

# NATURAL RESOURCES COMMISSION

Minutes - January 23, 1997

## MEMBERS PRESENT

Michael Kiley, Chair  
Jack Arnett, Vice Chair  
Patrick Ralston, Secretary  
John Goss  
Jerry Miller  
Jodi Perras  
Steve Cecil  
Damian Schmelz  
Joe Siener  
Terri Moore  
Jane Ann Stautz  
Mary Titsworth

## NATURAL RESOURCES COMMISSION STAFF PRESENT

Bill Teeguarden	Hearings
Cheryl Hampton	Hearings
Jennifer Kane	Hearings
Tim Rider	Hearings

## DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
David Herbst	Executive Office
Paul Ehret	Executive Office
Louise Krick	Executive Office
Lori Kaplan	Executive Office
Sylvia Wilcox	Legal Counsel
Angila Prather	Legal Counsel
John Richardson	Reclamation
Mike Sponsler	Reclamation
Ron Pearson	Reclamation
Bruce Stevens	Reclamation
Glenn Lange	Fish and Wildlife
Jim Mitchell	Fish and Wildlife
Gary Doxtater	Fish and Wildlife
Gary Miller	State Parks and Reservoirs
Gwen White	Soils Conservation
Charles Shannon	Law Enforcement
Scott McDaniel	Law Enforcement

Jerald Jackson            Law Enforcement

## **GUESTS PRESENT**

Barry Ledbetter	Michael Grimshaw
David Jenkins	Bernie Fallon
Myra Spicker	Nat Noland
Max Goodwin	Jeffrey Stant
Jon Voelz	Mike Mullett
J. Russell Boulding	

## **MONTHLY REPORTS**

Michael Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:20 a.m., EST on January 23, 1997 in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana. With the presence of all twelve members, the chair observed a quorum.

Jerry Miller moved to approved the minutes of the December 19, 1996 meeting. The motion was seconded by Jack Arnett and approved by voice vote of the commission.

Patrick Ralston presented the Director's Report. He indicated that the department will be presenting the budget to the House Ways and Means Committee on February 3. Ralston also noted the department is looking forward to Governor O'Bannon's leadership.

The Director reported that he had met with the new Commissioner of the Indiana Department of Transportation, Curtis A. Wiley. Ralston said Wiley plans to attend the next commission meeting so that the members can meet and talk to him.

Ralston said he received a call from the National Wild Turkey Federation Executive Vice President asking the department to host its 1998 convention. He indicated that the convention will bring to Indianapolis thousands of attendees from the United States and several foreign countries.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, said his council did not meet in January.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, reported that the department has made some process in streamlining the permit system. Costello also directed the commission's attention to agenda item #4. He said he asked Jerry Pagac to give a brief report on the state park deer control system.

Joe Siener, Chairman of the Advisory Council for the Bureau of Water and Resources Regulation, reported that due to the bad weather last week only four members attended. He noted that they did not have a quorum to vote on any items, but did make some informal recommendations. Siener said one item that staff presented was directed to seawall and shoreline

alterations. He said the DNR needed guidance in administering the regulatory program. Seiner said the council gave support to a staff proposal to talk with several citizens about refacing with stone instead of refacing with concrete.

David Herbst, Deputy Director for the Bureau of Water Resource Regulation, reported that the Department of Natural Resources and the Indiana Association of Soil and Water Conservation Districts co-hosted the annual meeting of district supervisors. The theme of the meeting was Water Quality. He characterized the meeting as "very successful."

Herbst also briefed the commission on the 1997 otter program. He said the division of fish and wildlife was returning this week with 75 additional otters from Louisiana. The program would release 25 otters at Mallard Roost, 25 otters at the Patoka Lake, and 25 otters at Sugar Ridge Fish and Wildlife area. Funding in excess of \$18,000 has been provided by two corporate sponsors, 13 schools, several organizations, and more than 100 individuals.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, reported that his bureau is working on several legislative issues. He said the division of reclamation has spend a great deal of time in discussions with the division of historic preservation and archaeology; the two divisions are seeking an effective and efficient method for processing archaeological investigations on mine sites.

Ehret also reported on the two full days of mediation with the parties that are involved in the coal combustion waste disposal issue. Ehret said, "I think although there are differences of opinions, I think there has been substantial progress and understanding made on the issues."

## **ANNUAL ELECTION OF OFFICERS**

The Natural Resources Commission then proceeded in its annual election of officers. Patrick Ralston made the following nominations:

Michael Kiley, Chair  
Jack Arnett, Vice Chair  
Patrick Ralston, Secretary

The motion was seconded by Damian Schmelz. No additional nominations were offered, and the nominations were declared closed. The three nominees were then approved by acclamation.

## **BUREAU OF LANDS AND CULTURAL RESOURCES**

### **Division of State Parks and Reservoirs**

#### **Consideration of a Proposal to Advertise a Prospectus for the Operation of the Newton Stewart Marina and Related Facilities at Patoka Lake**

Gary Miller of the division of state parks presented this item. He explained that the division currently operates the Newton Stewart Marina facility on Pakota Lake. The division is finding it "more and more difficult" to maintain and operate this marina. Miller said the department is unable to expand or further develop the marina. At this time, the division would like to offer the marina to a developer-operator which would ultimately negotiate a ground lease based upon the prospectus. He said the facility would provide the second privately-owned marina on the lake and assure competition "which is in the best interest of the patrons."

Jerry Miller moved to approve the proposal by the division of state parks to advertise the prospectus on the Newton Stewart Site. The motion was seconded by Mary Titsworth. Upon voice vote, the motion carried.

## **BUREAU OF WATER AND RESOURCE REGULATIONS**

### **Division of Fish and Wildlife**

#### **Consideration of Preliminary Adoption of Proposed Rule Amendments to Authorize Hunting Deer with Firearms in Designated Counties through an Extra Deer License; Administrative Cause No. 97-004D**

Jim Mitchell of the division of fish and wildlife presented this item. He indicated for consideration was a proposal to give preliminary adoption to amendments to 312 IAC 9-3-7. The amendments would authorize deer hunting in designated counties through the issuance of an extra deer license. Mitchell said the proposal was applied during the past hunting season through an emergency rule adopted by the DNR Director, and the division was now seeking to make the rule permanent.

Mitchell reviewed a state map with all the counties shown and numbers ranging between one and four in each county. The numbers represent the total antlerless deer a hunter can harvest in the referenced county. Hunters would have the opportunity to take four deer statewide but must also comply with these county bag limits.

Mitchell spoke briefly to this season's deer harvest. He said the harvest increased 7% from a year ago. There were 75,000 antlerless deer taken this season, an all-time record. Also, there were 47,300 antlered deer taken. The total harvest was an all-time record of 123,000.

Michael Grimshaw, who was representing the Northeastern Trout Association, said he had attended all the public hearings and was in favor of the rule.

Jon Voelz, Executive Director of the Indiana Wildlife Federation, was also present and expressed support for giving the rule amendments preliminary adoption.

Joe Siener said he received a letter from the Indiana Deer Hunters Association objecting to the rule. He also noted the advisory council had recommended that three hearings be held statewide on the proposed rule rather than the legal minimum of one hearing.

Damian Schmelz moved to approve for preliminary adoption the rule amendments to authorize hunting deer with firearms in designated counties through the use of an extra deer license, with the stipulation that there be three public hearings (one in northern, one in central, and one in southern Indiana). The motion was seconded by Mary Titsworth. Upon a voice vote, the motion carried.

## **LEGAL PROCEEDINGS**

### **Consideration of the Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the Matter of Bertie O. Weeks, Jr. v. Department of Natural Resources; Administrative Cause Number 96-024F**

The chair reported this item had been settled and the objections withdrawn. As a result, no action was needed by the commission.

Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the Matter Hoosier Environmental Council v. Department of Natural Resources and Foertsch Construction Company, Inc.; Administrative Cause Number 95-169R

[Foertsch Construction Company made a timely request to have the commission's court reporter record the oral argument on objections. Pursuant to 312 IAC 2-1-2(a) and 312 IAC 3-1-12(d), the transcript will form the official record in lieu of these minutes.]

Following the completion of oral argument, the chair deferred action on this agenda item until the meeting scheduled for February 19, 1997/

Consideration of Order to Deny Dismissal Based Upon Threshold Notice Issues in the Matter Hoosier Environmental Council v. Department of Natural Resources and Vigo Coal Company, Inc.; Administrative Cause Number 96-026R

The chair reported this item was deferred by agreement of the parties until the meeting scheduled for March 19, 1997.

### **Consideration of the Report of Hearing Officer and Recommendation for Final Adoption of the Recodification of the Fish and Wildlife Rules; Administrative Cause Number 96-155D**

Jennifer Kane, hearing officer, presented this item. She said the proposal was for final adoption of the recodification of fish and wildlife rules from 310 IAC 3.1 to 312 IAC 9. She noted also that the proposal incorporated numerous changes into permanent status which were currently effective only through emergency rules.

Kane referenced the report of public hearing by Steve Lucas. She said that report reflected public support for the proposal and no opposition. She also referenced technical errors which were

corrected from the language given preliminary adoption. With these modifications, her recommendation was for final adoption of 312 IAC 9 as the recodified version of the fish and wildlife rules and for the repeal of 310 IAC 3.1.

Damian Schmelz moved to give final adoption to new 310 IAC 9 and to the repeal of 310 IAC 3.1. The motion was seconded by Jerry Miller. Upon voice vote, the motion carried.

### **Consideration of the Report and Recommendation of Hearing Officer for Final Adoption of Amendments to 310 IAC 12-3 (Small Operator Assistance); Administrative Cause Number 95-312R**

William Teegarden, hearing officer, presented this agenda item. He said the changes were sought to maintain state conformity with the Federal Surface Mine Coal Reclamation Act and were noncontroversial. Teegarden noted that J. Nathan Noland, President of the Indiana Coal Council, indicated to him that the Coal Council would not comment upon this proposal or the other proposals for final adoption to SMCRA rules pending this month before the commission. Teegarden recommended the amendments be given final adoption.

Jerry Miller moved to give final adoption to the amendments to Indiana SMCRA rules pertaining to small operator assistance as recommended by the hearing officer. The motion was seconded by Joe Siener. Upon voice vote of the commission, the motion passed.

### **Consideration of the Report and Recommendation of Hearing Officer for Final Adoption of Amendments to 310 IAC 12 (Hydrologic Balance); Administrative Cause Number 95-314R**

Teegarden also recommended final adoption be given to the amendments to 310 IAC 12 with respect to maintaining hydrologic balance at coal mines. He said the amendments were also supported by Federal SMCRA.

Jerry Miller moved to give final adoption to the amendments to Indiana SMCRA rules pertaining to hydrologic balance as recommended by the hearing officer. The motion was seconded by Joe Siener. Upon voice vote of the commission, the motion passed.

### **Consideration of the Report and Recommendation of Hearing Officer for Final Adoption of Amendments to 310 IAC 12-3 (Incidental Mineral Extraction); Administrative Cause Number 95-314R**

Teegarden also recommended final adoption be given to the amendments to 310 IAC 12-3 with respect to the extraction of minerals other than coal from coal mines. He said the amendments were also supported by Federal SMCRA.

Jerry Miller moved to give final adoption to the amendments to Indiana SMCRA rules pertaining to incidental mineral extraction as recommended by the hearing officer. The motion was seconded by Joe Siener. Upon voice vote of the commission, the motion passed.

**Consideration of the Report and Recommendation of Hearing Officer for Final Adoption of Amendments to 310 IAC 12-3 (Ownership and Control); Administrative Cause Number 95-315R**

Teegarden also recommended final adoption be given to the amendments to 310 IAC 12-3 with respect to issues of ownership and control at coal mines to be permitted under Indiana SMCRA. He said the amendments were also supported by Federal SMCRA.

Jerry Miller moved to given final adoption to the amendments to Indiana SMCRA rules pertaining to ownership and control as recommended by the hearing officer. The motion was seconded by Joe Siener. Upon voice vote of the commission, the motion passed.

At approximately 12:30 p.m., EST, the meeting was adjourned.

**FUTURE MEETINGS DATES**

February 19, 1997 at 10:00 a.m., EST, Indiana State Museum, 202 North Alabama, Indianapolis:  
Regular Monthly Meeting.

March 19, 1997 at 10:00 a.m., EST, Indiana State Museum, 202 North Alabama, Indianapolis:  
Regular Monthly Meeting.

April 29, 1997 at 7:00 p.m., EST (Michigan City or another site to be announced in Northwest Indiana).