

**NATURAL RESOURCES COMMISSION**  
**Minutes - June 20, 1996**

**MEMBERS PRESENT**

Michael Kiley, Chair  
Patrick Ralston, Secretary  
Jerry Miller  
Joseph Siener  
Jodi Perras  
Steve Cecil  
Sherman Anderson

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Steve Lucas	Hearings
Bill Teeguarden	Hearings
Jennifer Kane	Hearings

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Paul Ehret	Executive Office
Louise Krick	Executive Office
Lori Kaplan	Executive Office
Glen Salmon	Fish and Wildlife
Dave Meuninck	Fish and Wildlife
John Friedrich	Forestry
John Bacone	Nature Preserves
Emily Kress	Outdoor Recreation
Otto Jose	Outdoor Recreation
Tom Kidd	Outdoor Recreation
Mike Neyer	Water
Mary Davidsen	Legal Counsel
Mary Ann Habeeb	Legal Counsel

**GUESTS PRESENT**

Linda Schoen	Les Zimmer
Hugh Schoen	Adam Titus
Don Hester	Rod Everhart
Don Schmidt	Dean Ford
Larry Scott	Jeane Meyer
Greg Woods	Tim Maloney
Bob Ginger	Bill Hayden
Jim Gumen	Kim Vail

## MONTHLY REPORTS

Michael Kiley, Chair, called to order the regular meeting of the commission on June 20, 1996 at 10:05 a.m., EST, in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana. With the presence of seven commission members, the Chair observed a quorum.

Sherman Anderson moved to approve the minutes of the May 23, 1996 meeting. The motion was seconded by Joe Siener and approved by voice vote of the commission.

Patrick Ralston gave the Director's Report. He noted that he was not able to attend the last NRC meeting due to his participation in the Vietnam War Memorial Dedication. Ralston noted that it was a memorable event and well attended.

The Director reported on the success of the fishing rodeo which was held on June 8. The theme was "Turn Our Kids Onto Fishing" and was a great success.

Ralston indicated the Midwest Fish and Wildlife meeting in South Bend was going to be attended by Fish and Wildlife Directors throughout the Midwest. He noted that Gary Doxtater is the president of the group.

The Director also reported that this is the 80th anniversary of the department. He indicated that the division of parks and reservoirs is working on a 80th birthday celebration along with the a dedication of Ft. Benjamin Harrison State Park. Tentatively, October 25 and 26 will be a dedication, commission meeting and celebration of the 80 years of the department.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported that Jack Costello had asked for Item #6 on the agenda to be taken off due to a lack of sufficient information from the proponent.

Miller also reported on the advisory council meeting during the prior week. Miller indicated the members had a great opportunity to tour the Gene Stratton - Porter Historic Site in Kendallville. Miller praised the DNR employees who serve at the site. He said, "they are probably some of the best people we have come in contact with in the State of Indiana, and they do a great job".

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, was not present.

Joe Siener, Chairman of the Advisory Council for the Bureau of Water and Resource Regulation, stated his council did not meet in June. He indicated his council was next set to meet in July.

David Herbst, Deputy Director for the Bureau of Water and Resource Regulation, was not present as he was representing DNR at the Natural Resources Study Committee which was meeting in Monticello on June 20 and 21.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, reported that his bureau had a very successful oil and gas compact meeting hosted in Indianapolis. He noted Governor Bayh, as well as the Governor of Wyoming and Governor of South Dakota, were participants. Ehret said "it was a wonderful event and well attended".

Ehret said the legislative natural resources committee is going to have a meeting in August, and the committee have asked the meeting to be held in Jasonville. He noted the division will be giving the committee an active mine tour and an AML site tour.

## **BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

### **Personnel Interviews**

There were no personnel interviews during the June 20 meeting.

### **Permanent Appointments**

There were three permanent appointments for the month of June. Presented for consideration and with favorable recommendations by the DNR were the following:

Jason Getz, Assistant Property Manager, Versailles State Park (Division of Parks and Reservoirs);

Rob Booknis, Assistant Property Manager, Shakamak State Park (Division of Parks and Reservoirs); and

Dave Mueninck, Assistant Property Manager, Mixsawbah Fish and Wildlife Area (Division of Fish and Wildlife).

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erry Miller moved that Jason Getz, Rob Booknis, and Dave Meuninck all be granted permanent appointments to their respective positions. The motion was seconded by Sherman Anderson. Upon voice vote, the motion carried.

## **DIVISION OF STATE PARKS AND RESERVOIR MANAGEMENT**

### **Consideration of the Dedication of Rix Wildlife Sanctuary Nature Preserve, Newton County**

John Bacone of the division of natural preserves presented this item. He explained that the proposal is a 38.45 acre tract of land located in Newton County adjacent to Willow Slough Fish and Wildlife Area. It is owned by The Nature Conservancy, which received

the site as a gift from the estate of Earl Rix. The Division of Nature Preserves recommends the dedication of this area.

Les Zimmer, on the staff for the Nature Conservancy, reflected on "what an opportunity it was" to dedicate a "very deserving ground". Zimmer indicated there was an additional 40 acres to the west of the tract which may be received in the near future.

Steve Cecil moved to approve the dedication of Rix Wildlife Sanctuary Nature Preserve located in Newton County. The motion was seconded by Sherman Anderson. Upon voice vote, the motion carried.

## **DIVISION OF FORESTRY**

### **Consideration of a Request by Ameritech, Inc. for a Four-Year Permit for the Construction, Operation, Maintenance and Repair of an Underground Telephone Cable Across Morgan-Monroe State Forest**

John Friedrich of the division of forestry presented this item. He explained that currently Indiana University operates an observatory at Morgan-Monroe State Forest, and there are overhead telephone lines connecting the observatory. Friedrich noted that Ameritech is requesting permission to move their overhead phone lines to underground phone lines in order to reduce the chance of damage and make repairs easier.

Joe Siener moved to approve the request of Ameritech to move overhead phone lines to underground phone lines. The motion was seconded by Steve Cecil. Upon voice vote, the motion carried.

## **BUREAU OF WATER AND RESOURCE REGULATIONS DIVISION OF OUTDOOR RECREATION**

### **Information Item Concerning Sugar Creek**

Michael Kiley, Chairman, directed that the record show the commission accepted the petition from a concerned citizens group. The petition was described as being from property owners, users of the creek, friends, and business owners who are against designation of Sugar Creek as a natural scenic and recreation river. He said the documents will be the first documents that will be shown on the record at the public hearing next month, and they will be circulated among the commission members so everyone will have an opportunity for review.

Otto Jose of the division of outdoor recreation presented this item. He outlined the events that have taken place over the last year. He reported on the committee and sub-committees, and on how they met and began developing goals for certain issues. After the goals, recommendations were made and were reviewed and revised by work groups. A

public meeting was held on April 17, 1996 at the Crawfordsville High School to review the guidelines and discuss how the guidelines were prepared. After the presentations were completed, the public was invited to make comments or suggestions on revisions to the guidelines. Jose noted another work group meeting was held, and the group reviewed each of the comments taken from the public meeting. He indicated most of the comments were opinions, not suggestions, so very few revisions were made. On June 12, 1996, a final public meeting was held to review the revised guidelines.

Patrick Ralston commended the division of outdoor recreation for a "job well done" in meeting with the city people and providing an open forum. He stated, "regardless on how it comes out, I don't think anyone can say they didn't have the opportunity to express their opinion".

Larry Scott, Montgomery County Engineer spoke briefly. He said approximately one year ago, Commissioner Alan Plunkett addressed this group and asked the process to designate Sugar Creek in Montgomery County under the Natural Scenic and Recreational Rivers Program be stopped. The primary concern about Sugar Creek seems to be water quality. He stated the Indiana Department of Environmental Management should enforce its own regulations. Another concern was that designations under the Rivers Program would inhibit economic development. Scott hoped that the DNR recommendations will consider all activities within the county and not just those activities in which DNR has a primary interest.

Linda Schoen spoke on behalf of a property owner along Sugar Creek. She claimed to represent almost 800 petitioners. She noted the petitioners would like to see more consideration for property owners along Sugar Creek.

Dean Ford, President of the Friends of Sugar Creek, said the citizens in Montgomery County want Sugar Creek preserved for generations to come. Ford asked the commission not to lose sight of its responsibilities.

## **DIVISION OF FISH AND WILDLIFE**

### **Consideration of Request by Pike-Gibson Water, Inc. for an easement in Pike State Forest to Place a Water Line Along County Road 775 East in Pike County**

At the request of Jack Costello, the Chair reported this item deferred.

## **LEGAL PROCEEDINGS**

### **Consideration of Proposal for a Nonrule Policy Document to Implement Mediation within the Natural Resources Commission and the Department of Natural Resources; Administrative Cause No. 96-131A**

Steve Lucas, Director of Division of Hearings for the Natural Resources Commission, presented this item. He directed the attention of the members to an amended proposal circulated to the members just prior to the meeting and printed on green paper. He said the thrust was similar to the original proposal but that it included several very productive changes suggested by the Legal Section of the Department of Natural Resources.

Lucas reflected that mediation is enjoying a growing acceptance and usage as an alternative to litigation in civil proceedings. Although not every case can be successfully mediated, and not every issue is suitable for mediation, the process has proven an invaluable tool for dispute resolution.

Lucas noted that with the growing usage of mediation in civil proceedings, it has also received attention as a possible way to streamline dispute resolution in administrative agencies. Mediation is being applied at the federal level, and at least two state programs already recognize the validity of mediation or other forms of "alternative dispute resolution." These are disputes between landowners and timber buyers within the jurisdiction of the Natural Resources Commission and voluntary remediation within the jurisdiction of the Indiana Department of Environmental Management. He said that in the last two years, eleven administrative mediations have been initiated before the Division of Hearings of the Commission (nine pursuant to the timber buyer statute and two by party stipulation involving the Division of Reclamation), and of those, eight were successfully mediated, one mediation failed, and two are pending.

Lucas said he currently chairs the Governmental/Regulatory Affairs Committee of the Alternative Dispute Resolution Section of the Indiana State Bar Association. Last year, that committee prepared draft language to amend the administrative orders and procedures act to make mediation more generally accessible.

Subsequently, the topic was taken up by the Administrative Orders and Procedures Act Study Committee created by the Indiana General Assembly. He noted that Lori Kaplan, Chief Legal Counsel for the DNR, is a member of the committee; and the legislative committee drafted language which ultimately became Senate Bill 241. He said SB 241 was a major expansion of the ISBA ADR Committee draft, but the two drafts were harmonious. SB 241 was then enacted by the 1996 Indiana General Assembly and becomes effective July 1, 1996.

Lucas said his understanding of SB 241 is that it requires an agency to opt into mediation. He was presenting for consideration a nonrule policy document, for publication in the Indiana Register, which would allow for the broad application of mediation both for NRC functions and DNR functions. He said the document was fairly detailed and complex and that it should be viewed as a pilot project, likely to need refinement. Lucas indicated that he would return to the commission within six months to report upon the progress of the project, and if it proved unworkable, he asked the commission for its forbearance if he brought the item back more quickly. Lucas stated that a rule package addressed to mediation might eventually be offered, but he thought some experience with the concept should precede rule development.

The Chair explained that he was certified as a mediator and could vouch for the success of mediation. "People are given a chance to have their say, to have their problems and concerns heard. Sometimes what bothers people the most is not a legal wrong but a real or perceived personal insult or slight." Mediation can help cut through the problems and bring a timely resolution to a dispute.

Sherman Anderson also spoke to the value of the mediation process. He said he had recently been involved in mediation and was impressed with how the parties were brought together. He said he wholeheartedly supported its usage by agencies, particularly because the emphasis of government should be upon making it less imposing and more accessible to the citizens.

Joe Siener moved to approve the pilot project for the implementation of mediation by the Natural Resources Commission and by the Department of Natural Resources, as amended, and for its publication in the Indiana Register as a nonrule policy document. The motion was seconded by Sherman Anderson. Upon a voice vote, the motion carried.

### **Consideration of Proposal for Addressing Commission Floodways; Administrative Cause No. 96-110W**

Steve Lucas introduced this item. He directed the attention of the membership to an amended proposal, circulated just prior to the meeting, printed on blue paper. He said the changes were mostly cosmetic, required primarily because of unintended manipulations by a word processing program. He said the proposal was for a nonrule policy document and that it involved almost exclusively a policy question but would provide greater flexibility in administration of the Flood Control Act (IC 14-28-1). If implemented, it could be incorporated as a concept appropriate for mediation. He introduced Mary Davidsen of the DNR's Legal Section, who he said would explain the proposal.

Mary Davidsen reflected that the Flood Control Act provides both for a "natural floodway" and for a floodway to be established by law and referenced as a "commission floodway." Although authority for implementing a commission floodway is not new to the Flood Control Act, its provisions had not been used, in large part because of the lack of any guidance document.

Davidsen suggested that the proposed guidance document would establish a legal structure by which an area lawfully and safely elevated above a floodway could be used for the development of abodes and other facilities. A permitting process would be established by which an applicant could seek to remove the area from the legal boundaries of the floodway, but the applicant would be bound to meet waterway dynamics, environmental, natural resource, and safety concerns. The Federal Emergency Management Agency would be invited to participate. Davidsen observed that the guidance document would help bring a reasoned conclusion to several pending cases and could be used also for issues likely to arise in the future.

Michael Neyer, Assistant Director of the Division of Water, spoke to the proposal. He agreed that there were a number of situations in which the development of a commission floodway could help bring a reasoned conclusion to a controversy.

Neyer noted, also, that there were some site-specific conditions where modeling of a natural floodway is an unsatisfying way to delineate a boundary. He said the use of the HEC 2 model is the primary way natural floodways are determined. A very flat basin can make a delineation somewhat arbitrary. Unique or extraordinary physical characteristics can also pose a problem. He referenced Junk Ditch in Allen County as an example; the ditch changes directions in a major flood event and discharges into a different watershed.

William Hayden of the Sierra Club and other environmental organizations spoke in favor of the proposal. He said some greater flexibility was needed for the DNR to address unusual site conditions. Hayden referred to several recent efforts to emasculate the Flood Control Act, often because of a legislator's concerns for an arbitrary result to a single constituent. Hayden also observed that the ability to delineate a commission floodway should provide an opportunity to establish boundaries on watersheds, in Monroe County and elsewhere, that are too small for a recognized floodway but where flooding is a serious problem.

Tim Maloney of the Hoosier Environmental Council also spoke briefly in favor of the concept. He said a greater degree of flexibility was probably justified. He urged, however, that commission floodway applications be included in the general disbursement listing prepared for permitting by the Division of Water. Neyer responded that Maloney's suggestion would be implemented.

Jim Wurster spoke in favor of the proposal. He said the concept should provide a viable option, in the proper setting, for responsible developers.

The Chair spoke positively about the concept. He observed that sometimes in the past, the Commission had found its "feet set in concrete where equities seemed to support a more open approach." He said the development of a commission floodway should only be approved where based on good common sense and with due consideration for environmental concerns, but the concept had an appropriate place.

Patrick Ralston spoke favorably as well. He agreed with Hayden's analysis that there had been considerable pressure from the Indiana General Assembly concerning the rare harsh consequences of the Flood Control Act. This process would help the Department of Natural Resources apply a better-reasoned approach and might help allay legislative fears for what has been a good program. He urged that the Flood Control Act has done a lot of "positive things," both in terms of public safety and the environment.

Patrick Ralston moved to approve the proposal for addressing commission floodway as a nonrule policy document, as amended and with access to mediation, and for its publication in the Indiana Register. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.



At approximately 11:35 a.m., EST, the meeting was adjourned.