

NATURAL RESOURCES COMMISSION

Minutes - March 24, 1998

MEMBERS PRESENT

Michael J. Kiley, Chair
Jack Arnett, Vice Chair
Larry Macklin, Secretary
Jerry Miller
Joe Siener
John Goss
Damian Schmelz
Steve Cecil
Tom Cobb
Jane Ann Stautz
Mary Tittsworth Chandler

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Lori Kaplan	Executive Office
Paul Ehret	Executive Office
Angie James	Executive Office
Carrie Doehrmann	Executive Office
Robert Waltz	Entomology and Plant Pathology
Gregg McCollam	Fish and Wildlife
Bill James	Fish and Wildlife
John Olson	Fish and Wildlife
Gerald Pagac	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
John Davis	Land Acquisition
Ken Grantham	Land Acquisition
John Bacone	Nature Preservers
Bill Bruggen	Museums and Historic Sites

GUESTS

Chris Morisse	WLFI-TV Lafayette
Dave Foley	WLFI-TV Lafayette
Mike Gery	West Lafayette
Charles Wilson	Indianapolis
Norman and Rita DeBay	West Lafayette
Carol Huston	West Lafayette

Steven and Debbie Wilkins	West Lafayette
Larry and Nancy Marshall	West Lafayette
Rick and Michelle Meyer	West Lafayette
Steve and Mary Beth McClean	West Lafayette
Esther Chosnek	West Lafayette
Gary Wolfet	West Lafayette
Terry West	West Lafayette
Jeff Smith	Battleground
Dave and Ellie Fisher	Battleground
Dick Mercier	Indianapolis
Philip Smith	Columbus
Thomas Sterner	Bloomington
Calvin Davidson	Indianapolis

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:08 a.m., EST, on March 24, 1998 in the Conference Room, Indiana State Museum, 202 North Alabama Street, Indianapolis, Indiana. With the presence of eleven members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the February 17, 1998 meeting. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. He said, "the Indiana General Assembly has retired for the year, and we came out of the legislature very clean." He added that "we're now approaching budget time, something we'll probably start in the next 30 days." Macklin also reported upon a meeting with the U.S. Fish and Wildlife Service to "strengthen our partnerships." He said Indianapolis hosted the National Wild Turkey Convention, and the convention "went very well."

Macklin commented briefly upon a meeting with Congressman Lee Hamilton regarding the development of Charlestown State Park. Macklin indicated the DNR was aggressively seeking the reclassification of several staff members. In response to a question from Damian Schmelz, he said substantial salary improvements would sometimes result from the reclassifications.

The Director said he attended the Executive Committee of the Great Lakes Commission. A primary initiative of the GLC is to develop full membership for Ontario and Quebec.

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

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, distributed a new publication from the Division of Historic Preservation and Archeology entitled Indiana's Cultural Resources Management Plan (1998-2003). He explained that the publication was required for a state to receive continuing funding under the National Historic Preservation Act (NPHA). In addition, the publication was "helpful to planning" and to a sense of what the division and the agency were accomplishing.

Joe Siener, Chair of the Advisory Council for the Bureau of Water and Resource Regulation, said his council met March 11. An informative presentation was made to the council on the operation of the Heritage Trust Program. In addition, the council gave a "vote of confidence" to the division of water to continue its efforts to design permit exemptions and general permits for waterway construction activities.

Lori Kaplan, Deputy Director for the Bureau of Water and Resource Regulation, reported upon a meeting with the U.S. Fish and Wildlife Service. She said four or five representatives from the USF&W Service came from Minneapolis to help explore opportunities for the two agencies to work together more closely. She reflected upon interest by the agricultural community in the purchase of development rights to help protect valuable farmland from suburban sprawl. Kaplan noted that the USF&W Service had found the purchase of these development rights was also helpful in protecting natural resources.

Kaplan also reported the Director had implemented an emergency rule to help protect paddlefish from sportfishing pressures. She explained that the daily catch limit was set at two fish, but this limit was still responsive to the interests of sport fishermen because an individual fish could easily weigh in excess of 30 pounds. Kaplan said paddlefish roe tastes very much like sturgeon roe and is being used on the black market as a caviar substitute. The emergency rule would enhance enforcement efforts. She noted that a permanent rule under consideration for final adoption during today's meeting would address the issue on a long-term basis.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said the Coal Combustion Waste Workgroup is working diligently and "continuing to make progress in some areas but struggling a bit in others." He said Jim Slutz, Director of the Division of Oil and Gas, is acting as co-chair of the Governor's Conference on the Environment set for April 24. He said Indiana recently hosted a national conference directed to the reclamation of prime farmland, and a related conference would soon follow in Illinois. Ehret reported that both the division of oil and gas and the division of reclamation recently held their annual meetings.

ELECTION OF OFFICERS

Jerry Miller nominated Michael Kiley as Chairman, Jack Arnett as Vice Chair, and Larry Macklin as Secretary of the Natural Resources Commission for 1998. The nominations

were seconded by Damian Schmelz. There were no additional nominations, and the three candidates were elected by acclamation.

BUREAU OF LANDS AND CULTURAL RESOURCES DIVISION OF STATE PARKS AND RECREATION

Consideration of Establishment of a Rate Making Process for Marinas and Other Facilities under Long-Term Lease Agreements with the Department

Garry Miller of the division of state parks and reservoirs presented this item. He said for consideration was "a way for discussion between marina operators and boat slip renters" when marina operators seek a rate increase for facilities on properties owned or leased by the DNR. Miller outlined to the commission the process which would be created by the draft nonrule policy document. An analysis of rate increase requests would be provided by the division of state parks and recreation, then an informal hearing process would be provided by the NRC's division of hearings.

Miller said, "The only thing we're requesting for this year is that we provide leeway for the April 1 date." The nonrule policy document would require a resort or marina under lease to the DNR to file its request for rate increase by April 1 to be in effect for the following year. With the timing of approval of the nonrule policy document, the division of state parks and reservoirs would this year allow filings into April and perhaps as late as April 30. Joe Siener asked how these late filings would be reconciled with the remainder of timings set forth in the proposed document. Miller said he believed the DNR could make the extraordinary effort needed to complete its review by May 30 so that the remainder of the schedule in the document would be on track.

Charles Wilson of Indianapolis spoke in favor of the proposal. "It's a process that has been long overdue. The former process deserved an F' on due process." Wilson said he and others had discussed the need for the change with Director Macklin and the agency several months ago, and he thanked the DNR for its cooperation in moving the concept forward.

Philip Smith of Columbus also spoke in favor of the new hearings concept and thanked the DNR for "being responsive. We appreciate very much the cooperative spirit shown to us." He said he believes the "proposal is fair, just, and equitable."

Jane Ann Stautz moved to approve as a nonrule policy document the process, as more specifically set forth in the commission packet, to consider rate increases at resorts and marinas under lease with the department of natural resources. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Consideration of a Proposal to Adopt the Prophetstown State Park Master Plan

Chairman Kiley re-introduced this item. He noted the proposal was before the commission during its February meeting, but action was not taken at that time in order to allow members to fully consider all options and because last month only a "bare quorum" was present. During the current meeting, all but one commission member was in attendance, and final action could appropriately be taken on the Master Plan for Prophetstown State Park.

Gerald Pagac, Director of the Division of State Parks of Reservoirs, said the DNR's consultants (Cole Associates, Inc.) had been asked to review other roadway alternatives to address concerns raised during the February meeting with respect to park roadway development. These concerns focused upon residential sites commonly referred to as the "gatehouse tract" and the "underpass tract." Craig Bair of DNR's Division of Engineering then outlined four possibilities for the roadway:

1. Road Shift to the South;
2. Road Shift to the North;
3. Route Proposed in the Master Plan; and,
4. Retention of Current Location of Swisher Road.

He said Cole Associates concluded the Route Proposed in the Master Plan was still preferable in terms of long-term park development. A Road Shift to the South was expensive, would enter the flood plain, and would impact plans for a horse trail. A Road Shift to the North would place park visitors in an unattractive proximity to aggregate mining operations, which were expected to last another ten years, and would pass through a low-quality woods. Retention of the Current Location of Swisher Road would provide a straight highway not supportive of park aesthetics. Pagac said the division hoped the commission would approve the proposed Master Plan, including the Route Proposed in the Master Plan, but with the stated condition that the land would be acquired only when the current owners determined to move or to sell their properties.

Sen. Mike Gery spoke "in favor of the Master Plan done by the consultants and the DNR." He told the commission the proposal was now ten years old, and he recounted early meetings to consider the concept with former DNR Director, Jim Ridenour, and former State Parks Director, Bill Walters. "At first the idea was controversial with lots of changes made" to accommodate citizen concerns. Gery also praised the "unique partnership of the participants in the Museums at Prophetstown. There's a real synergy here."

Terry West, a private consultant for five homeowners seeking disapproval of the road relocation urged by Cole Associates, (and Professor of Engineering Geology at Purdue University) said, "I am in favor of the park and have been for many years." He urged the commission to continue to use Swisher Road as the park access, however, rather than either of the two alternatives which would pass through or go around the gatehouse tract. He spoke largely in terms of cost efficiency and said that if a new road must be chosen, an alternative with only modest disruption would be to pass through a lightly forested

area farther away from the residences near the gatehouse tract. That alternative was previously outlined by Bair as the Road Shift to the North.

Gary Wolfelt told the commission that "My friends and family do appreciate your concern. It appears we're moving in the right direction." At the same time, he said if the DNR goes forward as suggested, some of the local residents would probably employ legal counsel to make sure their interests were properly protected. Wolfelt argued using existing Swisher Road was the best option. "Taking out a section of Swisher Road is not necessary." He also noted that one of the five parcels, the Borden tract, was now available for sale, and he urged the DNR to move forward with acquisition.

Dave Fisher, counsel for the Town of Battleground, said it "welcomes the state park. We don't find any problem with the general plan." He said the town urged approval of the Master Plan and looked forward to the park opening. Chairman Kiley thanked the Town of Battleground for its participation and cooperation, and he said the commission looked forward to a working partnership for the future.

Jerry Miller moved to approve the Master Plan for Prophetstown State Park but with the condition that land within the designated "gatehouse tract" and the "underpass tract" only be purchased when the current owners decide to sell or vacate their properties. In addition, the department of natural resources was directed to move forward as soon as practicable with negotiations to purchase the Borden tract. The motion was seconded by Damian Schmelz.

Jack Arnett asked if approving the motion would mean the DNR would be mandated to move the park road from its current configuration along Swisher Road. Pagac responded that would not be a mandate. Development of the park would be in phases and would be dependent upon funding availability. In addition, the road could not be located until land was acquired to accommodate for relocation. That might not occur for decades.

Tom Cobb urged DNR counsel to review the language of the commission resolution and to make modifications to assure that only landowners currently in residence were covered. Pagac responded he believed that to be the intent since acquisition could take place when the residents vacated the site. John Davis of the Division of Land Acquisition said all the landowners in the gatehouse tract were also residents, but the same was not true for the underpass tract.

Schmelz said, "I would like to compliment Gerry and his staff for addressing the concerns of the residents." He said the additional consideration of options and the flexible language of the resolution demonstrated concerns were heard and taken into account.

The Chair then called the motion for a vote. The motion carried unanimously.

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Burnett Woods Nature Preserve, Hendricks County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve was a 69 acre of land located near the town of Avon in Hendricks County and would be the first nature preserve in that county. "It is an Indiana Heritage Trust project." Bacone said the site was a very fine old-growth forest, and the owners were strongly supportive of its protection.

Mrs. Ruth Burnett made it available to us "as a serious bargain sale." Bacone said the preserve would be managed by the Central Indiana Land Trust Incorporated. He recommended its dedication as a nature preserve.

Jerry Miller moved to approve the articles of dedication for the Burnett Woods Nature Preserve in Hendricks County. The motion was seconded by Tom Cobb. Upon a voice vote, the motion carried.

BUREAU OF WATER RESOURCES AND REGULATION DIVISION OF OUTDOOR RECREATION

Report on Huntington Reservoir Mountain Bike Trail and Request for Approval of Continuation of Program

The Chair reported this item deferred.

DIVISION OF FISH AND WILDLIFE

Information Concerning Emergency Rule to Govern Antlerless Deer Quotas for Counties in 1998

John Olson of the division of fish and wildlife presented this item. He said deer biology did not provide sufficient time to perform needed analyses and, at the same time, complete the rule adoption process. As a result, antlerless deer quotas for 1998 and future years would be implemented through emergency rules. He distributed maps which indicated what the department was proposing for those quotas in 1998 and said the division of fish and wildlife would conduct public meetings in Plymouth, Indianapolis, and Seymour to determine citizen sentiment. He said that after the completion of the hearing process, the implemented emergency rule might differ somewhat from the proposed map.

LEGAL PROCEEDINGS

NRC DIVISION OF HEARINGS

Consideration of Report of Public Hearing and Other Public Comments, Responses by the Department's Division of Fish and Wildlife and Division of Law Enforcement, and Recommendations of Hearing Officers in the matter of Biennial Amendments to Fish and Wildlife Rules; Administrative Cause No. 97-209D; LSA #97-309(F)

Steve Lucas, hearing officer, introduced this item. He said three public hearings were conducted to consider biennial amendments to the fish and wildlife rules. A wide variety of issues were considered, and roughly 700 citizens attended at least one of the hearings. In addition, there were numerous written comments. The diversity of issues and the depth of public interest "stretched the rubber band for the hearing process about as far as it could go." He suggested important lessons were learned to be considered in future rule adoptions of this nature.

Lucas reflected that, as a result of public input, the division of fish and wildlife and the division of law enforcement agreed upon several changes to the rule proposal. Most of these meant backing away from final adoption at this time, but with the possibility that following further study some of the concepts might come back to the commission in a modified form. He said the three hearing officers concurred or at least acquiesced in each of these changes.

Lori Kaplan confirmed that the division of fish and wildlife and the division of law enforcement had decided more study was needed before recommending final adoption on several key issues. This decision was based largely upon public input.

Lucas distributed a copy of the rule language recommended for preliminary adoption. He said there was also one additional modification which was sought by the fisheries biologists in the division of fish and wildlife. This change would make off limits to fishing the Linde Dam (Prax Air) on the East Branch of the Little Calumet River. Lucas said that the language given preliminary adoption referred only to the period from April 1 to June 15 as the period of prohibition, but the proposal was presented by the DNR as covering the entire calendar year and discussed in those terms by citizens who commented upon it. Lucas also noted that the proposal was seemingly noncontroversial.

Chairman Kiley reflected that Calvin Davidson signed a card indicating he wished to speak in opposition to the rule proposal. Davidson did not respond when his name was called. Bill James, DNR Chief of Fisheries, informed the commission that Davidson had previously left the meeting room.

Damian Schmelz said an acquaintance in southern Indiana had a particular interest in a proposal to modify the season for hunting crows. This individual was opposed to the proposal but expressed skepticism that his concerns would be seriously considered. "A lot of citizens think it does no good to be heard." The hearing officer assured the individual, however, that he would receive a serious audience, and "largely as a result of the citizen's

comments, I think, the proposal is not here today for final adoption." Schmelz said this result shows the commission "is responsive. For him and his friends, faith has been restored in the process."

Schmelz moved to give final adoption to the biennial amendments to the fish and wildlife rules as set forth in the handout distributed during the meeting, but with the modification to make the prohibition at Linde Dam apply all year. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of Hearing Officer; In the Matter of Formalization by Rule of a "No-Boat" Zone in the Bass Lake State Beach Swimming Area; Administrative Cause No. 97-238P; LSA #97-337(F)

Steve Lucas, hearing officer, presented this item. He explained this proposal was a housekeeping measure. For decades, boating activities had been prohibited in the swimming area at Bass Lake State Beach in Starke County. Traditionally, the basis for the no-boat zone was a prohibition within the rules applicable to state parks and other properties administered by the DNR. Since the state park arguably terminates at the shoreline of Bass Lake, however, a potential enforcement concern was raised. This rule amendment would cause the no-boat zone to be based upon the commission's authority to regulate public waters, and any enforcement issue should be resolved.

Lucas said the public hearing drew a considerable audience because a local newspaper report suggested several adjacent property owners might be adversely affected. When they learned that would not be the case, concerns were alleviated. No negative comments were offered concerning the proposal. The public hearing did serve a positive purpose, however, because representatives from the division of state parks and reservoirs and from the division of law enforcement were given the opportunity to speak to local citizens about several items of concern (even if those items were not directly related to the rule adoption). Lucas recommended the amendments proposed to 310 IAC 2.1-5-3 be given final adoption.

Jack Arnett moved to give final adoption to the amendments to 310 IAC 2.1-5-3 to formalize by rule a no-boat zone in the Bass Lake State Beach Swimming Area. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearings and Recommendation of Hearing Officers; In the Matter of a Proposed Gypsy Moth Quarantine Rule Section; Administrative Cause No. 97-135E; LSA #97-232F

Steve Lucas, hearing officer, introduced this item. He said public hearings were held in Michigan City and Indianapolis to consider a proposed new rule section which would establish the process for determining which counties to quarantine when infestations of

gypsy moths occur. Gypsy moth is an insect pest which is regulated by the U.S. Department of Agriculture, as well as the DNR, and the alternative to a state-administered countywide quarantine process is a federally-administered statewide quarantine. Since the consequences of a gypsy moth quarantine are a substantial burden on businesses and citizens, the rule will relieve or at least defer the burden for portions of the state not quarantined. He said the proposal did not establish a quarantine in any particular county but set the mechanism in place for a quarantine, an apparent likelihood in the near future in northeast Indiana.

Lucas said Robert Waltz also attended the public hearing in Michigan City where Lucas acted as the hearing officer (Sylvia Wilcox was the hearing officer in Indianapolis), and Dr. Waltz effectively answered citizen questions concerning the gypsy moth and the rule proposal. As a result, there were no negative comments directed to the rule proposal. Lucas characterized the general atmosphere during the public hearings as being "resignation that the gypsy moth quarantine is something Indiana is going to have to deal with." Lucas said the only modification from the language given preliminary adoption was to reference "restricted use pesticides" in proposed 312 IAC 18-3-14(b)(19)(A), rather than specific brand names, a modification urged by the Indiana State Chemist.

Robert Waltz explained that the Animal Plant Health Inspection Service ("APHIS") of the Department of Agriculture administered the federal program directed to slowing the spread of gypsy moths. Because of elevated numbers of gypsy moths in Indiana during the last year or two, particularly along Indiana's border with Michigan, APHIS has taken steps to adopt regulations including Indiana in its quarantine program. In the absence of an Indiana rule, the federal regulations would move forward this summer toward a statewide quarantine. Waltz said in 1996 fewer than 6,000 male gypsy moths were captured in hormone traps, but in 1997 the number exceeded 60,000.

Waltz asked the commission to give 312 IAC 18-3-14 final adoption.

Steve Cecil asked whether the mild winter was likely to aggravate the spread of gypsy moths in the state. Waltz responded that gypsy moths were sensitive to extreme cold. Three consecutive nights of temperatures colder than 30 degrees below zero, with no snow cover, were "devastating to gypsy moth populations." A mild winter such as the one experienced this year probably was favorable to gypsy moths, but it might also be favorable to "parasites and parasitoids" which attack gypsy moths. The net result was impossible to predict.

Damian Schmelz moved to approve proposed 312 IAC 18-3-4 as set forth in the commission packet.

The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Consideration of Modification of Transcript Fees for Court Reporting Services by the Division of Hearings; Administrative Cause No. 98-043A

Steve Lucas presented this item as Director of the NRC Division of Hearings. He said rates for transcript preparation by the division's court reporter were set by the commission and had not been modified in a decade. He urged the commission to reset the rate at \$3.80 a page, the mean cost for transcripts based upon comparisons from several private services. At the same time, no hourly fee would be charged to record proceedings, a cost yet very favorable with hourly rates for private court reporters which varied between \$20 and \$50 an hour (if an hourly rate could even be obtained without also purchasing a transcript). Lucas said this schedule would be more equitable to private court reporting concerns and should also help relieve some of the pressure upon the division to do large numbers of transcripts. He said the latter result would be enhanced when a transcriber was purchased to allow proceedings recorded by the division of hearings to be transcribed, at the option of a party, by a private court reporting service.

Joe Siener moved to reset the rate for transcriptions by the division of hearings at \$3.80 a page effective with requests made after April 1, 1998. Recordings would continue to be provided without charge. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

Adjournment

At approximately 11:58 a.m., the meeting adjourned.