

**NATURAL RESOURCES COMMISSION**

The Garrison, Fort Harrison State Park  
6002 North Post Road  
Indianapolis, Indiana

Minutes of May 17, 2005

**MEMBERS PRESENT**

Michael Kiley, Chairman  
Rick Cockrum, Vice Chairman  
Kyle Hupfer, Secretary  
Jane Ann Stautz  
Chad Frahm  
Damian Schmelz  
Raymond McCormick, II  
Lester Ponder  
Matt Klein

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Ron McAhron	Executive Office
Todd Tande	Executive Office
Jessica Marks	Executive Office
Burgess Brown	Executive Office
Tim Taylor	Reclamation
Brock Mayes	Reclamation
Rob Carter	Law Enforcement
Mike Crider	Law Enforcement
Mike Reeder	Legal
Ihor Boyko	Legal
Jerry Pagac	State Parks and Reservoirs
John Baker	State Parks and Reservoirs
John Bacone	Nature Preserve
Jim Wichman	Forestry

**GUESTS PRESENT**

Gary Doxtater  
Ted Harris  
Don Mottley

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on May 17, 2005, at the Garrison, Fort Harrison State Park, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Damian Schmelz moved to approve the minutes of March 15, 2005. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

Director Hupfer updated the Commission on 2005 legislation. He stated the biennium budget passed with a “slight increase” over prior budgets. “However, this ensures that all this money will be received by the Department as opposed to the last biennium where significant amounts were reverted” resulting in a “sizeable” increase in agency funding over the next two years. He noted the Heritage Trust was funded for \$1 million over the next two years.

Director Hupfer informed the Commission that the Division of Soil Conservation was moved from the DNR to the new Department of Agriculture with two exceptions. The LARE (Lake and River Enhancement) Program and the Lake Michigan Coastal Program to implement federal CZM remained with the DNR. He said the Division of Soil Conservation’s purposes were related primarily to agriculture and were better suited for the Department of Agriculture.

The Director said the statute allowing for lifetime licenses would be repealed effective July 1, 2005. The availability of lifetime licenses has “proved to be very poor for the Department. Approximately 40,000 to 45,000 people” hold lifetime licenses. “Substantial revenue” is being lost that would otherwise be received through annual license sales. Hupfer also indicated legislation was passed that addresses confined livestock operations “to allow farm raised Cervidae to be sold in public. The legislation maintains DNR as the permitting authority as well as the regulatory authority.”

Director Hupfer updated the Commission on DNR operations. He said restructuring of the DNR’s Division of Information Services was completed resulting in the reduction of twelve positions. “We are also working to centralize other administrative functions”—Human Resources, budget, clerical, and customer service—“to be completed by July 1, or before, to create a clean budget structure.” He said there is an ongoing “substantial effort to get out into the State. We were lucky to have Governor Daniels over at Shakamak State Park.” He added that it was the first time in modern history a Governor has stayed at the park. The Director noted that he and others attended the Division of Forestry Open Houses, as well as visiting about one-third of the Division of State Park and Reservoirs and Division of Fish and Wildlife properties. He said he met with several interest groups and not-for-profits representing various constituencies.

Director Hupfer gave updates on several ongoing deer projects and recent proposals. He said new doe harvest regulations would introduce the concept of “B” counties, which are counties with excessive deer populations. In “B” counties, a bag limit of four does is set “plus four more does anywhere in the state. This is another incremental step in the process to control the deer population.” He said that deer biologist reports indicate Indiana’s deer population continues to grow. Director Hupfer emphasized that steps need to be taken to continue deer herd management. He also said bonus doe permits would be available during firearms season. “We need to arrest that growth at this point in time.” He indicated data would continue to be collected and reviewed in the management of Indiana’s deer population.

The Director said the DNR is looking, by emergency rule, to control, “deer hunting behind fenced areas” and would later come before the Commission for permanent rule adoption. He said this subject’s research results, parameters, and “talking points” would be formulated into a press release with opportunities for public comment. “It is clear that no one is ever going to come to a consensus on this issue. The two

constituent groups are at polar opposites.” He said DNR would take a leadership role in formulating rules. Hupfer explained that after the public comment period an emergency rule would be instituted.

The Director said the Department signed a “letter of intent” with Wilder Corporation of Delaware to acquire the Goose Pond property. The next steps are to finish the property appraisal for federal approval, and for the completion of several grants applications, “which we basically have approval on. Our constituents should be very pleased with this acquisition.” He said Goose Pond had the potential to become the “most used” wildlife area in the state, “not only by hunters, but by bird watchers as well.” He said the property might have the “potential to have a significant fiscal impact” in Southwest Indiana.

Director Hupfer said the Commission approved a nonrule policy document, Easements on Department of Natural Resources Properties and Navigable Waters, which “encourages” fair market value and includes a compensation schedule. “This has been brought to my attention, probably prematurely” due to the Crawford County easement request that was brought before this Commission on two previous occasions. He noted that Crawford County initiated legal action with respect to the denial of the easement request. Director Hupfer explained that based on the compensation guidelines, the long-term easement cost would be approximately \$21,000 with a \$13,000 temporary construction easement. He also explained John Davis and others negotiated an \$11,000 easement compensation that was ultimately rejected by the Commission.

Director Hupfer indicated that Crawford County subsequently obtained an easement appraisal showing a valuation of \$2,200. He said the DNR’s legal staff reviewed the statutory authority with respect to easements. “Our finding is that the authority to grant easements with respect to state forests is solely within my discretion. There is no grant of authority to the Commission even though the Commission promulgated these guidelines.” He continued, “Based upon the legal action and reviewing the appraisal, I can go ahead and grant the easement upon the negotiated price of \$11,000.” He noted that the Commission’s guidelines are not “diminished and still have value. It is appropriate to grant the easement at the negotiated rate.”

The Director said the DNR is reviewing a comprehensive fee increase to be presented to the Commission as early as the July meeting. “There are some certain areas where the fees may be a little bit low, park entrance fees for instance.” The review of fees is “appropriate” since the Division of State Parks and Reservoirs is facing some of the “biggest budgetary issues.” He also noted that some fees might be lowered.

Kiley inquired of the legal action taken against the “deer enclosure” operator located in Miami County. Hupfer indicated the operator received a jail sentence of one year. Damian Schmelz, Commission member, asked whether the north-south highway within Goose Pond would be closed. Hupfer responded that INDOT is working with the Natural Resources Conservation Service (NRCS) to determine the configuration of the highway. He said a portion of the highway might be raised. McCormick asked whether the DNR was to purchase Goose Pond from NRCS. Hupfer explained that the NRCS previously acquired a conservation easement over most of the property, and DNR would actually acquire fee title. “We will then be able to open a fish and wildlife area. The easement is a prohibition of what can be put on the surface.”

Lester Ponder, Chair of the Advisory Council for Water and Resource Regulation, said the Council had not met since the last Commission meeting.

John Davis, Deputy Director for Lands and Cultural Resources, said he met with Commission members Lester Ponder and Raymond McCormick, and Ron McAhron, the newly appointed Deputy Director of the for Water and Resource Regulation to schedule the next joint meeting of the Advisory Councils. He said

the next joint meeting was tentatively scheduled for June 21, 2005. Director Hupfer added, "We are diligently working not only bringing the Commission to full strength, but also the two advisory councils."

Davis noted that peregrine falcon chicks were banded and weighed this week in Indianapolis. He said banding would begin in Fort Wayne and Kokomo next week. He also announced that one of the male chicks was named "Reggie." Davis said public meetings have begun regarding the feasibility plan for the Grand Calumet Restoration. This is a joint effort among DNR, IDEM, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers. "There is a lot of interest up there." Davis concluded by saying the recreation season was in "full swing. I would note that campgrounds are full at Prophetstown State Park for the fall football season."

Kiley asked for a report regarding the Mississinewa Lake. He noted the lake was at final pool for the "first time in five years." Davis affirmed that Mississinewa Lake was at summer pool. "I think Kyle probably has in his inbox now a declaration to be signed to bring back the seaplane landing base." Davis said the lake is now able to handle seaplanes, and "we are looking for a lot more" recreation this year. "Lowering the lake for five years had an impact not just on the users, but for the service providers. Kiley also inquired of the status of the marina. Davis indicated the marina operator had five years of no income, and the issue of "whether he comes back or someone else" has not been resolved.

Raymond McCormick, Chairman of the Advisory Council for Water and Resource Regulation, also reported, his Advisory Council has not met in the 2005. "We look forward to meeting with Ron McAhron and the other council members on June 21.

Ron McAhron, Deputy Director of Bureau of Resource Regulation, noted that Robert Waltz, State Entomologist and Director of the Division of Entomology Plant Pathology, and his staff are finishing the "hectic but successful" spring treatments for emerald ash borer and gypsy moth in the northern part of the state. "The weather has not been particularly cooperative." He said the Division is also "in the middle of working on soybean rust." He explained that the DNR and other state agencies are working together to address the treatment of soybean rust due to the treatment's toxicity to fish. "Bob is a tremendous asset for the state. He is doing a great job for us."

McAhron said the Division of Reclamation has two proposed rule amendment packages on the Commission's agenda, Item 6 and Item 7, which impact Indiana's surface mining and reclamation. He said the proposals were ready for preliminary adoption. McAhron also indicated that the Division of Reclamation state matching funds were preserved in the last Legislative session. He said the fees for mined coal were set at \$0.055 cents a ton for surface mined coal and \$0.03 cents a ton for underground mined coal. "That will keep that program solvent." He said that Indiana's Reclamation program receives recognition nationwide. "It has been a very successful and well-run program."

McAhron reported the Division of Water is implementing process changes regarding backlog of permits. "We have seen about a 10% decrease" in backlog. He said an "early triage" program has been implemented for incoming applications. "It seems to be very positive for us so far."

Ray McCormick inquired of the relationship between treatments for soybean rust and the toxicity for fish. "Are you talking about, like, non-soybean plant species that you may be treating on DNR properties or the impact of treating soybeans?" McAhron explained the impact would be on fish where the treatment of soybeans is near a watercourse. "Right now we are trying to implement sort of an ad hoc buffer zone to keep the application some distance from the watercourse." McAhron said that the Division of Entomology and Plant Pathology, the State Chemist, Purdue University, fish and wildlife experts, and NRCS are "working together to get a uniform policy" that will be disseminated to the public.

## **Personnel Interviews**

### **Personnel Interview for the Position of Assistant Property Manager, Harmonie State Park**

Rick Cockrum, Commission member, presented this item. “Once again, Jane Stautz and I are pleasantly amazed at the quality of the applicants who are interested in working for the Department.” He said Chastity Spiller was recommended for Assistant Property Manager at Harmonie State Park. Cockrum indicated that Spiller obtained a Bachelors Degree in Business, and she has extensive background in property management in the private sector.

Cockrum moved to approve Chastity Spiller for appointment as Assistant Manager of Harmonie State Park. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Personnel Interview for the Position of Assistant Property Manager, Versailles State Park**

Rick Cockrum also presented this item. He recommended Lucas Green for Assistant Property Manager of Versailles State Park. He said Green also obtained a Bachelors Degree in Recreational Management, and has worked for the Department previously. “He also has extensive background in property management.”

Cockrum moved to approve Lucas Green for appointment as Assistant Manager of Versailles State Park. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

## **Division of Nature Preserve**

### **Consideration for Approval of Dedication of Fisher Oak Savanna Nature Preserve, Jasper County**

John Bacone, Director of the Division of Nature Preserves, presented this item. He reported the Fisher Oak Savanna Nature Preserve was located about twelve miles south of Rensselaer. “It’s a very interesting place. It sits right on the border where black oak sand savanna meets black soil prairie.” Bacone said the 130-acre tract was acquired by financial assistance from the Heritage Trust, and he recommended the area to be dedicated as a nature preserve. He noted that Ted Harris was present.

Ted Harris, President of the NICHES Land Trust, characterized the area as “very special” and noted the tract was owned by one family for over 100 years. He said that, with the Commission’s approval, the Fisher Oak Savanna Nature Preserve would be the third land acquisition that NICHES helped acquire. Harris added that “highly motivated” volunteers serve NICHES. Chairman Kiley thanked Ted Harris and NICHES for “its tremendous work and contributions.”

Damian Schmelz moved to approve the dedication of the Fisher Oak Savanna Nature Preserve in Jasper County. Lester Ponder seconded the motion. Upon a voice vote, the motion carried.

## Division of State Parks and Reservoirs

### **Consideration of a Request by the Division of State Parks and Reservoirs for Approval Miscellaneous Recreational Fee Increases**

John Baker, Assistant Director of the Division of State Parks, presented this item. He said this summer's opening of the state of the art shooting facility at J. Edward Roush Lake prompted the fee increase proposal. The Division also took the opportunity to look at other fees, as well as to request reinstating fees that were eliminated in the past. He said the fee request would also clarify the discount authority of recreation fees.

Rick Cockrum asked for an explanation regarding the implementation of discounting fees. Baker responded, "Frequently, these are across-the-board discounts that apply to a particular property." He gave, as examples, discounts during the winter season and discounts "for properties that have been under utilized." He said group rates have not been discounted. Weekend camping fees were discounted recently for under utilized properties. Baker further explained there was a \$5 discount per night camping, for the period of April 29 through May 15, for all properties because "we do not have high visitation at that time." At the end of August when most schools begin, a \$5 discount is once again offered for camping. Cockrum asked if discounts were used to take pressure off over utilized properties. Baker responded, "I don't think we have done that in the past." He said a more comprehensive package would be presented to the Commission that may include fee increases for those properties with greater visitation.

Jane Ann Stautz asked how DNR shooting range fees compare to private ranges. Baker said, "I understand the fees for Roush Lake are comparable to the concessionaire at Kingsbury Fish and Wildlife Area. He said he had not done a comparison for shooting ranges.

Cockrum said the recreational vehicle dump fee is a "great idea." In response to a question, Baker said the DNR does not charge more for RVs; however, the cost of the dump fee is considered to be "built into" the AA camping spaces that offer RV hookup. Chairman Kiley agreed the dump fee was appropriate. He noted that marinas are "obliged" to have dump facilities available. "This is certainly a comparable issue." Cockrum suggested a comprehensive dump fee be set for all users. Baker explained, "For ease of gate operation, we try to keep our fees as simple as we can so that we can process those coming through our gates, but we can certainly look at the issue." Matt Klein, Commission member and representative for IDEM, encouraged that fees be appropriate in order for the DNR recoup its costs associated with dump stations." The Chair agreed that fees should cover costs.

## Division of Forestry

### **Consideration of a Request by the Division of Forestry to Raise the Price of Conservation Seedlings by \$.01/Seedling or by \$1.00/100 Seedlings**

Jim Wichman, Supervisor, Vallonia Nursery, presented this item. "We distribute five to six million tree seedlings to Indiana customers each year for conservation planting." He said the Division of Forestry is requesting an increase in price per seedling of \$0.01 cent or \$1 per 100 seedlings "so we can keep our revenue approximately equal to our operating costs." Kiley asked, "How many nurseries are there?" Wichman said DNR has two nurseries—Vallonia Nursery and Jasper-Pulaski Nursery. For illustration, Wichman also brought a sample of one-year-old 100-count tulip seedling bundle.

Wichman said costs and revenues are monitored "very carefully" throughout the year. The Chair asked, "Do you traditionally sell all inventory?" Wichman answered, "It depends. Like this year there was a

prediction there would be a big conservation reserve program so we geared up for that. It turned out it was only moderate.” He said the inventory was carried over to the next year resulting in two-year-old stock being available. “We must guess on what the demand will be.”

Damian Schmelz inquired whether the nursery was still experiencing problems controlling purchase opportunities for corporations and individuals. Wichman said that several years ago the “Farm Bill” encouraged the planting of trees, and the “big tree planters” were planting ten to 50 thousand trees. “The coal companies would be lined up at the door first thing. We would sell out of important species before the private persons could purchase, so we instituted a lottery.” He explained that the nursery takes orders, but the orders are processed through a “computer lottery. We try to meet our lottery demand.” Cockrum asked whether the lottery was supportive of the small landowner demand. Wichman said the small landowners “prefer other species”—Norway spruce and white pine for windbreaks and wildlife—than large companies. “The best way to meet the demand is to adjust our species inventory.”

Lester Ponder moved to approve the \$0.01 cent increase per seedling or \$1 per 100 seedlings. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Division of Reclamation**

#### **Consideration of Recommendation for Preliminary Adoption of Miscellaneous Amendments to 312 IAC 25 Governing Surface Mining and Reclamation (SMCRA) (Administrative Cause Number 04-159R)**

Brock Mayes from the Division of Reclamation presented this item. He explained that the proposed amendments primarily make corrections omitted from prior rule promulgation. Under federal statute, “the Office of Surface Mining (OSM) requires states to modify its regulatory program to remain consistent with any changes to the Surface Mining Control and Reclamation Act.” He indicated the proposal contained several rule amendments required by OSM, as well as two revisions recommended by the Division of Reclamation.

Mayes explained amendments were proposed to the definition of “Government-financed construction,” and it also includes amendments regarding impoundments, performance release requirements, primary roads, and inspection of site issues. “With implementation of this rule package, Indiana will be considered by the [OSM] to be no less effective than the federal program.” He said the OSM has conducted an informal review of the amendments, and he said OSM has indicated the amendment package “meets their standards.” Mayes also noted that Indiana Coal Council’s Regulatory Affairs Committee was invited to comment on the rule amendments. “Our intention is to continue to communicate with the Coal Council throughout this rule process” to resolve any concerns that may develop. He expressed appreciation for the Indiana Coal Council’s “willingness to work toward consensus on language within the proposed rule package.” He then recommended the proposed amendment be given preliminary adoption.

Rick Cockrum moved to give preliminary adoption of miscellaneous amendments to 312 IAC 25 governing surface mining and reclamation (SMCRA). Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Recommendation for Preliminary Adoption of Amendments to 312 IAC 25-4 and 312 IAC 25-6, Rules Governing Surface Mining and Reclamation (SMCRA), Commercial Forest Resources on Prime Farmland (Administrative Cause Number 05-056R)**

Tim Taylor, Assistant Director of the Division of Reclamation, presented this item. He explained that the Division of Reclamation has worked with the federal Office of Surface Mining to “try to reduce regulatory impediments to the restoration of forest resources on mind lands.” He noted that forest resources are restored approximately equally to acreage of mined forestlands. Current federal and state regulations prohibit the use of prime farmland for any other land use. “Prime farmland must be designated cropland.” Taylor said the proposed rules would allow commercial forest species to be used as an alternative crop on prime farmland. All other requirements for prime farmland reclamation would remain the same. “The ability to expand forest resources can provide for future opportunities in ‘carbon credits and carbon sequestration’ for the coal and utility industries as allowed by emissions standards.” He recommended preliminary adoption of the proposed amendments.

Damian Schmelz moved to give preliminary adoption of amendments to 312 IAC 25-4 and 312 IAC 25-6, which govern surface mining and reclamation, to allow commercial forest resources on prime farmland. Lester Ponder seconded the motion. Upon a voice vote, the motion carried.

**NRC, Division of Hearings**

**Consideration of Recommendation for Preliminary Adoption of Amendments to Adjudicatory Procedural Rules to Streamline Finalization of Uncontested Final Orders (Administrative Cause Number 05-065A; LSA Document #05-57(F))**

Steve Lucas, Director of the NRC’s Division of Hearings, presented this item. He said, “this is a rather modest modification” to the process of adjudication that “resolves a bit of bureaucracy.” In two circumstances, what are effectively redundant signatures would be eliminated. These are where the parties execute an agreed order and where an administrative law judge renders a nonfinal order that is subject to a party filing formal objections, but no one does so. Lucas said the time for the resolution of adjudication would be reduced between “one or two days and a couple of weeks.” He said the reduction was not dramatic in terms of the totality of a litigated dispute, but the current delay served no apparent function and was often frustrating to litigants at the completion of a dispute who wished to move forward.

Chairman Kiley said, “This is long overdue. We need to make ourselves more user friendly.”

Jane Ann Stautz moved to give preliminary adoption to the amendments to the Commission’s procedural rules to streamline approvals of uncontested final orders under 312 IAC 3-1-9. Lester Ponder seconded the motion. Upon a voice vote, the motion carried.

**Information Item: Semi-Annual Update of decision on Appeal, Judicial Review, or From the Commission’s AOPA Committee**

Rick Cockrum asked Jane Stautz to give a brief presentation on the report. Stautz deferred to Steve Lucas to respond.

Lucas said *Lenz v. Messenger* was a dispute regarding the placement of piers on a public freshwater lake in Steuben County. The administrative law judge ruled in favor of the Messengers on the facts, and Lenz

took judicial review. The efforts by Lenz at the higher levels were unsuccessful with the Steuben Circuit Court then the Court of Appeals of Indiana determining he had failed to follow proper procedures.

Lucas said *Tiller v. DNR* involved a citizen's grievance that the DNR allows duck hunting on Brookville Lake and adjacent lands as they are a "Wildfowl Rest Area". The administrative law judge determined the agency rule lacked ascertainable standards and should be voided. Lucas said the opinion did not speak either way to whether duck hunting should be allowed. He said he understood the DNR would come to the NRC, possibly during the July meeting, with a proposal to establish standards, either by rule or by a nonrule policy document. He said Tom Tiller filed "objections" to the ALJ findings, but the Commission's AOPA Committee affirmed them. Neither party sought judicial review.

Lucas said the third and final case in the information item was *Pike Lumber v. Cruse, et al.* For consideration was a complaint by a landowner against a timber buyer and an adjacent property owner for timber alleged to have been wrongfully cut near the West Fork of the White River in Morgan County. He said the underlying legislation includes elements of both consumer protection and environmental protection. He said a two-day hearing was conducted with most of the testimony directed to the application of proper land surveying principles. Ultimately, the ruling was a judgment for the landowner for nearly \$15,000. The timber buyer, neighbor, and surety filed objections. Again, the AOPA Committee affirmed the findings of the administrative law judge. None of the parties sought judicial review.

Rick Cockrum thanked Lucas for his explanation.

### **Adjournment and Next Meeting**

The meeting adjourned at approximately 11:04 a.m. The next meeting was tentatively scheduled for Fort Harrison State Park, Indianapolis (Lawrence), on July 19, 2005.