

NATURAL RESOURCES COMMISSION

Minutes of February 24, 2001

MEMBERS PRESENT

Michael Kiley, Chair
Rick Cockrum, Vice Chair
Larry Macklin, Secretary
Damian Schmelz
Terri Moore
Jane Anne Stautz
Jack Arnett
Sylvia Wilcox
Raymond McCormick II
John Goss

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Tim Rider
Jennifer Kane
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Carrie Bales	Executive Office
Andy Cullen	Executive Office
Gayle Jansen	Entomology and Plant Pathology
Tom Lyons	Forestry
Larry Allen	Law Enforcement
Dale Brier	Outdoor Recreation
Jerry Pagac	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Jim Cassidy	State Parks and Reservoirs
Dick Gantz	Museums and Historic Sites
Eric Myers	INRF

GUESTS

George Flickner	Michael Chesser
Kathy Dorsch	Connie Szabo Schmucker
Laura Whitworth	Ron McCoy

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:10 a.m., EST, on February 21, 2001, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of ten members, the chair observed a quorum.

Jane Anne Stautz moved to approve the minutes of January 23, 2001. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. Macklin reported that his activities since the last Commission Meeting had been largely associated with the Indiana General Assembly. He said "we are tracking several pieces of legislation, and the most significant work is in regard to the budget for the next biennium." He reported he met with the House, Ways and Means Committee to present DNR's combined capital and operating budgets. Macklin said the meeting went well. Given the economic forecast, however, he expects all agency budgets will be tight this year.

Director Macklin noted the Department has been very fortunate in the past two years; "we've had the extra capital dollars to do a lot of work throughout the state on many of our properties, and we're very proud of that, and that work continues today."

Macklin said he and John Davis visited with the property manager at Mississinewa to discuss activities on the lowering of the lake and where the lake will be approximately four or five years from now. "The lake will be down to winter pool throughout the season to repair the dam." Macklin said the U.S. Army Corps of Engineers is seeking permission to construct a temporary road and bridge in the area. The request is set for consideration later during the meeting.

Macklin said he and Davis also attended the Annual Fish and Wildlife Meeting at Pokagon State Park. He said they visited Quabache State Park in Bluffton relative to a proposal by the City of Bluffton. Macklin reflected to Chairman Kiley and members of the Commission, "it's such a pleasure to get out to our properties. We just have such great people who have such an affection for the work that they do at the properties and the properties they manage themselves."

Macklin informed the Commission that the Division of State Parks is celebrating its 85th Anniversary this year. One of the activities included a celebration of the Boat, Sport and Travel Show that takes place each year at the Indiana State Fair Grounds.

Macklin said he, Paul Ehret, Carrie Bales, and Mike Neyer were selected as judges for the Division of Water's First Annual Chili Cook-off. The chili "seemed to be classed as hot, hotter and hottest!"

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, was not present due to a continued medical recovery.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, reported that Jerry Miller is expected to attend the next Advisory Council Meeting on March 13. Davis informed the Commission that in addition to Division of State Park's 85th Anniversary, the Division of Forestry is celebrating its 100th Year Anniversary. He said the Division of Forestry is having a celebration on Saturday, March 3 at the Forest Discovery Center in Louisville. Davis added that Forestry's Annual Meeting was currently in progress at Spring Mill State Park.

Davis reported on the progress of the construction of the new Indiana State Museum. He said "it is moving along well." He said the steel framing is now up, and he encouraged "everyone to drive by and see it if they had the opportunity. It's fun to watch happen."

Davis reported the Division of Museum and Historic Sites is sponsoring an historic interpreter's workshop in Brown County on March 5, 6, and 7. He said there would also be a ceremony for the Judy Burton area on May 4 at Lake Manitou. Davis said details of the ceremony would follow. Davis said spring lifting of seedlings had begun at the nurseries.

Davis concluded by announcing that earlier this month the Governor recognized the achievements of DNR firefighters who had participated in last year's fire season. He said Phil Wagner from Division of Forestry received a special award. Chairman Kiley asked Davis if the DNR had sent a team out West. Davis responded, "yes, we sent several teams out West."

Raymond McCormick, Chairman of the Advisory Council for Water and Resource Regulation reported that the January meeting consisted mainly of two items. The first item was the proposed fish and wildlife rule changes. These rule changes came about following a series of public meetings across the state that included hunters and outdoor enthusiasts "and what they would like to see changed." Those concerns were then presented to DNR staff. With review and much discussion by the advisory council, the proposed rule changes were recommended and passed. "The proposed rule changes now go into further review, and it looks like positive steps are being taken concerning what" outdoor enthusiasts and conservation organizations "would like to see accomplished."

McCormick said the second item receiving special attention at the meeting was the proposed mountain bike nonrule policy document. There were many questions concerning the language, including under what circumstances trails would be closed and the extent of authority in property managers to implement closure. Members of the Advisory Council expressed concerns that the draft language in the document was ambiguous. McCormick said he believed that subsequently the needed "changes have been made to address this issue, and we are going to review them today."

McCormick said one of the issues concerned the required use of helmets. "I saw immediately that helmets were not required and I wondered if that was wise. Other Council members have a lot of questions; and it was our recommendation that the Commission seriously consider changing those rules so helmets would be required. I think that we will be reviewing that here today."

Dave Vice, Deputy Director for the Bureau of Resource Management, was not present.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, expanded on Director Macklin's report of the Mississinewa Lake Project. He reported the repair of the dam would begin in May 2001 and continue through 2004. The plan calls for construction of a 2,600-foot long concrete cut-off wall. He said the cut-off wall would reach into the foundation from 150 to 180 feet deep from the top of the dam. While the project is ongoing, the water levels will be maintained at "winter pool."

Ehret reported he attended a briefing of congressional staffers in Washington D.C. The purpose was to discuss AML (Abandoned Mine Land) funding and Congressional reauthorization to extend the AML Program to the year 2011. He said he also attended an Annual Meeting of the National Association of Abandoned Mine Land Programs (NAAML) in Texas "where we also discussed the AML funding and reauthorization issues."

Ehret reported the Division of Oil and Gas had its Annual Meeting in Clarksville, and the Division of Reclamation's Annual Meeting is scheduled for early March at Turkey Run State Park.

BUREAU OF LANDS, RECREATIONAL AND CULTURAL RESOURCES

PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Personnel Interview for Administrative Law Judge for the Natural Resources Commission

Jane Anne Stautz presented this item. She reported that she and Steve Cecil conducted the interviews for the Natural Resources Commission's Administrative Law Judge position. As is frequently the situation, there were two well-qualified candidates. After reviewing the experience and backgrounds of the two candidates, Stautz said the committee recommended Steve Griffin for the position of Administrative Law Judge.

Chairman Kiley asked Stautz to give some background information on Steve Griffin. Stautz told the Commission he had more than 20 years of experience in environmental law. He has worked in private practice, as well as in the not-for-profit sector. Griffin currently works in the Environmental Law Section of the Attorney General's Office. He has also had his own private consulting business. Griffin has been admitted to the Bar in two states. He has very strong skills and has participated in several hearings as related to his experience in the environmental area.

Steve Lucas expressed his appreciation to the committee for interviewing the candidates for the ALJ position. He reflected that Administrative Law Judges are employees of the Commission, and the Commission is rightfully the entity to make the final selection.

Jack Arnett moved to approve Steve Griffin as Administrative Law Judge for the Natural Resources Commission. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview for Assistant Property Manager at Vallonia State Tree Nursery

Jack Arnett presented this item. He said there were two applicants for the position of Assistant Property Manager at Vallonia State Tree Nursery. John Crossley, who is a current employee with the Department, was recommended for this position.

Jack Arnett moved to select John Crossley as Assistant Property Manager at Vallonia State Tree Nursery. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview for Assistant Property Manager at Jasper Pulaski Fish and Wildlife Area.

Jack Arnett presented this item. Jason Gilbert was recommended for the position of Assistant Property Manager at Jasper Pulaski Fish and Wildlife Area. Arnett said, "Jason did his internship at Jasper Pulaski Fish and Wildlife Area, and he also worked as a laborer there. Although we had two strong candidates, Jason was the one we would like to recommend."

Jack Arnett moved to select Jason Gilbert as Assistant Property Manager at Jasper Pulaski Fish and Wildlife Area. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS, DIVISION OF FORESTRY, AND DIVISION OF FISH AND WILDLIFE

Consideration of a Request to Adjust or Establish Certain Recreational Fees at Department of Natural Resources Properties

John Davis presented this item. He circulated a copy of the proposed fees and said the recreational fees involve the Division of State Parks and Reservoirs, the Division of Forestry and the Division of Fish and Wildlife, although the biggest impact was to Division of State Parks. He also circulated a three-year schedule for greens fees and cart fees at the Fort Benjamin Harrison Golf Course. The rates shown for 2002 and 2003 are maximum rates to be charged. Davis said, "we need to have these adjustments so that we can make our bond payments."

Jerry Pagac, Director of State Parks and Reservoirs, spoke about the history of state parks and how the park system was developed on the proposition that services should be paid through user fees. Pagac said an early proponent of this proposition was Colonel Lieber, the founder of the State Park System and the Department of Conservation, which later was included in the current Department of Natural Resources. Pagac reflected that "Colonel Lieber felt very strongly that the user should pay the money it took to run the state parks, which has been the case from the very beginning." Pagac said the fee system "has served us very well over the years, and we have a very strong philosophy in that regard." He said that the money from the user fees is "set aside and dedicated" to use solely for the state parks, but that it is not enough to pay the entire amount of operating costs. In 1986, 76% of the operating budget was obtained through user fees. He

said “that amount has been gradually going down. Today we are at about 54%.” Pagac explained the importance of not depending solely on the general fund, which makes up that difference, because of the unpredictable economy. He said the availability of state government funds fluctuate, particularly during a recession, affecting the availability of money from the general fund. “We will be less affected if we are less dependent on the general fund.” Pagac said it has been 14 years since a fee increase for park entrance, and eight years for camping fees. He said the Division of State Parks and Reservoirs recommended approval of the fee increase.

Rick Cockrum and Terry Moore both expressed support for the fee increases. Cockrum said he was previously unaware that the percentage of user fees received for management of the parks had decreased, and he welcomed restoring a greater percentage.

Chairman Kiley reflected upon the Commission meeting held at Pokagon State Park approximately ten years ago. The subject then was a significant across-the-board fee reduction. The Chair added, “there were several hundred people almost all whom objected to the reduction of fees, and in some cases the elimination of services. The message we got is that people do not object to reasonable fees provided that, in exchange, they get good service.” Kiley concluded, “it has always been a privilege providing the services to the public and with the budget percentages dropping, it’s important that the fees increase.”

Michael Chesser, representing the Indiana Manufactured Housing Association and the Recreation Vehicle Indiana Council, informed the Commission they supported the user fees increase. “We feel this is a very solid step towards what our industry and our private campground owners have seen as an unfair government competition with the private campground owner, making a more level playing ground. Pardon the expression of the sports analogy.” He said the Association and its 800 members “certainly support a camping fees increase to get to that position where it would be level and equal to those private campgrounds in surrounding markets.”

McCormick asked how Indiana’s fees would compare, with the approved rate increases, to surrounding states. Chesser replied, “right now our private campground owners are charging \$21 and some change per night for an overnight recreational vehicle. As far as other states, we are comparable to other private campgrounds.”

Ron McCoy with the Indiana Trail Riders Association spoke to the Commission. He said his Association is a horse trail advocate group. He stated the Association supported the fee changes. McCoy added that the bridal tags would change to annual tags to the exclusion of daily tags. The Association plans to place an article in their newsletter to inform people of the coming change. Kiley thanked McCoy and Indiana Trail Riders Association for their suggestions and assistance in communicating changes to the public.

Jack Arnett moved to approve the fee increases at Department of Natural Resources properties, including the phased fee increases pertaining to the Ft. Benjamin Harrison Golf Course as described in the hand-outs. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Adoption of a Nonrule Policy Document Entitled “Mountain Bikes on DNR Properties;” Administrative Cause No. 01-006T

Dale Brier from Division of Outdoor Recreation presented this item. He said he was presenting the policy on behalf of the Mountain Bike Committee and his Division. In April 1998, the Commission voted to “extend the pilot project for mountain bikes at Huntington Lake for an additional five years (through 2002)” and to have staff develop criteria for evaluating the suitability of other sites for the use of mountain bikes. This proposal sought to be responsive to that Commission directive.

John Davis asked whether the DNR provides or offers helmets for the public that ride at the facilities. “I’m not sure when we don’t rent bikes, and where people are coming in on their own, if we can require helmets.” Davis asked Jerry Pagac if helmets were offered at some of the DNR rental facilities. Pagac replied that the DNR does not require people to wear helmets for private riding. “One way to deal with the use of helmets is to take a pro-active approach. Rather than require the use of a helmet, provide an incentive to people who are seen wearing a helmet.” Pagac said that one of the parks in another state made participants eligible for a drawing to win safety equipment from a local sports shop. “This approach is a way to encourage the use of helmets, rather than mandating their use.”

Connie Szabo Schmucker, Executive Director of the Indiana Bicycle Coalition, reported that the Coalition has been involved with the mountain bike issue since 1995. She said, “We’re very encouraged to see the policy come to the Commission.” Schmucker said the Indiana Bicycle Coalition would like to stress education. She said, “states that emphasize education have a much higher rate of helmet use than those simply passing laws mandating their use.” Davis suggested Brier and Schmucker could develop an educational program as an alternative to requiring the use of helmets.

Chairman Kiley reflected that for consideration was a nonrule policy document. Whether approved or not, the document would “not set in stone” any position with respect to helmets. The document could be “amended from time to time to address safety concerns.”

Rick Cockrum asked whether the non-use of safety helmets raised any liability issue. He asked what statistics might be available from other states regarding bicycle riding and the use of helmets. Terri Moore echoed Rick Cockrum’s concerns with respect to potential civil liability. In addition, she reflected that mountain bike riding and bicycle riding on sidewalks or streets were not exactly the same. Dale Brier responded, “The Huntington Bike Project has been in existence for six years, and it has had no reported injuries of that type yet.”

Chairman Kiley asked Brier about the amount of usage of the trails. Brier responded, “there are people on the trails during the weekends as well as during the week. We ask people to fill our comment cards and let us know what they think of our trails. We have boxes of comment cards in our office.” Kiley asked if the comments were mostly favorably. Brier responded, “Yes.”

McCormick expanded on how the use of helmets could prevent serious head injuries. “We’re not going to be rewarded by anyone, except the satisfaction that maybe somebody

sometime will not have their life impacted by an accident that causes a lot of grief to some family. It's one of those things where you have to be pro-active to prevent these things from happening. It may not be popular with some people, but we're trying to promote safety on our properties, and unless they can convince me that it's pretty safe without a helmet, I'm going to be one to require people on state properties to be as safe as possible. We require people to have a life preserver in a boat because it saves lives."

Steve Lucas said if this item was approved, he would submit the nonrule policy document to the Indiana Legislative Services Agency for publication. He asked for clarity as to the full application of the Commission's directives. In response, the Commission members reflected that an approval vote would include the following:

- (1) Publication of the nonrule policy document, as written, but with qualifying language to reflect that the Commission would continue to study safety issues relative to the use of helmets.
- (2) A request to DNR staff to determine what other states have done with respect to requiring helmets to be worn and whether helmet laws have significantly improved public safety. To the extent practicable, identify any potential hazards for mountain biking as compared to street biking.
- (3) Determine the potential for liability to the state for injuries resulting if helmets are not required.

With this clarification, Damian Schmelz moved to approve adoption of the nonrule policy document for the use of "Mountain Bikes on DNR Properties." Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

BUREAU OF RESOURCE REGULATION

DIVISION OF STATE PARKS, RESERVOIRS AND FORESTRY

Consideration of a Temporary Work Easement to the Department of the Army, Army Corps of Engineers (COE), for work on land that is part of Frances Slocum State Forest

Jerry Pagac, Director of the Division of State Parks and Reservoirs, introduced this item. He said the project is needed to gain access for the repair of Mississinewa Dam. The Corps of Engineers is asking for a temporary work easement to help address a county road impacted by construction at the dam. The Corps seeks to build a road and a temporary bridge that will impact 1.56 acres Frances Slocum State Forest.

George Flickner, Property Manager for Mississinewa, Louisville District Corp of Engineers, was present to give an overall view of the project. Flickner provided sketches of the proposed work for the Mississinewa Dam. Moisture is seeping out of the embankment of the dam, and flowing into the cracks of the rock, causing excessive settlement in the bank. Flickner explained what steps would be taken to correct the problem. He said stopping the settlement problem and bringing the dam back up to normal pool is estimated to cost about \$46 million over a three-year

period. Flickner explained the construction would not impact the DNR campground site located nearby. One entrance into the campgrounds would not be affected. Although it is not required of the contractor, Flickner stressed the Corps would work with the contractor to allow traffic through the other entrance into the campground during certain times of the year.

Cathy Dorsch with the Corps of Engineers provided further explanation of the temporary by-pass road. Dorsch explained the existing road was approximately 187 feet wide. She said the Corps is working with Miami County to add two feet to the shoulders, as well as guardrails in certain areas. Dorsch said, "there is no anticipation of having to cut down trees. The impact on property should be minimal."

Flickner commented that "basically the impact is widening shoulders on the road." He said "we're not going off on to any land or properties, or tearing out any trees." Flickner said the bridge would be removed when the project is completed; the shoulders will remain during construction of the project. Flickner said it is anticipated that construction will begin in May 2001 and continue through June 2004. He said the Corps would be accepting proposals for the project on April 11.

Chairman Kiley said the project "is of vital interest to all the folks in that area" and suggested, if it had not already been done, the Corps and DNR should "issue a press release to answer any questions and concerns." Flickner said a news release was issued for a January public meeting. About 200 people attended the meeting, but another press release might also be informative.

McCormick asked if there were concerns raised at the public meeting about road closure or use of the by-pass. Flickner said the only questions were whether the by-pass would accommodate heavy traffic such as combines and large tractors. The answer was "Yes, the road has a 24-foot width to it."

John Davis said the Corps has offered \$2,225 toward the temporary easement. He believes this offer to be reasonable.

Terri Moore moved to approve the Temporary Work Easement to the Department of the Army, Army Corps of Engineers (COE), for work to repair the Mississinewa Dam. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of Wintergreen Woods Nature Preserve, LaPorte County.

John Davis presented this item. He said the proposed nature preserve is a 22.9-acre tract located just east of Michigan City in LaPorte County. The site is a remnant northern boreal flatwoods natural community, which is a type of forest restricted to a narrow area just south of the Lake Michigan dunes. A number of rare species are found in the proposed Wintergreen Woods Nature Preserve, including paperbirch, gold thread, and wintergreen. Davis said the Division of Nature Preserves recommended dedication of this site as a State Nature Preserve.

Jack Arnett moved to approve the dedication of Wintergreen Woods Nature Preserve in LaPorte County. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

NRC–DIVISION OF HEARINGS

Consideration of Report of Public Hearings, Analysis, and Recommendation for Final Adoption of Amending 312 IAC 18-3-12, Which Governs Standards for Control of Larger Pine Shoot Beetle by Adding Counties to the Quarantine Area; Administrative Cause No. 00-144E; LSA #00-219(F)

Jennifer Kane, Hearing Officer, presented this item. She said the pine shoot beetle originated in Europe, and is reported to be the second most destructive shoot-feeding species in Europe. The pine shoot beetle is also established in Asia. Kane said that the beetle was first found in Indiana in 1992. She stated that the current infestation might have come from wood dunnage left on the shore at one or more U.S. ports on the Great Lakes.

Kane explained that, since 1992 the pine shoot beetle has moved steadily southward through the state and is now essentially established in the northern half of Indiana. Hardwood trees or pinewood in furniture or homes are not effected. With the adoption of this rule, 51 counties are under quarantine.

Kane stated that the Division of Entomology and Plant Pathology provides state regulatory services, including certifications and monitoring of the pine shoot beetle in conjunction with the US Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine program. Kane recommended final adoption be given to 312 IAC 18-3-12 as presented.

Damian Schmelz moved to give final adoption to 312 IAC 18-3-12 to govern standards for control of larger pine shoot beetle. Sylvia Wilcox seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of the Recodification and Modification of Law Enforcement Personnel Rules; Administrative Cause No. 99-146L

Col. Larry Allen of the Division of Law Enforcement presented this item. He said the proposal would streamline management of personnel matters within the Division. The structure of the Division would conform more closely to how similar law enforcement divisions are managed throughout the United States. He recommended the amendments be given preliminary adoption as set forth in the commission packet.

Rick Corkrum moved to give preliminary adoption to 312 IAC 4 to govern the management and discipline of employees of the DNR's Division of Law Enforcement and to repeal 310 IAC 1.2 that currently governs this subject. The motion was seconded by Sylvia Wilcox. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to the Rules Governing Visitor Use of DNR Properties; Administrative Cause No. 00-195A

Steve Lucas, Director of the NRC Division of Hearings, presented this item. He said Marian England chairs an informal committee consisting of representatives from the DNR Divisions that manage properties, as well as the Division of Law Enforcement, to review issues arising relative to visitor use of those properties. The proposed amendments are a product of the committee. The amendments would prohibit the discharge of “gray water” on such DNR properties as Patoka Lake and Salamonie Lake. A license would be required before a person could lawfully release an animal on a DNR property. The options available to Conservation Officers and Property Managers would be clarified relative to ejection of a visitor from a DNR property. Other technical changes would be made. He said Marian England was present to answer questions, and the committee recommended the amendments be given preliminary adoption.

Jane Anne Stautz moved to give preliminary adoption to the amendments to 312 IAC 8 governing visitor use of DNR properties, as recommended. The motion was seconded by Ray McCormick. Upon a voice vote, the motion carried.

ADJOURNMENT

At 11:40 a.m., the meeting was adjourned.

FUTURE MEETINGS

March 22, 2001, 10:00 a.m., EST (Indianapolis Zoo - Room C&D)

April 24, 2001, 10:00 a.m., EST (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

May 22, 2001, 10:00 a.m., EST (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

June 21, 2001, 7:00 p.m., EST (Pokagon State Park)