

NATURAL RESOURCES COMMISSION

Minutes of July 20, 2000

MEMBERS PRESENT

Michael J. Kiley, Chair
Jack Arnett, Vice Chair
Larry Macklin, Secretary
Father Damian Schmelz
Jerry Miller
Joseph Siener
Rick Cockrum
Terri Moore
John Goss
Lori Kaplan

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas
Sylvia Wilcox
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
David Vice	Executive Office
Carrie Bales	Executive Office
Carrie Doehrmann	Executive Office
Burnell Fischer	Forestry
John Bacone	Nature Preserves
Mike Nickolaus	Oil and Gas
Jim Hebenstreit	Water

Guests

Bernie Fallon
Marsha Kristen

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:05 a.m., CDT, on July 20, 2000 in the Mathew Welch Room of the Indiana State Museum, Indianapolis. With the presence of ten members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of May 25, 2000. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin gave the Director's Report and informed the Commission Members that John Tryon was appointed as the new Director of the Division of Human Resources. He said John Tryon is "very knowledgeable" and is a professional in Human Resources.

Director Macklin said he met with the Soil and Water Conservation District Boards to discuss the "Clean Water Initiative." He said the initiative was enacted by the last session of the General Assembly and replaces the T-By-2000 program.

The Director said he joined the roundtable discussion at the Indiana Wildlife Federation Annual Meeting held at McCormick's Creek State Park. Members of the roundtable discuss many issues and "the IWF folks were pleased of our participation and were happy to share their thoughts." Macklin also announced the DNR dedicated Lieber State Park's new Aquatic Center on June 21, 2000.

Director Macklin said he traveled to Decatur and Portland to discuss plans for gypsy moth treatments. He said Dr. Robert Waltz, State Entomologist, assured these communities the treatments are not harmful to human health. He said initial treatment results are positive.

Macklin said he accompanied the Division of Law Enforcement to the Karl Kelly Kids Camp located in Bear Creek near Metamora. The camp gives participants the opportunity to learn about the outdoors. The Director participated in several activities offered. "I am very proud" of this "well put together" program.

Director Macklin said he met with the Indiana Hardwood Lumbermen's Association regarding several issues including the forest inventory. He said the Commission would learn more about timber issues on DNR properties later in the meeting.

Macklin met with Dr. Bret Marsh, State Veterinarian, and Dr. Howell, State Board of Health, to discuss the recent permit application by the town Beverly Shores that would authorize injections for deer contraception. He said the DNR is forming a team to consider the contraceptive's potential impact upon public and animal health before acting on the permit. Chairman Kiley asked if the permit application anticipated "darting" female deer. Macklin answered that it did. He said the application is on file with the DNR and is in the review process.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources reported that “everything was approved” from the Council’s June agenda.

Jack Costello, Deputy Director for the Bureau of Lands, Recreational and Cultural Resources, said the Council toured the Vallonia State Tree Nursery. He said the members were “impressed with the process. Costello said six million tree seedlings will be planted this year; an increase from last year’s 4.5 million. He said funds are now available for additional cold storage. Costello commented that “if nature cooperates, we’ll have the biggest production we’ve had.” Costello distributed The Big Tree Register. Costello also reported that the Lieber Aquatic Center has opened and commented on its importance because the reservoir levels are unpredictable.

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, said the council meeting was canceled. As a result, there was no agenda to report.

Dave Vice, Deputy Director for the Bureau of Resource Management, announced the newly renovated DNR State Fair building and the improved aquatic display would be dedicated on August 12, 2000. Vice said the Wild Game Cookout is scheduled for the same day.

Vice said the Law Enforcement Summer Boating Patrol is active across the state—a continuing concern being the low lake levels. Vice reported that investigations continue into tree spikings at Yellowwood and Morgan-Monroe State Forests.

Vice reported Indiana has been awarded the North American Wildlife Enforcement Officers Association (NAWEOA) Conference in 2002. He said 1,000 to 1,500 conservation officers from the United States and Canada are expected to attend. The conference will be held at the Columbus, Indiana Holiday Inn.

Vice reported on two items from the Division of Entomology and Plant Pathology. He said gypsy moth treatments have concluded. Also, the division has received many calls about nursery dealers selling purple loosestrife. Although dealers are selling what are alleged to be “sterile” varieties, studies have shown they are not sterile. He said division inspectors would follow up and inform dealers the sales are unlawful.

Vice reported a near-record 23 Peregrine falcon chicks were counted in Indiana. He said the Indiana Bald Eagle Program has identified 23 nesting pairs, an increase from last year’s 20 pairs, rearing a record 33 young eagles to flight stage.

Vice said over the past week five fisheries crews sampled 25 sites on the main stem of White River and twelve tributary streams in Madison, Hamilton, and Marion Counties. The results show a high abundance of crayfish, minnows, and darters. The sampling confirmed the natural reproduction of largemouth bass, smallmouth bass, and flathead catfish. Reestablishment of predator fish and sport fish will be facilitated through fall stocking of fingerlings from private and state hatcheries. Vice said White River Rescue 2000, a citizen group, has raised \$140,000 to help restock from private hatcheries.

Vice said the drinking water in northwest Indianapolis and Zionsville is plagued with a taste and odor attributed to a blue-green algae byproduct. The DNR has issued a plant control permit, with a 15-day public notice, to the Indianapolis Water Company for treatment of Eagle Creek.

Rich Cockrum asked if the DNR could accelerate fish stocking in the West Fork of the White River. He said the NRC might consider special rules on the West Fork to support stocking of predator fish, notably large and smallmouth bass. Macklin responded the Division of Fish and Wildlife has made fish restocking on the White River one of its highest priorities for this summer.

Cockrum asked about the status of the White River contamination lawsuit. Lori Kaplan, IDEM Commissioner, said a lawsuit was filed in April and is “on-going.” She reported the federal and state cases were joined, and the city of Anderson has filed suit against Guide Corporation. Federal District Judge Dillon set a status conference in August. Kaplan said, “it has the potential for being very complex and drawn-out litigation.”

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reported the Council of State Governments (CSG) selected the Division of Reclamation as one of ten finalists for the CSG “Innovations Awards.” The basis for the nomination is the development of by the division of its unit price-contracting program. Unit Price Contracting in the division’s “Abandoned Mine Land” reclamation program has saved the DNR thousands of dollars and hundreds of project days relative to traditional state contracting approaches. Ehret said Division of Reclamation staff would make a presentation on unit price contracting at the CSC’s Midwestern Section August meeting in Minneapolis. Two finalists will be selected for recognition, among other regional winners, at the CSG Annual Meeting in December.

Ehret reported that Director Macklin, Division of Water staff, and he attended the groundbreaking ceremony to mark the initiation of a “vitally needed” levee reconstruction project. The project would help protect Elnora in Daviess County from flooding on the White River. Ehret said 75 local citizens attended the ground breaking, with two television stations covering the event.

Ehret said Director Macklin and he interviewed five candidates for Director of the Division of Reclamation. Mike Sponsler recently resigned the position to take a similar position in Ohio. Ehret said all five candidates were “very well qualified,” and a selection would be made within the next week.

**BUREAU OF LANDS, RECREATIONAL,
AND CULTURAL RESOURCES**

PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Consideration of Personal Interview for Selection of Assistant Property Manager at Ferdinand State Forest.

Terry Moore presented this item on behalf of the Commission's personnel committee. Referring both to Wade Ulrey and Robert Hogg, she said, "As always, we had two very qualified candidates." She said Robert Hogg is "already in the system" and has "brought a variety of expertise." She said the committee recommended Robert Hogg for appointment as Assistant Property Manager at Ferdinand State Forest.

Damian Schmelz moved to approve Robert Hogg for appointment as the Assistant Property Manager at Ferdinand State Forest. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

BUREAU OF RESOURCE MANAGEMENT

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Thousand Acre Woods Nature Preserve, Daviess County, Indiana.

John Bacone of the Division of Nature Preserves presented this item. Bacone said the proposed nature preserve is a 933-acre tract of land located approximately four miles northeast of Washington in Daviess County. Long recognized by the local community as Thousand Acres Woods, the forest remnant is one of the most extensive and least fragmented large forest blocks in southwestern Indiana. The site is a very flat, wet floodplain forest that borders the confluence of the North and South Forks of Prairie Creek. He said it is "pretty spectacular" and is a "high quality" bottomland forest. Bacone said the Division of Nature Preserves recommended dedication of this site as a state nature preserve.

Damian Schmelz moved to dedicate Thousand Acre Woods Nature Preserve in Daviess County. Terry Moore seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FORESTRY

Informational Item: Update on Developments at Morgan-Monroe and Yellowwood State Forests.

Burnell Fischer, State Forester, presented this item. He reported arsonists started at least 25 wildfires on Morgan-Monroe State Forest between September and December of 1999. The fires burned more than 300 acres with some fires consuming whole stands of trees. He said arsonists returned this spring, and in March and April another ten fires were started burning an additional 35 acres. Fischer said DNR has spent approximately \$25,000 in overtime in the last two years to fight the fires. The fires have been under investigation by the State Fire Marshall's Office and are under continuing investigation by the DNR's Division of Law Enforcement.

Fischer reported that activities by a few environmental extremists increased last fall with the vandalism of a private logging contractor's equipment on Morgan-Monroe State Forest. The vandalism has been credited to the Earth Liberation Front, which also claimed credit for two other acts of vandalism—a house fire and the destruction of highway construction equipment.

Fischer said he and DNR staff gave presentations to environmental activists at a public meeting held on May 13 at the Yellowwood shelter-house. He said the meeting “was not very well attended.”

Fischer said the Indiana Forest Alliance and Heartwood Association was joined by five protestors from Earth First to protest timber sale bid openings at the Morgan-Monroe State Forest Headquarters on May 16. The activists “came into our office and chained themselves up.” He said the Division of Forestry coordinated with conservation officers, and after about six hours, the activists left. This protest was non-violent.

Fischer said he received a call from the Morgan-Monroe Property Manager on June 26 who discovered the spiking of at least 25 trees that were ready for timber sale. The DNR reported the tree spiking to the media. On June 27 the Earth Liberation Front issued a news release claiming credit for the spiking, as well as another at Yellowwood State Forest. So far, the Division of Forestry has identified about 90 trees with spikes, some with as many as three spikes. Because of the safety hazards posed to timber cutters, all trees identified as having spikes must be removed from the forest. Fischer said the Earth Liberation Front is a “very radical group.”

Fischer concluded by reporting the incidents are under continuing investigation by the Division of Law Enforcement and other law enforcement agencies. Lori Kaplan asked if the spikes devalue the trees. Fischer responded they did.

Chairman Kiley asked Fischer how many people were trained in Indiana to fight forest fires. Fischer said there are approximately 200 trained fire fighters available, but most are volunteers rather than agency employees.

DIVISION OF LAND ACQUISITION

Consideration of Conveyance of Right-of-Way to Improve Tippecanoe County Road 200 South, Tippecanoe County (Fairfield Builders Tract)

John Davis, Director of the Division of Land Acquisition, presented this item. He explained the request is of a .05 acre conveyance of road right-of-way to improve Tippecanoe County Road 200 South. Davis said the conveyance is going to be “good for the fishermen” and will give them “good access.” In addition to suiting the needs of Tippecanoe County, improved fishing access would achieve a goal of the Department of Natural Resources.

Jerry Miller moved to approve the conveyance of road right-of-way to improve Tippecanoe County Road 200 South. Damian Schmeltz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Conveyance of Right-of-Way for Daviess County Road 825 South, Daviess County (Glendale FWA Tract)

John Davis also presented this item. He explained the existing right-of-way easement documents, executed in 1959, add five feet to a presumed-to-exist 20-foot easement. Daviess County requests the DNR to execute new conveyances that accurately reflect the 50-foot total easement needed for Daviess County Road 825 South. Davis said the Divisions of Fish and Wildlife and the Division of Land Acquisition recommend approval.

Damian Schmeltz moved to approve the conveyance of road right-of-way for Daviess County Road 825 South—Daviess County, Glendale FWA Tract. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of Resolution to Declare Twelve Acres in Lake County (the Esther Doak Tract) as Surplus Property in Anticipation of Sale

John Davis presented this item. He explained Esther Doak died in 1998. In her will she left the DNR two parcels of land, one including twelve acres and the other in excess of 100 acres. Davis said the state took title to the twelve-acre tract subject to an existing development agreement. The Division of Land Acquisition and the Division of Fish and Wildlife recommended approval of a resolution to declare the twelve-acre tract “surplus” in anticipation of a sale that would net approximately \$60,000. Proceeds from the sale would go to the Natural Resources Foundation. The resolution would not affect the 100-acre tract, which would remain under DNR management.

Jack Arnett moved to approve a resolution declaring as surplus property the twelve-acre Doak Estate tract. Damian Schmeltz seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

NRC DIVISION OF HEARINGS

Consideration of Final Adoption of Amendments to 312 IAC 16-5 Governing the Management of Spills of Oil and Saltwater from Oil and Gas Operations under IC 14-37; Administrative Cause Number 00-030G

Sylvia Wilcox, Hearing Officer, presented this item. She explained the rule proposes to amend 312 IAC 16-5 by setting standards to manage the cleanup of oil and saltwater spilled during petroleum production activities. Wilcox said the amendments would define reporting criteria, containment requirements, and cleanup standards. IDEM and DNR worked closely to draft the rule proposal, and both agencies support the proposed amendments.

Wilcox said a public hearing was held on May 31, 2000, where a representative from the Indiana Oil and Gas Association (“IOGA”) voiced general support for the rule but suggested several changes. Included among these changes were approval of absorbent pads for containing spills and their on-site burning. IOGA requested an increase in the minimum amount of spill that occurs before reporting to IDEM is required. IOGA also objected to the breakdown of individual components within crude oil for remediation evaluation.

Wilcox said the Division of Oil and Gas agreed with some of the changes sought by the industry. Those changes were incorporated in her report for final adoption. The amount of spill mandating reporting to IDEM was an IDEM standard, however, and not within the jurisdiction of the Commission to modify. The Division of Oil and Gas continued to urge that component breakdown was needed for sound remediation evaluation, and she did not propose deletion of the breakdown from the final rule. Wilcox concluded by saying she recommended final adoption of the proposed rule amendments to 312 IAC 16-5, but with changes identified in the Commission’s written materials.

Damian Schmelz moved to give final adoption to 312 IAC 16-5. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption to the Recodification of Watercraft Management Rules; Administrative Cause No. 00-095L

Steve Lucas, Director of the Division of Hearings, presented this item. He said for consideration was whether to give preliminary adoption to the recodification of watercraft management rules from 310 IAC 2.1 to 312 IAC 5. The initiative was part of the continuing process to recodify DNR rules and NRC rules.

Lucas said that, “for the most part, the rules are substantively identical to their current form, with only numerical changes to the citations.” In addition, however, the proposal reflected changes to the enabling legislation since 1995. He said the Division of Law Enforcement also “seeks to clarify standards for personal flotation devices (commonly called “life preservers”) and the disposal of wastewater from vessels.” Lucas said if the Commission elects to give preliminary adoption, a public hearing would be advertised and held to receive comments.

Jerry Miller moved to give preliminary adoption to the proposed recodification of the watercraft management rules. Joe Siener seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to Commission’s AOPA Procedural Rules to Govern Modifications of Final Orders and Actions on Remand; Administrative Cause No. 00-055A

Steve Lucas also presented this item. He said the proposal would give preliminary adoption to two new sections to the Commission’s AOPA procedural rules. The new sections would govern the modification of final orders and actions on remand. He said neither of these circumstances arose frequently, but where they did, the absence of a process created unnecessary confusion or caused unneeded delays. In general, the amendments would delegate to the Division of Hearings the ability to address these issues. Where newly discovered evidence resulted in another hearing, however, the Commission would continue to serve as the “ultimate authority” and determine any disputed final order.

Joseph Siener moved to approve preliminary adoption of rule amendments. Damian Schmeltz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Nonrule Policy Document for Registration of Significant Water Withdrawal Facilities; Administrative Cause No. 00-097W

Steve Lucas introduced this item. He said a citizen recently telephoned and asked about Commission policy concerning the registration of significant water withdrawal facilities. The citizen said he believed standards had been published at one time in the INDIANA

REGISTER. After some searching, a nonrule policy document on the subject was found in the September 1984 INDIANA REGISTER. The citizen was ultimately forwarded to the DNR's Division of Water for more information. In the course of conversations, it was determined the 1984 publication had been superseded at the Division of Water (by a document that was very similar to the 1984 document), although the new document had not been approved by the Commission or published in the INDIANA REGISTER. Lucas added the 1984 document was prepared before a standardized practice had been developed for the enumeration of the agency's nonrule policy documents.

The statutory basis for the registration of significant water withdrawal facilities is IC 14-25-7 (sometimes referred to as the "Water Resource Management Act"). That act also requires the Commission to approve forms used in its administration, and the forms currently used for registrations had not been approved.

Lucas said the Commission was being asked to consider two actions: (1) approval of the "Registration of Significant Water Withdrawal Facilities" as Information Bulletin #29; and (2) approval of "Instructions for the Registration of a Significant Water Withdrawal Facility" and the "Registration of a Significant Water Withdrawal Facility" as Commission forms pursuant to IC 14-25-7. Upon approval, "Registration of Significant Water Withdrawal Facilities" would be published in the INDIANA REGISTER and also included on the Commission's website.

James Hebenstreit, Assistant Director of the Division of Water, outlined the substance of the proposed revised nonrule policy document and the forms. He also distributed copies of *Trends in Indiana's Water Use 1986-1996*, a document based in part on information derived from the registration and reporting of significant water withdrawal facilities.

Chairman Kiley asked Hebenstreit whether the Division of Water continues to process complaints asserting the failure of domestic water wells as a result of activities of significant groundwater withdrawal facilities. Kiley recalled the litigation that had involved the Prudential Farms in Newton County and Jasper County.

Hebenstreit responded that groundwater emergencies were addressed under legislation separate from but related to IC 14-25-7. He said most well failures in Jasper and Newton County resulting from irrigation activities are now resolved, and the Prudential Farms have been sold to new owners. In other locations, however, there are numerous citizen complaints. These sometimes arise from the operation of golf courses or as a result of de-watering activities during sand or gravel extraction operations. Hebenstreit said Mark Basch handles these complaints for the Division of Water. Due in large part to Basch's expertise and dedication, several years have passed since one of the complaints resulted in the declaration of a "groundwater emergency" or other litigation.

Jerry Miller moved to approve the "Registration of Significant Water Withdrawal Facilities" as a nonrule policy document and to approve the two forms included in the Commission packet as forms of the Commission under IC 14-25-7. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At 11:05 a.m., CDT, the meeting was adjourned.
