

NATURAL RESOURCES COMMISSION

Minutes of March 18, 2003

MEMBERS PRESENT

Michael Kiley, Chair
Rick Cockrum, Vice
John Goss, Secretary
Damian Schmelz
Jack Arnett
Jerry Miller
Larry Goode
Lori Kaplan
Jane Anne Stautz
Raymond McCormick, II

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sylvia Wilcox
Jennifer Kane
Debra Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Carrie Bales	Executive Office
Paul Ehret	Executive Office
Bob Waltz	Entomology
Gwen White	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
John Carr	Historic Preservation
Jon Smith	Historic Preservation
Frank Hurdis	Historic Preservation
Sam Purvis	Law Enforcement
Scott McDaniel	Law Enforcement
John Bacone	Nature Preserves
Gerald Pagac	State Parks and Reservoirs
Marian England	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
George Bowman	Water
Terri Swoveland	Water

GUESTS

Dick Mercier	James Anderson	Arlene Smuof
Ted Harris	Joe Murphy	Scotty Eskridge
Tim Maloney	Alan Hux	Lenny Noens
Clark Kahlo	Herb Bolinger	Mr. Collins

ELECTIONS OF OFFICERS AND MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on March 18, 2003, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of ten members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of January 21, 2003. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF OFFICERS

Chariman Kiley opened the floor for nominations to elect officers.

Jack Arnett moved to re-elect the current Board and re-nominated Michael Kiley as Chairman, Rick Cockrum as Vice Chairman, and John Goss as Secretary. Damian Schmelz seconded the motion. No other nominations were offered. Upon a voice vote, these officers were re-elected.

MONTHLY REPORTS

John Goss provided the Director's Report. He said the legislative session was approximately halfway finished. "We're in pretty good shape with the budget and all the permit and fee bills we have been working on." He said the House of Representative recommended the Department's requests, however with no increase in budget. He said that DNR asked for \$50 million dollars for their Capital Budget. The only item removed from the capital budget proposal was Phase II of the Prophetstown project, which would not effect Phase I. "I think the recommendation of about \$45 to \$50 million dollars looks pretty good at this point."

Goss reported that the House passed approximately 37 fees, bills, and permits "with pretty good majorities," which are currently in the State Senate. He said, "A couple of those bills passed out of the Committee. We think we're going to have pretty good luck getting all this through, and it will generate about \$40 million dollars."

Goss noted that wetlands are still a very significant legislative action. He said that IDEM, however, needs authority to regulate isolated wetlands. Goss deferred to the IDEM

Commissioner, Lori Kaplan. Kaplan said that one bill passed through the House of Representatives and one through the State Senate. Kaplan explained that there were several amendments to the bills. She commented that “although there are some provisions we like, we still have some concerns.” She hoped for continued collaboration with both the Houses to find a middle ground where isolated wetlands will have clear protection of the law. Kaplan said that IDEM would continue partnership with the Department of Natural Resources, the Department of Agriculture, and all the various constituents. Kaplan informed the Commission that Ray McCormick gave testimony before the committee, which was “remarkable and appreciated.” She said McCormick presented a “good prospective” from the agriculture production. Kiley asked whether the Farm Bureau voiced concerns about the proposed legislation. McCormick commented that “farmland might be overburdened by the rules.”

Goss informed the Commission that John Hillenbrand resigned as the Chair of the Indiana Heritage Trust Foundation, had. He said there would be a farewell for Hillenbrand during the May 1, 2003 Heritage Trust meeting to be held at 2:30 p.m., at The Garrison, Fort Benjamin Harrison State Park. He said that Governor O’Bannon would also be in attendance.

Goss reported that several bills were filed and heard in the House concerning deer farming and captive hunting issues, “but they didn’t come out of committee.” He said that DNR issued an order prohibiting issuance of additional whitetail game breeder permits. Goss said, “several legislators took offense” of the order. Subsequently, DNR staff met with legislators to discuss a possible solution. Goss said an agreement was reached to “kill the bill” and “rescind the order.” Goss said that additional meetings are anticipated over the next few months with game sporting group, farmers, and the Board of Animal Health, to develop rules to legislate hunting on private property. “This is a very highly emotional issue. My hope is we can work with the Board of Animal Health and come up with something everybody can live with.”

Goss reported on the Chronic Waste Disease (CWD) testing. He said that all but 100 of the 1,000 samples taken have been completed, and thus far all tests are negative.

Jerry Miller, Chair of the Advisory Council for Lands and Cultural Resources, deferred to Ray McCormick to provide the report of the new joint Advisory Council.

Ray McCormick II, Chair of the Advisory Council for Water and Resource Regulation, reported that the joint Advisory Council meeting was held on February 19, 2003. McCormick informed the Commission that Jerry Miller was re-elected as Chair of the Advisory Council for Lands and Cultural Resources. McCormick was re-elected for the Regulatory Management Team for the Advisory Council. He said that the Council received a request to surplus small tracts of ground, which were acquired by the Division Fish and Wildlife (like abandoned rest stops and other isolated land tracts) throughout the years, in toto. McCormick said that the Council decided it was best if the Commission reviewed each tract individually for surplus.

Paul Ehret, Deputy Director, reported on the new plant disease “*ralstonia solanacearum*” which has entered Indiana. He informed that the disease was transferred through vegetation that was shipped from Kenya to various nurseries. Ehret said that the disease is “not dangerous to humans,” but could cause severe damage to crops and plants. Ehret reported that 44 nurseries

were affected and quarantined and are being reviewed. He provided that one nursery's entire stock of plant materials had to be destroyed. Ehret stated that he attended one of the meetings held regarding the quarantine, and was "very impressed with the knowledge and speed in reacting to the threat."

Ehret reported that the Division of Reclamation continues to work on the proposed groundwater rules. He said that DNR had been meeting with the Hoosier Environmental Counsel, the Indiana Coal Council and IDEM to discuss the "controversial" rules. "We are spending time on it to make sure we get on target." He said that the rule is tentatively scheduled to come before the Commission on May 20, 2003 for final adoption.

Ehret reported that staff met with the Corps of Engineers regarding the Mississinewa dam repairs. He informed that the construction of the dam was on schedule and to be completed November 2004, with a price tag of \$55 million. Ehret said that the Division of Water, along with other DNR staff met in Knightstown, Indiana, concerning the high-hazard Raysville Dam. "We had a very interactive meeting" which helped to educate the public on the dangers of the dam. Ehret said the dam was orphaned and has been in a state of "disrepair for a long period of time." He said there were several houses downstream from the dam, and the public reaction to "decommission the dam was very positive."

Ehret informed that the Division of Water's Notice of Violation Matrix has been implemented for violations of the Flood Control Act, the Lakes Preservation Act, the Navigable Waters Act, and other key waterway construction laws administered by the Division of Water. He said that the Division of Water has issued its first NOV through the new policy. "It's been, I think, a benchmark for us to establish that policy, and we'll get it finalized before the Commission, hopefully, in the near future."

Chairman Kiley thanked everyone for the get-well wishes, following his recent surgery. Kiley thanked everyone for their care, kindness, and consideration. He expressed, "After 27 years on this Commission, I deem you all very close and personal friends, and I thank you for your care."

PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Permanent Appointment for the Position of Assistant Property Manager at Lake Michigan Fisheries

Rick Cockrum stated that he and Jane Ann Stautz performed the interviews of the two candidates. "Once again, it's very challenging" to choose a candidate because of the "caliber of people recommended by staff." Randy Brindza was recommended for the Assistant Property Manager position. Cockrum informed that Brindza comes from Pittsburgh, Pennsylvania and is a graduate from Mansfield University. He stated that Brinzda has worked in the Northwest Indiana fisheries. "Brindza is a jack-of-all-trades."

Rick Cockrum moved to approve Randy Brindza for permanent appointment as Assistant Property Manager at Lake Michigan Fisheries. Jack Arnett seconded the motion. Upon a voice

vote, the motion carried. Chairman Kiley welcomed Brindza and said, “I’m glad you’re on board.”

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Granville Sand Barrens Nature Preserve, Tippecanoe County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone explained that the nature preserve consists of 40 acres located near Lafayette, Indiana. “It is a unique piece of ground.” He noted that the tract contains sand barrens, which is an extremely rare habitat in Indiana. Bacone said that the property has several rare plant species.

Bacone explained that the tract is owned and under the administration of NICHES Land Trust Corp. He said that Indiana Heritage Trust monies as well as NICHES Land Trust Corp acquired the tract of land.

Ted Harris from NICHES Land Trust Corporation thanked the Commission for their approval of the Black Rock Barrens Nature Preserve in January 2003. “We really would appreciate your approval of the Granville Sand Barrens, because it really is a very unique and special spot for people in Indiana to enjoy.”

Jerry Miller moved to approve the dedication of Granville Sand Barrens Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of Boot Lake Nature Preserve, Elkhart County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the Boot Lake Nature Preserve is also an Indiana Heritage Trust project. The tract is owned by the City of Elkhart and is under the administration of the Director of Public Works and Utilities for the City of Elkhart. He explained that the property is a “real unique example of the isolated wetlands with a floating mat. It is a very shallow lake that sometimes dries up.” Bacone said there are “tiny rare plants” located in the tract and includes a “beautiful boardwalk and overlook and trail system.” He said the wetlands connects with a prairie preserve.

Bacone said that the Division of Nature Preserves recommend the dedication of the Boot Lake Nature Preserve.

Damian Schmelz moved to approve the dedication of the Boot Lake Nature Preserve. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request by The Nature Conservancy for an Agreement for Tree Planting at Big Walnut Nature Preserve, Putnam County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone stated that one year ago the DNR and Cinergy entered into a cooperative agreement to reforest Big Walnut Nature Preserve. He said that part of the agreement would be that Cinergy would receive the rights to the carbon sequestered by the growing trees on the planted areas for a period of 50 years. He said that if and when carbons are ever traded, Cinergy would own the rights until the agreement expires. Bacone explained that The Nature Conservancy is hoping to enter into a similar partnership to facilitate reforestation of 8.6 acres. "Other than that, all the rights are retained by the DNR." Bacone explained that this reforestation would "speed up our hope for Big Walnut and in the process save considerable monies."

Rick Cockrum moved to the approval of the agreement for reforestation at Big Walnut Nature Preserve. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF WATER

Consideration of the Nonrule Policy Document Regarding the Submission and Review of Hydraulic Modeling for Permit Applications under the Flood Control Act; Administrative Cause Number 03-043W

George Bowman, Assistant Director of the Division of Water, presented this item. He explained the nonrule policy document would outline procedures for submission and review for hydraulic modeling submitted for permit applications. Bowman provided background information on the Flood Control Act (IC 14-28-1). He explained in detail the Division of Water's long-term and extensive assistance available to individuals and engineering consultants in developing the technical documentation needed to meet the burden of proof under the Flood Control Act. For many reasons there have been questions as to whether the division's level of assistance is appropriate or even practicable since the engineering staff is down by 30%. Bowman outlined the challenges in filling the engineering positions due to salary ranges and budget constraints. "It's going to be very difficult to bring qualified individuals in to do that."

Bowman said questions arise with respect to the Division of Water performing tasks on projects in which the division ultimately approves. He explained, "We're actually making modifications to the model and then turning around and giving the recommendation an approval."

Bowman said another issue was the amount of time expended on the processing of applications and supplied several statistics. He said the division processes over 500 applications during a one-year period. From 35% to 40% of the applications are submitted with models. Approximately 60% of those numbers end up in abeyance due to inadequate modeling and 20% of the 60% go into abeyance more than one time for inappropriate submittals. Over the past two years, the Division of Water has worked with several members of the consulting industry and the Indiana Department of Transportation, to facilitate a modeling guideline packet. He said that

since the completion of the modeling guidelines, the division has held three public training sessions across the state.

Bowman summarized the effects the proposed nonrule policy document would have on the public and the industry. (1) The state-of-the art modeling guideline will be used for submittal of models. (2) The Division of Water would no longer be an active participant in the design of the projects. (3) “Two strikes” policy would be implemented for permit application submittals with modeling errors. After two attempts the division will recommend the application for denial.

Herb Bolinger, Engineer with Earth Tech. He said that Earth Tech is a member of the American Council of Engineering Companies of Indiana. “We are in support of this particular nonrule policy document.”

Clark Kahlo said he was representing Protect Our Rivers Now. “The bottom line is we’re supportive of this new initiative. We think it’s rather long over due. We know there are definite ways to improve modeling and one, which is to tighten up procedures, as Mr. Bowman as indicated. My only concern is, is it tight enough? Can we actually in reality operate in such a way that we do maintain an arms-length relationship with the professional engineering companies.”

Tim Maloney, member of the Hoosier Environmental Council, addressed the Commission. “We support the policy as well.” Maloney suggested that additionally there be a six months to one-year waiting period before an applicant could re-apply. He said HEC believed the waiting period would lend more effectiveness to the “two-strikes” policy.

Maloney said, “Hopefully, this policy is a direction by the Department to be more aggressive in implementing and enforcing the Flood Control Act. This is a very important law that protects people and property and natural resources in Indiana.” He said the Association of Floodplain Managers informs us flood losses are increasing every year. Maloney indicated this policy would also help protect the state’s floodways and subsequently protect water quality. “We do support the policy and hope this is the start of a real strong effort to protect our floodways and rivers in Indiana.”

Ray McCormick questioned the “two-strikes” policy and whether the time involved with the re-submitting an application would be enough time without a waiting period for further review of a model. “I mean, I hear constantly how long it takes to get a permit. Surely they’re not going to just start in with a new application.”

Paul Ehret indicated that it depends on particular applicant. He said that with the rejection or the denial of the permit and the process of re-submitting that the applicant would “have their act better together” with the second re-submittal. Ehret expressed that if an applicant was rejected a second time; it would post a strong message. Ehret said, “statutorily we might have a legal problem imposing a waiting period for somebody to reapply. I think that as a matter of policy, we can certainly suggest that they start over again, but to impose a legal waiting period for them before they could reapply, I think might be a legal question.”

Bowman stated that there is no statutory authority for delaying the time period for an applicant to reapply for a permit. He pointed out that if an application is denied a person could either appeal the decision and file for administrative review for the denial of a permit, or resubmit the application, which involves a 30-day period.

Ehret said he believed the time delay caused by re-submittal would be enough to “curb people that are just trying to ram stuff through.” Ehret added, “seriously, it is a resource issue with us, and we just can’t do work for people that we use to. Customer service, customer friendly is fine, but we don’t have the resources for it and I think there are some potential conflict issues. All in all, I think our approach sends a good message, I really do.”

Lenny Nolans, engineer with Christopher Burke Engineering and board member of the American Society of Civil Engineers, addressed the Commission. He stated, “On behalf of the Board, we want to express our approval of the nonrule policy.”

Damian Schmelz asked Bowman if he thought that Division of Water had a “good handle on the cumulative effects. In the days when the Commission ruled on each permit, I was always uneasy about that.” Bowman said, “I think with the modeling guidelines, we tried to address that. And, I will point out that with the modeling guidelines we have in place, the Committee is still going to continue to meet at least on a quarterly basis as issues come up we intend to address those. And, some of those issues might actually be back here before the Commission in the near future.”

Rick Cockrum added, “I hope there is some consideration between commercial projects and residential.” Bowman replied, “Basically, with respect to individual projects—what we commonly refer to as Mom and Pop projects—we will still provide some limited assistance.” He said that an example would be an individual wanting to know the 100-year elevation, in which case, the division would provide that information as well as provide some guidance.

Ray McCormick explained the Advisory Councils had spent “a great deal of time and discussion on this issue. We would bring forth a recommendation for approval.” He moved to approve the nonrule policy document regarding the submission and review of hydraulic modeling for permit applications under the Flood Control Act. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Proposed Public Freshwater Lake Rule Modification for ADA Compliance in Construction of Public Access Facilities; Administrative Cause No. 03-028D (LSA #03-30)

Randy Lang, Fisheries Staff Specialist with the Division of Fish and Wildlife, presented this item. He said the purpose for the proposed rule modification was to provide consistency in the public freshwater lake permitting process, as well as to maintain compliance with the federal aide compliance regulations for Americans with Disabilities Act (ADA). “We’re not asking to be exempt from the permit process when we construct these ADA facilities at our public access

sites. What we are asking for is an exemption that allows us to use certain types of methods or materials to construct these access sites.”

Lori Kaplan asked Lang what types of materials are being considered for exception. Lang said the rules currently prohibit the use of certain types of materials. The DNR is seeking authorization for the use of materials such as concrete or sheet piling at public access sites in order to achieve ADA compliance. There are “unique natural areas” around public freshwater lakes where extra protection would be needed.

Jack Arnett moved to give the proposed rule amendments preliminary adoption. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of a Request to Form an Easement by Howard & Mildred Anderson across a Portion of Sugar Ridge Fish and Wildlife Area

Randy Lang, Fisheries Staff Specialists with Division of Fish and Wildlife, presented this item. He said that approximately 30 years ago, the Andersons purchased an 80-acre tract of land from Amax Coal. He explained that the Andersons established an easement agreement with Amax Coal to access their land locked property. Lang said that ten years after the Andersons purchased the land, DNR acquired the use of the land, which Amax Coal controlled through a gift in order to establish the Sugar Ridge Fish and Wildlife Area.

Lang said that DNR is requesting permission for the Anderson family to continue to use the easement. He said that the Andersons plan to build a log cabin and are requesting a permanent easement to be recorded in order to bring buried utilities to their property. Lang said the easement would not impact operational or maintenance of the DNR property, nor impact the public use of the property. Lang said that the Division of Fish and Wildlife supports the request for the easement and recommends approval.

Jerry Miller moved to approve the request for an easement by Howard and Mildred Anderson across a portion of Sugar Ridge Fish and Wildlife Area. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of a Waterline Easement to South Lawrence Utilities

Marian England, Legal Analyst of the Division of State Parks and Reservoirs, presented this item. She said that South Lawrence Utilities, Inc. is requesting an easement from the DNR for the installation of a 6-inch water line. England informed that the land is located directly across from Spring Mill State Park, south of State Road 60.

England said that the recommendation of the Division is to approve the easement with the contention that Midwestern Engineers receive various prior permit approvals. She informed that the State is not the direct benefit of the waterline. “We’re requesting installation of portion of waterline in addition to what their project currently has.” England informed that South Lawrence Utilities has obtained approval from the U.S. Fish and Wildlife Service, IDNR’s Fish and Wildlife and Historic Preservation.

Damian Schmelz moved to approve the waterline easement to South Lawrence Utilities. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to the Rules Governing Public Use of DNR Properties; Administrative Cause No. 02-101A (LSA #03-50)

Marian England, Legal Analyst of the Division of State Parks and Reservoirs, also presented this item. She said the proposed changes address a number of issues pertaining to public use of state parks, forests, and other DNR properties. New standards would be included concerning the use of firearms. Service animals would be legally distinguished from pets. Restrictions on swimming in DNR reservoirs would be clarified. An amendment would also be made to 312 IAC 9 to prohibit hunting at state historic sites. England said the proposed changes are in the beginning stages, and if they are given preliminary adoption, the Division of Hearings will hold public meetings and provide the Commission with the results of those meetings.

Chairman Kiley asked England if she anticipated a considerable amount of public comment. England said the property managing divisions hoped for meaningful input from our citizens, but she did not expect a great deal of controversy. “At least we have not heard of any to this date.”

Damian Schmelz moved to approve the preliminary adoption to the proposed rule changes. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

NATURAL RESOURCES COMMISSION DIVISION OF HEARINGS

Consideration of Recommendation of Hearing Officer to the Natural Resources Commission with Respect to the Petition for Adding Area to the West Central Conservancy District; Administrative Cause Number 02-160L

Jennifer Kane presented this item on behalf of the Hearing Officer, Stephen Lucas. Kane said the purpose for which the West Central Conservancy District was established is to provide for the collection, treatment, and disposal of sewage and other liquid wastes. Currently for consideration are two petitions (also joined by a third person) to add territory to the district. Before the petitions were referred to the Natural Resources Commission for review, the Hendricks Circuit Court found they conformed to statutory requirements.

Kane said because the Director or the Division of Water determined the addition of territory could have more than a *de minimis* effect, a public hearing was held that followed the same procedures as are used to consider whether a new conservancy district should be established. She said the public hearing was held on February 6. Kane explained that the statute requires the Commission “make a determination and report” to the Hendricks Circuit Court whether the proposed addition to the West Central Conservancy District meets certain conditions. These are listed on page two of the Hearing Officer’s report.

Kane noted the Hearing Officer’s recommended findings began on page 14. She explained that the Commission is responsible for providing the analyses described in IC 14-33-2-18 and IC 14-33-2-22. The statutory structure does not, however, anticipate the Commission will approve or reject the petition to add area to a conservancy district. The Indiana General Assembly has placed this authority squarely and exclusively within the Hendricks Circuit Court.

Kane said the Commission developed a nonrule policy document to assist in the implementation of its responsibilities relative to conservancy districts. She said the Petitioner presented sufficient evidence on February 6 to make affirmative findings concerning the requisite technical considerations. Kane recommended the Commission adopt the findings of the Hearing Officer in its report to the Hendricks Circuit Court.

Alan Hux, attorney for the Petitioner, stated, “We would request the Commission adopt the findings of Hearing Officer.” Hux added he would be available to answer any questions following other comments.

Joe Murphy, district resident, said that he was opposed to the annexation of the West Central Conservancy District “mainly because it raised sewer rates an additional \$20 per month.”

James Anderson, a West Central Conservancy District freeholder and President of the Hendricks County Conservancy Coalition, said he was also opposed to the annexation. Anderson said he believed the decision “was not made in the best interest of the freeholders and should not be at the expense of the freeholders. He commented that “the West Central Conservancy District accepted a large amount of indebtedness by approving a bond. We feel that growth is something that is going to happen, but at this time, this annexation, with our deficit burden that we have is just adding more burden onto the freeholders.” Anderson reiterated, “There’s nothing against growth, but it should not be at the expense of the freeholders.”

Chairman Kiley asked Anderson whether the Hendricks County Conservancy Coalition had an opportunity to remonstrate with respect to the bond issue. Anderson replied, “No, sir, we did not. We were only formed in August 2002. The bond issue was done in the first part of 2002, with little notification to people only with what the basic minimum requirement is—putting an ad in the paper.” Kiley added also inquired whether Anderson understood his remonstrance rights in the current process to consider the addition of territory. Anderson replied that he understood his rights.

Anderson asked that if the Commission approved the annexation that they “approve it with reservations. Our main issue is we have enough debt as it is right now. Let’s get on and resolve the issues we have without adding any more.”

Alan Hux reported that Anderson did not appear during the public hearing nor did he provide evidence for the record. Hux said two freeholders petitioned to enter the West Central Conservancy District. One of these was the Indiana University Foundation through its Board of Trustees. The I.U. Foundation requested its land be brought into the district in order to have sewer service, because the Board realizes the land is right for development. Hux also pointed out that the land is being held in trust by Riley Hospital. “Mr. Anderson is a self-appointed community activist and is trying to impede progress.”

Rick Cockrum pointed out the Hendricks Circuit Court is the legal entity empowered to determine whether the petition should be approved. The Commission merely makes recommendations concerning technical findings, and no one has offered evidence to refute the report of the hearing officer concerning those findings. Chairman Kiley concurred with Cockrum’s statement.

Jack Arnett added, “As far back as I can remember, it has been our position that the proper venue would be back to the circuit court, and folks will have their chance to certainly discuss it at that point. And I think, statutorily, we’re pretty much bound to the issues that we’re going to be dealing with. So given that I will make a motion that we approve this.” He then moved to approve the hearing officer recommendations as the technical findings of the Natural Resources Commission to the Hendricks Circuit Court. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Presentation for Final Adoption of Lake Wawasee and Syracuse Lake Fishing Tournaments and Organized Boating Activities on Indiana Public Waters; Administrative Cause Number 02-084L (LSA #02-236(F))

Sylvia Wilcox introduced this item on behalf of Steve Lucas, Hearing Officer. Wilcox informed that public meetings were held and comments received concerning the rule proposal. Many of the comments reflected that landowners and boating members often have conflict in terms of water use. Wilcox explained that the rules are to provide a balance to the various interests. She also said that the amendment also codifies the Division of Law Enforcement’s activities on public waters and that division authority to regulate those activities. Wilcox deferred to Major Samuel Purvis for further explanation.

Sam Purvis, Indiana State Boating Law Officer, said, “The process that we used to come to a final adoption, really worked well on this rule.” He said that the property owners and the fishing tournament organizers “worked very well together on their own to talk about these rule changes and collectively came together on the proposal that’s before you today for final adoption.” He was optimistic there would be “good compliance” on Wawasee and Syracuse Lakes for the fishing tournaments. He explained that the Division of Fish and Wildlife has offered support in

the development of a website to inform the public when and where organized boating activities are licensed on Indiana public waterways.

Dick Mercier, Indiana Sportsman Roundtable addressed the Commission, urged the Commission to approve the regulations. “We’d like to thank Deputy Director Paul Ehret and Sam Purvis for all the effort that they put into coming up with these. They did an excellent job in putting this together.” Mercier added that Ken McIntosh, member of the Indiana Sportsman Roundtable, is in the process of writing a Code of Ethics for all their tournament fishermen.

Jerry Miller moved to give final adoption of amendments to 312 IAC 2-4 and 312 IAC 5-3 that govern organized activities and tournaments on public waters to establish regulations on Lake Wawasee and Syracuse Lake for fishing tournaments and other organized boating activities on Indiana Public Waters. Jane Anne Stautz seconded the motion. On a voice vote, the motion carried.

Chairman Kiley added, “It has been several years of hard work to come up a consensus of all varying groups with different interests. It’s rare that happens, so in this instance, this is really a great thing for our public freshwater lakes in Indiana.”

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Establishment of Commission Objections Committee to Consider Oral Arguments; Administrative Cause Number 02-138A (LSA #02-294(F))

Sylvia Wilcox presented this item on behalf of Steve Lucas, Hearing Officer. Wilcox explained that the rule amendments for final adoption allow the NRC to create a standing committee. The committee would be charged with the authority to consider actions that fall under AOPA, and to hear objections to the findings of fact and conclusions of law of the administrative law judge. Some of the benefits would include allowing the DNR Director to confer with DNR legal counsel without it constituting an *ex parte* communication. Since the Director is a voting member of the Commission, he can be placed in the position of serving both as the chief executive of the DNR and a judge for litigation where the DNR is a party. The rule amendments also would reduce the likelihood that Commission members partake in *ex parte* communications. The public hearing was held on January 29, 2003, and the comment period was held open until March 1, 2003. No public comments were received. Wilcox recommended final adoption be granted.

Director Goss asked Wilcox to explain more on *ex parte* communication, since there had been concerns about it in the past. Wilcox explained that an *ex parte* communication occurs if the Natural Resources Commission members have discussions with parties outside the presence of the opposing party to the case. AOPA requires that an ALJ, adjudicating panel or board not communicate directly or indirectly with parties to a pending proceeding. If *ex parte* communications occur, they must be placed on the record of the proceeding. If the objections committee were allowed to consider AOPA objections, the potential for commission members to engage in unlawful *ex parte* communication would be significantly reduced.

Chairman Kiley said that the establishment of a Commission Objections Committee to consider oral arguments was long over due.

Rick Cockrum said that he had voted against the original proposal, because of the provision that stated only lawyers could serve on the committee. Cockrum said that he was pleased to see the language revised.

Lori Kaplan moved to approve the recommendation for final adoption of the establishment of a Commission Objections Committee. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 9-11-14 Governing Wild Animal Possession Permits; Administrative Cause Number 02-154D (LSA #02-322(F))

Jennifer Kane, Hearing Officer, presented this item. She said the proposed rule amendments to 312 IAC 9-11-14 include an allowance for commercial use and public display of alligator snapping turtles acquired prior to January 1, 1998. Kane explained that to comply with existing language, a person must also obtain a commercial license by the USDA. However, an USDA license is issued only for wild animals that are covered under the Animal Welfare Act, which is limited to those that are warm-blooded. There is no USDA license for the use of reptiles, because they are cold-blooded. In essence, no federal commercial license exists for the use of an alligator snapping turtle.

Kane stated that an Indiana resident petitioned the Indiana General Assembly's Natural Resources Study Committee for possible amendment of section 14 to include an allowance for commercial use and public display of alligator snapping turtles. The Study Committee requested the Division of Fish and Wildlife to review the resident's request.

Kane said the Division of Fish and Wildlife recommended the amendment; and subsequently, the Advisory Council recommended preliminary adoption. She said the Commission gave preliminary adoption to the rule amendment at its November 2002 meeting. Kane noted that no member of the public attended the public hearing, and no remonstrance was received. She recommended the rule amendment be given final adoption.

Jerry Miller moved to approve the final adoption of the amendments to 312 IAC 9-11-14 Governing Wild Animal Possession Permits. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 18-3-12, which Governs Standards for Control of Larger Pine Shoot Beetle by Adding Counties to the Quarantine Area; Administrative Cause Number 02-094E (LSA #02-201(F))

Jennifer Kane, Hearing Officer, presented this item. Kane said the proposed rule amendments add Bartholomew, Franklin, Monroe, Morgan, and Putnam Counties to the pine shoot beetle quarantine area. She noted that 60 counties are now included in the quarantine area, which includes the proposed counties. Kane stated that a public hearing was held, however, no member of the public attended, and there has been no remonstrance received. She recommended the proposed rule amendment be given final adoption.

Damian Schmelz moved to approve the recommendation for final adoption of amendments to 312 IAC 18-3-12, which governs standards for control of larger pine shoot beetle. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments of 312 IAC 18-3-8 that Governs Standards for Control of Black Stem Rust; Administrative Cause Number 00-186E (LSA #02-202(F))

Jennifer Kane, Hearing Officer, presented this item. She stated that the proposed rule amends 312 IAC 18-3-8, which governs the control of black stem rust by adding new varieties of rust-resistant Berberis, Mahoberberis, and Mahonia species to the list of regulated items. Kane said that the proposed rule also corrects several clerical errors within the existing language.

Kane explained that the varieties of rust resistant plants amended to the rule are varieties that may be legally sold in Indiana and other protected areas of the country. She noted that the rule parallels the federal regulation that designates those varieties of that have been determined to be rust-resistant by the United States Department of Agriculture.

Kane stated that the Division of Entomology and Plant Pathology administers this rule, and recommended the proposed rule amendments be given final adoption.

Jerry Miller moved to approve for final adoption of rule amendments within 312 IAC 18-3-8. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Presentation for Preliminary Adoption of Adding 312 IAC 20-5, Administration of the Indiana Register of Historic Sites and Structures “State Register”; Administrative Cause Number 02-081D (LSA #02-329(F))

Sylvia Wilcox, NRC Division of Hearings, presented this item and introduced Jon Smith, John Carr, and Frank Hurdis of the Division of Historic Preservation and Archaeology. She explained that the rule amendments codify and provide clarification on criteria for the administration of the Indiana Register of Historic Sites and Structures. The amendments are part of a continuing process to make the activities of the Board and the Division of Historic Preservation and Archaeology more transparent and accessible to the public.

Jane Anne Stautz moved to approve the recommendation for preliminary adoption of 312 IAC 20-5 for the administration of the Indiana Register of Historic Sites and Structures. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Presentation for Preliminary Adoption of Amendments to 312 IAC 20 to Establish Minimum Review Periods and New Definitions for Historic Preservation Review Board; Administrative Cause Number 02-091H (LSA #03-012))

Sylvia Wilcox also presented this item. Wilcox said the amendments would provide 40 days to the Division of Historic Preservation and Archaeology to perform reviews, and five working days to the Board before a determination could be made regarding the grant, denial, or conditioning of a certificate. New definitions would be provided for “certificate”, “Indiana Register”, and “National Register”. Wilcox said the Historic Preservation Review Board endorsed the concepts of the proposed amendments during its regular quarterly meeting held on October 23, 2002.

Jerry Miller moved to approve the recommendation for preliminary adoption of 312 IAC 20 to establish minimum review periods and new definitions for Historic Preservation Review Board. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of Approval of Modifications to 312 IAC 5-6-6(b)(3) that Governs Watercraft Speed on Lake Wawasee Within the Area Known as Conklin Bay

Sylvia Wilcox introduced this item. Presented for preliminary adoption was a permanent rule to govern an ecozone on Conklin Bay where boats would be limited to idle speed. Wilcox deferred to Conservation Officer Sam Purvis for further explanation.

Sam Purvis, Indiana State Boating Law Officer, explained that the amendment depicts the location of the idle speed zone consistent with the Indiana coordination system. Purvis said that the rule would be a preliminary adoption consisting of the same language as the existing emergency rule. He said the Division of Law Enforcement would coordinate with either the Division of Soil Conservation or Division of Water staff to determine the GPS points in order to place the buoys.

Chairman Kiley asked Purvis if any property owners offered assistance with placement of the buoys. Purvis replied that offers were made and that the Department would use assistance from property owners within the restricted shallow areas. Purvis concluded, “we have a couple of purchases to follow up on, but we’re pretty much ready to go.”

Jack Arnett moved to approve the modifications to 312 IAC 5-6-6(b)(3) that governs watercraft speed on Lake Wawasee within the area known as Conklin Bay. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At 11:50 a.m., EST, the meeting adjourned

FUTURE MEETINGS

May 20, 2003 — The Garrison, Fort Benjamin Harrison, Indianapolis, Indiana

July 15, 2003 — Location to be announced