

NATURAL RESOURCES COMMISSION
Meeting Minutes, May 19, 2020

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Marc Milne
Patrick Early
Bart Herriman
John Wright
Phil French

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Dawn Wilson
Billie Davis	Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
David Bausman	Executive Office
Dan Bortner	State Parks
Steve Hunter	Law Enforcement
Ihor Boyko	Legal
Matthew Rea	Legal
Ron Hellmich	Nature Preserves
Alysson Oliger	Water
Amanda Wuestefeld	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Rod Edgell	Fish & Wildlife
Matt Buffington	Fish & Wildlife
Douglas Nusbaum	Fish & Wildlife
Joe Caudell	Fish & Wildlife
Angie Haywood	Fish & Wildlife
Brad Feaster	Fish & Wildlife
Steven Donabauer	Fish & Wildlife
Marty Benson	Communications

JB Brindle
Carl Wodrich
Dale Brier

Communications
Land Acquisition
Outdoor Recreation

GUESTS PRESENT

Christopher Lee
Steve Surette
Brad Klopfenstein
Matthew Underwood
Samantha Morton

Creighton Kaiser
Jon Zinnel
Amy Matherly
Rebecca Thiele

Justin Meyers
Joshua Holdaway
Brad Wetnight
Stephen King

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 9:59 a.m., ET, on May 19, 2020, held virtually on WebEx. With the presence of eleven members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's January 21, 2020 meeting minutes. Jane Ann Stautz moved to approve the minutes, as presented. John Wright seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Cameron Clark, Director of the Department of Natural Resources (Department), provided his report. Clark said that Bob Vollmer retired on February 6, 2020, after nearly 57 years with the Department, he will be 103 years old making him older than the Department.

Clark stated that 14,092 turkeys were harvested during the hunting season breaking a record from 2010. Clark noted that there had been a lack of growth in hunting and fishing license sales, but the Department has had an increase in the sales so far in 2020. He stated that fishing licenses were down about ten thousand from 2019, but in one of the Governor's Executive Orders, all the state licenses that were set to expire were extended to June 4, 2020, which affected fishing license sales. Clark said there were about two thousand more combo licenses sold and the total license sales have increased since this time last year.

Clark thanked the Department for responding to the current challenges related to COVID-19. He reported that the Department has had operational challenges and changes related to COVID-19 and that safety planning and remote work plans were implemented quickly. He commended the Division of Communications for communicating operation changes to the public and noted that the Department webpages were updated timely. Clark reported that camping has been suspended,

park inns remain closed, bathrooms were closed for a period, offices are closed to the public, shelters are closed. He added that some of the trails were closed but opened back up on May 11, 2020. He noted three park rescues on the weekend the trails opened included a mountain biker who hit a tree, a rider that was thrown from a horse, and some lost hikers. Clark noted that decisions to relax restrictions or have restrictions modified are difficult to make, but are made for the safety and benefit of everyone.

Clark said the Department has obtained the necessary personal protective equipment (PPE), and Offices will remain closed to the public; however, people can still access Department staff through posted information, website, and phone. Clark noted the nature centers will re-open soon with limited services, and staff will be “phased back in” to the central office, but will continue to maximize remote work opportunities. Clark is looking forward to the Department’s readiness for the Memorial Day weekend and noted the Inns' restaurants will experiment with touchless menus.

Clark stated that Mountain Bike Indiana (MBI) is a new group that the Department has collaborated with concerning new trail opportunities and he recognized Steve Surette with MBI to address the Commission.

Surette stated that MBI looks forward for the opportunity to work with the Department and other local leaders to help build and maintain biking trails.

The Chair thanked Surette for attending and participating in the meeting

Clark recognized David Bausman, to provide the Commission with a legislative update.

David Bausman, the Department’s Legislative and Public Policy Director, provided a legislative update. Bausman stated that HB1385 is the Department’s omnibus bill that included codifying *Gunderson v. State, 90 N.E.3d 1171* (2018) regarding the ordinary high water mark on land adjoining the waters of Lake Michigan for administrative purposes. He noted that HB1385 allows the Commission to adopt rules for recreation on the Lake Michigan lakeshore.

Bausman said that HB1385 removes the sunset provision regarding the use of high-powered rifles while hunting on private property and makes it a Class C infraction to violate a rule adopted by the Commission or an emergency rule adopted by the Department, unless otherwise specified under state law. He noted that HB1385 makes various changes to the procedures for revoking or denying a license or permit under the Wildlife Violator Compact. Bausman stated that HB1385 would prohibit minnow seines and dip nets from being used near a dam to help prevent further spreading of Asian carp.

Bausman stated that HB1099 requires the Commission to establish a roster of low head dams capable of creating hazardous currents that pose a safety issue. He said the bill establishes requirements and warning standards for low head dams and will make it a Class C infraction to access the water within 50 feet of a low head dam. Bausman noted the bill’s author, Representative Ethan Manning, would like the Department to prepare a report that includes

recommendations concerning the creation of a low head dam removal program and any recommendations concerning low head dam safety legislation.

Bausman said SB430 will allow Geist Reservoir to be established as a “reservoir conservancy district” where an agreement between the reservoir conservancy district, Citizens Energy, and Marina Partners LLP would describe the improvement and maintenance that the reservoir conservancy district proposes. He noted that the conservancy district would have some of the same requirements for this establishment with some safeguards the Department feels are important so that the state regulations and fish and wildlife laws are protected.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that, right before the shutdown, the Department participated in the Indianapolis Boat Sport and Travel Show that resulted in \$130,000 in license sales and park passes being sold.

Davis stated that the new visitor center building opened at the Goose Pond Fish and Wildlife Area and noted that the facilities and exhibits are nice. Davis said the opening of the visitor center is phase one of the interpretative plan and phase two will be better trail interaction to explain to visitors what they are viewing along the trails.

Davis stated that for the 11th year the Department received the Forest Management Certification from the Forest Stewardship Counsel (FSC). He noted that FSC Forest Management Certification confirms that both private and public forests are managed in a way that preserves biological diversity and benefits the lives of local people and workers while ensuring it sustains economic viability. Davis stated that the partnership between the Division of Forestry and the Department of Corrections (DOC) has changed because of COVID-19 and the Department has lost the assistance of some DOC crews that were assisting in the production of tree seedlings. He said the Department has enough tree seedlings to fill the demand, but harvesting the trees for storage will be challenging without the assistance of the DOC.

Davis complimented Director Clark and thanked him for his leadership during the challenging times associated with the COVID-19 pandemic.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith said that James Brindle is new to the Division of Communications. Smith explained that Brindle, graduated from the United States Military Academy West Point, received a Master’s Degree in Public Relations and Corporate Communications from Georgetown University and previously served as Public Affairs Officer in the United States Army.

Smith said that the Division of Entomology and Plant Pathology began enforcing the terrestrial invasive plant rule adopted by the Commission in 2019 after three years of educating those impacted by the rule. He noted that compliance with the rule has been good and problems with some retail stores selling prohibited plant stock were easily addressed.

Smith stated that the collaborative effort between the Division of Water and the Indiana Department of Environmental Management (IDEM) on the Division’s floodway permits and

IDEM's wetland permits resulted in the creation of the Indiana Waterways website located at <https://www.in.gov/waterways/>. He said the website allows one place to access information related to waterways permitting and the site has a tool to allow landowners to determine what, if any, permitting is necessary for a project. He said the Department and IDEM are reviewing the application process to improve the customer service experience.

Smith said the month of May is National Historic Preservation month. Although he recognized that many of the events were canceled, he noted the annual photo contest was completed and offered that the submissions of the winners can be viewed on the Department's webpage.

Smith noted the passing of Marvin Ellis, Assistant Director of the Division of Reclamation. He recalled that Ellis started with the Division of Reclamation as a Hydrologist in 1997, became a Program Coordinator in the Abandoned Mine Lands Program (AML) in 2006, and was promoted to Assistant Director of AML in 2015.

The Chair praised for the Department for their outstanding job.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since the last Commission meeting.

CHAIR, AND VICE CHAIR

Information: Consideration of 2020 meeting dates:

The Chair noted that the remaining 2020 Commission meeting dates are July 21, September 15 and November 17 and announced that the meetings are currently scheduled to take place at the Fort Harrison State Park Garrison or Inn in Indianapolis.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated that the AOPA Committee has not met since the last Commission meeting. Stautz complimented and thanked the Division of Hearings staff for their efforts in maintaining operations, conducting hearings, and conducting the Commission meeting in a virtual forum on WebEx.

The Chair thanked the Division of Hearings and noted that the functions of the Division and transition to a remote work schedule was seamless.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Dilcher-Turner Canyon Forest Nature Preserve in Greene County

Ron Hellmich, Director of the Division of Nature Preserves, presented this item. Hellmich said that the 68 acre proposed nature preserve is located in Green County and is owned by the Sycamore Land Trust. Hellmich noted the proposed nature preserve contains a mesic and dry-mesic upland forest community with scenic ravines and large sandstone outcrops, intermittent creeks, and several waterfalls. He said the property was donated by David and Kathy Dilcher and Rudi Turner, who helped preserve the site for 40 years. He noted that Turner retired from Indiana University (IU) as a biology researcher and passed away in 2018 and David Dilcher is a retired IU biology professor who contributed to research on the proposed nature preserve site.

The Division of Nature Preserves recommended dedication of the site as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Dilcher-Turner Canyon Forest Nature Preserve. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Second report to the Natural Resources Commission on citizen petition to amend 312 IAC 9-4-11; to allow the use of 28 gauge and .410 shotgun and No. 9 tungsten super shot loads for wild turkey hunting; Administrative Cause Nos. 18-058D and 20-FW-031

Linnea Petercheff, Division of Fish and Wildlife, presented this item. Petercheff stated that Department staff reviewed the citizen's petition and determined that the .410 gauge and 28 gauge shotguns would be efficient in killing a turkey up to 40 yards. She noted the Department also determined that .410 and 28 gauge would not likely be an increased risk for human-related shooting accidents and non-target turkey crippling kills with shots taken at a distance up to 40 yards. Petercheff noted the public comments received and pointed out that the proposed equipment has less recoil and is lighter than other standard turkey hunting equipment.

Petercheff stated that the Department is also recommending to allow the No. 9 shot, but only with tungsten super shot (TSS) loads. She noted that other states already allow similar equipment.

Clark noted that this is a report by the Department to consider a rule change and rule language would be drafted prior to bringing the matter before the Commission for preliminary adoption. Clark assured the Commission and citizens that during the rulemaking process there would be an opportunity to review the proposed rule language and offer public comments.

Herriman asked if TSS was a name brand or a type of load and wanted to make sure that the Commission was not put in a position of promoting one brand name over any other competitor's brand.

Petercheff responded that in her research she determined that TSS is not a name brand and is a type of shot.

Clark added that manufacturers are looking at options related to product development and the Department will continue to ensure that they are not promoting one brand over another brand.

Patrick Early moved to accept the Committee's Report and recommendation regarding the citizen petition to amend 312 IAC 9-4-11; to allow the use of 28 gauge and .410 shotgun and No. 9 tungsten super shot loads for wild turkey hunting. Cameron Clark seconded the motion. Upon a voice vote, the motion was carried.

Report to the Natural Resources Commission on citizen petition to amend the definition of muzzleloader, 312 IAC 9-3; Administrative Cause No. 20-FW-021

Petercheff also presented this item. Petercheff stated that the Department reviewed the citizen's petition pertaining to the definition of muzzleloader that would also include a weapon that allows both the powder and the primer to be loaded from the breech end of a muzzleloader instead of loading from the muzzle. She said that the new FireStick™, breach end technology, allows the powder to stay dry, will not increase the range, and allows for one shot with the bullet loaded from the muzzle. Petercheff stated the proposed rule change would not change the season during which muzzleloaders could be used, but would allow additional muzzleloaders to be used during the firearms and muzzleloader seasons.

The Chair recognized that there may be questions and additional studies that still need to be completed regarding the newer technology as it evolves. He noted that there would be a time for additional comments during the rulemaking process. The chair recognized several comments submitted on the proposed rule changes that relate to hunting equipment.

Clark noted that there were several good points raised in the comments that were submitted prior to the meeting and that the Department is committed to exploring and researching the matter of new technology in shot size used in turkey hunting and muzzleloaders. He said the language used in any proposed rule change will be important to avoid unintended consequences.

The Chair thanked those citizens who took the time to write in and make comments and noted that those comments were distributed to the Commission members and have been considered. The Chair also recognized that additional comments will be evaluated during the rule making process.

Cameron Clark moved to accept the Committee's Report and recommendation regarding the citizen petition to amend the definition of muzzleloader, 312 IAC 9-3. Patrick Early seconded the motion. Upon a voice vote, the motion was carried.

Report to the Natural Resources Commission on citizen petition requesting a primitive muzzleloader season; Administrative Cause No. 20-FW-020

Petercheff also presented this item. Petercheff stated the Department reviewed the citizen's petition requesting an Indiana primitive firearms deer season in which only primitive muzzleloaders would be allowed to hunt deer. She noted currently there are approximately 14,000 muzzleloader deer hunters using primitive muzzleloader equipment. She added that adult deer hunters already have four seasons when the primitive equipment can be used and noted that adding a season only for primitive muzzleloaders might cause confusion on what equipment could be used during a particular season.

Petercheff stated that the Department does not support a rule change to create a primitive muzzleloader deer season.

Cameron Clark moved to accept the Committee's Report and recommendation regarding the citizen petition requesting a primitive muzzleloader season. Patrick Early seconded the motion. Upon a voice vote, the motion was carried.

Request for preliminary adoption of amendments to 312 IAC 5-6-5.6; Lake Manitou; Special Boating Zone; Administrative Cause No. 19-145D

Rod Edgell, Division of Fish and Wildlife, presented this item. Edgell stated that Kenny Anderson filed a petition to eliminate the Ecozone on May 20, 2019 and the Department's review committee examined the petition and met with the petitioner. Edgell noted a compromise between the Department and the petitioner to make the Ecozone smaller in size to reduce the boating congestion around Wolf Point.

Milne asked about a strikeout in Section 5.6 (a) that appeared to have missing language.

Jensen acknowledged missing language, stated that the language was intended to read the same as the language in 312 IAC 5-6-11 associated with the established boating zone on Simonton Lake.

Cameron Clark moved for preliminary adoption of amendments to 312 IAC 5-6-5.6; Lake Manitou Ecozone with the revision noted by Jensen. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion was carried.

Request for preliminary adoption of amendments to 312 IAC 5-6-11; Simonton Lake Special Boating Zone; Administrative Cause No. 20-FW-018

Edgell also presented this item. Edgell noted that when originally adopted there was a sunset clause and the amendment would remove the expiration of the special boating zone on Simonton Lake.

John Wright moved for preliminary adoption of amendments to 312 IAC 5-6-11; Simonton Lake Special Boating Zone. Marc Milne seconded the motion. Upon a voice vote, the motion was carried

Consideration of new nonrule policy document implementing In-Lieu Fee Mitigation; Administrative Cause No. 19-144D

The Chair noted that Laura Hilden would abstain from voting on this item.

Matt Buffington, Division of Fish and Wildlife, presented this item. Buffington said that the new In-Lieu Fee Mitigation nonrule policy identifies and addresses fee mitigation options for Division of Water permits under 312 IAC 9.5 and allows the Department to issue permits under the Flood Control Act, Lake Preservation Act, or the Navigable Waterways Act.

Buffington explained that Habitat Mitigation Guidelines (HMG) were set up to avoid and minimize a project's impact on fish, wildlife, and botanical resources, in some instances compensatory mitigation is necessary to offset unavoidable impacts. Buffington said people have the option to mitigate by hiring consultants, finding suitable mitigation locations, getting approvals, and developing mitigation plans that meet all the requirements. He noted the current process of mitigation is expensive, time-consuming, and sites are poorly installed and maintained.

Buffington stated that another mitigation option is a mitigation bank associated with wetland permits approved by the US Army Corps of Engineers (USACE) to address mitigation associated with permits issued by the USACE and the Indiana Department of Environmental Management (IDEM). Buffington said there is also a fee mitigation option, which allows permit applicants to pay a fee to a program sponsor to do the mitigation.

Buffington said the proposed In-Lieu Fee Mitigation nonrule policy will help identify the service areas and credit prices for mitigation through the In-Lieu Fee Program and went over the credit purchase prices and In-Lieu Fee service areas. He noted the Indiana Natural Resources Foundation would serve as the physical agent and the Department's Division of Land Acquisition would serve as the program sponsor. Buffington noted that the In-Lieu Fee Mitigation Program will be self-sustaining and the new nonrule policy is a way to improve the process, improve the permitting timeline, and have better mitigation.

Milne asked if the Mitigation Program would require additional staff to be hired to do the anticipated mitigation work.

Buffington responded that the Division of Land Acquisition currently has two staff **members**, they will be looking to expand and that, currently, the Department is looking for mitigation sites.

He noted that the Department will do preliminary planning, and will use a combination of state resources to help pay for consultants.

Bruno Pigott moved to approve a new nonrule policy document implementing In-Lieu Fee Mitigation. Marc Milne seconded the motion. Upon a voice vote, the motion carried.

Consideration of amendments to nonrule policy document, Information Bulletin #17, Habitat Mitigation Guidelines; Administrative Cause No. 20-FW-032

The Chair noted that Laura Hilden would abstain from voting on this item.

Buffington also presented this item. Buffington stated that the proposed amendments to Information Bulletin #17 will provide clear guidance and align more with the In-Lieu Fee Mitigation. Buffington noted four content changes in the information bulletin amendments **that** included striking Floodway from the title and **adding “Guidelines”**, remediation associated with violations, preservation mitigation options, and adding language on page 9 related to wildlife passage through structures.

Herriman asked about the definition of mitigation that was deleted on page 2 and inquired if the omission was a substantive change or if the definition had moved to another place in the document.

Jensen responded that there was not a substantive change and her recollection was the term “mitigation” is defined by rule or statute.

Milne asked about smaller grammatical changes and if the best way to address them would be to forward those grammatical changes to the Division of Hearings staff.

The Chair and Jensen confirmed that grammatical edits could be addressed by sending an email with any proposed changes to the Division of Hearings.

Cameron Clark moved to approve amendments to nonrule policy document, Information Bulletin #17; Habitat Mitigation Guidelines. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT

Request for preliminary adoption of amendments to 312 IAC 5-9-4; boating restrictions on Prairie Creek Reservoir; Administrative Cause No. 20-LE-022

Steve Hunter, Director of the Division of Law Enforcement, presented this item. Hunter reported that Prairie Creek Reservoir boating restrictions were submitted in a Citizens Petition from the City of Muncie and was reviewed and recommended for preliminary adoption by the Department.

Hunter stated the amendment adds the embayment known as Campground Cove and the embayment known as Sailboat Cove as locations on Prairie Creek Reservoir where a person must not operate a boat at greater than idle speed. He noted that since the petition was submitted there was an administration change with the City of Muncie. Hunter noted that the Department contacted the new administration, and they are still interested in the rule change.

Bart Herriman moved for preliminary adoption of amendments to 312 IAC 5-9-4, to create special boating zones on Prairie Creek Reservoir. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of recommendation for final action on re-adoption of 312 IAC 2, governing standards for and guidance regarding the conduct of business and delegations by the Commission and procedures by which the individuals may petition for a public hearing; LSA #20-178(F), Administrative Cause No. 20-AD-001 (Agenda Item # 13); 312 IAC 6.2, governing standards for the management of ground water and surface water within the Great Lakes in Indiana; LSA #20-179(F), Administrative Cause No. 20-WA-004 (Agenda Item #14); 312 IAC 6.3, providing standards to review of contracts for the withdrawal or release of water supply storage from a reservoir; LSA #20-180(F), Administrative Cause No. 20-WA-005 (Agenda Item # 15); and 312 IAC 22.5, providing standards for aligning cemetery preservationists into the law concerning the work that they do in cemeteries to find sunken tombstones; LSA #20-181(F), Administrative Cause No. 20-HP-008 (Agenda Item # 16)

Billie Davis, Hearing Officer, presented this item. Davis noted that Mark Basch with the Department's Division of Water was available to answer questions for 312 IAC 6.2 and 312 IAC 6.3. Davis stated that for consideration is the final re-adoption of 312 IAC 2, governing procedures and delegations by the Commission and procedures on petition for a public hearing, 312 IAC 6.2, governing Great Lakes basin water management, 312 IAC 6.3, governing water withdraw contracts from reservoirs, and 312 IAC 22.5, governing cemeteries and burial grounds. She stated the final re-adoption of 312 IAC 2, 312 IAC 6.2, 312 IAC 6.3, and 312 IAC 22.5 are in their entirety and without amendment.

Davis stated the Notice of Intent to readopt the 312 IAC 2, 312 IAC 6.2, 312 IAC 6.3, and 312 IAC 22.5 were published in the Indiana Register on March 25, 2020, which provides that a person has 30 days to submit a written request to have a particular section of the rule readopted separately. She note that no request was received with respect to any of the re-adoptions and recommend for re-adoption to the Commission.

Milne asked about question marks in the links at the end of each paragraph on all four re-adoptions.

Davis responded that it could be an error, possibly the question marks were to be included in the hyperlink, and that she would follow up with correction.

Patrick Early moved to readopt 312 IAC 2, 312 IAC 6.2, 312 IAC 6.3, and 312 IAC 22.5 without amendment. John Wright seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 11:23 a.m., ET.