

NATURAL RESOURCES COMMISSION
Meeting Minutes, May 16, 2023

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Dan Bortner, Secretary
Parvonay Stover
Laura Hilden
David Holt
Marc Milne
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Elizabeth Gamboa	Scott Allen
Aaron Bonar	Billie Franklin

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office	Mary Hayes	Fish and Wildlife
Kirsten Haney	Executive Office	Theresa Bordenkecher	Fish and Wildlife
David Bausman	Executive Office	Terry Coleman	State Parks
Steve Hunter	Law Enforcement	Brandt Baughman	State Parks
Jennifer Ware	Water	Dale Brier	State Parks
Mark Basch	Water	Tessa Manual	State Parks
Amanda Wuestefeld	Fish and Wildlife	Steve Weinzapfel	Reclamation
Linnea Petercheff	Fish and Wildlife	Ron Hellmich	Nature Preserves
Brant Fisher	Fish and Wildlife		

GUESTS PRESENT

David Girot	Jim Girot
Kent Reineking	Paula Reineking
Walter Johnson	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:01 a.m., ET, on May 16, 2023, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of nine members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's March 21, 2023, meeting minutes.

Jane Ann Stautz proposed corrections to the March 21, 2023 meeting minutes as follows: on page one paragraph one, replacing "ten members" with "seven members;" and on page four, under "*Information: Announcement from Chair,*" striking the phrase "public comments to be made during a meeting." Stautz requested the second paragraph of page five be changed to the following: "Stautz recommended referring the development of an Information Bulletin or rule amendment to make a clear, more transparent, Department aerator permit process, to the Advisory Counsel."

David Holt moved to approve the minutes as amended. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTY DIRECTORS, AND THE CHAIR OF THE ADVISORY COUNCIL

Dan Bortner, Director of the Department of Natural Resources (Department), provided the following report:

Several of the Governor's legislative agenda items including several large Department expenditures were approved during the recently-concluded legislative session. Funding for the new lodge at Potato Creek State Park was approved. This will be the first new lodge since 1939, when the lodge at Spring Mill State Park was built. The new lodge will be in the northwest area of the state and will provide additional revenue and additional overnight accommodations for visitors.

An additional \$10 million for land acquisition and funding to be administered through the President Benjamin Harrison Conservation Trust Fund was approved as part of the Governor's legislative agenda. The legislature also approved an additional \$30 million for the fourth phase of the Next Level Trails program. The total funding for Next Level Trails is \$180 million. This is the highest funding the state has ever seen in trail construction.

The legislators approved an increase in law enforcement officer compensation to \$70,000 for new officers in order to attract qualified officers.

Additional funding approved by the legislators includes \$5 million allocated for the cleanup at McCormick's Creek State Park and \$1.9 million for the Busseron Creek project as part of the federal Sentinel Landscape program. The Department's agency bill passed, taking care of housekeeping measures, flood control, and other important items. Other bills passed that regulate watercraft registration fees, carbon dioxide rulemaking, and other division-specific concerns.

The Department continues to move forward with the Governor's Next Level Trail program with \$30 million in phase four funding. The Department will accept trail project applications beginning July 1, 2023 through August 1, 2023. The project funding will be announced in December 2023.

Bortner commended the Department's Legislative Director, Caitlin Smith, for her leadership and the staff for the hard work in getting an aggressive legislative agenda passed.

Chris Smith, Deputy Director of the Land Management Bureau, provided his report as follows:

On Friday, March 31, 2023, a tornado touched down at McCormick's Creek State Park, impacting more than two hundred acres including most of the campground. The tornado caused two fatalities at the campground. The response of park staff minimized injuries and loss of life, but the campground is a dramatic scene and in need of repair. The Department may make some upgrades and expand the campground; however, it will be a slow and tedious process. Most of the property is still open to the public but the campground will stay closed through October while repairs are made.

Smith expressed appreciation for Dwight and Sarah and the McCormick's Creek State Park staff; Jim Roach, property manager at Monroe Lake; Lynda Ellington, property manager at Lieber State Recreation Area; Jack Seifert, Director of the Division of Forestry; and the division staff for their assistance so emergency crews could access the McCormick's Creek State Park campground.

May 5 to 7, 2023 was the Department's welcome back weekend that started the recreation season with programs and free admission on Sunday, May 7, 2023. This coincided with the first of the 2023 free fishing events. The other free fishing days will be June 3 and 4 and September 23, 2023. September 23, 2023 is also National Public Lands Day.

Spring turkey season ended on Sunday, May 14, 2023. As of May 15, there were 16,555 turkeys checked in, the largest number of turkeys checked in the last six years.

The Division of Forestry, with assistance from the Division of State Parks, finished the spring tree planting for the Governor's Million Trees in Five Years Initiative. The plantings occurred at the Bluffs of Beaver Bend Nature Preserve, Hovey Lake Fish and Wildlife Area, and Prophetstown State Park. There are some more tree plantings scheduled for the fall. By the end of the 2023, 920,000 new trees will be planted.

Starting May 27, 2023, the Wyandotte Cave in Crawford County will reopen with guided tours on Friday through Sunday and on holidays until Labor Day. The Department closed access to all caves because of white-nose syndrome in 2009. Wyandotte Cave was partially reopened, but then closed again because of COVID.

The Department closed on the first Next Level Conservation Trust project with the Department's partners at the Central Indiana Land Trust. The project is a 570 acres property located in Putnam County.

Turkey Run State Park Trail Three was recently named the best hike in the Midwest by Midwest Living Magazine.

The Chair noted the tornado and tragic loss of life at McCormick's Creek State Park was devastating and the park is unrecognizable. He added although there was a tragic end there were also many blessings and the Department staff and others helped to save a lot of lives.

The Chair noted the success of the reintroduction of species into the wild and stated the turkey harvest from the 2023 spring turkey hunting season is unbelievable considering just a few short years ago there were no turkeys in the state.

Chris Smith provided the report for the Deputy Director of the Regulatory Bureau, as follows:

The Division of Entomology and Plant Pathology has been busy responding to the spotted lanternfly problem in a couple of Indiana counties. Division staff is identifying egg masses so they can scrape and spray them. So far, 16,830 egg masses have been identified in Jefferson and Switzerland Counties. The Division is working with federal partners on funding and treatment options to eradicate the spotted lanternfly in those two counties and prevent further spread.

The Division of Entomology and Plant Pathology is also conducting annual spongy moth treatment with Btk treatments being conducted at Kingsbury Fish and Wildlife Area in LaPorte County. The Division will continue treatments through the year and will place pheromone traps later in the year to slow the spread of spongy moth.

National Dam Safety Awareness Day is May 31, 2023. This is an opportunity for the Department to educate dam owners and stakeholders on the importance of inspecting and maintaining dam structures correctly to prevent failure. As part of the education week, the Division of Water will host the 2023 Dam Information Resource Training Conference on June 6, 2023.

For the last two weeks the Division of Historic Preservation and Archaeology has been hosting the third annual Teddy Bear Camp during National Historic Preservation Month. The event engages children in historic preservation by taking the children and their stuffed animals to historic sites. The children will learn about history, architecture, and historic preservation. Boone, Hamilton, Marion, and Shelby Counties are included this year along with the Indianapolis Motor Speedway and the Benjamin Harrison Presidential Site.

Kirsten Haney, Deputy Director of the Bureau of Administration, provided her report:

The Department's partnership with the Indiana Department of Administration remains strong. 112 deferred maintenance projects around the state are complete. The renovation at the Spring Mill Inn has progressed and will be fully funded with deferred maintenance dollars.

As of May 15, 2023, the Department had 1,238 regular positions filled and 160 regular positions vacant, a decrease from the last report. The Department is in the process of filling 63 of those regular positions. The Department continues to fill positions at a higher rate and is pushing to fill intermittent positions during the high peak season.

The Department is in the process of closing out fiscal year 2023 and will be starting fiscal year 2024 with new appropriations passed by the General Assembly. An additional \$150 million was appropriated for statewide deferred maintenance. The Department hopes to receive some those funds.

The Chair noted the Advisory Council report would be deferred to the next Commission meeting.

CHAIR AND VICE CHAIR

Information: Consideration of 2023 meeting dates:

The Chair noted the 2023 Commission meeting dates are July 18, September 19, and November 21. All meetings are scheduled to be held at the Fort Harrison State Park Garrison, except the September 19, 2023 meeting, which will be held at Clifty Falls State Park. Because of legislative changes there may be some rule amendments that require extra meeting time. The Chair urged the Commission members to be flexible with how much time they allot for meetings.

The Chair recognized Amanda Wuestefeld, Director, Division of Fish and Wildlife to provide an information update.

Wuestefeld reported as follows:

The Division of Fish and Wildlife provided a report at the January 17, 2023 Commission meeting on a citizen petition to ban netting on Sugar Creek, to clearly define netting, and to add grass carp on the list of exotic species not allowed to be released when caught. Since the January meeting, the Department has had several good meetings and conversations internally with citizens, volunteers, and Commissioners. The last conversation was about providing educational materials to the fish netting community.

When the netting laws were created, they were intended to be a bait collection law. Today, individuals are collecting fish to feed themselves. The concern is people are talking a lot of fish. The Department lacks the research to understand if there is a true impact from the utilization of netting.

Currently, the Department is educating on the impacts of netting. A connection to the netting community has been established which will be helpful when the Department makes changes to the netting rules. The Department is working with the petitioner and other groups to put up multilingual signs along Sugar Creek and to reach out to new people coming to Indiana. Sport net-fishing is already prohibited but the Department is looking at the possibility of limiting the size and quantity of fish taken by netting.

The Chair requested that the next time this matter is brought before the Commission that a formal agenda item be presented so the public can have proper notice.

Smith added the netting issue and any proposed rule amendment would be considered by the Advisory Council, giving the public an additional opportunity to participate in the process.

Wuestefeld introduced Division of Fish and Wildlife supervisors present at the Commission meeting: Mary Hayes, Theresa Bordenkecher, and Brant Fisher.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Vice Chair of the Commission and Chair of the AOPA Committee, reported:

Senate Enrolled Act 412 strikes the provision granting the Commission jurisdiction to mediate riparian rights disputes, which is most of the proceeding before the AOPA Committee. There will need to be some significant work to understand the implications for the Division of Hearings and the AOPA Committee, including existing cases currently underway. The effective date of the new law is July 1, 2023, and there will need to be clarity of time, overall notice, and awareness to effected parties, attorneys, and citizens and monitoring the overall impacts. There could be long term opportunities to monitor riparian rights and any implications to natural resources.

DNR, EXECUTIVE OFFICE

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

None

DNR, DIVISION OF WATER

Request for preliminary adoption to amend 312 IAC 10-1-2(d) and 312 IAC 10-2-8, governing Coastal High Hazard Areas; Administrative Cause No. 23-WA-006

Jennifer Ware, Division of Water, presented this item as follows:

The proposed amendments to the floodplain rules include striking IC 14-27-7 and adding IC 14-27-7.5 to separate the regulation of dams and to refer to the correct statute in the rule.

The proposed amendment to 312 IAC 10-2-8 adds to the definition of the “lowest floor” to address the establishment of “coastal high hazard areas” on Lake Michigan by Federal Emergency Management Agency (FEMA). The flood insurance maps were revised by FEMA and now show the coastal high hazard areas for all states around the Great Lakes. The revisions to the flood insurance maps were adopted by Porter and LaPorte Counties in September 2022 and by Lake County in 2023.

During the map revision process, FEMA and Department staff had conversations regarding necessary changes to ordinances, state statutes, and rules to reflect the addition of coastal high hazard areas. FEMA encouraged the revision to the existing lowest floor definition to cover a definition for coastal high hazard areas. There was an emergency rule in place. The Department is now requesting to make the changes permanent.

Bart Herriman moved to approve preliminary adoption to amend 312 IAC 10-1-2(d) and 312 IAC 10-2-8. Laura Hilden seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF STATE PARKS

Request for preliminary adoption to amend 312 IAC 8-2, add 312 IAC 8-1.5-5.5, and delete 312-8-1.5-14, governing Property Rules; Administrative Cause No. 22-SP-014

Dale Brier, Division of State Parks, presented this item as follows:

The first proposed change to property rules is to reflect the change and bring into compliance with state law that a personal license to carry firearms license is no longer required.

The next proposed change involves e-bikes. Language was recently added to Indiana Code defining e-bikes, so the Division has started allowing them at state parks on mountain bike trails. The Division has had an e-bike pilot project and there have been no complaints or degradation of trails. The Division would like to allow type one e-bikes on the mountain bike trails. A type one e-bike is a pedal assist only that allows assistance up to 20 miles an hour. Type two and type three e-bikes are not allowed on mountain bike trails.

The last proposed change is with motorized carts or golf carts. The current property rules require a person to qualify for using a motorized cart at campgrounds under a very complicated Social Security Administration rule. The proposed changes simplify the requirements and make it easier for a disabled person to use a golf cart. Language has been added to allow someone to chauffeur another person with a disability. The final change is that the Indiana Code definition of motorized cart will be referenced instead of duplicating the language in the property rule.

Stautz stated because the rule amendment is up for preliminary adoption, she would recommend clarifying the definition of “firearm versus handgun” so there is consistency and clarity in the rule.

David Holt moved to approve preliminary adoption to amend 312 IAC 8-2, add 312 IAC 8-1.5-5.5, and delete 312-8-1.5-14, governing Property Rules. John Wright seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Consideration of preliminary adoption to amend Information Bulletin #2; the Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern); Administrative Cause No. 23-FW-010

Ron Hellmich, Division of Nature Preserves, presented this item and proposed amendments as follows:

The eastern meadowlark is proposed to be added as recommended by the non-game Bird Technical Advisory Committee. A paper published in 2019 in the Journal of Science documented that bird populations have strongly declined since 1970. Grassland birds like the eastern meadowlark have declined more than other species. The eastern meadowlark should be placed on the species of special concern list because the species experienced a significant population decline, which is an indicator of declining grassland and prairie habitat. Indiana populations are part of the species distribution.

The northern brook lamprey is proposed to be removed as recommended by the Fish Ethical Advisory Committee. Surveys conducted for northern brook lamprey found that it was more common than previously thought and population seem to be stable. Based on these findings, northern brook lamprey no longer meets the criteria for species of special concern status.

The Karner blue butterfly had an incorrect reference in the justification where it was being moved from “threatened” to “endangered” when it is being moved from “endangered” to “extirpated”. The species is federally endangered, and the Indiana Natural Heritage Data Center have surveyed properties in Northwest Indiana for several years but no evidence of sustaining populations of Karner blue butterfly.

The cave dipluran is a bristle tail being proposed as a state threatened species found only in caves within Crawford, Washington, Harrison, Martin, and Orange Counties.

The American bumble bee is a grassland bumble bee to be added to the list of rare species. It appears to be declining and was added to the watch list in 2019. The American bumble bee continues to decline and in 2021 the U.S. Fish and Wildlife investigated and listed the species. The American bumble bee is also included as a regional species of greatest conservation need by The Midwest Association of Fish and Wildlife Agencies.

The *actaea rubra* subspecies *rubra* and *baptisia australis* are being removed from the threatened plants list and qualifies to be added to the endangered plant species list.

Echinata remains on the endangered list but will be shown as a subspecies of carex echinate. Carex inops subspecies heliophile qualifies to be added to the endangered plant species list. The eriophorum angustifolium and eriophorum gracile are already on the threatened list of plant species; however, subspecies angustifolium and variety gracile are being added because only those subspecies are known in Indiana. Hypericum adpressum is downgraded to a threatened plant species. Ranunculus ambigenus is being added to the endangered species list. Rubus setosus is being removed from the threatened and endangered list because it is not attributed in the strict sense to Indiana. Solidago rupestris is being removed from the extirpated plant species and added to the endangered list. The spiranthes magnicamporum is being downgraded for the endangered list and added to the threatened plant species list. There have been several occurrences of the triantha glutinosa. The plant is not considered historically rare, is being removed from the endangered list, and is being placed on the states watch list. The wolffiella gladiata is an aquatic plant that is being downgraded from endangered to the threatened list.

Marc Milne moved to approve to preliminary adoption to amend Information Bulletin #2, Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare. Laura Hilden seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of recommendation for final action on readoption of 312 IAC 12, governing standards for Water Well Drilling and Ground Water; LSA #23-68(F); Administrative Cause No. 23-WA-003

Consideration of recommendation for final action on readoption of 312 IAC 13, governing standards for Water Well Drillers and Water Well Pump Installers; LSA #23-69(F); Administrative Cause No. 23-WA-004

Billie Franklin, Hearing Officer, presented agenda items seven and eight together and reported as follows:

The Director of the Division of Hearings approved preliminary adoption on January 3, 2023, and the Notice of Intent was published at the Indiana Register on February 15, 2023, followed by the submission of fiscal analysis to the Legislative Council.

No request was received to separate any portion of the rule out during the thirty-day waiting period and the readoption of 312 IAC 12 and 312 IAC 13 is recommended.

Jane Ann Stautz moved to give final action on readoption of 312 IAC 12, governing standards for Water Well Drilling and Ground Water and to give final action on readoption of 312 IAC 13, governing standards for Water Well Drillers and Water Well Pump Installers. John Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Kent's Harbor ratemaking petition; Administrative Cause No. 22-SP-037

Consideration of Hearing Officer report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Lake Monroe Sailing Association (LMSA) ratemaking petition; Administrative Cause No. 22-SP-036

Consideration of Hearing Officer report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Quakertown Marina ratemaking petition; Administrative Cause No. 22-SP-038

Billie Franklin, Hearing Officer, presented agenda items nine, ten, and eleven together as follows:

Kent Reineking, on behalf of Kent's Harbor, Richard Morpurgo, Commodore, on behalf of the Lake Monroe Sailing Association (LMSA) and James L. Girot, Sr., on behalf of Quakertown Marina, Inc. (Quakertown) filed their petitions with the Commission and the Department.

Franklin noted that all the marinas notified the slip renters of the proposed rate increases as required by Information Bulletin #20. No qualifying comments either in opposition to or in support of the increases were received for any of the marinas. The Department completed a comparative review of the rates associated with the petitions, found them comparable to similar marinas, and determined the rate increases are reasonable and justified.

After reviewing the comparables and considering the information received, Franklin recommended the findings and recommendations be approved.

Holt asked if the rate increases were for the purpose of keeping up with inflation.

Franklin responded that the reasons marina request rate increases include keeping up with inflation, updating amenities, and repairing docks.

John Wright moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers, in the matter of rate making Petitions for Kent's Harbor, Lake Monroe Sailing Association, and Quakertown Marina. Parvonay Stover seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval for amendments to Information Bulletin #42, AOPA Committee, to make technical updates; Administrative Cause No. 23-AD-008

Consideration of approval for amendments to Information Bulletin #43, Coastal Zone Management Federal Consistency Reviews, to make technical updates; Administrative Cause No. 22-WA-032

Elizabeth Gamboa, Hearing Officer, presented agenda items twelve and thirteen together and reported as follows:

The Division of Hearings is required to put Information Bulletin (IB) #42 on the Commission agenda for review, which was last considered in 2016. Jane Ann Stautz, AOPA Committee Chair, reviewed IB #42 and determined it was relevant and necessary, no substantial changes were needed, and there were only technical amendments needed. Those changes included changing the word advisory in the last sentence of section two to advisor and updating the history section.

There are technical amendments to IB #43 removing the specific definition of ordinary high watermark for Lake Michigan to be consistent with the new law. On page three “management of storm water run-off associated with construction” is deleted because the referenced rule, 327 IAC 15-5, has been repealed. The history section has been updated.

After approval, the Information Bulletins will be posted to the Commission’s website and published in the Indiana Register.

Jane Ann Stautz moved to give final action to amend Information Bulletin #42 and Information Bulletin #43. Marc Milne seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF RECLAMATION

Information Item: Division of Reclamation Presentation

Steve Weinzapfel, Director Division of Reclamation gave a presentation and update to the Commission as follows:

The Division of Reclamation has a Coal Regulatory Program, an Abandoned Mine Land Program (AML), and an Oil and Gas Program.

In 2021, the Federal Infrastructure Investment and Jobs Act provided federal money to the states. Indiana will receive \$24.6 million for AML over the next fifteen years. The Division is hoping to bid some AML projects at the end of 2023. The Division will also receive a total of \$39 million for the Orphaned Well Program. A \$25 million initial grant has already been received. The orphaned wells were divided into twelve different contracts, targeting approximately 350 wells. Seven of the contracts have started plugging approximately 53 wells, costing \$3.2 million.

Stautz asked if the 350 wells were all the orphaned wells or if there were more.

Weinzapfel answered that the 350 wells represent about one-quarter of the total orphaned wells. Wells existing before 1977 are covered under AML when the Surface Mining Control and Reclamation Act was signed into law. Any wells after 1977 are under Regulatory Program.

The meeting was adjourned at approximately 11:14 a.m., ET.