

**NATURAL RESOURCES COMMISSION**

March 19, 2012 Meeting Minutes

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Michael Cline  
Kent Abernathy  
Anicia Richardson  
Doug Grant  
R. T. Green  
Donald Ruch  
Robert Wright

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Debra Freije

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cameron Clark	Executive Office
Cheryl Hampton	Executive Office
Phil Bloom	Communications
Steve Hunter	Law Enforcement
Mark Reiter	Fish and Wildlife
Bill James	Fish and Wildlife
Matt Buffington	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Steve Roth	Fish and Wildlife
John Bacone	Nature Preserves
Ginger Murphy	State Parks and Reservoirs
Rob Hogg	State Parks and Reservoirs
Lynda Ellington	State Parks and Reservoirs

## **GUESTS PRESENT**

Robin Wilson	Mark Huter
Jack Corpuz	Anne Sterling
Barb Simpson	Kevin Hardie
Dericke Lavoine	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EDT, on March 19, 2012 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of ten members, he observed a quorum.

Jane Ann Stautz moved to approve the minutes for the meeting held on January 10, 2012. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

## **Reports of the Director, Deputies Director, and Advisory Council**

Director Robert E. Carter, Jr. was not present at beginning of meeting to provide his report. He joined the meeting in progress.

Ron McAhrn, Deputy Director for the Bureau of Resource Regulation, provided his report. McAhrn said the DNR, by statute, has a responsibility to issue a permit for any state land where minerals will be developed and there is an “opportunity to recover what would be a stranded asset near the Carlisle Prison.” The DNR “has worked with getting a permit together between Sunrise Coal Company, which we’ll have the opportunity to visit at the May meeting, and the Indiana Finance Authority, which actually owns the property at the DOC facility.” McAhrn stated that the permit is in the final stages of review.

McAhrn reported the Operation Stay Afloat Conference, sponsored jointly by DNR and the Indiana Department of Homeland Security, was held on March 15 in the Government South Conference Center. Operation Stay Afloat “is a tool” that provides Floodplain Managers and professionals with the latest technology and information in floodplain management. Approximately 150 people attended the conference. “It was a very successful day.”

John Davis, Deputy Director of the Bureau of Lands, Recreation, and Cultural Resources, provided his report. He said Governor Daniels visited the Healthy Rivers Initiative project at Sugar Creek and toured a parcel of property DNR recently purchased. Several high school students were present during the tour. He said the Governor plans to visit fencing for Asian carp at Fort Wayne’s Eagle Marsh this week. “Those are good things, and the Governor’s been a huge supporter of DNR. We appreciate that interest and the interest that it generates.”

Davis stated “the Bicentennial Trust is getting a little bit of publicity.” Co-Chaired by Lieutenant Governor Skillman and former Congressman Lee Hamilton, the Trust will coordinate activities for the Bicentennial celebration of Indiana’s statehood in 2016. “It is the 100<sup>th</sup> anniversary of the State Park System, which was a centennial gift to the people of the State of Indiana in 1916.” Davis said 1916 was also the year that the National Park Service was created

“so, a lot of things happening in 2016. The Bicentennial Trust is an effort to do meaningful acquisitions and projects around the state in furtherance of that original 100-year goal effort.”

Davis reported on the DNR’s cleanup efforts in Clark County. “A lot of parts of Clark State Forest were blown down.” DNR emergency crews “responded immediately to help clear roads. It’s no small feat, I guarantee you. I drove some of the roads that they cleared, and there were multiple big trees down and lots of hard work in pretty tough conditions helping people.” Davis said as much as ten million board feet were blown down, “which is as much as DNR harvests in its whole forest system in one year.”

The Chair asked if the trees could be recovered and sold.

Davis responded some trees could be recovered, but much of it is twisted. “There is no good log. In fact, not even kind of a salvageable bio product—but, some can be. They’re talking about putting a chipper on site. There are people down there that do pelletizing and other bio fuels, so we’re looking for a way to salvage. We have to get it up off the ground as soon as possible.”

## **CHAIR AND VICE CHAIR**

### **Updates on Commission and Committee activities**

The Chair reported that the May 15<sup>th</sup> Commission meeting includes a field trip through the Sunrise Coal Underground Mine, as well as the opportunity for overnight lodging at Shakamak State Park. “I enjoy these opportunities to get out, not only because it’s helpful to us as Commission members, but it gives opportunities for those in other parts of the state who choose to come to a Commission meeting to be able to participate.”

Steve Lucas commented, “The underground mine tour is an extraordinary opportunity. From what the regulatory people tell me, it’s probably one that’s about to close the door. Very possibly this is the last chance the Commission could do the underground tour.”

McAhron emphasized, “With the safety issues that are prevalent in mining; it is a dangerous business. With the accidents that have occurred in West Virginia recently, the federal oversight safety agency is more and more restrictive about who can go into these facilities. This is a different type of facility from the inherent gassiness. We don’t have those issues in Indiana, but nonetheless, this is a dangerous environment and it’s becoming more difficult to get into it.” He said the Sunrise Coal Underground Mine “is very safe,” and “it’s a tremendous opportunity to see what they do and see how they recover the resource.” Training and safety requirements would apply to the tour. “This is the future of mining in Indiana and an important part of our energy business, so it is a great opportunity to be able to go see what they do.”

Davis reflected on the history of state parks recognizing that Colonel Lieber was instrumental in setting up legislation so that counties could take part in helping establish state parks. He reflected three counties entered into negotiations to establish Shakamak State Park. “Local participation has always been a big piece.”

The Chair recognized “the great work of the AOPA Committee and noted that they have “really been pounded so far this year” with meetings before and after the Commission meetings. The Chair then re-appointed the members of the AOPA Committee: Jane Ann Stautz, Chair; Mark Ahearn, Member; R.T. Green, Member; Doug Grant, Member; and, Robert Wright, Member. “We desperately need your expertise.”

Vice-Chair Jane Ann Stautz reported that in March, the AOPA Committee met both before and after the regular NRC meeting. Today, the AOPA Committee met before the regular meeting and would also reconvene following the meeting. Last month, the AOPA Committee considered disputes pertaining to petroleum production. “Today, the public freshwater lakes and issues and matters associated with permitting and riparian rights continue to be before us.”

### **DNR, EXECUTIVE OFFICE**

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

No additional topic was identified.

### **PERSONNEL ITEMS**

#### **Personnel interview of Mark Huter for Assistant Property Manager at Wabashiki Fish and Wildlife Area in Greene County**

Mitch Marcus, Chief of the Wildlife Section for the Division of Fish and Wildlife, presented this item. Marcus stated that Mark Huter earned a Bachelor of Science degree in Forest Management from Purdue University. Huter has been employed with the Department of Natural Resources since 1999 and has held several positions. Huter worked as a Naturalists aide at East Fork Hatchery, a Laborer at Fort Benjamin Harrison State Park, and is currently employed as a Laborer at Atterbury Fish and Wildlife Area. “Mark’s training and experience will serve the agency well as the Assistant Property Manager at Wabashiki Fish and Wildlife Area.” Marcus recommended Huter for the position of Assistant Property Manager at Glendale Fish and Wildlife Area.

R. T. Green moved to approve Mark Huter for Assistant Property Manager at Wabashiki Fish and Wildlife Area. Michael Cline seconded the motion. Upon a voice vote, the motion carried.

#### **Personnel interview of Dericke Lavoine for Assistant Property Manager at Tri-County Fish and Wildlife Area in Kosciusko County**

Mitch Marcus also presented this item. He said that Dericke Lavoine earned his Bachelor of Science degree in biology from University of Southern Indiana. He graduated from Clay High School in Indiana. In Candela, Texas, he worked for Wildlife Rescue and Rehabilitation, Inc. caring for Texas wildlife species.

Marcus said the Division of Fish and Wildlife recommended the approval of Dericke Lavoine for Assistant Property Manager at Tri-County Fish and Wildlife Area.

R. T. Green moved to approve Dericke Lavoine for Assistant Property Manager at Tri-County Fish and Wildlife Area. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

### **DNR DIVISION OF Nature Preserves**

#### **Consideration of the dedication of the Shakamak Prairie Nature Preserve in Sullivan County**

John Bacone, Director of the Division of Nature Preserves, presented this item. He said that before “European settlement, Indiana prairies covered millions of acres. While most people believe prairies are primarily in the Northwest, there was a lot of prairie land in Southwest Indiana. We’re really not aware of any other prairie remnants in Southwest Indiana, and none have been protected to date. We were delighted to find a small remnant prairie in Shakamak State Park which is located in the extreme southwest corner of the park.” He said the prairie remnant “would require occasional prescribed burning.”

Donald Ruch moved to approve the dedication of the Shakamak Prairie Nature Preserve in Sullivan County as recommended by the Division of Nature Preserves. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

#### **Consideration of the dedication of the Sauga Swamp Nature Preserve in Noble County**

John Bacone presented this item. Sauga Swamp is part of a high quality wetland complex in the northern part of Noble County. The spotted turtle and other rare plants and animals have been found on the property. The tract is owned and managed by the ACRES Land Trust and was acquired with assistance from the Indiana Heritage Trust Program. Bacone recommended the Sauga Swamp be dedicated as a nature preserve.

Donald Ruch moved to approve dedication of Sauga Swamp Nature Preserve in Noble County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

#### **Consideration of preliminary adoption of amendments to 312 IAC 8, which governs use of DNR properties, to modify or clarify standards pertaining to dedicated nature preserves and other properties managed by the division of nature preserves; Administrative Cause No. 12-001N**

John Bacone also presented this item. Bacone said the amendments would allow the Division of Law Enforcement to enforce 312 IAC 8 for property owned and managed by the Division of Nature Preserves but not yet dedicated. The amendments would also require landowner consent before the Commission or the DNR approves entrance fees and locations, or special use permits, on properties dedicated as nature preserves but not owned by the State of Indiana.

Robert Wright moved to approve the amendments to 312 IAC8 as recommended by the Division of Nature Preserves. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

#### **DNR DIVISION OF FISH AND WILDLIFE**

#### **Consideration of a citizen's petition regarding the aquatic vegetation control permit and request for preliminary adoption of proposed rule change; LSA Document #12-109; Administrative Cause No. 11-064D**

Mark Reiter, Director of Division of Fish and Wildlife, presented this item. He said currently a permit holder is required, at least five days before making an aquatic vegetation treatment, to post notice onsite that the treatment is scheduled, as well as to identify the chemical to be used and any restrictions on usage. The DNR received a petition for rule change from a pesticide applicator who "contends posting is burdensome" since rain may require postponement and reposting at significant cost and inconvenience to the permit holder. Reiter said most "restrictions on aquatic herbicides have been lifted since the original rule language was adopted." He recommended granting the citizen's petition and giving preliminary adoption to removal of the five-day posting requirement.

R.T. Green moved to grant the citizen's petition for rule change and to give preliminary adoption to amendments to remove the five-day onsite posting requirement for the application of aquatic vegetation treatments. Bob Wright seconded the motion. Upon a voice vote, the motion carried.

#### **Consideration of request for approval of a new nonrule policy document for bioengineered materials and techniques for public freshwater lakes, rivers and streams; Administrative Cause No. 09-042W**

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She said the Division of Fish and Wildlife Environmental Unit developed a new document to guide landowners along rivers, streams and freshwater lakes on the use of bioengineered materials and techniques for bank protection. The new policy is particularly important for the review of permit applications to construct new seawalls, as well as for re-facing existing seawalls along public freshwater lake shorelines. If a shoreline is designated a "significant wetland" or a "natural shoreline", the seawall must be constructed of bioengineered materials. In the past, contractors proposed designs that would not meet the definition of bioengineered materials. "We believe this policy will assist in showing contractors and permit applicants exactly what is approvable." She said although not legally required, bioengineered materials can also be used along river banks and are especially useful along areas of special concern.

Commission Member, Michael Cline, asked if the materials and techniques in the proposed document would be consistent with those required by other States with similar needs.

Petercheff replied, "We're being consistent the best we can. We've used the USDA Handbook which is more of a national type of document that can be used. So, we've tried to be very consistent but be specific regarding species and plants that are native to the area."

Doug Grant moved to approve the nonrule policy document for bioengineered materials and techniques for public freshwater lakes, rivers, and streams. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Vice-Chair Stautz asked Petercheff how document would be communicated to the public.

Petercheff responded the requirements would be posted on the Commission's website and would also have a link on Division of Water's website for permit applicants, particularly those with public freshwater lake shorelines. "When we do our early coordination or environmental review letters where people are asking ahead of time, we can provide it."

**Request for approval of amendments to the nonrule policy document governing youth free hunting days for the years of 2012 and 2013; Administrative Cause No. 12-047D**

Linnea Petercheff also presented this item. She said state statute gives DNR the ability to have four free youth hunting days each year. The statute allows resident youth under the age of 18 the ability the hunt without purchase of a hunting license, if accompanied by an individual at least 18 years of age. "We typically set these dates for the first full weekend of September when duck and squirrel season are in, and for the weekend after Thanksgiving to hunt deer, rabbit, squirrel, and in other fur-bearers." For 2012, the proposed dates are September 1 and 2, which would be the opening weekend of duck season, and November 24 and 25. The proposed dates for 2013 are September 7 and 8 and November 30 and December 1. Petercheff requested approval of the amendments to the nonrule policy document for free hunting days.

Robert Wright moved to approve amendments to the nonrule policy document governing youth free hunting days so the document would address 2012 and 2013. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

**NRC DIVISION OF HEARINGS**

**Consideration of report on rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 9-7-6 governing black bass; LSA Document #11-358(F); Administrative Cause No 10-154D**

Sandra Jensen, Hearing Officer, presented this item. The proposal would amend 312 IAC 9-7-6 governing the taking of black bass from rivers and streams. The Commission granted preliminary adoption of the rule amendments on January 11, 2011, and statutory procedural requirements have since been fulfilled. Public hearings were conducted, as scheduled, on October 11, 2011 at McCormick's State Park and on October 17, 2011 at the Miami County Fairgrounds near Peru. The opportunity for the public to submit written comments extended from approximately January 2011 until October 2011. "A wealth of information" was received from the public comments.

Under the proposed amendments, a sport angler on Indiana rivers and streams would only be allowed to take black bass that are 12 inches in length or less, or 15 inches in length or greater, and would be limited to taking five black bass total with only two of the five measuring 15

inches or longer. The rule would not apply to sport fishing on the Ohio River which is governed by 312 IAC 9-7-16. Jensen commented, "That's where the wrinkle kind of came in here." Currently, 312 IAC 9-7-6 allows a sport angler to take black bass 12 inches in length or longer which is the same length requirement on the Ohio River under 312 IAC 9-7-16(f).

Jensen said "overall the public comments supported the protection of black bass," but the differentiation between the size limits in the rivers and streams versus the Ohio River created a problem for bass tournament fishing in Indiana which was "completely an unintended consequence." Commentators indicated in bass tournaments they not only fish the Ohio River. They also fish tributaries and bays to the Ohio River. Approximately 80% of the black bass taken during a bass tournament are within that 12 to 15-inch range that they would now be prohibited from taking in the tributaries and bays but not from the Ohio River. Jensen said the fishermen's expectation was major bass tournaments would probably pull out of Indiana as a result, which lead to comments from a variety of individuals associated with Indiana convention and visitors bureaus. The public expressed concerns there would be "significant negative economic impacts" resulting from the loss of the bass tournaments, particularly in communities along the Ohio River such as Lawrenceburg and Tell City.

Jensen said IC 4-22-2.1-5 requires an agency to provide specific data regarding economic impacts of a rule upon small businesses if the rule "will impose requirements or costs on small businesses." She expressed the opinion that the Department's determination that there was no cost to small businesses was correct, but the rule amendment will nonetheless have these unintended consequences on local economies. "We certainly did not intend that, and we certainly don't want that either." Jensen said there appears to be a consensus for revision of the rule as contained in her report as Exhibit C. The revision would "essentially not apply the new rule" to Indiana counties that adjoin the Ohio River. "That would eliminate this concern. I believe we would be within proper parameters to go forward with the revision as offered in Exhibit C, and that's what I recommend at this time."

Mark Reiter said he concurred with Jensen's report and recommendations.

The Chair reflected, "Part of the reason is this was an unintended consequence no one ever thought was come about. That's why we're fixing it here. There is a practice that we want to try to keep rules consistent between States. And, Kentucky obviously bordering Indiana on the Ohio River, we want to keep it consistent. That was also a factor that contributed making it simpler by just carving out those counties."

John Davis commented, "The tournament people did express this concern. I think this fixes their concern about that. I would never want to say we were satisfying anybody or speak for anybody else. But I was not able to reach a consensus, and I think this is a good solution Sandy and Mark agreed to. I'm in agreement also."

The Chair commented, "Again, this was also in conjunction with the Division of Law Enforcement. This appears to be the most palatable for everybody concerned for an issue that is important." The Chair then called upon Barb Simpson to provide comments.



Barbara Simpson with the Indiana Wildlife Federation addressed the Commission. “Originally, we testified we supported the slot limit. We certainly do still support that, but we are fine with the compromise. I also spoke to Brian Walden, the President of the Indiana Smallmouth Alliance, and we’re all fine with compromise to support the bass tournaments.”

Kevin Hardy from Friends of White River addressed the Commission. “I’m very happy to be here and glad this came up on the agenda earlier because I’m dressed to go out and patrol the river downtown for an upcoming cleanup.” He concurred with Simpson’s comments. “We testified in favor of the original measure for slot sizing. I characterize the Chair’s comment for this being a palatable solution as a good one, keeping in mind we do advocate catch and release or fishing for fun, but certainly realizing people need to eat and economics are a part of that. So, I think that what is on the table now best represents the interest of all parties concerned.”

John Davis added, “Kevin is one of the folks that worked with us on the White River cleanup. He responded as the fish were dying and is still there. He doesn’t get here very often. It’s good to see you. He’s a hero of the White River.”

R.T. Green moved to approve final adoption of rule amendments, as recommended by the hearing officer, to 312 IAC 9-7-6 governing black bass. Michael Cline seconded the motion. Upon a voice vote, the motion carried.

The Chair thanked everyone for their hard work on the rule amendments governing black bass.

**Consideration of report on rule processing, analysis, and recommendation regarding final adoption of repeal of 312 IAC 24, which formerly provided standards governing Indiana State Museum and historic sites; LSA Document #11-663(F); Administrative Cause No 11-133A**

Stephen Lucas, Hearing Officer, presented this item. He said repeal of 312 IAC 24 is a consequence of elimination of the Indiana State Museum as a DNR Division and its statutory reconstitution as the Indiana State Museum and Historic Sites Corporation. “For most of the functionality for the rule that’s being repealed, I think the Museum people are looking to re-adopt their own rule, but as part of the DNR and the NRC, there’s simply no statutory authority for it anymore.” He recommended final adoption of the repeal.

Donald Rush moved to approve final adoption of repeal of 312 IAC 24. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

**Consideration of amendments to nonrule policy document providing guidance for personal property found on DNR properties; Administrative Cause No. 11-130A**

Steve Lucas also presented this item. As part of the process for separating Indiana State Museum functions from the DNR, other rules and other nonrule policy documents pertaining to property usage were reviewed. “Foremost among the goals was the removal of references to the terms ‘state museums and historic sites.’” In reviewing the nonrule policy document for personal property left on a DNR property, it was concluded that even though no specific

reference was made to museums, some of the language “wasn’t internally parallel and was old fashioned. As a result, housekeeping amendments are recommended to this nonrule policy document to update it and make the document more readable.”

Robert Wright moved to adopt the amendments to nonrule policy document providing guidance for personal property found on DNR properties. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of amendments to nonrule policy document pertaining to the Commission’s Division of Hearings; Administrative Cause No. 12-040A**

Steve Lucas presented this item. He said the amendments would update the URL for the Commission’s website and other cross-references. References would be made to ALJs responsibilities for the Board of Licensure for Professional Geologists and for the Board of Registration for Soil Scientists. In addition to the main database for AOPA decisions called “CADDNAR” that is searchable through the Commissions website, reference would be made to a compilation of agreed orders that is available for viewing and copying on recordable discs at the Commission offices. Other technical and history updates would be made. He recommended the changes for approval.

Anicia Richardson moved to approve the amendments to the nonrule policy document pertaining to formation and functionality of the Commission’s Division of Hearings. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of repeal of Information Bulletin #65 that addresses Firewood Management on DNR Properties; Administrative Cause No. 12-043P**

Steve Lucas presented this item. He said the Commission adopted a nonrule policy document during pendency of a rule adoption to govern firewood entry and management on DNR properties, particularly state parks. The Commission gave final adoption to the rule in January, and following approval by the Attorney General and the Governor, the rule became final on March 17, 2012. As a result, the nonrule policy document became obsolete, and he recommended its repeal.

Donald Rush moved to approve the repeal of Information Bulletin 65. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

### **Legislative Update**

Chris Smith, the Department’s Legislative Liaison provided a legislative update.

### **Adjournment**

The meeting was adjourned at approximately 11:05 a.m.