NATURAL RESOURCES COMMISSION

Information Bulletin #36 (Sixth Amendment)
Effective October 1, 2010

SUBJECT: Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33).

I. History

A. Background

(1) The development of conservancy districts is an active option for addressing a variety of land use issues at the local level. Freeholders within contiguous geographic areas may use a conservancy district to achieve a dependable drinking water supply, to provide for sewage collection and treatment, to improve flood control, to reduce soil erosion, or to achieve any of numerous other water resource community goals, either singly or in combination. IC 14-33-1-1.

(2) A circuit court determines whether to approve the establishment or dissolution of a conservancy district and has jurisdiction for oversight of an existing conservancy district. IC 14-33-2-26. Management of the district is under the control of a board of directors, selected initially by the county commissioners and subsequently by the freeholders of the district. IC 14-33-5-11.

(3) Important roles are also served by the natural resources commission (sometimes referred to as the "commission") at six crucial stages in the formation, management, and dissolution of conservancy districts. At two of the stages, hearings for public input are required. At the other four, hearings may be requested. These stages also provide the primary forums for the receipt and evaluation of scientific and technical data upon which the court adjudicates and the board manages. In the receipt and evaluation of technical data, the commission brings together reports and analyses of the department of natural resources (sometimes referred to as the "DNR"), acting primarily through the division of water, as well as other state and local agencies. Most common among these are the department of environmental management, state department of health, and utility regulatory commission.

B. Development of Information Bulletin

(1) In 1996, a comprehensive commission policy was established for procedural functions relating to the formation and development of conservancy districts. (Information Bulletin #12, 19 IR 2801, superseded). Four developments were identified by the commission in support of the policy:

(A) The absence of a policy led to public uncertainty and discomfort, particularly among persons who oppose the formation of a conservancy district or who oppose the development of a project within an existing conservancy district. Concerns had been expressed that the conservancy district process should be reevaluated to assure all citizens within the boundaries of a proposed or existing district would have meaningful access to the hearing processes.

(B) The complexity of the economic and environmental issues supported the need for a consistent policy. Not the least of these issues were the regulatory functions of the state agencies and their coordination with local governmental entities bearing upon the functions of conservancy districts.

(C) The commission and the DNR had experienced a statutory evolution regarding hearing processes that had not yet been accommodated for conservancy district hearings. Most noteworthy was IC 4-21.5 (sometimes referred to as the "administrative orders and procedures act" or "AOPA") and the "sunset review" process for these agencies that resulted in 1990 and 1991 legislation.

(D) The recodification of natural resources laws resolved a statutory ambiguity relative to adding territory to conservancy districts. Compare IC 13-3-3-6(a) as recodified at IC 14-33-4-2(b) by P.L.1-1995. In part to address the ambiguity, the commission implemented Information Bulletin #6, published at 17 IR 1836 (April 1, 1994). With the recodification, Information Bulletin #6 was reconsidered and amended.

(2) In response to these developments, Information Bulletin #12 provided guidelines for implementation of conservancy districts processes, where those processes were within the commission's jurisdiction. A flexible guidance was designed to help the commission fully and fairly review pertinent issues. Responsibilities were identified and delegated to the commission's division of hearings, and to the DNR, so as to foster better coordination among these and other agencies.

(3) The primary purposes of Information Bulletin #36 were the (1) refinement of the purposes previously

addressed in Information Bulletin #12; (2) integration of the "contiguousness" analysis contained in Information Bulletin #6; (3) clarification of agency treatment of initiatives to add a purpose to an existing district; (4) inclusion of standards for determining whether a district qualifies for the purpose of flood prevention and control; and (5) consideration of conservancy district elections.

(4) The six crucial stages in which the commission serves are considered separately in the information bulletin. These stages are as follows:

(A) Consideration of technical issues prior to formation of a district.
(B) Development of a district plan.
(C) Development of a unit of work.
(D) Addition of territory to an existing district.
(E) Addition of a purpose to an existing district.
(F) Dissolution of a district.

The commission on September 16, 2003, approved amendments to this information bulletin, for additions to conservancy districts in Hendricks County. These amendments were published in the Indiana Register and became effective on November 1, 2003. In 2004, the Indiana general assembly amended IC 14-33-4-2 by deleting the extraordinary requirements for Hendricks County. The legislation became effective July 1, 2004, and the information bulletin was amended to remove the 2003 amendments.

In January 2010, the commission approved amendments to help implement IC 14-33-2-20, which provides for the repayment by a conservancy district to the commission, the DNR, and other state agencies for certain expenses.

II. Consideration of Technical Review Prior to Formation of a District

A. Petition Referral

(1) As provided in IC 14-33-2-17(b), after a court determines a petition to create a district is in proper form and has the needed signatures, the petition is referred to the commission for technical review. The issues for review are set forth in subsection (c) and include whether:

(A) the proposed district appears to be necessary;
(B) the proposed district holds promise of economic and engineering feasibility;
(C) the proposed district seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
(D) the proposed district proposes to cover and serve a proper area; and
(E) the proposed district could be established in a manner compatible with similar governmental entities.

(2) At least one public hearing shall be held. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." IC 14-33-2-19(a). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." IC 14-33-2-19(b). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject matter of the proposed district.

(3) Information received at public hearing, in written statements, and from the agencies is incorporated by a hearing officer in a recommended factfinding report to the commission. The recommended report is placed on an agenda for consideration during a public meeting of the commission. During the public meeting, the commission may also receive additional information. If newly discovered information is offered that could not reasonably have been offered before preparation of the recommended report, and the newly discovered information significantly refutes any of the five findings in the technical review, the commission may remand the matter to the hearing officer for further proceedings.

(4) When the commission is satisfied as to the adequacy of the technical review, it adopts a factfinding report for submission to the circuit court. The commission's factfinding report is prima facie evidence of the facts in all subsequent proceedings. IC 14-33-2-23. After receipt of the report from the commission, the court sets another hearing at which an opportunity for additional evidence is provided. IC 14-33-2-25.

(5) Of the six stages considered in the information bulletin, the initial stage has most frequently evoked controversy. Persons participating in the process at this stage have occasionally urged the full application of the AOPA. Key elements of AOPA are that all testimony must be given under oath, there is an opportunity for the cross-examination of witnesses, and there is a prohibition on substantive ex parte communications between a

party and the administrative law judge (or, if applied to conservancy districts, the hearing officer).

(6) AOPA does not have direct application to the commission's role prior to formation of a district. AOPA is typically concerned with the issuance or failure to timely issue an agency "order". The commission's factfinding report is not an order. The circuit court issues the order whether to create a conservancy district following a judicial hearing. In addition, the application of AOPA to hearings which may be attended by hundreds of citizens would be unwieldy. Finally, the hearing officer is often unaware of the identity of remonstrators before the hearing date.

(7) On the other hand, fairness requires the full participation by remonstrators and by citizens seeking additional information, as well as by the petitioners. The development of a complete factfinding report is also supported by full citizen participation, particularly the freeholders to a proposed district. The process should be conducted in a manner which both is and has the appearance of being impartial. To these ends, the following guidelines are established:

(A) Referrals by a court for the technical review anticipated by IC 14-33-2-17(b) shall be directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2200

(B) As soon as practicable after the receipt of the referral, the director of the division of hearings shall appoint a hearing officer. The hearing officer shall conduct actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(1) The hearing officer shall promptly provide a copy of the referral to the DNR's division of water, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject matter of the referral. An invitation for comment as well as the address and telephone number of a contact person within the division of water shall accompany the referral. The address for the contact person is as follows:

Division of Water–Project Development
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(2) The hearing officer shall contact the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(3) The hearing officer shall forward a letter to each of the parties with the following:

(a) A copy of this information bulletin.

(b) Contact information for the person within the division of water who will coordinate technical reviews.

(c) The location, date, and time of any public hearing scheduled under IC 14-33-2-19.

(d) A party's opportunity to request an informal conference to develop procedures for the conduct of any public hearing. The request for an informal conference shall be filed with the commission and served upon all parties at least 14 days in advance of the date scheduled for the public hearing.

(4) As soon as practicable after the receipt of a request under (3)(d), the hearing officer shall schedule an informal conference. Notice shall be provided to the parties and to the contact person from the Division of Water. Notice may be provided by regular U.S. mail, facsimile mail, e-mail, or telephone. During the informal conference, the hearing officer shall attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

(a) The process shall be conducted in the most informal manner practicable that supports fairness and meaningful public participation.

(b) If issues in dispute are identified which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded, and the trial rules of discovery applied.

(c) The hearing officer shall provide written notice to the parties of any second hearing and shall announce the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer shall make a reasonable effort to conduct the second hearing so that the submission of a recommended factfinding report to the commission is not delayed.

(5) The hearing officer shall draft and tender to the commission a recommended factfinding report. A copy

of the report shall be forwarded to each party, to the division of water, to any agency that commented upon the proposed conservancy district, and to any other person requesting a copy. The hearing officer shall enclose with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(6) Following action by the commission, the hearing officer shall cause its factfinding report to be filed with the court and served upon the parties, the division of water, and any other person requesting a copy.

B. "Contiguousness" of District Boundaries

(1) As part of the factfinding report, the commission is required to determine and communicate to the court whether a proposed district would "cover and serve a proper area." IC 14-33-2-17(c)(5). Also, as provided in IC 14-33-2-22, the factfinding report must include "findings on the territorial limits of the proposed district."

(2) Factors for determining appropriate district boundaries are set forth in IC 14-33-3-1. Among these factors is that "each part of the district is contiguous to another part." The statutory requirement of contiguousness forms an important element to the geographic requirements of the conservancy district article. If lengthy but narrow boundaries are created to incorporate outlying areas into a district, problems could be posed to adjacent areas, particularly if residents of these areas are not allowed to enter the district. The establishment of a district with exclusive boundaries may hinder attempts by the residents to form a new district. These problems may be acute where a purpose of the district is to provide water supply or sewage disposal.

(3) To establish a consistent and viable framework for determining what is "contiguous" within IC 14-33-3-1, the commission shall seek to prevent the formation of a conservancy district which is comprised of unrelated, unconnected parcels of land. Property to be included in the district must properly be related to a purpose for which the district is being established in both general nature and proximity.

(4) Ordinarily, "contiguous" anticipates that each part of the district adjoins every other part. Contiguousness may be made contingent upon the grant of an easement or other written license, to connect improvements across a parcel which is not included in the proposed district, because the parcel is unlikely to benefit directly from the district's formation.

(5) A district boundary, which is excessively long and narrow, does not satisfy contiguousness. What is excessively long and narrow would be evaluated on an individual basis and is more likely a major concern for districts which would provide sewage disposal or water supply than for districts which would provide other services.

(6) Where the district would provide flood prevention and control, contiguousness should encourage a coordinated effort within a watershed.

(7) Where the district is to provide sewage treatment or water supply, freeholders must typically be provided an opportunity to connect to an adjacent line or to enter the district. An "adjacent line" is one that is either (1) used to carry sewage and located within 300 feet of the freeholder's building; or (2) used to carry water supply and located on an easement or license that adjoins the freeholder's property.

C. Review Standards for Purpose of Flood Prevention and Control

One purpose for which a conservancy district can be established is flood prevention and control. IC 14-33-1-1(a)(1). In order to receive a favorable determination by the commission under IC 14-33-2-17 for the purpose of flood prevention and control, a petition must ordinarily show the district would accomplish at least one of the following:

(1) The removal of obstructions and accumulated debris from a waterway channel.
(2) The cleaning or straightening of a channel.
(3) The development of a new and enlarged channel.
(4) The construction or repair of dikes, levees, or other flood protective works.
(5) The construction of waterway bank protection.
(6) The establishment of a floodway.

All works for the purpose of flood prevention and control must be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to affect the best flood control obtainable that complies with IC 14-28-1-29.

III. Development of a District Plan

A. Statutory Structure under Conservancy District Article

(1) Following the creation of a conservancy district by the circuit court, the district is required to establish a "district plan." As provided in IC 14-33-6-2, a "district plan consists of an engineering report that sets forth the general, comprehensive plan for the accomplishment of each purpose for which the district was established." The district plan includes physical and technical descriptions, maps, preliminary drawings, cost estimates based upon preliminary engineering surveys and studies, copies of agreements with other governmental entities, and works of improvement.

(2) The board of directors is required to submit a district plan to the commission for its approval within 120 days after the appointment of the board members, unless a time extension is obtained from the commission. IC 14-13-6-3. "The commission may reject a plan or any part of a plan." IC 14-13-6-4(d). "After receiving the approval of the commission, the board shall file the district plan with the court." IC 14-13-6-5(a). Following the filing by the board of directors, the court sets the district plan for a hearing. IC 14-13-6-5(b).

B. Agency Processing and AOPA Review

(1) The Conservancy District Article does not address review of the "approval" process at the state agency level, but licenses are addressed by AOPA. Included within the definition of "license" is any "approval" required by law. IC 4-21.5-1-8. The term "license" is similarly defined at IC 14-11-3-1, a section which also specifies the DNR director or his designee issues most licenses for IC 14. The commission is the "ultimate authority" for these license determinations. IC 14-10-2-3. "Ultimate authority" is defined in AOPA as the entity "in whom the final authority for an agency is vested by law." IC 4-21.5-1-15.

(2) With this background, the following guidelines are established:

(A) The board of directors of a district shall submit any proposal for or pertaining to a district plan to the division of water.

(B) The division of water shall assist the board in identifying licenses likely to be required to implement the district plan. The division of water shall coordinate with the department of environmental management, the utility regulatory commission, and the state department of health concerning any comments pertaining to the development of a district plan.

(C) The division of water shall review and evaluate comments and alternative proposals to the district plan that may be submitted by other interested persons. The division of water shall consider only technical, engineering, and scientific issues necessary to the development of the district plan. The division may use facilitation or mediation.

(D) The director of the division of water shall approve or disapprove the district plan. The division director shall provide notice of the action, and of the opportunity to seek administrative review under AOPA, to the board of directors and to any other person requesting a copy of the notice. The director of the division of water shall act upon any request to extend the time to file a district plan. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a district plan.

(E) Administrative review and any subsequent judicial review shall be governed by AOPA, IC 14-10-2-2, and 312 IAC 3-1.

IV. Development of a Unit of Work

A. Statutory Structure under Conservancy District Article

(1) To implement a district plan, the board of directors of a conservancy district "shall order the preparation of the detailed construction drawings, specifications, and refined cost estimates.... The implementation may involve all or part of the works of improvement if the part constitutes a unit that:

(A) can be constructed and operated as a feasible unit alone; and

(B) can be operated economically in conjunction with other proposed works set forth in the district plan." IC 14-33-6-8(a).

"When the drawings, specifications, and cost estimates have been prepared to the satisfaction of the board, the board shall by resolution tentatively adopt and submit the drawings, specifications, and cost estimates to the commission for approval." IC 14-33-6-8(b).

(2) "Upon the receipt of the written approval," the board provides shall provide a "hearing on the drawings, specifications, and cost estimates at which any interested person must be heard." IC 14-33-6-9.

(3) The process of the development of a unit of work is similar to that for the preparation of a district plan. An important distinction is that no judicial hearing is required following agency approval.

B. Agency Processing and AOPA Review

With this background, the following guidelines are established:

(A) The board of directors of a district shall submit any proposals for or pertaining to a unit work to the division of water.

(B) The division of water shall assist the board in identifying licenses likely to be required to implement the district plan. The division of water shall coordinate with the department of environmental management, the utility regulatory commission, and the state department of health concerning any comments pertaining to the development of a unit of work.

(C) The division of water shall review and give due consideration to comments and alternative proposals to the unit of work which are submitted by other interested persons. The division is limited to consideration of the design and construction of structures needed to implement the district plan. The division may use facilitation or mediation.

(D) The director of the division of water shall approve or disapprove the unit of work. The division director shall provide notice of the action, and of the opportunity to seek administrative review, to the board of directors and to any other person requesting a copy of the notice. The director of the division of water shall act upon any request to extend the time by which to file a unit of work. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a unit of work.

(E) Administrative review and any subsequent judicial review shall be governed by AOPA, IC 14-10-2-2, and 312 IAC 3-1.

V. Addition of Territory to an Existing District

A. Alternative Procedures

Unless otherwise specified by statute, territory may be added to an existing district according to either of two procedures. The procedures are here separately considered:

B. Additions Initiated with the Circuit Court

(1) Pursuant to IC 14-33-4-2(b)(1), territory may be added according to the same procedure as is provided for the establishment of a district. A petition to add territory shall be supported as follows.

(2) After a court determines a petition to add territory to a district is in proper form and bears the needed signatures, the petition is referred to the commission for a technical review. The issues for review include whether:

1. the proposed addition appears to be necessary;
2. the proposed addition holds promise of economic and engineering feasibility;
3. the proposed addition seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
4. the proposed addition proposes to cover and serve a proper area; and
5. the proposed addition could be implemented in a manner compatible with similar governmental entities, most notably the existing conservancy district.

(3) The director of the division of hearings shall appoint a hearing officer to conduct at least one hearing in the county seat where land in the conservancy district is located. The hearing officer shall provide notice in a newspaper of general circulation in each county containing land in the district and in the proposed addition. Each interested person shall be provided an opportunity to be heard. An agency with jurisdiction over the subject matter of the district and the proposed addition shall be provided an opportunity to comment.

(4) A proposal for addition of territory may be relatively minor and involve only a small area with little or no measurable affect to the freeholders within the existing district. Following the public hearing and the receipt of agency comments, the hearing officer shall report to the director of the division of water as to whether the proposed addition is likely to have more than a de minimis effect upon the operations of the district.

(5) Upon receipt of the report from the hearing officer, the director of the division of water shall determine if the

proposed addition of territory is de minimis and if further review by the commission is unlikely to be productive. If the division director makes such a determination, the hearing officer's report shall be forwarded directly to the court as the commission's factfinding report. This report shall be submitted within 30 days of receipt by the division of water of a completed petition to add territory to a district.

C. Additions Initiated with the Board of Directors

(1) As provided in IC 14-33-4-2(b)(2), an addition of territory to an existing district may also be initiated by a board resolution. The resolution follows a petition by the majority of freeholders or the municipality in the area proposed to be added. The resolution and petition are filed with the court, and the court sets the matter for hearing. Notice of the hearing shall be sent to the following:

(A) The commission's division of hearings.
(B) The freeholders in the existing district.
(C) The freeholders in the area proposed to be served by the additional territory.

(2) Upon receipt of the notice, the division of hearings shall notify the DNR's division of water and other state agencies which appear to have jurisdiction over the subject of the addition.

(3) A board wishing to apply IC 14-33-4-2(b)(2) shall inform the division of hearings as soon as practicable, and not later than 45 days before a hearing is set under IC 14-33-4-2(d), so as to facilitate expeditious discussions with state agencies. Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of territory, or to object to the addition of territory. See particularly IC 14-33-4-2(e).

VI. Addition of a Purpose to an Existing District

A. Alternative Procedures

A purpose may be added to an existing district according to either of two procedures. The procedures are here separately considered.

B. Additions Initiated with the Circuit Court

Pursuant to IC 14-33-1-4(1), the same procedure may be used as is provided for the establishment of a district. If this procedure is used, reference should be made to the process for the addition of territory in part V.B. of this information bulletin.

C. Additions Initiated with Petition to Board

(1) In the alternative, IC 14-33-1-4(2) provides that the district board may add a purpose based upon a petition signed by at least 10% of the freeholders of the district. If the board approves a resolution supporting the petition, the resolution and petition are filed with the circuit court, and the court sets the matter for hearing. The court forwards a notice of hearing to the commission along with a copy of the resolution "at least 30 days before the date of hearing." IC 14-33-1-5.

(2) Upon receipt of a notice from the circuit court, the division of hearings shall notify the DNR's division of water and other state agencies that appear to have jurisdiction over the subject of the addition. A board wishing to apply IC 14-33-1-4(2) shall inform the division of hearings as soon as practicable, and not later than 45 days before setting a hearing under IC 14-33-1-5(b), so as to facilitate expeditious discussions with state agencies. Adequate review is essential to a favorable comment by the commission to the court. The director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or to condition the addition of purpose, or to object to the addition of purpose. See particularly IC 14-33-1-5(e).

VII. Dissolution of a District

A. Alternative Grounds

A conservancy district may be dissolved under IC 14-33-15 because the district is "no longer of benefit" or under IC 14-33-16 because "construction of works of improvement has not begun within six (6) years after the district plan."

B. Improvements Not Begun within Six Years after the District Plan

Where a dissolution is sought on the grounds that works of improvement were not begun within six years after the district plan, the commission has no statutory role.

C. District is No Longer of Benefit

(1) A district dissolved due to loss of benefit applies "the same procedure used to establish a district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit." IC 14-13-15-1.

(2) Because the process is essentially the same for the dissolution as for the establishment of a conservancy district, a similar analysis applies to the development of an appropriate process for dissolutions as was applied to the establishment of a district. With this background, the following guidelines are established:

(A) Referrals by a court for the technical review anticipated by IC 14-33-15-1 shall be directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room 501
Indianapolis, IN 46204-2200

(B) As soon as practicable after the receipt of the referral, the director of the division of hearings shall appoint a hearing officer. The hearing officer shall conduct actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(1) The hearing officer shall promptly provide a copy of the referral to the DNR's division of water, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject matter of the referral. An invitation for comment, as well as the address and telephone number of a contact person within the division of water, shall accompany the referral. The address for the contact person is as follows:

Division of Water–Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(2) At least one public hearing shall be held. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." IC 14-33-2-19(a). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." IC 14-33-2-19(b). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject matter of the proposed district.

(3) The hearing officer shall contact the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrator or other party has entered an appearance as a party to the civil proceeding.

(4) The hearing officer shall forward a letter to each of the parties with the following:

(a) A copy of this information bulletin.
(b) Contact information for the person within the division of water who will coordinate technical reviews.
(c) The location, date, and time of any public hearing.
(d) The opportunity for a party to request an informal conference to develop procedures for the conduct of any public hearing. The request for an informal conference shall be filed with the commission and served upon all parties at least 14 days in advance of the date scheduled for the public hearing.

(5) As soon as practicable after the receipt of a request under (4)(d), the hearing officer shall schedule an informal conference. Notice shall be provided to the parties and to the contact person from the division of water. Notice may be provided by regular U.S. mail, facsimile mail, e-mail, or telephone. During the informal conference, the hearing officer shall attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

(a) The process shall be conducted in the most informal manner practicable that supports fairness and meaningful public participation.
(b) If issues in dispute are identified during the informal conference which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded, and the trial

rules of discovery applied.

(c) The hearing officer shall provide written notice to the parties of any second hearing and shall announce the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer shall make a reasonable effort to conduct the second hearing so that the submission of a recommended factfinding report to the commission is not delayed.

(6) The hearing officer shall determine whether either of the following matters is in issue:

(a) the board has failed, within two years of establishment of the conservancy district, to produce satisfactory evidence of progress in the preparation of the district plan; or

(b) federal or state money, or both, contemplated in the petition for the establishment of the district, appear to be unavailable. See IC 14-33-15-2.

(7) Information received at public hearing, in written statements, and from the agencies is incorporated by a hearing officer in a recommended factfinding report to the commission. A copy of the report is forwarded to each party, to the division of water, to any agency that commented upon the conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(8) The recommended report is placed on an agenda for consideration in a public meeting of the commission. During the public meeting, the commission may also receive additional information. If newly discovered information is offered that could not reasonably have been offered before preparation of the recommended report, and the newly discovered information significantly refutes any of the findings in the technical review, the commission may remand the matter to the hearing officer for further proceedings.

(C) When the commission is satisfied as to the adequacy of the technical review, it adopts a factfinding report regarding dissolution of the district for submission to the circuit court. The commission's factfinding report is prima facie evidence of the facts in all subsequent proceedings. IC 14-33-2-23. Following action by the commission, the hearing officer causes a copy of the commission's factfinding report to be served upon the division of water, the parties, and any other person requesting a copy. After receipt of the commission's report, the court sets another hearing at which an opportunity for additional evidence is provided. IC 14-33-2-25.

VIII. Election of Board of Directors and Notice to Commission

Neither the commission nor the DNR have jurisdiction over board elections. The board of commissioners of the county appoints the board of directors for the new district within 20 days after a court order establishing a district. IC 14-33-5-1. A person adversely affected by an action committed or omitted by the board may petition the court to enjoin or mandate the board. IC. 14-33-5-24.

The board chair is required by IC 14-33-5-17 to promptly notify the commission when board members are elected or appointed. The department's division of water maintains a database of conservancy districts and board members. By this information bulletin, the commission identifies the following address for the notice required by IC 14-33-5-17:

Division of Water–Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

Service at this address will also help assure the division of water's database is current.

For more information see:

http://www.in.gov/dnr/water/2454.htm#other

IX. Expenses

A. Initial Payment

The commission, the department, and another state agency shall initially pay the expenses they incur in the formation, review, or dissolution of a conservation district.

B. Repayment

(1) Subject to subdivision (3), a conservancy district shall, under IC 14-33-2-20, repay the commission for reasonable expenses incurred by its employees with respect to the formation, review, or dissolution of a conservancy district with respect to the following:

(A) Preparing, conducting, or reporting upon any hearing described under IC 14-33 or this information bulletin.
(B) Performing any investigations or surveys.
(C) Studying and acting upon the development of a district plan or unit of work.

(2) Subject to subdivision (3), a conservancy district shall repay the department or another state agency for performing activities described in subdivision (1) if the activities are performed in cooperation with the commission.

(3) The financial responsibility of a conservancy district under subdivisions (1) and (2) is limited to a maximum of thirty percent (30%) of the amount paid by the conservancy district to private engineers for the preparation of plans for the following:
(A) forming a district;
(B) developing a district plan; and
(C) developing a unit of work.

(4) The department shall tender to the conservancy district any proposed repayment sought under this section, and a reasonable opportunity shall be provided to the conservancy district for comment, before submission of a billing directly to the conservancy district or through the presiding court. No billing shall be issued before July 1, 2011. If effective not later than July 1, 2011, the Indiana General Assembly repeals IC 14-33-2-20, the department shall withdraw any pending tender of a proposed repayment.

C. Application of Repayment Requirement

A conservancy district is responsible for the repayment of reasonable expenses if the conservancy district was formed subsequent to a court order issued after March 31, 2010, under IC 14-33-2-17(b) or IC 14-33-2-18(b).

X. Application and Modification

This information bulletin shall be liberally construed to support efficient administration by the commission, acting in cooperation with other agencies, of its conservancy district responsibilities. Modifications to the document may be needed based upon experience or legislative changes. Suggestions for modification of the document are welcomed and may be forwarded to the division of hearings at the address set forth previously or by e-mail to nrcrules@nrc.in.gov.

Posted: 10/06/2010 by Legislative Services Agency
An html version of this document.