ADVISORY COUNCIL
Minutes of June 11, 2008

MEMBERS PRESENT
Patrick Early, Chair
AmyMarie Travis, Vice Chair
John Bassemier
Donald Van Meter
Kari Evans
Bill Freeman
Rick Cockrum
Jim Trachtman

NATURAL RESOURCES COMMISSION STAFF PRESENT
Stephen Lucas
Jennifer Kane

DEPARMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Ryan Hoff	Executive Office
Chris Smith	Executive Office

GUEST PRESENT
Dick Mercier

Patrick Early, Chair of the Advisory Council, called the meeting to order at 10:37 a.m., at The Garrison, Fort Harrison State Park, 6001 North Post Road, Indianapolis, Indiana. With the presence of eight members, the Chair observed a quorum.

Chairman Early asked for a motion with respect to the draft minutes for the meeting held on April 9, 2008. John Bassemier moved to approve the minutes of April 9, 2008. Amy Marie Travis seconded the motion. Upon a voice vote, the motion carried.

Information Item: Great Lakes Compact Legislation and Status

Ron McAhron, Deputy Director, Bureau of Resource Regulation, said 2008 legislation allows Indiana to participate in the Great Lakes—St. Lawrence River Basin Water Resources Compact. Similar legislation passed four other Great Lakes States. Ohio has a "public trust issue", but appears likely to be the sixth state for passage. Kari Evans said an announcement this morning indicates that "Ohio may have gotten its legislation done yesterday." McAhron said both houses in Michigan passed legislation, but with differing versions of implementing language. Pennsylvania passed legislation in one house.

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The Chair asked for an overview of the Great Lakes Compact. McAhron explained that the Great Lakes Compact generally bans the diversion of water out of the Great Lakes but allows movement of water out of the basin under certain restrictions. "It also puts in place a threshold permitting program for in-basin uses."

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, commended Kari Evans and Ron McAhron for their efforts in processing the Compact through the Legislature.

The Chair asked what action is required of the Advisory Council. McAhron explained that this item is presented for information. He said the next item on the Advisory Council's agenda is a rule proposal addressing Great Lakes Basin Water Management to assist with the Compact and its effectuation.

Consideration of Recommendation for Preliminary Adoption of Great Lakes Compact Incipient Rule; Administrative Cause No. 08-081W

Steve Lucas, Director of the NRC's Division of Hearings, presented this item. He explained a "small rule" was adopted in 2005 that deals with Indiana's implementation of the Water Resources Development Act (WRDA). WRDA already requires that all Great Lakes Governors must approve any diversion from the Basin. "How that's to be implemented may be a little fuzzy and is one impetus for the Compact."

Lucas said the current rule is "mostly symbolic" and would amend the existing rule to anticipate the possibility of the Compact being adopted. "In a general sense, it reflects upon Indiana's continuing commitment to the Compact." Under Indiana law, an agency must initiate rule adoption not less than 60 days after the effective date of the statute that authorizes the rule. "The statute under which Indiana agreed to participate in the Compact is P.L. 4.–2008", and it becomes effective July 1, 2008. There is "not a Compact at this point, and there won't be unless all states approve it, and Congress passes enabling legislation." The 60-day statute "is not written in such a way that rule adoption is deferred until" the states and Congress pass the Compact. He said the current rule amendment "would be to say we are going to work toward implementing the Compact if the Compact happens and to address the 60-day rule initiation requirement."

Bill Freeman moved to recommend preliminary adoption of amendments to 312 IAC 6.2-1 which addresses Great Lakes Basin Water Management. Rick Cockrum seconded the motion. Upon a voice vote, the motion passed.

Information Item: Prospecting Rules for Waterways; Administrative Cause No. 08-105W

The Chair noted that the Advisory Council reviewed "extensively the mining of gravel and other minerals out of navigable and nonnavigable waterways." The Advisory

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Council recommended setting "pretty stringent limits" on equipment usage and disallowing mining of gravel with power equipment on navigable waterways, including recreational prospecting. "The main thing that we limited was the size of the horsepower of the pump and the size of the intake valve."

The Chair noted that a "fairly large contingent of prospectors" attended the Natural Resources Commission's May 21 meeting regarding the preliminary adoption of the mineral extraction rule proposal. The comments received "basically indicated that [the Advisory Council] was off base in everything that dealt with prospecting." As a result of the public comment, the Commission separated the recreational mining aspect of the proposal from the aggregate extraction. The Chair said the Commission "sent back" the portion of the rule addressing recreational mining for further review.

The Chair said that a field trip would be scheduled in the next few weeks to view a recreational mining site. "At least from our Conservation Officers, I'm getting a pretty conflicting report as to the amount of streambed damage these pumps cause compared to what the prospecting organization represented" at the Commission's May 21 meeting. "The only fair way for us to deal with this is for us to see what's actually happening."

Rick Cockrum said the referral of the rule back to the Advisory Council was "a good idea". He added that "prospecting is a great spin, but the fact of the matter is they are harvesting valuable minerals from public waterways."

John Davis explained prospectors sift down to the bedrock of a stream to reach the gold that has settled there. He also noted that there is "a lot of archaeology" that occurs during recreational dredging, and arrow heads and other artifacts are being removed from navigable streams. "That's another consideration to have" in reviewing the rule proposal "besides valuable minerals".

Amy Marie Travis noted that persons hike down streambeds, and the holes resulting from pump dredges "do not have shallow edges. I think of kids walking along the creek bed and falling into six to eight feet of water." She asked whether Director Carter could be requested to have DNR staff photograph dredging sites to give the Advisory Council "other documentary evidence". Davis said, "That's a great idea" and indicated he would speak with Director Carter.

The Chair said the rule proposal would be tendered for action at the August Advisory Council meeting, or if a field trip cannot be scheduled shortly, the October meeting.

Donald Van Meter asked whether recreational mining is exclusive to southern Indiana. Davis answered that mining occurs in other regions such as Fort Wayne. Lucas said prospecting is "not exclusively a southern Indiana phenomenon". His understanding is that "some of the most productive areas" are where the glaciers stopped. "One of the favorite places is on the Tippecanoe River" and its tributaries.

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Van Meter noted that the Outdoor Channel airs a program called "Golden Prospecting", with programs showing prospecting activities in Alaska and Ohio. "I haven't seen any shows" which cover Indiana.

Kari Evans asked how other states were addressing recreational mining. McAhron said at least ten states have "some type" of program. He said a field trip is planned in White County near Brookston on the afternoon of either June 23 or June 24. McAhron noted that he was also meeting with several prospectors on June 12. "We will get back with you in August, I hope, with a pretty good listing of what other states are doing."

Cockrum noted that he was "not unsympathetic" to prospecting organizations, but "we make decisions like this every day from taking gill nets off the Great Lakes to improve the sports fishery, to regulating people's firearms for hunting, to recreation vehicles, to horseback riding…. We protect the resources…. At the end of the day, the tough choice is to find the balance as to not interfere too much in private recreational activity, but at the same time protecting the resource for everybody else". McAhron added, "We need to find what impact [prospecting] has not what it could have and work from there."

Information Item: Pier Rules on Public Freshwater Lakes and Navigable Waters—Reports on Action by Natural Resources Commission and Lake Management Work Group

John Davis introduced this item. He noted that the Advisory Council discussed the pier issue previously. Davis explained that the seven reservoirs listed in the rule proposal are "a little more complex", and Department owned or managed shorelines present "unique" situations. He met with staff from the Division of States Parks and Reservoirs to discuss how the reservoirs "could fit into the rule". Davis said an amended rule proposal would be presented to the Advisory Council in August. "There are compelling reasons why [the reservoirs] need to be included. There is more than just our management at stake."

Bill Freeman asked, "So you are only talking about DNR reservoirs?" Davis answered in the affirmative and noted that Brookville Lake, Cagles Mill Lake, Cecil M. Harden Lake, Mississinewa Lake, Lake Monroe, Patoka Lake, and J. Edward Roush Lake are included in the proposed rule at 312 IAC 6-4-5. "We have a set of rules that the Corps leaves us with. The lease itself says we are in charge. So we want to know how that affects the rest of the rule."

Cockrum noted that the definition of "group pier" in 312 IAC 6-2-3.7 includes "club", but 312 IAC 11-2-11.5 includes "boat club". He added, "I prefer that both definitions include "club" only. For consistency, a 'club' is a 'club'". Lucas indicated he understood Cockrum's comments and agreed the definitions should be consistent.

Cockrum asked for the status of the current proposal. Lucas said the two provisions were "split" as recommended by the Advisory Council at its last meeting. The proposed rules addressing piers in navigable waterways (amendments to 312 IAC 6) were sent to

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the Natural Resources Commission for consideration as to preliminary adoption. The proposed rule amendments addressing pier standards in public freshwater lakes (312 IAC 11) were sent to the Lakes Management Work Group (LMWG).

Lucas said the LMWG has reviewed the proposed rule amendments and has thoughts on the proposal, "but it hasn't come to conclusion as to what the ultimate recommendations are" and has requested more time for review. The LMWG is looking at amendments to the public freshwater lake "elements to parallel the navigable waters provisions. I don't think in all regards the public freshwater lake rules and navigable waters rules have to be the same, but there are some areas that if you had them inconsistent, it would be hard to justify."

Lucas said the Commission did not give preliminary adoption to the amendments to 312 IAC 6 but instead sent them back to the Department for further review. The navigable waters rule proposal would be reviewed both in terms of the concerns by the Division of State Parks and Reservoirs and to maintain consistency with the lake rules in 312 IAC 11. The "bottom line is the two sets are separated, and they are both presented here to allow input from Advisory Council members." For different reasons, neither rule proposal has been given preliminary adoption.

The Chair asked for a brief overview of the LMWG. McAhron explained that the LMWG was established by statute, and its focus is on public freshwater lakes. "They had two or three bills pass last legislative session. Sen. Meeks has been a champion of the LMWG."

The Chair reflected, "In essence, it made no sense for us to move forward with anything until [the LMWG] took a look at it."

Cockrum asked whether the Advisory Council is requested to make a recommendation on the rule proposal today. Davis explained that this item was presented to update the Advisory Council on the progress of the rule proposals. "We will come back to you in August with a proposed solution."

Evans said, "What we need to consider, and most importantly the Commission has to consider, is anything that goes into these rules has to have a rational relationship of the jurisdiction of the [DNR] and the Commission. There are going to be a lot of people who are interested in this from a property rights and a recreational enjoyment standpoint. I'm not saying those aren't valid concerns, but there is only so far that the Commission or the [DNR] can go in addressing these issues." She added that any rule amendment should consider impacts to "habitat, the biology, or what does it do to free navigation…things that are within the agency's jurisdiction."

Adjournment

The meeting adjourned at 11:45 a.m., EDT (12:45 p.m., CDT).

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