

NATURAL RESOURCES COMMISSION

The Garrison
Fort Harrison State Park
6002 North Post Road
Indianapolis (Lawrence), Indiana

Minutes of November 18, 2008

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Patrick Early
Mark Ahearn
Phil French
Brian Blackford
Robert Wright
Thomas Easterly
Larry Klein
Doug Grant
Damian Schmelz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhrn	Executive Office
Brandon Butler	Executive Office
Phil Bloom	Communications
Linnea Petercheff	Fish and Wildlife
Bill James	Fish and Wildlife
Carol Newhouse	Fish and Wildlife
Cheryl Hampton	Human Resources
Kimberly Hiser-Weaver	Human Resources
Felix Hensley	Law Enforcement
Mike Crider	Law Enforcement
Samuel Purvis	Law Enforcement
Jay Dishman	Museum and Historic Sites
Kathleen McLary	Museum and Historic Sites
Ben Eddy	Nature Preserves
Bourke Patton	Natural Resources Foundation
Lee Casebere	Nature Preserves
Dan Bortner	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs

GUESTS PRESENT

Carl Kelle
Dick Mercier
John Goss

Laura Barker Jack Corpuz
Joanne Williams
Mike Phelps

Brad Wombles
Steve Wright

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on November 18, 2008 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of all twelve members, the Chair observed a quorum.

Jane Stautz moved to approve the minutes of September 16, 2008. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director and Deputies Director, and Natural Resources Advisory Council

Director, Robert Carter, Jr., gave his report. He announced that Commission Member, Damian Schmelz, who has served on the Commission since 1975, is retiring. "This is Father Damian's last meeting, and he will be sadly missed on this Commission. He has been a great friend and resource in Indiana and a great friend of the DNR, as well as a great steward for the State of Indiana. On behalf of myself, the Department of Natural Resources, and the Governor's Office, we appreciate your service. You will be sadly missed."

Damian Schmelz replied, "It's a hard decision, but time."

Bryan Poynter said he would offer Commissions members an opportunity to say a few words about Father Damian during the Chairman's report.

The Director gave a budget update. "With the economy in trouble, as you all know, we're no stranger to that right now, the DNR and especially the State of Indiana. We have some budget challenges. We're preparing our next two-year budget as we speak, and we are certainly going to have some challenges meeting the needs of our divisions, as well as keeping the services up to the citizenry out there. We're not done yet. We still have some work to do. I talked to my colleague Tom Easterly with IDEM, and they have the same problems. It's going to be tough. Mark Ahearn at INDOT knows we've got some tough times ahead. We're going to try and innovative and try to seek, especially with our landholding divisions and our revenue based divisions..., to find ways to generate more revenue."

Director Carter added that the DNR divisions are "really working hard to market more products. State Parks and Reservoirs, Fish and Wildlife, Outdoor Recreation, they're doing a great job. We've actually seen some major results lately, especially with Fish and Wildlife. Anticipated revenue shortfalls are going to be there, but we're going to do

the best we can to try and get our dedicated funding revenues up and try to mitigate these problems as much as we can.”

The Director added, “I’m very proud to announce this past weekend was the first weekend of deer gun season.” The sale of hunting licenses increased 7,000 to 8,000 in 2008 from the previous year. “So that’s very good, which is a testament to the marketing campaign that the Division of Fish and Wildlife has done and the communications that Phil Bloom has done. So, we’re very proud of that. That’s \$160,000 more.” He said DNR Communications and the Division of Law Enforcement are partnering with the Pacers organization to pursue marketing opportunities. “They’ve got a good team this year.” The Director then deferred to Phil Bloom to introduce an upcoming *Outdoor Indiana* initiative.

Phil Bloom, Director of Communications, said his Division has, for some time, been providing *Outdoor Indiana* subscriptions at a discount to special clients. “These special client discounts have been extended to companies that order 50 or more subscriptions to give as employee gifts or to state park friends groups. We also partner with the Division of Fish and Wildlife and the Indiana Heritage Trust for cross promotions of programs. We also provide a number of free subscriptions to state and federal lawmakers. We come here today to let you know, and to seek your blessing, regarding a discount that we are wanting to offer to the general public. Our plan is to offer a buy-one-get-one-free subscription as a holiday gift idea, available only to the first 200 new subscribers.”

Chairman Poynter asked Bloom for the current number of subscribers to *Outdoor Indiana*. Bloom responded that there are approximately 12,000 subscribers and approximately 15,000 magazines are printed. “We have a restriction on how many we can give away. This program will pretty much push us to the cap on that.” The Chair reflected the quality in the last several issues of the magazine “has just been fantastic, and the magazine continues to be something that I look forward to reading.”

Director Carter said *Outdoor Indiana* is part of the public marketing effort with the Division of Fish and Wildlife. “With the National Shooting Sports Foundation grant, totaling about \$60,000, we were able to create some new public service announcements on the radio. We’ve also sent cards out to lapsed hunters and lapsed anglers from our database.”

The Director recognized and congratulated Commission Member Patrick Early on receiving from Indianapolis the Charles L. Whistler Award for his lifetime achievements. “We’re very proud to have Pat on the Natural Resource Commission.” The Director then deferred to Dan Bortner to report on the Lincoln Boyhood Home.

Dan Bortner, Director of State Parks and Recreation, addressed the Commission. Bortner provided some history on the Lincoln Amphitheatre at Lincoln State Park. In 2005, the amphitheatre went dark from its production of young Abraham Lincoln. This “state of the art” outdoor amphitheatre consists of 1,500 seats. “It’s a wonderful location.” He said the production that had been there for many years had run its course. “We were

playing to about 80 people a night or less, so the thing went dark.” In an effort to determine what to do with the facility, he met with Will Cook, the CEO of Holiday World in Spencer County. In Spencer County there is Lincoln State Park, Lincoln National Boyhood Home, the National Park Service, and Holiday World. “Each of those entities, by itself, is a one or two day excursion, at best. But if you combine the three of them from a marketing standpoint, now you have a week long destination, and we were trying to figure out what we can do to make Lincoln State Park a bigger part of that, taking a totally new approach to what we have there and what we can offer. What Will has done is put together a solid team of folks with the Lincoln Boy Drama Association. They’ve hired professional staff. This is going to be something that you want to get on your calendar for the world premier that’s going to come up June of next year in celebration of President Lincoln’s 200th birthday. Bortner deferred to Steve Wright, Executive Producer, and Laura Barker, Communications Director.

Steve Wright said, “This is very exciting for Indiana and for DNR. And, it’s exciting about sharing the legacy of Abraham Lincoln in this area. Lincoln Amphitheatre is proud to be part of the bicentennial celebration with the world premier of *Lincoln*. *Lincoln* will be a new theatrical production, unlike any other, which will premier in June of 2009. The story will be an insight into the life of Abraham Lincoln. Theatre goers will follow Lincoln from his arrival in Indiana, through his boyhood years, and into the presidency and the Civil War. “All of us are proud to be working together on this project and this is a very exciting experience.”

Laura Barker said opening night at the Lincoln State Park Amphitheatre would be on June 12, 2009 and would run approximately through August 15, 2009. The theatre would be open Tuesday through Sunday. “Not only will we have the production, we’ll have a complete pre-show experience that will include the meal, the artifacts, and the archives that you can walk through. We’ll have guided walking tours. Artisans will be onsite spinning and weaving. We’ll have people teaching children pioneer games—just a complete experience. So, we’re working on creating a complete Lincoln experience in Indiana.” Barker added volunteer time or donations to the Amphitheatre could be done at <http://www.lincolnamphitheatre.com/index.htm>. “Thank you all so much for allowing us to come speak to you today.”

Jane Ann Stautz inquired about the average ticket prices. Barker responded that ticket prices would range from \$35.95 to \$42.95, depending on whether the meal is purchased, as well as the selected seating area.

The Chair inquired about the duration of the play. Barker answered the play would be approximately 90 minutes long with a 15 minute intermission.

Wright said the goal was to encourage people to stay an extra day to enjoy and explore Southern Indiana.

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, gave his report as well as reported for Ron McAhron, Deputy Director for the Bureau of

Resource Regulation, who was not present. There have been “lots” of trail openings and celebrations. “I can’t think of a more successful effort than the Governor’s effort, and the DNR’s effort, and all the demand to spread some significant trail dollars around the state.” He said McAhrn had been working on the Water Shortage Task Force, which is an ongoing effort to plan for what happens when water quantity becomes an issue in Indiana. “We have both been working with IDEM and INDOT, as well as private clients, on wetland mitigation and a match up DNR properties, to satisfy the wetland-mitigation needs of DNR and IDEM with regard to permit requirements. That’s one partnership that I think is a tremendous benefit that comes when we work together and try to give the public good customer service and accomplish good things for the environment.”

Davis reported on the budget. “We do have some dedicated funds that are very healthy” as a result of increased energy production. The increase in oil and gas production results in “a good dedicated fund that can be used in different ways to accomplish DNR’s mission.”

Davis reflected, “I think it’s pretty fitting that today is Father Damian’s last NRC meeting and also a day of the deer reductions across the state. We have 17 parks closed today for very necessary management of the deer herd. It’s so routine now I don’t even know how long we’ve been doing it. But, it didn’t start out that way; it didn’t start out as routine at all.”

Patrick Early, Chair of the Advisory Council, gave his report. Early said that the Advisory Counsel met in October, but did not have a quorum. “As a result, we were not able to take any official action.” He said the biggest part of the meeting was directed to a proposed permanent rule to address paddlefish. “Although it was not official action, it was a strong consensus for the passage of Item 9 today.”

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

The Chair reiterated the Director’s congratulations to Patrick Early on receiving the Charles L. Whistler Award. “What a wonderful honor as a citizen here in Indianapolis who’s seen a lot of the landmarks that you’ve directly touch. I know you’re humble enough not to take credit for them. Having known you for a long time, it’s certainly wonderful what you’ve had your hands in and left your fingerprints on here in this state. So, your reward this morning; the highest award a citizen can receive here in the City of Indianapolis, bestowed upon Pat, was a deserved honor.”

The Chair then directed his comments to Damian Schmelz. “I would be terribly remiss if I did not talk to Father Damian directly and tell you how important you have been to this Commission and your friendship to me and many others of the Commission members that are present and those that have come in the past. You’ve seen an awful lot. You have a lot of institutional knowledge and will leave a very big hole and big shoes to fill here. I just wanted to tell you how much you have meant to us. When I received your

letter, understanding some of the challenges that you've had, it was with tremendous remorse that we were accepting of that."

The Chair continued, "According to our statute, Father Damian is an appointee of the Indiana Academy of Sciences, and he has been taking the appropriate actions, and I believe he had met with his peers in Evansville recently and notified them of his impending resignation from this Commission. That will be an appointment that comes from the Indiana Academy of Sciences, and I'm sure that with his guidance, they'll choose ably. We look forward to welcoming your successor. But I did want to offer the opportunity for any member of this Commission who has known Father Damian, to offer any thoughts. Before doing so, we certainly wanted to have you address the Commission and those here today, if you care to do so."

Father Damian Schmelz reflected, "Before beginning with the Commission, I was realistic enough to understand that I wasn't particularly aware of the talents or experiences required or if I belonged here. It's one of those situations where I was in the right place at the right time. My predecessor was awarded a sabbatical at Butler University in June, so the then current president had to find a replacement. When I asked him what was expected, he said, 'I don't really know, but I know that you can do it.' Frankly, it took at least a year to catch on to what this is all about. So, now you'll find my successor in a learning curve which will have to be rather steep. I don't know who it will be but I will encourage the incoming president to get somebody in place for maybe the January meeting. But, we'll have to see."

Father Damian continued, "It's been a remarkable run and a very rewarding one, not without its frustrations, but with an awful lot of significant challenges. I guess the single biggest one was the deer reduction study. It didn't get as nasty in the field as it might have been, but it had its interesting moments. It's solidly in place now, and I'm glad that it's working."

Schmelz added, "I want to introduce to you a mother of a family from St. Meinrad whose youngest kid I first met when, I think, he was on his third birthday. There are five of them with four more who are older. One of the neat things that's gone along with job is I was able to introduce them to nearly all the state parks. In recent years, more often than anybody else realizes, Pauline Shaffer, there on the second row, has made it possible for me to get here, because it's gotten increasingly difficult and would have been foolish for me to make the trip up and back by myself. So, it was a hard decision to make, but it's the time to make it. I appreciate being allowed to do lots of things with you all."

The Chair reflected, "Well, I speak for myself, only, that it's been my pleasure." The Chair asked Pauline Shaffer whether she had anything to offer. She replied, "No, thank you". Father Damian said, "Thanks, publicly."

The Chair added, "Know that this Commission will, with that news of the resignation, plan accordingly. So, we will certainly recognize your service in a far more public fashion and deserving one." The Chair then opened the floor for further comments.

Vice Chair, Jane Ann Stautz, spoke. “As one of the longer-term Commission members here, I would just offer my thanks to Father Damian on behalf of us all. He served really as a mentor, not only for myself, but others as they came on to the Commission. His passion and commitment for our resources in the State is tremendous. That is contagious with everybody who has served on the Commission and with the staff and folks that we’ve worked with. So, we really appreciate that. If there was ever a question about some of our special properties, you could always count that he would have the background, the information, and the expertise there. We really appreciate that, and we are going to miss that institutional knowledge and that expertise that you have. Father Damian is always humble, but he was a very significant contributor to new documentation and records of our flora and forest here in the Indiana. He has served as an author of a number of those surveys and publications, as well. We will miss you, but I have really treasured the friendship and the opportunity to work with you over the years.”

Stephen Lucas offered his comments. “I started my service to the Commission 26 years ago, which is starting to sound like at long time ago. But, at that time, Father Damian was already a legend on the Commission. One of my first experiences was talking to the former member Bill Lieber who was the grandson of Colonel Lieber. Speaking with Bill, he gave me a background on the Commission members, the roles that he perceived they played on the Commission at that time. He told me that Father Damian was the conscience of the Commission. I always thought that would be a heavy burden to carry, being a public board’s conscience, especially as I figured out how important the role of the Commission is. But I’ve seen over the years Father Damian did carry that burden and carry it with grace. They say no one is indispensable, but it’s also true that some people cannot be replaced. I will miss him on a personal basis, and Indiana will miss him.”

The Chair offered, “I know that there are others out here who have worked with Father Damian, and John Goss who is the Executive Director of the Indiana Wildlife Federation, appropriately recognized his service two years ago with a high honor from the organization and documenting historical nature which he’s provided to the State of Indiana. So, thank you and others who have recognized him.”

John Davis cited a book, *Natural Areas in Indiana and Their Preservation*, which Father Damian co-authored. He encouraged the Commission members to obtain a copy of the book available at the Indiana Historical Society. Davis also provided a handout of an article written about Father Damian by Marion T. Jackson of the Department of Life Sciences, Indiana State University. “It’s certainly worth reading for the Commission and for the insight it brings.”

David said, “I would also personally echo what’s been said about your leadership, and your comfort and your sensitivity. And, I think there are hundreds of DNR employees who feel a special closeness to you for all that you’ve done. Not to speak for them, but I know that they’d all like to be able to recognize publicly how important that is. I think balance is an important thing with Father Damian. And, you’ll read in here if you read

this about that devotion to obviously his commitment to his Faith and his devotion to everything that we do and the serious business that we do here.”

Davis added, “The other side of Father Damian is he also ran, for 20 some years, a beer and pizza place at St. Meinrad. You know when you drive by there, and you think my gosh that looks terrible in there, all those poor guys alone in there having beer and pizza. I appreciate all of it Father, thanks.”

The Chair added, “Thank you all. We will continue this at a more appropriate time with more accolades. Thank you, for everything.”

The Chair then reported he recently attended the retreat of the Division of Hearings for the Natural Resources Commission. “I was glad to listen in as they were preparing and planning some of those issues that take place. It was a great opportunity to learn more about the work that happens behind the scenes.” He said one issue discussed was setting 2009 Commission meeting dates and locations. “What was discussed may have to be altered a little bit due to budget restrictions in terms of locations that were identified as potential meeting sites.” The Chair said the next meeting would be on January 13, 2009 at the Garrison at Fort Benjamin State Park. “Thank you for the staff and under Steve’s leadership and Sandy’s and others helping to put together strategic planning and issues addressing the workings of this Commission.”

The Chair asked Sandra Jensen for an update on the Fish and Wildlife Rules Project.

Jensen responded there had been delays with the posting of the online suggestion form, but she is “hopeful” that it will be posted by mid-November. The first non-substantive package, which involves the deer hunting rules and the hunter education program, is anticipated for January consideration by the Commission as to preliminary adoption.

DNR, EXECUTIVE OFFICE

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

No new topics were presented for referral to the Advisory Council.

PERSONNEL ACTIONS

Consideration of permanent appointment of Carol Newhouse as Assistant Property Manager at East Fork Hatchery, Mongtomery, Indiana

Bill James, Chief of Fishery for Division of Fish and Wildlife, introduced this item. James said that following Newhouse’s probationary period as the recommended Assistant Property Manager at the East Fork Hatchery, it was his pleasure to recommend Newhouse for permanent appointment. “Carol has done an outstanding job for us. And

without reservation, we would recommend her to you at this time, for indefinite appointment.”

Damian Schmelz moved to approve Carol Newhouse for permanent appointment as Assistant Property Manager at East Fork Hatchery. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of personnel interview for the position of Assistant Property Manager at the Whitewater Canal Historic Site, Metamora, Indiana

Kathleen McLary, Executive Vice President of Division of Museum and Historic Sites, presented this item. She recommended Joan Williams for the position of Assistant Property Manager at the Whitewater Canal Historic Site. McLary introduced Williams to the Commission.

Joan Williams addressed the Commission. She said she was a Purdue University and Indiana University graduate. “I went into education as a second career. My first career started out in communication and marketing. I’m really very excited about this position. I feel like it’s the culmination of all the experiences that I’ve had in education and out in the world of business, that I can combine them and really make an impact on something that I feel is very important, and that’s the preservation and marketing of the wonderful sites that we have here in Indiana. There is such a rich history here, and culture, that I think it’s important that we preserve that and get the word out that we are a neat place to visit.”

Thomas Easterly moved to approve Joan Williams for the position of Assistant Property Manager at the Whitewater Canal Historic Site at Metamora, Indiana. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

INDIANA HERITAGE TRUST

Information Item: Indiana Heritage Trust and Foundation

Bourke Patton, Executive Director of the Indiana Heritage Trust and Foundation, introduced this item. He said that in 1990 the Indiana General Assembly created the Indiana Natural Resources Foundation. The General Assembly realized the Department of Natural Resources “needed an arm to accept donations from the public of land and property. Contributions to the Foundation are tax deductible as allowable by law. Since 1990, the Foundation has been run by the Director of the Indiana Heritage Trust Foundation. They were successful with the Goose Pond acquisition where the Foundation was the clearing house for private donations for that project.”

Patton noted there was also an educational program for inner-city families that was “very successful” for two years consecutively. “Those projects were great and directly complemented the mission of the Department of Natural Resources. But, the Foundation’s board decided earlier this year that it was time to take the Foundation and

do more with it. My background is in non-profit management and fund raising, so that's why they brought me in, to see how we can management this and how we can grow it. Our goals for the Foundation are those of the Department. Our mission is directly tied to the Department of Natural Resources. Increase outdoor recreation, increase conservation education, and increase land acquisition for those pursuits."

Patton said the Foundation recently launched a membership program for raising private funds to be used by the Department of Natural Resources. "As the Department has needs, we will help provide for those needs. We do a lot of programs that are specifically tied to what the DNR is trying to do. We're also trying to raise unrestricted dollars so we can meet needs where they're most critical and most relevant. We'd also like to invite you to be a part of this inaugural class of our membership program. The need now is greater than ever before and that's going to grow. Our needs will grow for funds to keep our programs up and running and operational, and to reach more people, so that we can enjoy greater license sales, so we can have increased marketing efforts to get people to outdoors. Please join me in supporting the Foundation."

Doug Grant asked, "How does this relate to the Heritage Trust Foundation?"

Patton replied, "In 1990, when the Foundation was founded, with a board of twelve appointed by the Governor, and then the Heritage Trust was founded in 1992, they did not want to create another board to be managed. They took the Foundation board and said, 'You're going to do double duty and serve on the Heritage Trust and the Natural Resources Foundation.' We are still wedded to DNR, and we work very closely with the Heritage Trust, but this is just to provide additional revenue stream for land acquisition projects. We do have great support from the Department, and it's great to be a part of it to see where we can go. The sky's the limit with the right support."

John Davis said, "I want to say how pleased we are that Bourke is here. Bourke is the first non-state employee to be directing and running and operating the Foundation. He's an employee of the Foundation. We're very pleased. Bourke has been an incredible injector of energy into the Foundation. He's doing all the things that you would hope that he would do, and we really appreciate that he's here and fulfilling this role."

DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Sweedy Hollow Nature Preserve, Monroe County

Lee Casebere, Assistant Director of Division of Nature Preserves, introduced this item. He said both nature preserves on the agenda were on other DNR properties, Sweedey managed by the Division of Forestry and Prophetstown by the Division of State Parks and Reservoirs. He said the proposed Sweedy Hollow Nature Preserve is a 150-acre tract located on Morgan Monroe State Forest that encompasses a number of different natural community types and an area of sandstone cliffs. The area is known as the Highland Rim Natural Region in the Brown County Hills Section. Casebere identified the presence of

the state-endangered, green adder's mouth orchid (*Malixis unifolia*). He said there "are a number of birds that breed there that are becoming less common."

Casebere recommended that the Sweedy Hollow area be dedicated as a nature preserve. Thomas Easterly moved to approve the dedication of Sweedy Hollow Nature Preserve in Monroe County. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Prophetstown Nature Preserve, Tippecanoe County

Lee Casebere also presented this item. He said the proposed Prophetstown Nature Preserve is a "fen", which is a type of peatland that is kept moist through ground water. The result is a "pretty unique wetland." He said that in Indiana fens, sedge meadows, and bogs comprise 3% of Indiana's remaining wetlands. "So, it truly is a very unique community." He said a number of rare plants grow in the area. Casebere recommended that articles of dedication be approved for the Prophetstown Nature Preserve.

Thomas Easterly moved to approve the dedication of Prophetstown Nature Preserve, Tippecanoe County. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration for preliminary adoption of proposed new rules for prospecting in waterways; Administrative Cause No. 08-105W

Linnea Petercheff of the Division of Fish and Wildlife introduced this item. For consideration are new rules to govern "prospecting" on navigable and non-navigable waters. She said "prospecting" would be defined as any activities conducted in preparation for or to remove hard mineral resources, such as gold platinum and silver, from a stream. With the new rules, prospecting could be done within the ordinary high watermark in specified Indiana waters through compliance with the specifications for a "general license". No mercury or other chemicals could be used to assist in the recovery of the minerals. Activities must occur between sunrise and sunset. No mussels or endangered species could be taken. She said a permit would be required from the Division of Water to use equipment other than as listed in the rule language.

Patrick Early commented, "We've had a lot of opportunities. Several of us made a site visit, and we feel that the rules as they are, this is a good thing to go forward with."

Mike Phelps addressed the Commission for comments. He said that "many of the prospectors were skeptical how this would turn out, but throughout the summer we had many meetings, many discussions. We even had an opportunity to see about ten members, some of who are here, in shorts and tennis shoes and waders, splashing around

in the creek actually watching ‘prospecting’ going on, taking pictures and taking water samples and being very diligent about how they address this.”

Phelps thanked Patrick Early, Ron McAhron, and Steve Lucas and other members of the DNR, the Advisory Council and the Commission for their involvement with the proposed rule. “I think they have done fair due diligent work on this. The proposal has addressed both sides of the issues concerning conservation and recreation. I believe all members that were involved are to be commended for their efforts.”

Jack Corpuz addressed the Commission. He expressed concerns for the conduct of recreational prospecting. “We license hunters and we license fisherman, who are using natural resources in Indiana, but we have not licensed these recreational prospectors. It’s not a deal breaker, but it’s something I wish the Commission would think about perhaps in the future. All recreational activities in Indiana, whether it’s hiking, bird-watching, prospecting, impact our natural resources. I think it’s time for the other groups to start paying their own way and to take ownership of what’s going on in natural resources that we all really enjoy.”

Carl Kelle, former President of the Southern Indiana Chapter of the Gold Prospector’s Association, addressed the Commission. “I do represent somewhere around 100 prospectors that are active in this organization. There’s another chapter here called the Central Chapter, and they have other members, also. But, at any given time, I’ve been asked how many people would be ripping up the creek beds and dredging, and, truthfully, if there was ten at one given time in the whole state, it would be probably a very conservative estimate. I’m very fortunate to represent these 100 individuals, and just want to bring forth thoughts from a meeting we just had last month. They said to be sure and express their gratitude and thanks for all the work for the rule. We read the current proposals at our meetings, and they were 100% in favor of it. Also, we reiterate that we stand firm that if you ever have a need for us to get the word out, as far as where there are different endangered species, different areas that really need a closer look, be sure and keep us in mind.”

Kelle said his Association holds monthly meetings which include training pertaining to protecting resources. “We do bring revenues in. We want to share those revenues with the State of Indiana in the many resources you make available for us. So, thank you, very much, for all the time and the effort you put into it.”

The Chair replied, “Thank you all for your kind words. I do remind the Commission and those who spoke that this stage is preliminary adoption. There will be a formal course that takes place going forward with a formal hearing. We’ll be back again for final adoption. But, thank you everybody, including the Advisory Council.”

Thomas Easterly moved to give preliminary adoption to the proposed new rules for prospecting in waterways. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption for amendments to 312 IAC 9 that govern the taking of paddlefish; Administrative Cause No. 08-163D

Bill James, Chief of Fishery for Division of Fish and Wildlife, introduced this item. He reminded the Commission this subject was presented as an information item in 2007. “This is a lucrative business. It’s part of global caviar market that is being focused on North America in the Mississippi River drainage, on the Ohio River, and right here in Indiana because of the collapse of the traditional sturgeon caviar trade in Eastern Europe and the former Soviet Union. Paddlefish eggs are extremely valuable on the commercial market. Many of them taken, here in Indiana, end up being exported out of the country.” James said the undercover operation he outlined in 2007 resulted in 22 arrests, with over 300 charges filed, some being felonies.

James said Illinois, Kentucky and Indiana have commercial fishing on the Ohio River. “We can’t be very successful moving alone on this. It takes all three states working together. We have invested this past year working with those other states, primarily Kentucky, to try to gain their cooperative partnership in moving forward with uniform regulations.” James said Kentucky recently promulgated permanent rules for additional paddlefish protections. Recently, Director Carter reissued an emergency rule for one more year, and he modified it to match Kentucky’s permanent rule. At the present time, Indiana, Kentucky and Illinois all have the same paddlefish protection on the Ohio River.

James recommended preliminary adoption of the rule amendments governing the taking of paddlefish.

Larry Klein said, “I’m somewhat confused as to what exactly gets formulated. Does this come out in a list of rules and regulations that we hand out to sportsmen, or is this just a licensing agreement regulation?”

James responded, “These are commercial fishing regulations that are proposed. There is a season. There is a size limit. There is a net size restriction. It does include a sport fishing restriction. In the past, it was lawful to snag paddlefish by dragging un-baited hooks through the water with the intent to snag fish on contact. Sport fishermen operating on a license were allowed to take two-a-day out of the Ohio River. The law enforcement investigation found that was really just a cover for gangs of sport fishermen working with a commercial entity, to go into areas closed to commercial fishing below dams, snag those paddlefish, and then move them into the commercial market. We have proposed that the sport snagging of paddlefish be prohibited as part of this regulation.”

Klein asked if there is a commercial fishing organization that DNR has met with to consider the proposed rule amendments. “I know it came from an investigation regarding some nere-do-wells, but what about the legitimate commercial fishermen?”

James answered, “We have about 30 individuals who hold Indiana commercial fishing licenses on the Ohio River. There are a lot more on the Kentucky side, and some of them are licensed in both states.” He said “a number of the commercial fishing license holders

on the Indiana side were arrested. Our licensed commercial fishing license holders were notified every step of the way with individual letters of exactly what were doing. But to date, it has been an emergency rule process that did not have a public hearing. What is proposed here is that a formal opportunity would be provided for each and every citizen who wished to comment, for the record, to be part of this process.”

John Davis added, “I have had conversations with several commercial fishermen on the Ohio River who were not arrested. We’ve had conversations with them. They’ve also had appearances before the Kentucky Natural Resources Department.”

James reflected that the Kentucky DNR has given final adoption to its rule regarding the taking of paddlefish.

Director Carter asked for the approximate value of eggs from a paddlefish.

James answered, “About \$100 a pound. One fish may be worth \$500 or more for the egg value. These are long-lived fish. They can reach over 100 pounds in size and have a big, long paddle-nose. They’re smooth like a catfish. They don’t have scales. They’re really an ancient fish. These fish take eight to ten years or more to mature. They are a fragile resource that is prone to over-harvest. We certainly do need diligent, responsible protection and management.”

James continued, “There are about seven or eight out of the 30 licensed professional fishermen who deal in the paddlefish. We’ve got other commercial fishermen that are targeting buffalo, carp or catfish. This is a specialty netting operation. There are usually one or two buyers.”

James reflected, “We’re also concerned about the need to protect paddlefish in Indiana because of what is happening in other states. Paddlefish are state-endangered in some places where they were formerly abundant. They are under increasing protection in other states, with one notable exception. In Tennessee, which has had a major paddlefish industry, recently their Commission...said they were tired of dealing with this issue, and ‘we’re going to just ignore it.’ So they cancelled the size limit. They cancelled the closed season. They essentially opened it up and said ‘just have at them. If you destroy them, that’s too bad.’ One of the shocking outcomes of that is it’s going to move [the fishing pressure] elsewhere because they’re going to wipe out their paddlefish industry” in Tennessee. “Those people that are involved in that industry will be looking for other markets to exploit. We can look for those people, legally and illegally, to be moving into Indiana.”

Mark Ahearn asked whether a violation of the standards pertaining to paddlefish was a misdemeanor or a felony. “What are the penalties? You said there were several arrests.”

James responded, “There were felonies involved in this case, including money laundering.”

Col. Michael Crider added, “Typically, the illegal sale of wildlife in Indiana is a misdemeanor. For sales exceeding \$500, the violation can be a felony.”

Mark Ahearn moved to give preliminary adoption to the amendments, as proposed by the Division of Fish and Wildlife, regarding the taking of paddlefish. Patrick Early seconded the motion. On a voice vote, the motion carried.

Consideration for approval of a new nonrule policy document, Information Bulletin #59 to establish Free Fishing Days for years 2009 and 2010; Administrative Cause No. 08-162D

Bill James, Chief of Fishery for Division of Fish and Wildlife, also introduced this item. He said the Indiana General Assembly has authorized the DNR Director, with approval by the Commission, to set two free fishing days a year for Indiana residents without a fishing license. “It’s a promotion and marketing effort that we’ve had for a number of years. The two days are tied in with National Fishing and Boating week in early June.”

James said the dates need to be set a couple years ahead of time in order to calendar them in the DNR’s fishing guide and in *Outdoor Indiana*. The proposed dates for 2009 and 2010 are as follows: June 6 and 7, 2009 and June 5 and 6, 2010. “We’d ask for your approval to set those dates so we can move ahead with planning.”

Dick Mercier with the Indiana Sportsman Roundtable addressed the Commission. “We have supported this free fishing days every since its inception several years ago, and we would certainly hope that it be continued.”

Patrick Early moved to approve the new nonrule policy document to establish free fishing days for years 2009 and 2010. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration for preliminary adoption of proposed new rule, 312 IAC 8-2-4.5, to regulate the placement of fish attractors on waterways within DNR properties; Administrative Cause Number 08-095P

John Bergman, Assistant Director of State Parks and Reservoirs, introduced this item. He said the proposed rule section would address the placement of materials in waterways, located on DNR properties, which are intended to serve as fish attractors. The proposal arose from discussions among the property holding divisions which indicate there is not a consistent approach to managing the placement of fish attractors. He said that the U.S. Army Corps of Engineers has minimum standards for fish attractors, but it defers to the Department of Natural Resources for permitting or allowing fish attractors in the lakes. “However, we don’t have a promulgated rule to deal with this. In order to provide a little more consistency to our managers at our lakes in any property that may have a request for

fish attractor, we felt we needed to have a promulgated rule to have more standardized approach.”

Phil French asked for an example of a fish attractor. Bill James explained that fish attractors have historically been made out of brush piles and tree tops.

Jane Ann Stautz moved to approve, as recommended by DNR personnel, the preliminary adoption of a proposed rule to regulate the placement of fish attractors on waterways within DNR properties. Phil French seconded the motion.

Larry Klein asked several questions concerning the implementation of a license for a fish attractor: Who would seek a license? Who creates the document an applicant would sign to seek a license? Would there be a form, and where would a person obtain a form?

Bergman responded that the purpose of the rule proposal was to provide property managers with latitude but to also have consistency with how requests are handled. He said the proposal would not specify a particular form, and the level of formality for a written approval could be determined within a division or among the various property holding divisions.

Steve Lucas suggested that the current property rules (312 IAC 8) which govern DNR properties probably already prohibit a visitor, without DNR authorization, from placing materials in a lake for use as a fish attractor. This proposal could put a finer point on current rules and practices, both to the benefit of the property managers and the understanding of the public.

The Chair called Stautz’s motion for a vote. Upon a voice vote, the motion carried.

Consideration of approval of proposed special events policy changes and fee structure of the Division of State Parks and Reservoirs; Administrative Cause No. 08-178P

John Bergman, Assistant Director of State Parks and Reservoirs also presented this item. He informed the Commission that the proposal would include all divisions within the Department. He said that the special events policy has “been around for a long time” with change or modifications for approximately thirty years or more. “More and more over the years special event requests are hitting our properties.” Many requests are for events such as triathlons, mountain bike events, for fund raising purposes. “We currently have no mechanism to generate any revenue from these events when these events could possibly be raising five to ten thousand dollars in registration fees.

Bergman said that the special events process is “outdated” and needs updated. He said that the revised application process would cost \$25. He explained that the property manager would go through a costs/benefit analysis to determine the impact on the property. After completing Cost/Benefit Analysis, the property manager would assign a rating to each category of questions within the analysis to determine what the potential

fees may or may not be for an event. He said there would be a separate scale for the not-for-profit events and commercial events. After an event takes place, the management staff will complete an evaluation form, which would allow beneficial information for future events or other DNR properties that are approached by event promoters. “We think we may need something a little more concrete, and give managers a little better tool to access fees for these bigger events as they occur on our property.” Bergman said that in the past two years Division of State Parks and Reservoirs has averaged 80 to 90 special events. “The proposal before you is to allow us to have a better way of accessing whether we should do these events or not. And, if we do agree that they can occur on our property, have a more standardized approach to what those fee rates might be.”

Mark Ahearn asked if a fee amount could be appealed.

Bergman replied, “If the fees are \$1,500 dollars or more, then you go up to a higher level than the property manager. I think everything is always reviewable within the Department of Natural Resources to a certain level.”

Doug Grant moved to approve the proposed special events policy changes and fee structure. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report of public hearing and recommendation for final adoption of amendments to 312 IAC 6.2, Great Lakes-St. Lawrence River Basin Water Resources Compact Preliminary Rule; LSA Document #08-531(F); Administrative Cause Number 08-081W

Stephen Lucas, Hearing Officer, presented this item. He said major legislation involving a multitude of interests always moves slowly, “but there’s an exception to every ‘always’. Although conceptually “several years in the making, once it got started, the Great Lakes Compact was certainly an exception. The Compact was approved by all eight Great Lakes States, the U.S. Congress, and signed by President Bush in a matter of months not years. The Compact has advanced farther at this time than we really had expected, which is the reason I’ve suggested amendments to the language given preliminary adoption.”

Lucas said, “The proposed rule was, frankly, mostly a place-holder for substantive amendments to potentially come later if and when the Compact was enacted. The way the Indiana statute is written for rule adoptions is that they must be commenced within 60 days of the effectiveness of a state statute authorizing them, and the Indiana statute authorizing the Compact and rules to help implement the Compact became effective on July 1 of this year. There was not an apparent exception to allow rule adoption to commence whenever the Compact might later come into existence. In this instance, we thought it might be years before the Compact became effective, if it ever was enacted. So this particular rule amendment doesn’t do a lot except to emphasize the Commission’s and Indiana’s commitment to the Great Lakes Compact. Additionally, the Division of Water is made the point of contact for Compact matters. Amendments I am now

suggesting, to the language given preliminary adoption, would clarify that the Compact is not now in a ‘maybe situation’ but rather in an ‘existing situation’. I feel confident that the DNR will be coming back to the Commission with recommendations for more substantive rules in the fairly near future.”

Lucas added, “We had one commentator for the public hearing process. He was John Goss who is here again today to speak to these rules and the Compact. With these remarks, I would present the amended language for consideration as to final adoption.”

The Chair called on Goss to speak to the rule proposal.

John Goss addressed the Commission on behalf of the Indiana Wildlife Federation. “As I said in my written comments in support of the rule proposal, we had broad-based support for the Compact in Indiana from the business community, the industrial community, agriculture, and environmental groups. We hope to keep that communication going as we move into implementation. Governor Daniels is chairing the compact implementation group beginning in December, so, hopefully, Indiana will be able to continue its leadership.”

Goss continued, “On this implementation of the Great Lakes Compact, water conservation is certainly one significant part of the implementation. Indiana has challenges to create conservation plans for our communities, for water companies, irrigators, and other major users. We’re just beginning the actual hard work among the interested players and DNR. I think the Division of Water is in a great position to do this because we have 25 years of data. Most of the States have not collected the data to know what the current uses are. Since the early 1980s in Indiana, everyone using 100,000 gallons of water or more a day has been required to report to DNR. We’re in a good position to continue to lead on this.”

The Chair thanked Goss and the Indiana Wildlife Federation for “all your good work on the Compact.” He asked if there was a motion for final adoption of the amendments for the initial rules for the Great Lakes-St. Lawrence Basin Water Resources Compact”.

Thomas Easterly moved to give final adoption to the amendments to 312 IAC 6.2, including the modifications recommended by the hearing officer from language given preliminary adoption, regarding the Water Resources Development Act and the Great Lakes Compact. Jane Ann Stautz seconded the motion. On a voice vote, the motion carried.

Consideration for recommendation for final action on readoption of 312 IAC 9 governing fish and wildlife; LSA #08-672(F); Administrative Cause No. 08-124D

Sandra Jensen, Hearing Officer, presented this item. She said that the package was related to the recodification of the fish and wildlife rules of 312 IAC 9 without amendment. Jensen reported that the Director of the Division of Hearings, through his delegated authority, preliminarily approved the readoption. Linnea Petercheff,

Operations Staff Specialist for the Division of Fish and Wildlife, conducted the necessary fiscal analyses that Jensen set forth in the report. She said that the notice to readopt was posted to the INDIANA REGISTER on August 20, 2008. No comments were received with regard to the readoption proposal that either requested or required separation of any individual rule from the readoption package.

Jensen recommended final action on the readoption of 312 IAC 9 governing fish and wildlife.

Damian Schmelz moved to approve final adoption on the readoption of 312 IAC 9 governing fish and wildlife. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of amendments to nonrule policy document, Information Bulletin #55, for citizen comments to hearing officer; Administrative Cause No. 08-157A

Sandra Jensen also presented this item. She offered that although the nonrule policy document was “relatively new” it had been discovered, through subsequent rule promulgations, public hearings and public comment periods, that additions were needed. She said that the primary effect of the amendments would be to (1) require non-residents of the United States to provide their country of residents, not just for non-residents of Indiana, to provide their state of residence; (2) provide notification on the web-based comment form to any individual offering a comment that their comment will be disclosable to the public; (3) prohibit a hearing officer from including comments made in a language other than in English or from including comments that contain excessive foul or offensive language. The prohibition requires the hearing officer to attempt, to the extent possible, to communicate with the person and encourage them to resubmit the comment in a more appropriate manner; and, (4) clarify that the hearing officers will only consider comments that are received after either the notice of intent has been published, or after the language that has been preliminarily adopted by the Commission has been published.

Jensen recommended the approval of the amendments of the nonrule policy document, Information Bulletin #55.

Mark Ahearn asked Jensen if the Attorney General’s Office was in approval. Jensen answered, “I think everything within this nonrule policy document would conform.”

Thomas Easterly moved to approve the amendments to nonrule policy document, Information Bulletin #55, for citizen comments to hearing officer. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Information Item: 2008 “Lakes” cases from the Court of Appeals in Indiana

Steve Lucas presented this item. He said the effort was part of the continuing series of discussions, suggested by Chairman Poynter, to help keep the Commission and the public

current with legal developments and the Commission's role regarding those developments. He said he would outline four recent reported decisions from the Court of Appeals of Indiana. Aspects of these decisions were also critical to amendments suggested for the final item of the Commission's agenda, amendments recommended to a nonrule policy document for the identification of riparian zones within public freshwater lakes and navigable waterways.

Lucas said the first decision is *DNR v. Lake George*. The Court of Appeals reversed a decision by the Steuben Circuit Court that DNR was the owner of the control structure which forms Lake George, in Steuben County and neighboring Michigan, because Lake George is a "public freshwater lake". The decision is of immediate interest because a conclusion that any public freshwater lake is owned by the State, and the DNR is responsible for maintaining the lake, would have huge financial ramifications.

He said *DNR v. Lake George* was also important because it underlines the nature of the DNR's relationship to public freshwater lakes. The agency is effectively the trustee of the public trust, not a fee simple owner. This aspect of the decision limits dictum in another recent decision regarding a public freshwater lake, *Parkison v. McCue*.

Lucas indicated the second decision is *Daisy Farms Ltd v. Morrolf*. For consideration is a determination of riparian boundaries on a public freshwater lake, the core subject of the nonrule policy document considered in the next agenda item. Decided in May of this year, the Court of Appeals concluded that a Wisconsin case, *Nosek v. Stryker*, which identifies three principles on which riparian zones may be delineated, and on which Indiana's first-riparian-zones case was decided (*Bath v. Courts* in 1984) using the first principle, did not require application of the second or third principle. A lower court, and by implication the Commission, would seemingly have very broad discretion to determine a riparian zone.

He said the third decision is *Lukis v. Ray*, decided one month after *Daisy Farms*. This decision was an appeal from the Steuben Circuit Court's reversal of a decision by the Commission's Administrative Law Judge, Sandra Jensen, and the Commission's AOPA Committee. The Court of Appeals reinstated the Commission's decision which had embraced the third principle of *Nosek v. Stryker*. In addition, the Court of Appeals articulated what might be described as a fourth and overriding principle: If the landowners agree in association bylaws or a constitution to a methodology for determining riparian zones, the bylaws or constitution control. This overriding principle was being recommended as a new first principle in the nonrule policy document, considered in the next agenda item, causing the three existing principles from *Nosek* to be renumbered as the second, third and fourth principles.

Lucas said the fourth decision is *Bowyer v. DNR*. This decision held the Lakes Preservation Act (IC 14-26-2) and IC 14-26-4 were properly construed together to determine the legal elevation of a public freshwater lake. He said the decision answered a long-standing question and would be helpful in a variety of contexts pertaining to regulatory functions since the shoreline of a lake usually identifies the agency's

geographic jurisdiction. In the near term, the decision would be helpful to preparing a list of “public freshwater lakes”, as directed in 2006 by the Indiana General Assembly, since one requirement is that a lake contain at least five acres. Having direction for determining the legal elevation of a lake, determinative of a lake’s parameters for measuring size, would help identify which lakes do and which do not contain at least five acres.

Consideration of first amendment to the nonrule policy document, Information Bulletin #56, which addresses riparian zones within public freshwater lakes and navigable waters; Administrative Cause No. 08-167A

Steve Lucas presented this item. He said for consideration were proposed updates to the nonrule policy document used to assist with identifying riparian zones within public freshwater lakes and navigable waterways. In addition to the items referenced in the previous agenda item, there were a handful of other changes suggested. These included a cross-reference to the Commission’s recently-modified listing of waterways declared navigable or nonnavigable, a recent decision by the Court of Appeals in *Center Township Corp. v. City of Mishawaka* which identifies riparian rights pertaining to navigable waterways, and new rules by which the DNR or the NRC may require common use by riparian owners if needed to accommodate competing interests.

Robert Wright moved to approve the amendments to Information Bulletin #56, which addresses riparian zones within public freshwater lakes and navigable waters, as set forth in the Commission packet and recommended by Commission staff. The motion was seconded by Damian Schmelz. Upon voice vote, the motion carried.

Stautz commented, “I do want to compliment Hearings in the development of this non-rule policy document. It’s been unusual and very helpful to have that in place. I know a number of citizens have found it very useful, so we appreciate that.”

ADJOURNMENT

The meeting was adjourned at approximately 12:15 p.m., EDT.

NEXT MEETING DATE

The next meeting of the Natural Resources Commission is scheduled for January 13, 2009 at 10:00 a.m., EST in The Garrison, Fort Harrison State Park.