

Minutes of the April 22, 2004

Joint Meeting of the Advisory Council for the Bureau of Water and Resource Regulation and the Advisory Council for the Bureau of Lands and Cultural Resources

Members Present for the Advisory Council for the Bureau of Water and Resource Regulation

Raymond McCormick
Ellen Jacquart
Don VanMeter
Donald Mann
William Pippenger
Charles Amlaner
David Click
William Wert

Members Present for the Advisory Council for the Bureau of Lands and Cultural Resources

Jerry Miller
Lester Ponder
Meredith Richmond
Jim Trachtman

Call to Order

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, called the meeting to order at approximately 10:05 a.m. With the presence of seven members of the Advisory Council for the Bureau of Water and Resource Regulation, he observed a quorum. A quorum was not present for the Bureau of Lands and Cultural Resources.

Approval of Minutes of Joint Meeting of February 18, 2004

Lester Ponder moved to approve the minutes of the February 16, 2004 joint meeting of the Advisory Councils. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Report of Proceedings of the Natural Resources Commission

Raymond McCormick reported upon key agenda items considered during the March 16, 2004 meeting of the Natural Resources Commission.

Election of Chair and Vice Chair of the Advisory Council for the Bureau of Lands and Cultural Resources

This item was deferred because a quorum of the members was not present.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments Pertaining to Dog Training Activities; Administrative Cause No. 04-036A

Glenn Lange, Chief of Wildlife, Division of Fish and Wildlife, presented this item. After opening remarks by John Davis, Lange explained that statutorily the “Division of Fish and Wildlife is responsible for Indiana’s wildlife and resources. Fish and wildlife areas are set aside for resources and those areas are available for compatible activities.” He stated, “Dog running is biologically detrimental, especially beagling.” Lange listed several scientific studies published in recognized journals. Lange provided to the Advisory Councils members with a revised rule proposal. He explained that in 312 IAC IAC 8-2-3(e)(3)(E) language was amended that required persons conducting dog training “make every reasonable effort to keep dogs confined to designated area” rather than “visual contact with the dogs” as the previous proposal required.

Lange provided the Advisory Councils with a list of dog running seasons within the surrounding states (Michigan, Ohio, Kentucky, Illinois, and Indiana). He stated that Indiana currently has 14,725 acres open year round for dog running. “We believe prohibiting dog running is advisable, but we are willing to compromise. But, we request a decrease of acreage open year round.” He also stated that there are adequate water areas on properties for retriever training. Charles Amlaner complemented Lange, and stated “You have answered many of the questions asked at the last meeting.” He added that the scientific studies presented “represent solid data.”

Jack Hyden, representing the Indiana Beaglers Alliance, Dick Mercier of the Sportsmens Roundtable, Carla Bare, a high school science teacher with a Masters in natural resources, Scott Langohr, Marvin Stout, Don LeCount, Jim Heasley, and Elwood Simmons expressed concern about the rule proposal. Heyden pointed out that he had provided data to the Advisory Councils. Amlaner stated that data from the Internet was not “normative” and “could not be used” for consideration regarding a recommendation.

Several of Carla Bare’s students voiced concern. David Nacke, Cole Chandler, Holden Webster, and Carly Searles reflected on the importance of dog running as a youth activity. The students commented that the rule proposal prohibits dog running during the summer months, the months they are most available.

Ken McIntosh stated that he owned 67 acres that supported “turkey, pheasant, quail, deer, and plenty of birds. We run our dogs.” He invited the DNR to study his acreage. Jill Shaefer, a member of the Greater Indianapolis Brittany Club, expressed concern. She also expressed “disappointment” that she had not received replies from the DNR to her letters.

Lester Ponder requested that the commentators “point to what specifically they disagree” regarding the rule proposal. Susan Steffey presented written comments. She also presented California rule proposals regarding dog training and organizational field trial permits. She stated, “I do not believe ‘retriever people’ have been represented in these discussions.” McCormick asked, “Do you want all properties open year round?” Steffey said, “Leave the 29 properties and reservoirs the way they are until you can show proof.”

Mace Clark, former Conservation Officer, said that there was a lack of data to support the rule proposal. He commented, “Leave the rules as they are.” Clark provided a National Kennel Club, American Rabbit Hound Association Field Trial Survey that indicated minimal wildlife disturbance by dog running. Charles Amlaner suggested that, in the areas where the dog running is occurring, “maybe these wildlife do not exist. This data does not speak to our concerns.” Raymond McCormick said that his animals, “if left to run do get into wildlife.” David Click said,

“We should listen to what these people have to say. We should not take sides.” Ray Kersey from the Indiana Hunting Dog Association also requested the existing rule language remain unchanged. “Our organization would be willing to put up money for research.”

Ellen Jacquart said the discussion was centered on impacts to game species but questioned the impacts of dog running on nongame species. Randall Kratzer, member of the Indiana Coon Hunter Association, said he did not agree with “closing any of the sites.” Lange noted that the proposed rule amendments “do not affect the raccoon dog running regulations.” Doug Allman voiced support for the rule proposal, and he said “The resource comes first, then there will be hunting. I support DNR and what they are trying to do.” Jim Swank questioned whether DNR “is sitting on information. Information should be available for game.”

Ellen Jacquart moved to recommend Commission approval to amendments to 312 IAC 8-2-3. Charles Amlaner seconded the motion. The motion failed. McCormick stated, “I am a little surprised that we are hearing this already again. I thought at the last Councils meeting we had said we didn’t have enough facts yet and that we need to hold off on this and get more information in, and a better and longer chance to look at this before we deny the public’s use of this land especially since they have had that use in the past. So it is my opinion we are moving along too quickly.”

The supporting documents pertaining to this item characterized the proposed amendments as follows (language in brackets [] added by minute taker for clarification purposes):

- (1) Allowing State Forests, Reservoirs, and Outdoor Recreation Areas in addition to Fish and Wildlife Areas to establish designated dog-training areas. [312 IAC 8-2-3(e)(3)(A)]
- (2) Describe dog-training area. [312 IAC 8-2-3(e)(3)(B)]
- (3) Prohibits dog training on all training areas during the breeding and nesting season except on seven (7) designated areas. [312 IAC 8-2-3(e)(3)(C)]
- (4) Require dog trainers to obtain a daily permit. [312 IAC 8-2-3(e)(3)(E)]
- (5) Require dog trainers to accompany dogs afield and make every effort to keep dogs confined to the designated area. [312 IAC 8-2-3(e)(3)(F)]

Charles Amlaner moved to recommend Commission approval of amendments (1), (2), (4), and (5). Donald VanMeter seconded the motion. The motion failed. Amlaner observed that the Councils should “at least make some form of recommendation to the Commission that is a little proactive than not agreeing to move it toward them.” He noted that the proposed amendments depicted in (2), (4) and (5) were not “hotly contested. (4) could be implemented to begin to collect data on impacts.” Amlaner moved to recommend Commission approval of amendments (1), (2), (4), and (5) “as they stand, and (3) be referred back to the DNR for further study and evaluation.” Lester Ponder seconded the motion. The motion carried. Meridith Richmond abstained.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to the Public Freshwater Lake Rules Regarding “Group Pier” Licensure in a Public Freshwater Lake; Administrative Cause No. 04-025W

George Bowman, Assistant Director of the Division of Water, presented this item. He explained that the condominiums are installing large piers in “very small areas”, and the “current practice is, after following a minimum of guidelines, a pier would fall under a general license.” Bowman

noted that the DNR is receiving “a lot of public outcry.” He explained that the rule proposal defined “group pier” and would require a person seeking a “group pier” to apply for a license within the full licensure process rather than through a general license. Bowman noted that the application process would allow for public comment. Paul Ehret, DNR Deputy Director, said the rule proposal was “not retroactive” to existing group piers, and, if adopted, it could become effective January 1, 2005.

Donald VanMeter moved to recommend Commission approval of amendments to 312 IAC 11-2 and 312 IAC 11-3 regarding group piers. Ellen Jacquart seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments of a New Rule Regarding Management of the Great Lake Basin (Water Resources Development Act); Administrative Cause No. 04-048W (LSA #04-66)

George Bowman also presented this item. He stated the proposed rules would “help manage the Great Lakes Basin.” Bowman said the rule is an outgrowth of legislation in the most recent session that amended IC 14-25-1-11 to conform state statute to the federal Water Resources Development Act (commonly referred to as “WRDA”). He said the proposal would authorize the Commission to adopt rules. Bowman explained that federal WRDA prohibits water diversions or exportations from the Great Lakes for use outside the Great Lakes Basin, unless approved by the Governors of each of the Great Lakes. What constitutes a “diversion” is not currently defined.

Bowman said WRDA was passed in 1986, and the Council of the Great Lakes Governors was formed with participation from the eight Great Lake states and two Canadian provinces. He said the rule proposal also formalizes the Division of Water as the contact and coordinator for “handling administrative and technical issues. If there is a need for an order, or anything with regard to diversions, it would authorize the Department Director to take action.”

Charles Amlaner moved to recommend Commission approval of new 312 IAC 6.5 concerning management of water usage from Indiana’s portion of the Great Lakes Basin. Meredith Richmond seconded the motion. Upon a voice vote, the motion was approved.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments Governing the Inspection, Maintenance, and Operation of Watercraft Carrying Passengers for Hire; Administrative Cause No. 03-153L

Samuel Purvis, Indiana State Boating Law Administrator, presented this item. Purvis said the Division of Law Enforcement regulates vessels carrying passengers for hire. “Passenger for hire boats could be the charter boat fishermen, which make up most” and others such as the “*Shafer Queen* and the [vessel operated by the] Frog on Lake Wawasee.” He said the rule proposal was a “clean up.” He explained Indiana’s current rules are based on Michigan requirements; however, the rule proposal would incorporate industry standards from the National Marine Boat & Yacht Council and the U.S. Coast Guard. In addition, the amendments would formally recognize reciprocity for vessels that have passed inspection in Michigan.

Charles Amlaner moved to recommend Commission approval of amendments to 312 IAC 5 governing watercraft carrying passengers for hire. Meredith Richmond seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request for Approval of a Nonrule Policy Document Governing Permanently Injured and Non-releasable Wild Animals Possessed by Licensed Wild Animal Rehabilitators; Administrative Cause No. 04-083D

Linnea Petercheff, EPO Staff Specialist from the Division of Fish and Wildlife presented this item. She said the nonrule policy document would establish guidelines for the permanently injured and nonreleasable wild animals taken in by wildlife rehabilitators. “Our desire is to protect wild animal populations and to provide conservation education, but also to emphasize the need to euthanize a wild animal humanely, and to prevent wild animals from being kept as pets.”

Amlaner asked whether there were reasons why white-tailed deer were not included in the list of animals that could be obtained by educational institutions with educational permits. Petercheff answered that the permanent rule language contains an exemption for governmental and educational entities to obtain a white-tailed deer.

Meredith Richmond moved to recommend Commission approval of the nonrule policy document establishing guidelines for disposition of permanently injured and non-releasable wild animals. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request by Department of Natural Resources Landholding Divisions for Amendments to the Nonrule Policy Document for Easements on Department of Natural Resources Properties and Navigable Waters; Administrative Cause No. 03-009A (Information Bulletin #28)

John Friedrich, Property Specialist from the Division of Forestry, presented this item. He said the Commission previously approved a nonrule policy document (Information Bulletin #28) establishing guidelines to address requests for easement on DNR property and navigable waters. He noted that the compensation requirement provides for the use of fair market value. “Sometimes it is very difficult for some of the requestors to gather that information and provide that as part of their proposal.” Friedrich said a survey of the surrounding states indicated a gamut of a highly structured fee schedule to a flat rate. Friedrich said the DNR land holding divisions proposed revisions that includes a structured schedule for fees and “other minor things.” The proposal was considered and recommended favorably by the DNR Property Use Committee.

Lester Ponder moved to recommend Commission approval of amendments to Information Bulletin #28 addressing requests for easement on DNR properties. William Wert seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for the Dedication of Lime Lake Nature Preserve, Steuben County

Lee Casebere, Assistant Director of the Division of Nature Preserves, presented this item. He said the Lime Lake Nature Preserve was located in “extreme” northwest Steuben County. He said the Indiana East-West Toll Road runs through the property, and property north of the toll road continues into Michigan. “This is a great place.” Casebere noted that several types of wetlands are within the boundaries such as shrub fen, prairie fen, and marsh, along with oak trees, and prairie plants. He said the property is being managed as a savanna.

Casebere provided copies of *Moth Quest*, an article penned by Casebere and published in the Division’s newsletter regarding “fascinating relationships between plants and animals” within

Lime Lake Nature Preserve. Vanmeter asked whether Michigan's bordering property was under protection. Casebere indicated that it was not protected. Jacquart added, "It's a really cool place. There is some incredible work going on."

Lester Ponder moved to recommend Commission approval of the dedication of the Lime Lake Nature Preserve. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request by Indiana Fiber Network, Inc. for an Easement for Installation, Maintenance, and Use of an Underground Fiber Optics Cable via a Utility Corridor for the Transmission of Communication Across Clark State Forest

John Friedrich, Property Specialist of the Division of Forestry, presented this item. He explained that Indiana Fiber Network was requesting an easement to place a fiber optics cable along State Road 160 in Clark County, a portion of which would cross approximately 10,000 feet within Clark State Forest. Friedrich noted that the easement was "pretty much" within the highway right-of-way. McCormick questioned, "From reading the description of this, you are putting it so far from the centerline of the road, and very close to the road, so why do we need a 16-foot easement?" Friedrich stated that the easement was needed for a construction corridor, as well as installation of two handhold boxes.

Charles Amlaner moved to recommend Commission approval of request by Indiana Fiber Network, Inc. for an easement across Clark State Forest. William Wert seconded the motion. Upon a voice vote, the motion carried.

Consideration of a request an easement for installation of a sewer line through Dubois Public Access Site

James Kershaw from the Division of Fish and Wildlife presented this item. He said the Patoka Lake Regional Water and Sewer District requested an easement for installation of a sewer line through the Dubois Public Access Site. Kershaw noted that the easement would be 1,025 feet rather than 465 feet as indicated in the Councils' packet materials, as well as a request for a 20-foot construction easement. He noted that a sewer line was placed in September 2001, and the current request would run parallel to the existing corridor. "The sewer line will support a turkey fee operation and help local farmers." Kershaw said the DNR would seek the standard rate for compensation as proposed in Information Bulletin #28 (Agenda Item #9) that was considered previously.

William Wert moved to recommend Commission approval of request by Patoka Lake Regional Water and Sewer District for installation of a sewer line across Dubois Public Access Site. He recommended that the construction not impede the use of the access site. Lester Ponder seconded the motion.

Information Item: Invasive Species Rules

This information item was deferred.

Information Item: DNR Invasive Species Property Policy

This information item was deferred.

Information Item: Approved Beneficial Organism List

This information item was deferred.

Information Item: Statewide Plant Pest Emergency Response Plan

This information item was deferred.

Information Item: Information item: Hoosier Smallmouth Bass: Today and Tomorrow

Bill James, Chief of Fisheries, introduced this item. After brief opening remarks, James introduced Doug Keller, District Fisheries Biologist. Keller explained that six years ago a study was commenced to collect data regarding the impact of the twelve-inch small mouth bass limitation. He listed the key objectives of the study:

- Distribution of small mouth bass
- Assess overall fish community
- Assess aquatic habitat
- Relate habitat to small mouth bass

Keller noted that the Tippencanoe River, Eel River, Sugar Creek, Indian Creek, and the Blue River were studied from 1998 and to conclude in 2004. Keller listed the study's conclusions to date:

- Appears size limit is having little influence
- Seems good spawning years lead to good fishing
- Poor spawning years results in future poor fishing
- Appears size limit has done no harm in most streams
- Size limit may be counterproductive for slow growing sites
- Growth rates are a key for tailoring management

David Click inquired of the sampling method. Keller indicated the boat and barge method was used for collection. Lester Ponder asked about the method used to catch the fish. Keller explained that the biologists used electric fishing gear. Charles Amlaner asked whether there were plans to study macroinvertebrates. Keller stated that the fisheries biologists do not look at macroinvertebrates, but it "might be a possible study."

Adjournment

At approximately 2:15 p.m., the meeting was adjourned.

Next Meeting

The next meeting was scheduled for June 16, 2004 at a location to be announced.