

ADVISORY COUNCIL
Minutes of June 9, 2010

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Bill Freeman
David Lupke
Ross Williams
Donald Van Meter
James Snyder

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Chris Smith	Executive Office
Kelli Burton	Executive Office
Mike Crider	Law Enforcement
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
John Bergman	State Parks
Mark Basch	Water
Monique Riggs	Water

GUESTS PRESENT

Don Gorney	Jack Corpuz
Kurt Dorman	Roger Chastain
Alan Pope	

Call to order by Chairman, Patrick J. Early

Patrick Early, Chair of the Advisory Council, called the meeting to order at 10:34 a.m., at the Fort Harrison State Park Inn, Roosevelt Ballroom, 5830 North Post Road, Indianapolis, Indiana.

With the presence of six members, there was not a quorum. The Chair noted that since a quorum was not present the agenda items would be discussed as presented. "Where appropriate," the items would move forward to the Natural Resources Commission with a statement of support by individual Council members. The minutes of April 14, 2010 meeting also could not be approved.

Consideration for recommendation for preliminary adoption of amendments to 312 IAC 13 governing water well drillers; Administrative Cause No. 09-065W

Mark Basch, Water Rights and Use Section Head of the Division of Water, presented this item. Proposed are amendments to 312 IAC 13 which governs water well drillers. The amendments would help implement P.L. 84-2010 (effective July 1, 2010) which provides for licensing of water well pump installers and for continuing education for water well drillers and pump installers. The licensing and continuing education requirements for pump installers was pursued by the Indiana Groundwater Association (the "IGA"), which is the association for water well drillers, for "at least for the past ten years. In 2001 and 2003, bills were introduced seeking license and continuing education requirements for pump installers. The IGA's concern has been for improper pump installation, and "in some respects," for improper well installation.

Basch said in the statute and in the proposed rule, "water well pump installer" is defined as a person who installs or repairs water well pumps. "It is important to note that this is specific to just to water well pumping equipment." The amended statute includes provisions for qualified pump installers. "Those provisions are similar to what existed in the water well drillers law when it was passed in 1988. You have to be 18 years old, have three years of experience, and have three references in order to be grandfathered." Basch said he anticipates there will be a single license. An annual \$100 water well driller license exists currently. "There would still be a single license, but there would be...a pump installer endorsement or a water well driller endorsement."

Basch said the proposed rule would require six hours of continuing education every two years for license renewal. "We anticipate that this would be for both pump installer license and water well driller license. Theoretically, there would be twelve hours required if you maintain both licenses." The Department would approve the continuing education courses and may also conduct education courses. Discussions have occurred with other States regarding continuation education programs and "who they utilize for some of this continuing education. In fact, we have talked a lot to folks in Indiana about that." The Department may contract with IGA for the continuing education program.

Basch said the Department met with IGA and the Indiana Association of Plumbing, Heating, and Cooling Contractors regarding the new license requirement and continuing education. The associations were provided a copy of the proposed rule, and their comments and suggestions were incorporated. Basch requested the Advisory Council to recommend that the Natural Resources Commission give preliminary adoption to the proposed rule as presented.

Basch said Monique Riggs, Environmental Scientist with the Division of Water, was also present. Riggs would help administer the program.

David Lupke asked whether the proposed rule would apply to geo-technical and geo-thermal drillers.

Basch said geo-thermal well drillers would be governed by the proposed rule because “they fall under the definition of a ‘water well’. Geo-technical is kind of eliminated. The statute is pretty specific about what the well is to be used for, and generally, geo-tech poles are not included.”

Lupke then asked, “Are they separately licensed?”

Basch responded that geo-tech drillers are “really not licensed. INDOT has a memorandum of understanding with [the Department] where [INDOT] would deal with them as they would a regular water well and plug them accordingly. It depends on what you mean by geo-tech, but if they are used for evaluating building characteristics, then they are not covered under these rules.”

John Davis asked about the number of current licensed water well drillers and the number anticipated to be licensed under the statute and rule. “\$100 is what it costs them to make application right now?”

Basch said the license fee was \$100 and the testing fee \$25. The Department would administer the program with no involvement from the Professional Licensing Board. There are approximately 850 to 900 licensed water well drillers. There are three different license groups—plumber license, water well driller license, and “in between you have these pump installers, which are really unregulated.” Several years ago, the Department “tried to get a feel for how many licensed plumbers actually do pump work.” There are almost 10,000 licensed plumbers in Indiana, and “we were told at one time that maybe 20% of those folks would do some type of pump work. Although, in Illinois, when [it] instituted a similar type of program and licensed pump installers, [Illinois] had a lot of those folks kind of drop out and no longer do pump work, because of the licensing.” Some licensed water well drillers will also be licensed pump installers, and “they are going to take advantage of that.”

The Chair asked whether the amendments to statute as well as the proposed rule amendments are to “protect the public or to protect the aquifers?”

Basch responded the current rule is mainly for the protection of the water resource. The proposed amendments address the licensing and continuing education program. “We have added a few things that are specific more to pump installation, but our feeling is that this is a protection of the water resource.” The statutory amendment “may have evolved because of an issue where individuals had problems with wells.”

The Chair said, “I was just trying to figure out why it was even under DNR, but I guess if we are protecting the water resource.”

Basch added that the water well drillers rules and licenses have always been through the Department.

Donald Van Meter asked for clarification regarding how a pump installer could impact the water resource.

Basch said a water well driller will install the well with casing and “hopefully a temporary cap. The pump installer, which is not always the same company, or the homeowner will follow up, pull the cap off, and install the adaptor unit which attaches to the side of the casing. So, there is some work that is done that could potentially then impact that well being a source of contamination either directly down through the well or on the outside of it although the driller is required to grout the well.” Basch gave other examples of potential water source contamination, such as casings improperly cut or caps replaced incorrectly. “That is something that these drillers really have an issue with where they then have to follow up and clean up messes.”

Van Meter asked whether a licensed plumber would also have to be a licensed water pump installer. Basch answered in the affirmative and said qualified licensed plumbers can be grandfathered under the new rule. “Just because they are licensed plumbers does not automatically make them licensed pump installers.”

The Chair asked the members present whether there were objections to forwarding the proposed amendments to 312 IAC 13 for consideration by the Natural Resources Commission. There were none.

Initial discussion of management of paragliding activities and similar sports on DNR Properties and public waters; Administrative Cause No. 10-061A

Stephen Lucas, Director of the Natural Resources Commission, Division of Hearings, introduced this item. He said the rule proposal originated with a citizen petition that was “somewhat difficult to interpret”. The citizen was primarily interested in obtaining a Commission rule to allow paragliding from the Lake Wawasee Access Site, as well as other sites under DNR and Commission jurisdiction. He was also interested in “Mt. Baldy” which is located at the Indiana Dunes National Lakeshore.

Lucas outlined the Commission guidelines for citizen petitions for rule change and said those guidelines were applied. An informal DNR committee was formed to review the petition, with Major Steve Hunter serving as Chair. The committee recommended the Commission disapprove the rule change, and the Commission followed the recommendation. During the Commission meeting, the committee also noted the citizen could have requested a special use permit. Following disapproval of the rule change, the citizen made this request. The request was denied by the Division of Fish and Wildlife, which manages the Lake Wawasee Access Site.

Lucas said as the citizen petition was reviewed, the Commission discussion turned “into what are these sports that people have interest in using within or adjacent to public waters?” The agency has different jurisdiction in different places. One situation is where an activity is on a DNR property such as Lake Monroe. Another situation is where the activity is on public water such as Lake Wawasee. The Lake Wawasee Access Site is a DNR property, but Lake Wawasee is not a DNR property. Even so, the Commission has jurisdiction over Lake Wawasee as a “public freshwater lake”.

Lucas said the proposal under review would amend 312 IAC 8 (commonly called the “property use rules”). Where an activity would take place on public waters, 312 IAC 8 would generally not apply, but the Commission might have a different legal authority for rule writing. The Commission discussed the broader policy considerations of how activities such as paragliding and other similar sports should be regulated. 312 IAC 8 does not currently define terms associated with the citizen petition. The Commission recommended the Natural Resources Advisory Council review paragliding, and other similar activities such as tow-kite flying, to make policy recommendations with respect to these activities. “Are rules warranted? Should there be rule amendments, or is the way it’s already addressed adequate?” Lucas said the Advisory Council would then make recommendations to the Commission as to “what you think would be a good idea” for the Commission in terms of rule adoption and possibly in terms of nonrule policy documents.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, said the Department has had internal discussions regarding this topic since the Commission meeting. “We have to get a list of definitions together” for Advisory Council consideration, and “we have to do an analysis of why [the special permit application] was denied. What was the impediment to using a public access site and how does that translate into using other public access sites?” Davis said the Department will pose questions when the item is ready for presentation to the Advisory Council. “What exactly is [the Department’s] power to exert over public freshwater lakes if it doesn’t impact our public access site?” He said this item is “an information item and does not require any action today.” He invited Advisory Council members to provide input regarding “any limits or help in limitations about what we should consider” regarding DNR properties and public freshwater lakes.

David Lupke, Advisory Council member, stated, “Any increased use of public lakes has to have a safety and conservation consideration. A lake like Wawasee, which has a lot of pressure on it anyway from recreational boaters, skiers, aircraft, all sorts of different uses, anytime you add a new one whether it’s a bass tournament or paragliding, I think new considerations have to be given for public safety and conservation issues—how the Division of Law Enforcement is going to deal with issues that come up... conflicts between people. It just adds one more element of pressure to that public water.”

Davis responded, “Absolutely.”

The Chair asked, “I’m just trying to understand exactly what we are doing here today” regarding this issue. “Obviously, we don’t have any recommendations or definitions or

anything from staff at this point in time. So, there really isn't anything in front of us to act upon. What we are saying is that we have, if you will, a gap in our rules at least at this point that govern what we might call 'extreme sports' or nontraditional usage of both [Department] properties and waters that we somewhat control from a public safety standpoint." He asked for further clarification on whether the Department would make recommendations for Advisory Council review, or is the Advisory Council "being tasked with formatting the recommendations?"

Davis responded the Department will make a presentation to the Advisory Council at a future meeting and then ask for Advisory Council "guidance and advice." He said the item is currently an informational item. The Commission at its last meeting "charged the Department" to conduct a comprehensive review regarding policies or rules governing paragliding and similar activities and to seek guidance from the Advisory Council.

The Chair asked Col. Michael Crider whether there was an application submitted to conduct power boat races on Lake Wawasee. "Does that fall under the extreme sports thing, too?"

Mike Crider, Director of the Division of Law Enforcement, explained that a group applied for a special use permit to conduct a powerboat race, but the Department's Division of Law Enforcement reviewed the application and found there were safety concerns. The Department recommended that the group choose an alternate location other than Lake Wawasee. The group ultimately chose Lake Monroe, "a more suitable body of water". He noted that "so many questions come up" relating to the conduct of paragliding and other similar activities on DNR property and public freshwater lakes. "What are the safety concerns? How much speed is required? Is it within 200 feet of shoreline? What distance do they have to go in order to get airborne to be effective?" Questions were also raised as to "what is even practical" related to the use of Department property. A standard procedure regarding these types of petitions and special use applications is to conduct a site visit, looking at the activity's potential impacts not only on the environment, but also on safety, and the impact on other uses taking place on a particular body of water on a given day.

The Chair asked, "Is it pretty normal that any kind of nontraditional use would have to get some type of permit or permission that would go through [Division of] Law Enforcement?"

Crider explained, "Typically, we sign off on anything from fireworks displays to rubber duck races. You name it; they all come up. Typically, we are looking at a myriad of things, which first and foremost in our minds is public safety."

The Chair asked whether activities, such as paragliding, would still need to be processed under the same procedures as any other special use activity. "We're not talking about coming up with a rule that says paragliding is okay? Or are we talking about coming up with a rule that says you can paraglide but you can't launch off of a public dock? But if you go over to a beach, and you are not in an idle zone and so on, are we talking about

potentially defining parameters by which paragliding doesn't require a permit process from Law Enforcement?"

Davis answered, "Yes, I think we are trying to figure out all of the things like Mike [Crider] was mentioning, but all of the different factors that would go into it. I guess there is a huge difference to me regarding getting up to speed on Lake Wawasee as opposed to getting up to speed on a lake where there aren't people going out to get the paper in their little boat."

John Bergman, Assistant Director of the Division of State Parks and Reservoirs, noted that under 312 IAC 8 parasailing is allowed without a permit on DNR properties such as Lake Monroe or Brookville Lake. Since the activity can be conducted without a permit at Monroe Lake, but a permit would be needed at Lake Wawasee due to safety concerns, "down the road" a question will be asked whether there are also safety concerns on Lake Monroe.

The Chair observed, "I guess we are throwing all of these things in a hat to see if there is a way we can give the public more guidance."

Davis said there are "a lot of variations. There are some activities that are relatively stable and predictable. I think there are some other activities that go by similar names where the flight is very unstable, so they have been outlawed. These techniques have been outlawed on some federal lands because it's too dangerous." He said the Department would present a "concise view of the world as we see it, but we are not ready to do that yet."

Donald Van Meter asked at what frequency these activities occur.

Bergman responded only Brookville Lake and Monroe Lake have recently had these types of activities. "Maybe three or four times a year at one property. Really, right now, I don't think it's a huge activity on our reservoirs."

Van Meter continued, "Something like boardsailing—that would be more common wouldn't it?"

Bergman answered in the affirmative. He said windsurfing and boardsailing are the same thing. This type of activity does not require a permit but is not a frequent activity on Department properties. "Part of the issue is the terms used." The rules were written several years ago, and they refer only to tow-kite flying. Paragliding and tow-kite flying can be "considered somewhat synonymous now so we need to review the rules and add some terms." On DNR properties, 312 IAC 8-2-8 addresses landing and takeoff of hang gliders, but "maybe we need to look at the rule in terms of other types of apparatus."

Bill Freeman, Advisory Council member, commented, "I guess I'm trying to figure out how in the world are we ever going to stay ahead of the curve.... Is there a caveat in the

rules that says that you can't do anything that endangers safety; therefore, somebody could stop it?"

Davis noted that a related question is what activities are under the Department's purview on public freshwater lakes? "I don't know where the line goes. Maybe it's about safety.... It's got to be about the resource, too."

The Chair suggested "safety is the common denominator. I think that if we are mindful of erring on the side of" what the Division of Law Enforcement "has to say, 'It's okay.' Then we can give more guidance, so we don't get people doing crazy stuff since we didn't specifically ban it."

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9-3-14.5 that govern the possession of furbearing mammals and 312 IAC 9-3-15 governing the taking of nuisance wild animals by landowners and tenants; Administrative Cause No. 10-100D

Linnea Petercheff, Program Specialist with the Division of Fish and Wildlife, presented this item. She said the proposed rule amendments would change the standards for furbearers that are trapped and "kept live" during the remainder of the trapping season. Existing rules do not specify "how a trapper that traps an animal live during the season" houses that animal for the remainder of the season. Coyotes and foxes can be trapped live at the beginning of the season and kept in captivity, and then the animals are "usually killed or otherwise sold" at the end of the trapping season. She said Department staff met with representatives from the Indiana Chapter of the Fur Takers of America and the Indiana State Trappers Association to discuss the proposed housing requirements. Both associations "understand the need" and are "agreeable" to the basic requirements. But the associations have "some concerns" on the limitations on species that can be retained live during the rest of the trapping season.

Petercheff summarized the proposed rule. An amendment would limit live possession to raccoons, red and gray foxes, and coyotes during the rest of the trapping season; require all other furbearers that are trapped to be released within the county of capture or euthanized within 24 hours of capture; establish housing requirements for the animals kept live; and require furbearers that are kept live during the trapping season to be euthanized at the end of the trapping season or be kept under a game breeder license. "Right now the game breeder license actually allows a furbearing mammal that's trapped live to be put under that game breeder license within five days after the close of the season." Another rule amendment would remove the requirement of resident landowners or tenants to notify a conservation officer within 72 hours of taking a nuisance mammal governed by this rule. "This eliminates the need for thousands of Hoosiers to notify officers" every time a raccoon, opossum, squirrel, or other animal listed is captured.

The Chair asked whether there were any objections to forwarding to the Commission the proposed amendments to 312 IAC 9-3-14.5 that govern the possession of furbearing mammals and 312 IAC 9-3-15 governing the taking of nuisance wild animals by

landowners and tenants. The item was recommended for Commission favorable consideration by acclamation.

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9-1-7 and 312 IAC 9-10-13 governing falconry licenses; Administrative Cause No. 10-088D

Linnea Petercheff also presented this item. She said in October 2008, the U.S. Fish and Wildlife Service finalized changes to federal regulations governing falconry licenses. Amendments are needed to the Indiana rules to comply with the new federal requirements. Although most of the proposed State rules have a federal equivalent, some provisions originate with the State, including the season for taking birds from the wild for use in falconry and the falconry hunting seasons. "Falconry" is the sport of caring for and training raptors for pursuit of wild game and hunting wild game with those raptors.

Petercheff reported there are approximately 80 licensed falconers in Indiana. She said the DNR met with representatives of the Indiana Falconers Association (the "IFA"), and several IFA representatives were present at today's meeting. The amendments proposed by the Department would specify when a person can re-take the required test after failing it the first or second time and allow inspection of birds without the presence of a license holder "if the welfare of the bird is of immediate concern". Current federal regulations require that inspections take place in the presence of a licensed holder. Another amendment would require those not a resident of Indiana to notify the Department if the nonresident is in the State for more 120 consecutive days. The taking of endangered species is not allowed in the rule, but some States are now open to the taking of certain species such as peregrine falcons. Proposed is the extension of dates for taking eyasses and nestlings, and exempting some falconers from educational permits when using raptors in conservation and education programs. Another amendment would clarify who can accompany a licensed holder when the license holder is hunting with the raptor. The bag limit for taking squirrels is increased to two per day. There is clarification that a falconry license holder can carry a handgun under a personal protection permit. Definitions are also added to clarify important terms. Another amendment would allow whole squirrels and other game to be kept frozen at the licensee's residence after the end of the season, which would be in excess of the possession limit for that species in order to feed those whole carcasses to the raptors. The minimum age of an apprentice falconer would be reduced to twelve years old, and apprentices may only keep wild-caught birds. Another amendment would allow master falconers to keep more than 15 captive-bred birds. "They have a possession limit on the number of wild-caught birds."

Petercheff said Sandra Jensen has been reviewing proposed language. For clarity, Jensen has suggested the rule proposal be codified under a new section number with repeal of the existing section.

Bill Freeman asked for clarification regarding the taking of endangered species by falcon.

Petercheff responded that endangered species would not be allowed to be taken.

Dave Lupke asked, “It’s actually ‘any listed species’, so it would be endangered or threatened?”

Petercheff responded that Indiana does not list “threatened species”, but it does list “species of concern”. The prohibition would apply only to “endangered species”.

Kurt Dorman, representing the Indiana Falconer’s Association, explained that “most of the new federal regulations came from an environmental assessment that was done that resulted in a finding of ‘no significant impact’—that the current take provisions don’t affect wild populations or game populations.... That’s probably the primary thing that forced a lot of the changes on the federal level.”

The Chair asked Dorman whether the IFA believed the proposed rule, as presented, was “representative of what it should be?”

Dorman answered, “Very much so. Linnea is a dream to work with. Steve Hunter, we’ve worked with all of them. They have been very considerate of our concerns. Of the few items that are left open that [Petercheff] mentioned, the one biggest concern is on the possession issues.” He said it is “very important” to understand that raptors require a “whole food” diet. “When I say ‘whole food’, when we feed [the raptors] something, they will eat portions of the entrails, head, feet. Fur and feather is important as digestive material.”

Dorman spoke to the current possession limits. “What we would like to see is some provision for falconers that would allow us, as we legally take game during the season, just to be able to store it in the freezer so that we can then provide that food to the hawks through the off-season. Essentially, our season is approximately six months long that we are allowed to fly the birds and hunt with the birds. Most falconers get into falconry as a result of the love for birds of prey, an interest in birds of prey. The hunting aspect is just part of providing for what [the birds] require for their existence.” Dorman said the existing bag limits put a “burden on falconers. We have to find quality food resources, and you really can’t trust just anybody on that aspect.”

Dorman also noted the IFA is seeking an exemption regarding the requirement to wear hunter orange when hunting with falcons in regions where local control ordinances do not permit the discharge of a firearms. “Falconers typically won’t hunt where gun hunters hunt. It’s danger to the birds we fly even though the birds are federally protected.”

Bill Freeman asked for clarification regarding any “bad practices” that may occur in falconry.

Dorman said, “I know there have been some circumstances in the past several years with some individuals, but it has been on a case by case basis.” Dorman then deferred to Alan Pope.

Alan Pope, Vice President of IFA, explained, “Our primary interest is the welfare of the bird, and we really police ourselves very closely. We have the opportunity to be sponsors of an apprentice the first two years to really educate these people. It’s not easy to become falconers. It takes a big commitment. Really, for the most part—I’m sure there are exceptions—we are a very close-knit group and we keep a very close eye on what falconers are doing in the community. If there is ever a concern, we are the first people to confront them, because we know that if there is one bad apple, it really taints the reputation of all of us.” Pope said the relationship between IFA and the Department “is such that we are often in communication with each other.”

The Chair asked whether there were any objections to forwarding to the Commission the proposed amendments to 312 IAC 9-1-7 and 312 IAC 9-10-13 governing falconry licenses. By consensus, the item was recommended for Commission consideration.

Consideration of recommendation for approval of a new non-rule policy that establishes the Youth Free Hunting Days for the years of 2010 and 2011; Administrative Cause No. 10-087D

Linnea Petercheff also presented this item. She explained that the proposed nonrule policy document would publish the dates for the youth free hunting days established for 2010 as September 4 and 5, and November 27, and 28, and for 2011 as September 3 and 4, and November 26 and 27. “Right now there’s no rule. There’s no policy in place. The Department requests approval from the Director of the Department to have those dates for youth free hunting days, and [the dates] are listed in the hunting guide.” The nonrule policy document would provide guidance for staff and would also provide advance notice to the public for planning purposes. “Right now, though, there is no other document for conservation officers or staff to view, so this will of some benefit and guidance.”

The Chair asked whether there were any objections to forwarding to the Commission the proposed nonrule policy document that establishes the Youth Free Hunting Days for the years of 2010 and 2011. By consensus, the item was recommended for Commission consideration.

Information Items:

John Davis said that Governor Mitch Daniels would be holding a press conference in Terre Haute on Friday to announce a land acquisition program for property adjacent to the Wabash River for “buffering” the watercourse. Governor Daniels will also visit Hardy Lake. He invited the Advisory Council members to the event.

The Chair provided an update regarding the proposal addressing “coyotes inside enclosures”. He said Bryan Poynter, Commission Chair, has formed a group that will conduct a comprehensive review of the issues. Chairman Early said the group will consist of Advisory Council members, Dave Lupke and AmyMarie Travis Lucas, as well as two Commission members. The “idea behind” the formation of the group was “because there are a lot of conflicting...testimony about the well-being of the animals

involved. It was determined that the best thing to do was to defer introducing the rule until such time as the group could observe some of these field trials to try to determine whether or not there were issues regarding the well-being of the animals.” The Chair added, “Chairman Poynter has reached out to the groups that are contesting this, primarily the sporting dog groups to try to determine what dates may be available. To some extent, it is important that the visits are spontaneous.... Coordination will likely take place in the early fall.” There is “still intention to move forward with something regarding regulation, if, in fact, there are issues that need to be addressed.

Davis noted that Dave Lupke and AmyMarie Travis Lucas were appointed to the group, but he invited other Advisory Council members to join the group who were interested in the issues. The Chair agreed.

Davis said the Executive Office and the Commission’s Division of Hearings would provide an information packet with the location of the enclosure, maps, and dates.

Adjournment

At approximately 11:35 a.m., the Chair reported the meeting was adjourned.