

NATURAL RESOURCES COMMISSION

Minutes - January 20, 1998

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
Jane Ann Stautz
Damian Schmelz
Joe Siener
Tom Cobb
Jerry Miller
Steve Cecil
Terri Moore
John Goss
Mary Titsworth Chandler

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Lori Kaplan	Executive Office
Paul Ehret	Executive Office
Carrie Doehrmann	Executive Office
Angie James	Executive Office
Bill James	Fish and Wildlife
Katie Smith	Fish and Wildlife
Gregg McCollam	Fish and Wildlife
Gary Doxtater	Fish and Wildlife
Julie Hendricks	Fish and Wildlife
Bill Bruggen	Museums and Historic Sites
Dawn Deady	Water
Mike Neyer	Water
Matt Abriani	Water
Angila Prather	Staff Counsel
Trina Saunders Ray	Staff Counsel
Tony Wilson	Law Enforcement

GUESTS

Anthony Wilson	Michael Cook
Paul Loy	Joshua Griffin
Joe Street	Ron Billingsley
Ron Allen	Brandon Mellinger
Ed Roemer	Richard Rucpich

John Sturgill
Brian Hahn
Kevin Bryant

J. Nathan Noland
Holly Carter
Vaneeta Kumar

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:04 a.m., EST, on January 20, 1998 in the Conference Room, Indiana State Museum 202 North Alabama Street, Indianapolis, Indiana. With the presence of eleven members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the December 17, 1997 meeting. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. He said the agency was "working very hard" on development of the new state museum. "We're also very pleased with the activities of the museum society and the museum trustees."

The Director reported briefly on the current session of the Indiana General Assembly. In accordance with the purpose of "short sessions," he said the DNR had no emergencies and no legislative errors to correct, so the agency was not pursuing legislation. At the same time, Bill Stuart was helping track 25-30 pieces of legislation promoted by others but about which the DNR and NRC might have an interest.

Macklin reported that he and Lori Kaplan met with the Maumee River Basin Commission. His hope was to foster communications with the MRBC and similar boards or commissions which had important linkages with the DNR.

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, said his council did not meet in January.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, said his bureau has been "busy tracking and reading bills." He reported that currently construction activities for the parking lot and the "pro shop" addition to the Garrison Inn at Ft. Benjamin Harrison State Park were "a little bit ahead of schedule."

Joe Siener, Chair of the Advisory Council for the Bureau of Water and Resource Regulation, said he was not present for the January 7 meeting of his council. He was informed, however, that he had been re-elected Chair.

Lori Kaplan, Deputy Director for the Bureau of Water and Resource Regulation, reflected that the advisory council had a productive meeting. Prominent among discussion topics was a review of the regulatory initiative to address herptiles and reptiles.

Kaplan reported that John Simpson, Director of the Division of Water, would be retiring on January 30 after 37 years of dedicated service to the DNR. She said his experience would be greatly missed. Kaplan said interviews for his replacement were beginning later in the month. She informed the commission the next release of river otters was also scheduled for January. Weather permitting, otters would be released at Salamonie Lake and at Pigeon River. The hope was that the event would be observed by several groups of elementary school children.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, reported upon a "very successful" meeting of the Society of Mining and Reclamation held in December. He said Damian Schmelz participated actively in the meeting's Coal Combustion Workgroup. Ehret said both the Division of Reclamation and the Division of Oil and Gas were scheduled to hold their annual meetings in February.

BUREAU OF WATER AND RESOURCE REGULATION

Personnel Interviews

Consideration of Personnel Interviews for Assistant Property Manager, East Fork State Fish Hatchery

Terri Moore provided the report of the personnel committee. She said the committee interviewed two very good candidates for the position of Assistant Property Manager, East Fork State Fish Hatchery. The committee determined to recommend Julie Hendricks for the appointment. Moore reflected that Hendricks "has more than ten years of experience at a state fish hatchery."

Jerry Miller moved to select Julie Hendricks as Assistant Property Manager for the East Fork State Fish Hatchery. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of Preliminary Adoption of Amendments to 312 IAC 9 to Address the Sale of Domestic Reptiles and Amphibians and Venomous and Designated Species of Exotic Reptiles and Amphibians; Administrative Cause No. 97-251D

Conservation Officer, Tony Wilson, explained this item. He said preliminary adoption was sought for amendments to the fish and wildlife rules to address the sale of dangerous reptiles, dangerous amphibians, and reptiles and amphibians native to Indiana. Recently, the Director adopted an emergency rule to address the issues, but the Division of Law Enforcement and the Division of Fish and Wildlife were now seeking a permanent rule to address the issues on a long-term basis.

Wilson explained that recent information obtained by the DNR suggests the sale of both dangerous reptiles, dangerous amphibians, and native reptiles and amphibians in Indiana is

increasing to record levels. Over the past ten years, trade in these animals has increased 5,000%. Native species are collected from the wild and sold with increased frequency. Overall, the commercial sale of reptiles and amphibians is now second only to exotic fish.

Wilson said the proposed rules would serve three primary functions: (1) Promote public safety. (2) Protect the wild populations of native species. (3) Clarify the legal application of existing rules. He emphasized that the DNR was working with interested persons outside the agency to address concerns they had expressed, and Wilson asked that preliminary adoption be made with the understanding the form of the published rules might vary considerably from the language included in the commission packet.

Ron Billingsley, President of Indiana Reptile Breeders, contended all venomous snake bites in recent years in Indiana took place in the wild. He expressed concerns with the proposed rule language. "The way it's written, you can't import poisonous snakes." He recommended Indiana adopt a permit system for the possession of venomous snakes similar to the system used in Texas, where the permit applicant "must take a written test to demonstrate knowledge." According to Billingsley, "the way the rule is written, you can possess venomous snakes, but you cannot sell them." He argued the result would be that owners would free unwanted snakes into the wild. Billingsley concluded by expressing interest in working with the DNR as the hearing process moved forward.

Michael Cook of Evansville spoke on behalf of the Fraternal Order of Police. He said his organization "favors this administrative rule. For the safety of law enforcement officers in Indiana," the rule is needed. He explained that not infrequently police officers were called upon to reach their hands into "false walls" seeking for illegal drugs, and there was a need for assurance these darkened areas would not harbor venomous snakes.

Paul Lay of Shelbyville, a retired firefighter, said the rules were also needed by his profession. He said firefighters often do "search and rescue" and need to be informed if a poisonous snake is present in a building.

Kevin Bryant, a commercial reptile breeder, said he supported the rule proposal with a few exceptions. He said the rule would prohibit the sale of snake offspring if the adults of the species can grow to more than ten feet in length, a prohibition he opposes. At the same time, Bryant said, "I can sympathize with law enforcement and firefighter concerns." He agreed to "assist in any way" as the rule adoption process moves forward.

Joe Street, Vice President of Uncle Bill's Pet Center, said "pretty much everything I have to say is redundant with what has already been said. Overall, I think the DNR has done a wonderful job" with the rule proposal, but additional changes should be made. He said if the ten-foot rule goes into effect, euthanasia is the only option. Street said statistics in the USA show horses and dogs are a greater risk to humans than venomous reptiles.

Brian Hahn, who manages a reptile show at the Indiana Fair Grounds, said generally the DNR rule proposal was acceptable. "The horror stories you hear about ten-foot snakes" are, however, very misleading. Hahn said he opposed application of the rules to poison-arrow frogs and Gila

monsters. He said he held one show a month and typically 800 to 1,500 persons attend a show. "I would love to participate in the [rule adoption] process."

Holly Carter, Secretary of the Hoosier Herpetological Society, said she supported the listing of subspecies contained in the proposed permanent rule. She said the emergency rule already in place failed to distinguish among subspecies, and she urged that the emergency rule be amended to conform to the proposed permanent rule. In response to questions from the commission, Carter quoted a few typical sale prices for exotic snakes. For example, "the Honduran milk snake costs \$150."

Ron Allen described himself as a reptile "hobbyist." He described "a life-long interest in science" resulting from an early fascination with reptiles. He urged that Indiana animals needed protection, not from sales, but from being collected from the wild. He expressed the opinion the DNR and interested citizens could achieve a compromise on this important issue.

Ed Roemer said "pretty much what I have to say has already been said." He said he looked forward to working with the Indiana Department of Natural Resources as the rule went through the promulgation process.

Tom Cobb said he had recently visited a reptile show. He said he was "frankly appalled" at the condition of many of the reptiles and amphibians marketed at the show. Steve Cecil asked if one of the targets of the rule was the unethical treatment of reptiles at trade shows. Wilson responded that was one concern.

Jerry Miller moved to give preliminary adoption to rule amendments to govern the sale of native or venomous reptiles and amphibians, with the understanding modifications could be made to the exact form of the rules to incorporate legitimate public comments. The motion was seconded by Tom Cobb. Upon a voice vote, the motion carried.

BUREAU OF MINE RECLAMATION

Division of Reclamation

Consideration of Petition filed by the Hoosier Environmental Council under Indiana Code 14-34-2-7 of the Indiana Surface Coal Mining and Reclamation Act to Adopt Rules for the Disposal of Coal Combustion Materials at Surface Coal Mines; Administrative Cause No. 97-223R

Angila Prather presented this item as counsel for the DNR Division of Reclamation. She referenced the petition by the Hoosier Environmental Council and said, that without addressing the completeness of the petition, the NRC was being asked to deny it. Prather explained the DNR was already in the final stages of drafting rules covering coal combustion waste, and a workgroup process had been developed to incorporate input from interested persons before the rules were given preliminary adoption. As a result, separate action based on the petition would be redundant and was unneeded.

J. Nathan Noland, President of the Indiana Coal Council, spoke very briefly. He said he was present solely as "an observer to see how the Commission disposes" of the petition.

Joe Siener moved to deny the petition on the basis that formal rule adoption was already underway within the Division of Reclamation. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

Natural Resources Commission, Division of Hearings

Consideration of Review of Hearing Officer Relative to Commission Determination and Report Under IC 14-33-2-17; In the Matter of the Proposed U.S. 35 Conservancy District; Administrative Cause Number 97-234C (LaPorte Circuit Court #46CO1-9708-MI-000361)

Steve Lucas, Hearing Officer, introduced this item. He said the proposed U.S. 35 Conservancy District would provide sewage collection in a non-incorporated area of LaPorte County near Michigan City. The conservancy district would provide lines for the collection of sewage from residences, businesses, and a local elementary school for transport to and treatment by the Michigan City Sanitary District.

Lucas said there were five issues on which the NRC was required by statute to give recommendations to the LaPorte Circuit Court. The first issue was whether the proposed district appeared to be necessary, and he said the "evidence was compelling for need." The second issue was economic and engineering feasibility. Lucas said engineering feasibility was satisfied since the proposed project presented no unusual technical challenges. He reflected he did have "some pause about economic feasibility," however, since domestic users would be required to pay \$70 to \$75 monthly. The third issue was public health, and the evidence showed public health would be served. Lucas said the fourth issue was whether the district would serve a proper area; he believed the testimony showed it would, although there were probably individuals included within the district who could properly be excused from participation. "The level of sophistication of testimony in this regard was not adequate to make a dispositive recommendation one way or the other." Lucas said the final issue was whether the district could be operated in a manner compatible with other districts, and with incorporation of a functioning collection system within the proposed district at Indian Springs Subdivision, and with an agreement anticipated with the Michigan Sanitary District, he felt this issue was met effectively.

Richard Rupcich said he was present as legal counsel for the petitioners, and he was accompanied by the consulting engineer. Rupcich said the petitioners hoped the NRC would approve the report of the hearing officer as the Commission report to the LaPorte Circuit Court. He said the petitioners would answer any questions posed by the NRC.

Damian Schmelz moved to approve the recommendations of the hearing officer as the Commission's determination and report to the LaPorte Circuit Court under IC 14-33-2-17 with

respect to the proposed U.S. 35 Conservancy District. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Consideration of the Nonfinal Order of Summary Judgment in Department of Natural Resources and Brenda Samuels v. James G. Busch; Administrative Cause Number 96-019W

The Chair reported this item continued at the request of Brenda Samuels.

Consideration of Report of Public Hearing and Recommendations of Hearing Officer Concerning Final Adoption of Amendments to 310 IAC 2.1-7-2; Proposal to Modify "No-Boat" Zones Adjacent to Whihala Beach (Near Whiting and Hammond) in Lake Michigan, Lake County, Indiana; Administrative Cause No. 97-072L; LSA #97-297(F)

Steve Lucas, Hearing Officer, presented this item. He said the proposal was to expand a "no-boat zone" adjacent to Whihala Beach on Lake Michigan. The proposal followed a petition from the Lake County Parks and Recreation Department and was part of its "Master Plan" for Whihala Beach.

Lucas said the public hearing on the proposal was held as scheduled on January 5 in Whiting. Tim Janowski, Property Manager for Whihala Beach, presented the proposal to those in attendance and answered a few questions. Approximately a dozen people were in attendance, and no one spoke in opposition to the proposal.

Lucas said he had received telephone inquiries concerning the proposed no-boat zones, and one of the callers suggested he would send adverse comments. Also, one individual appeared a few minutes after the public hearing in Whiting was recessed and suggested he would later prepare negative comments relative to the proposal. Lucas said he had not, in fact, received negative comments from anyone. The primary basis for possible opposition is seemingly the desire of motorboaters to access beaches directly from Lake Michigan. Lucas suggested the reason why no adverse comments were ever finalized regarding the proposed "no-boat zones" might be that the Master Plan for Whihala Beach also includes an extensive "boat-in beach" where motorboats and other watercraft would be allowed to moor and access the beach.

Tom Cobb moved to give final adoption to the amendments to 310 IAC 2.1-7-2 to expand "no-boat" zones on Lake Michigan adjacent to Whihala Beach at Whiting and Hammond. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

OTHER MATTERS

Lake Michigan Coastal Coordination Program

Request to the Natural Resources Commission for Comment and Guidance Concerning a Resolution of the Blue Ribbon Advisory Panel on Lake Michigan Issues with Respect to Agency Permit Coordination

Dawn Deady, Lake Michigan Coastal Coordinator, introduced this item. She said a 1995 public workgroup process involving citizens along the Indiana shoreline of Lake Michigan resulted in 865 possible solutions to challenges faced by the region. In order to attempt to prioritize these issues, the DNR asked volunteer participation from several leaders in the community on a Blue Ribbon Advisory Panel ("BRAP"). Included were a shoreline city mayor; a shoreline town; a county commissioner each from Lake, Porter, and LaPorte Counties; a county council member; the Longshoremens; Amoco; Bethlehem Steel; the Save the Dunes Council; a member of the Izaak Walton League; NIPSCO; a township trustee and property rights advocate; a representative of the Farm Bureau; and Chairs of each of the four workgroup sections.

Deady explained that the Blue Ribbon Advisory Panel discussed several issues but focused primarily upon governmental coordination and streamlining. In particular, the BRAP encouraged a coordinated effort to assure appropriate permitting of construction activities along waterways. The BRAP received examples of permit streamlining from several states, including Wisconsin, Michigan, Pennsylvania, and Washington. The Panel studied from these states such techniques as primacy, Programmatic General Permits, joint permits, and federal consistency. The BRAP urged that permit applications should be processed in a timely fashion but not at the expense of important environmental concerns.

During its final meeting in August 1997, the Blue Ribbon Advisory Panel adopted the following resolution:

The BRAP recommends that the Natural Resources Commission bring the following proposal to the Indiana Governor:

- (1) Implement a joint permit application for greater efficiency by:
 - (a) Involving all federal, state, and local regulating authorities.
 - (b) Assigning a work team to pursue joint applications.
- (2) Consolidate environmental permitting processes in the State of Indiana.

Deady said one effort to respond to the BRAP resolution had been commenced in discussions with the Lt. Governor's Office, the Lake Michigan Marina Development Commission, and the Indiana Department of Environmental Management. She asked Steve Lucas to outline those discussions.

Lucas said that in addition to the BRAP initiative, the Lake Michigan Marina Development Commission ("LMMDC") had presented a resolution directed to permit coordination. He indicated the LMMDC is a state agency whose voting membership consists of the mayors of Hammond, Whiting, East Chicago, Gary, Portage, and Michigan City. Steve Rogers of the Lt. Governor's office helped bring together representatives of the LMMDC, IDEM, and DNR to

respond positively to the LMMDC resolution. During the discussion, the BRAP resolution was also discussed. A determination was made to seek a Memorandum of Understanding ("MOU") between IDEM and DNR to help move permit coordination forward, with the understanding the Natural Resources Commission and Water Pollution Control Board also had important state regulatory roles. In addition, the design was to invite participation from the Army Corps of Engineers, the Environmental Protection Agency, and the U.S. Coast Guard. He reflected that recent email communications from Gary Manesto of the Detroit District of the Army Corps had expressed an interest in working with Indiana on the effort.

Lucas said MOU drafts had since been exchanged through Patti Yount of IDEM, and the drafts had progressed to the stage that advice and direction was now sought by the NRC concerning how to respond to the BRAP resolution and if the MOU was "on track with where the agencies should be going." Lucas reflected that the draft had also been shared last week with the LMMDC by Kay Nelson of IDEM's Gary Regional Office. He emphasized that the draft MOU was "not carved in stone" and would undoubtedly yet undergo refinement.

In response to the request for guidance by the Lake Michigan Coastal Coordination Program, Chairman Kiley reflected he felt the draft MOU was an appropriate response to the BRAP resolution. He suggested that the NRC should actively participate in a dialogue directed to permit streamlining. The Commission might appropriately review efforts of the "technical workgroup" as it progresses and might even meet in joint session with the Water Pollution Control Board to discuss the issue at some future date. Kiley urged that a letter of appreciation be sent to the members of the BRAP to express the Commission's and the Department's appreciation for its volunteer efforts. "I know many of the members of the BRAP personally and understand how busy they are and respect their knowledge of and dedication to Lake Michigan issues." He also expressed the perspective that it would be appropriate to forward correspondence to the Governor to communicate the BRAP resolution and what steps were being taken in order to be responsive. Kiley asked for the perspectives of other NRC members.

Steve Cecil said "early permit coordination" was a key issue. He said he also understood the Lake Michigan area was of particular concern. "Something good will come out of this effort I'm sure." At the same time, he expressed hope the initiative would look to the state, generally, since issues of permit coordination have an important impact on all the regulated community throughout Indiana.

The Chair expressed agreement with Cecil but also reflected that in some ways "the needs along Lake Michigan are unique." He noted that the bodies of waterway construction law and navigation law applicable to Lake Michigan were in many respects divergent from inland regions of Indiana.

Jane Ann Stautz reflected that, to be effective, the permit coordination initiative would require a significant commitment of staff and related funding. She urged that a realistic approach be taken and personnel and monetary costs identified.

Chairman Kiley asked if there was a consensus of support for the directives suggested by Steve Cecil, Jane Anne Stautz, and him. That consensus appearing from the responses of the

Commission members, he reflected that a formal vote was unnecessary. Kiley asked that the DNR and NRC staff move forward according to the stated directives and report back to the Commission at some later date on the progress of the initiative.

Adjournment

At approximately 11:45 a.m., the meeting adjourned.