

NATURAL RESOURCES COMMISSION

Minutes - June 26 and June 27, 1997

MEMBERS PRESENT

Michael Kiley, Chair
Larry Macklin, Secretary
Mary Titsworth Chandler
Jane Ann Stautz
John Goss
Jerry Miller
Steve Cecil
Damian Schmelz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Paul Ehret	Executive Office
David Herbst	Executive Office
David Vice	Executive Office
Lori Kaplan	Executive Office
Angie James	Executive Office
Bill Stuart	Executive Office
Gerald Pagac	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Peter Nosek	State Parks and Reservoirs
Angila Prather	Legal Section

GUESTS PRESENT

Roger H. Weisensteiner
Matt Weisensteiner
Jason Yoder
Jim Wichman

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the natural resources commission at 7:02 p.m., EST, on June 26, 1997 in the Law Enforcement District Headquarters, Lake Wawasee (Syracuse), Indiana. With the presence of eight members, the Chair observed a quorum.

Jerry Miller moved to approve the minutes of the May 22, 1997 meeting. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. He said it was "a pleasure to be in this beautiful facility for law enforcement." Macklin indicated he was looking forward to meeting with the White River Park Commission for the first time, a commission on which he sits by virtue of being the DNR Director. He introduced Bill Stewart who would direct the agency's external affairs.

Macklin said interviewing had begun for a new deputy director for the bureau of water and resource regulation. "It's going to be a tough one because a very good friend of mine, David Herbst, is retiring. To Dave Herbst, my very best."

Chairman Michael Kiley praised Dave Herbst as a "professional's professional when it comes to protecting our natural resources. I want to pay special tribute to Dave." A framed print was then presented in Herbst in appreciation of his service to the DNR and to the environment.

Jerry Miller, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, said all items on the agenda of the council were passed.

Jack Costello and Joe Siener were not present.

David Herbst, Deputy Director for the Bureau of Water and Resource Regulation, provided his final monthly report. He said, "It has been my pleasure to work with a very dedicated council and an outstanding staff." Herbst reflected that the advisory council had recently toured the Lake Monroe watershed with the army corps, forest service, and DNR personnel, focusing on water quality issues.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said his staff was busy working on coal combustion waste issues. He anticipated going to the legislative services agency and to the attorney general with questions concerning rule adoption or possible legislation pertaining to this important and sensitive topic. Ehret said he also reviewed petroleum production within Harmonie State Park. At that time, he was accompanied by employees of the division of oil and gas, as well as Jack Costello and Gerry Pagac. He noted that Channel 13 in Indianapolis recently did a favorable story covering the division of reclamation as an example of efficiency in state government.

Dave Vice, Deputy Director for Law Enforcement and Administration, introduced Larry Allen as the new Director of the Division of Law Enforcement. He said Allen was an experienced law enforcement officer who would provide invaluable leadership to the division. Vice also announced that Mickey James had been selected as the new Director of the Division of Accounting.

BUREAU OF LANDS AND CULTURAL RESOURCES

Personnel Interviews

Consideration of the Permanent Appointment of Drew Daily as Assistant Property Manager, Potato Creek State Park

Chairman Kiley introduced Drew Daily. Gerald Pagac, Director of the Division of State Parks and Reservoirs, then described Daily as an "exceptional individual" who has "more than exceeded our expectations." Pagac recommended Daily for permanent appointment.

Daily spoke briefly to the commission. He expressed his personal respect for the DNR and the honor of serving at Potato Creek State Park. He also expressed great sadness, however, that on this date there was a drowning at the park. He and other employees were now seeking to console the lifeguards because of this tragedy.

The commission expressed empathy for the family of the victim and for Daily and his co-employees at the park. Damian Schmelz then moved to give Drew Daily a permanent appointment as Assistant Property Manager, Potato Creek State Park. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

DIVISION OF LAND ACQUISITION

Consideration of the sale of former Erie Lacawanna Railway property now owned by the Indiana Department of Natural Resources in Huntington County

The Chair reported this item deferred.

Consideration of a Resolution for the Transfer of Right-of-Way by the Department of Natural Resources to Jennings County for the Reconstruction of County Bridge 48, with the Old Bridge Approach to be use for Access to Brush Creek

John Davis, Director of the Division of Land Acquisition, presented this item. He said the resolution was mutually advantageous to Jennings County and to the IDNR. Land transferred to the county would facilitate the reconstruction of County Bridge 48 over Brush Creek (Jennings County Road 675 East). The former roadway would then be used to offer public access to Brush Creek for fishing and boating.

Jerry Miller moved to approved the resolution. The motion was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Consideration of Rate Increase for Indiana State Park Inns

Gerald Pagac, Garry Miller, and Pete Nosek of the division of state parks and reservoirs presented this item. Pagac explained that during the past three years, the hotel industry has had a "high rate of growth and typically" significant rate increases. Increases at state parks have been frozen. "Our bottom line is getting further and further from where it is supposed to be." He noted

that all profits from state parks go back into the state park fund. The division of state parks supports 75% of its operations from park revenues, and 25% come from the general fund. Garry Miller responded to a question about inn occupancy. He said annual occupancy in the state parks was about 68% to 69%. These figures compared very favorably to the Midwest average of 64%.

John Goss, a member of the commission and State Tourism Director, said he wanted to "speak strongly" in favor of the increase. He explained that rates have gone up 20% during the past three years at comparable hotels and inns, but there had been no increases in the DNR facilities. "We are really undercutting the private sector with our current rates, and I've received frequent complaints about this condition." He noted the DNR had no marketing budget, but a fee increase would provide at least some latitude in this regard.

The DNR was asked about inn rates in neighboring states. Nosek responded that a nightly room rate of \$69 in Indiana compared very favorably with rates for similar rooms in Ohio inns which cost between \$80 and \$130.

Jerry Miller moved to approve the "Rate Structure and Proposed Rates" set forth in the commission packet for use at Indiana State Park Inns. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

Consideration of Proposal to Grant Permission to BP Oil Company to Clear an Additional 600 Feet along a Crude Oil Pipeline at Shakamak State Park

Gerry Pagac explained this item. He said BP Oil Company had previously sought a much broader authority from the commission to perform clearing along its pipeline in Shakamak State Park, but the commission had denied the request. This proposal would grant permission to clear another 600 feet with some tree removal resulting. Due to the need to repair the line in the event of an emergency, and the need to bring in heavy equipment for this contingency, Pagac said the request appeared reasonable. As a result, the division of state parks now supported the proposal.

Damian Schmelz moved to approve the request by BP Oil Company to clear an additional 600 feet for its crude oil pipeline in Shakamak State Park according to the terms referenced by the DNR. The motion was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Consideration of a Request to Authorize the Division of State Parks and Reservoirs to Negotiate a Long-Term Ground Lease for the Operation of the Newton Stewart Marina on Patoka Lake

Gary Miller presented this item. He explained that the division of state parks and reservoirs sent out a prospectus for the development and operation of the Newton Stewart Marina. Three proposals were received in response, and he said the division was seeking authorization from the commission to begin negotiations on the lease. Miller explained the division wished to authority

to be "tiered" with Dixon/Honeycutt/Weisensteiner/Edwards/Weisensteiner being the first priority. According to him, this proposal appeared the most attractive to the department because it would result in immediate replacement of the docks and the highest financial returns. If those negotiations failed to reach closure, Ragsdale Marine would be the second tier and Ron Lane the third.

Steve Cecil asked Lori Kaplan whether she believed this approach was lawful. She responded that the process is exempted from the procurement statute and is lawful. Gerald Pagac added that following negotiations, the DNR and successful sponsor of the favored proposal would come back to the commission for action in a public and open forum.

Steve Cecil moved to approve the request by the division of state parks to negotiate a long-term ground lease for the operation of Newton Stewart Marina on Patoka Lake, including use of the tiered approach. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Consideration of Proposal to Increase the Price of Tree Seedlings by Three Cents (or \$3 per Hundred)

Jim Wichman, Nursery Program Supervisor for the Division of Forestry, presented this item. He said the proposal would increase the price of tree seedlings by three cents per seedling. He also reflected no increase had been sought during the past four years. Wichman showed examples of seedlings for several species of trees. He explained that purchasers were often private citizens, and the division was also an important source for reforestation of reclaimed surface coal mines.

Jerry Miller moved to approve the increase in the price of tree seedlings as recommended by the division of forestry. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Consideration of the Dedication of the Bell-Croft Woods Nature Preserve in Jay County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve was a "really nice remnant" of woods near Portland in Jay County. Containing 40 acres, he described the property as a mixed old-growth stand with white, red, burr and pin oaks, beech, sugar maple, shagbark hickory, red elm, black cherry, basswood, and cottonwood. He said the division recommended the dedication.

Damian Schmelz moved to approve dedication of the Bell-Croft Nature Preserve in Jay County. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

Consideration of the Dedication of the Tank Spring Nature Preserve in Martin County

John Bacone also presented this item. He said the proposed nature preserve was a 60-acre tract within Martin State Forest in Martin County. The property is already managed by the division of forestry and provides a quality example of mesic upland forest, with sandstone cliffs and a permanent freshwater spring. He said the tract was selected as a result of an inventory for natural areas and significant features at Martin State Forest and "well-represents the communities and features characteristic of the forest."

Damian Schmelz moved to dedicate the Tank Spring Nature Preserve in Martin County. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Consideration of the Dedication of the Henshaw Bend Nature Preserve in Martin County

Bacone presented this item. He said the proposed nature preserve was a 77-acre tract in Martin State Forest which includes a high-quality example of mesic upland forest. The site is situated on bluffs overlooking the East Fork of the White River and was also selected as a result of an inventory of resources within the state forest. Bacone said unlike the Tank Spring Nature Preserve, this site lies on a bedrock of limestone and contains somewhat different plant communities. He recommended its approval as a dedicated nature preserve.

Damian Schmelz moved to dedicate the Henshaw Bend Nature Preserve in Martin County. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

BUREAU OF MINE RECLAMATION

Division of Reclamation

Consideration of a Draft State-Federal Cooperative Agreement between the State of Indiana and the U.S. Department of the Interior for the Regulation of Surface Coal Mining Activities on Federal Lands

Angila Prather, Legal Counsel for the Bureau of Mine Reclamation, presented this item. She said the agreement would grant authority from OSM to the IDNR to regulate most surface coal mining activities associated with federal lands located in Indiana. Approval authority for the state rested finally with Governor O'Bannon, to be exercised in concert with the U.S. Secretary of the Interior, but it was being presented to the commission for comment as the "ultimate authority" for Indiana SMCRA permitting.

Steve Cecil asked whether acceptance of this primacy authority would result in a need for staff increases. Paul Ehret responded that it would not. He said there were really very few impacted federal lands in the state, but the issue arose occasionally. A notable example was where HUD forecloses on a mortgage. Whatever additional role might be anticipated within the division of reclamation would be absorbed without additional staffing. Ehret added that the concept was thought to be noncontroversial and enjoyed industry support.

Damian Schmelz moved to advance the state-federal cooperative agreement, for state SMCRA regulation of most federal lands, with a recommendation to the governor that it be approved. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

Natural Resources Commission, Division of Hearings

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Recodification of the Rules Governing Navigable Waters; Administrative Cause No. 97-030A; LSA #97-56(F)

Steve Lucas, Hearing Officer, presented this item. He said for consideration was final adoption of the recodification and modification of rules which govern navigable waters. Lucas said that for the most part, language to be given final adoption restated existing rules but was needed as a continuation of the process for relocating all DNR rules as NRC rules. There were a few notable additions.

An emergency rule currently allowing a general permit to encourage the use of clean sand for beach nourishment was being made permanent. Beach nourishment was a relatively natural method for addressing shoreline erosion on Lake Michigan resulting from man-made structures which impeded littoral drift. He said use of a general permit rather than a specific permit simplified several bureaucratic steps. Lucas acknowledged that the primary impediment to the placement of beach nourishment was, however, funding. Beach nourishment activities are costly, and although legislation exists in Indiana to establish a beach nourishment fund, there is no regular income source for the fund.

Another addition would acknowledge application of the "public trust doctrine" to activities within navigable waters. The acknowledgment was also balanced in the rule by a reflection upon the property rights of a permit applicant and neighbors of an applicant.

A few redundant definitions would be deleted from the rule. These are definitions now set forth in 312 IAC 1.

Lucas explained there were a few modest adjustments to the requirements that marinas provide pumpout facilities for boats. The changes were motivated by experience with the relatively-new requirement and with the Pumpout Program administered by IDEM.

The Chair asked about the list of waters declared navigable or nonnavigable previously approved by the commission and what impact upon the list this rule adoption might have. Lucas responded that the list was incorporated by reference into the definition of navigable waters, as a guidance document and not a mandatory regulation, contained in 312 IAC 1. The list would continue to be used following recodification.

Jane Ann Stautz moved to give final adoption to 312 IAC 6 governing navigable waters and the simultaneous repeal of 310 IAC 21 as set forth in the commission packet. The motion was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Consideration of the Report and Recommendation of the Hearing Officer for the Recodification of Snowmobile Trails and Scenic Rivers Rules; Administrative Cause No. 95-195T; LSA #97-3

Steve Lucas presented this item on behalf of William Teegarden, Hearing Officer. He said the proposal would recodify and significantly simplify the rules governing snowmobile trails and scenic rivers, as administered by the division of outdoor recreation. Lucas reflected that originally this proposal would have included a consideration of adding Sugar Creek in Montgomery County as a scenic stream, but this portion of the proposal had been withdrawn. He said that Teegarden reported the hearing process was noncontroversial relative to matters now before the commission for final adoption.

Jane Ann Stautz moved to give final adoption to 312 IAC 7 and for the simultaneous repeal of 310 IAC 4 and 310 IAC 4.5 relative to snowmobile trails and scenic streams. The motion was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Adjournment

The regular meeting adjourned at approximately 7:52 p.m., EST on June 26, 1997.

Informational Meeting

An informational meeting was held on June 27, 1997. The meeting included a boat tour of Lake Wawasee, focused in part upon the integrity and significance of its wetlands. In addition, the division of law enforcement presented developments relative to watercraft enforcement and safety. Included among these were river rescue techniques.