

**NATURAL RESOURCES COMMISSION**  
Fort Harrison State Park Inn — Roosevelt Room  
5830 North Post Road, Indianapolis (Lawrence)

**Minutes of January 12, 2010 Meeting**

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Patrick Early  
Mark Ahearn  
Danielle Chrysler  
Robert Wright  
Thomas Easterly  
Larry Klein  
Doug Grant  
Donald Ruch  
Phil French

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Dan Bortner	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Jim Hebenstreit	Water
Kenneth Smith	Water
Terri Price	Water
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Randy Lang	Fish and Wildlife
Robert Ackerson	Fish and Wildlife
Mike Crider	Law Enforcement
Katherine Gould	Indiana State Museum

Kara Vetter                      Indiana State Museum  
Phil Bloom                      Communications

**GUESTS PRESENT**

Alan Hux	Bill Herring	Anne Sterling
Rick Miller	Dan East	Frank Keeton
Don Gorney	Cliff Carley	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:03 a.m., EST, on January 12, 2010, at the State Park Inn, Fort Harrison State Park, 5830 North Post Road, Indianapolis, Indiana. He welcomed and thanked Danielle Chrysler, Deputy Chief of Staff of the Office of Lt. Governor, for serving as the day’s proxy for the Office of Tourism. With the presence of all twelve members, the Chair observed a quorum.

Stephen Lucas reported the proposed November 17, 2009 meeting minutes did not reflect the presence of Thomas Easterly and incorrectly listed Patrick Early as attending. Robert Wright moved to approve the minutes with this correction. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

**Election of Officers**

Doug Grant moved to re-elect the current slate of officers 2010: Bryan Poynter as Chair, Jane Ann Stautz as Vice Chair, and Robert Carter as Secretary. No other nominations were offered. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

The Chair said, “I appreciate the confidence of this Commission and its members. Hopefully, we have done good work as a team and as a Commission, and we will continue to do so in 2010.”

**Reports of the Director, Deputies Director, and Advisory Council**

The Department Director, Robert Carter, Jr., provided his report. He welcomed Commission members and attendees to the Fort Harrison State Park Inn, the newest state park lodge. He thanked Thomas Easterly, Commissioner of Indiana Department of Environmental Management, and Mark Ahearn, representative of Indiana Department of Transportation, and other state agencies that have held meetings at the inn. “We really appreciate that.” The Director then asked Dan Bortner, Director of the Department’s Division of State Parks and Reservoirs, to give a brief overview of the inn.

Dan Bortner said the inn has been a “wonderful addition to the state park’s mix of properties.” The inn is a “boutique hotel”, and close proximity to downtown Indianapolis offers additional meeting space when combined with The Garrison. “It’s a real advantage to people of Indiana.” He said the inn once served as the military hospital and as the headquarters for Fort Harrison.

The Director said the State has been impacted by the decline in revenues, but the Department has “specifically done pretty well throughout this crisis.” He said the Division of Fish and Wildlife

has sold “quite a few licenses, and the state park campgrounds are full. We’ve done quite well compared to other States.” The Director said Ron McAhron, John Davis, and he met with the Ohio DNR Director last month to discuss budgetary impacts. “It was nice to know that we are doing much, much better than Ohio.” He said that Ohio’s park lodges “are typically in winter 20% full, but Indiana’s park lodges average 60% full. We are doing really well. That’s a testament to the good employees we have at the DNR.”

Doug Grant asked, “You said 60% full?” The Director responded the Department averages 67% year round. “We just have the features at the parks that people want to see in wintertime.”

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said Director Carter participated in a partnership with NRCS, IDEM, and the Department of Agriculture’s Division of Soil Conservation in signing the Indiana Conservation Partnership Agreement which binds the signatories to “try to be efficient” in delivery of services to mostly rural land owners, such as farmers and forest landowners. “That’s a good government efficiency partnership.” Davis also thanked the Indiana Department of Transportation for a “tremendous partnership with the Department, particularly this year in snow removal, and by salting and sanding the park roads.”

Davis announced that January 26, 2010 is Conservation Day. He said the celebration is scheduled for the Statehouse Rotunda with the presence of many environmental groups. A lunch buffet is also planned.

Davis reported he attended the Tern Bar Slough opening that was held on January 9 in Gibson County near Skelton. The bar provides habitat for endangered least terns. The terns lay their eggs on bare gravel so the islands are required to be isolated by water to prevent predation of the eggs. He said there are no terns present in winter, but the area is a haven for ducks and eagles.

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He said the Division of Water recently completed a baseline report required by the Great Lakes Compact, compiling the registration of 828 users of significant water withdrawal facilities in Indiana’s Great Lakes Basin. The report provided information regarding the amount of water withdrawn, the consumptive uses, and any diversions. He said 14 facilities sought administrative review of the Division’s findings from the Commission’s Division of Hearings. Each of these proceedings has since been resolved by a correction to the reported data, an agreed order, or a dismissal. McAhron commended the Division of Water “for completing the reporting by the deadline.”

McAhron said the Division of Historic Preservation and Archaeology has worked with the Indiana Department of Transportation to shorten the form required to report archaeology surveys “funded with Federal 106 monies. A lot of surveys turn out to not find anything.” Previously, the Department required a 20-page report of the physiological setting and other details. “Finally, working with INDOT, we’ve got that in a format where we will have the information that is appropriate, but not the wordy reports.... We think this is going to be a real timesaver for our staff, INDOT staff, and the people out in the field.”

Patrick Early, Chair of the Advisory Council, reserved his report for Agenda Item 3.

## CHAIR AND VICE CHAIR

### **Updates on Commission and Committee activities**

Vice Chair Jane Ann Stautz, who also is Chair of the Commission's AOPA Committee, said her committee met earlier in the day to address a few housekeeping matters. "It speaks to the excellence of the work of the Division Hearings staff that we have not had any matters before us here this summer or fall. For those that previously we had heard in 2009, and that were appealed, the decisions were affirmed."

Chairman Poynter said at year end, the he and Vice Chair conduct performance appraisals of professionals in the Division of Hearings. "I think it would be terribly remiss if I didn't publically acknowledge the work of this staff that has done just tremendous work. On behalf of the Commission, Jane Ann and I submitted their performance appraisals. The opportunity for exceeding expectations is very easy to check those boxes. I just wanted to congratulate them. As Jane has mentioned, not only the efficiency, but also the respect of their legal peers and the community that they deal with, is very satisfying. Many of the Commission members don't see the hearings they conduct in other places around the state, and the work that they have to do to prepare for these agenda items that makes our work much more efficient."

## DNR, EXECUTIVE OFFICE

### **Consideration and identification of any topic appropriate for referral to the Advisory Council**

Doug Grant requested the Advisory Council review the impacts of the "new generation of speed boats on public freshwater lakes. Older speed boats created a downdraft of five feet, but the new models are throwing downdrafts considerably farther than five feet." He requested a review of this change "to get to the point where we understand what the physics are and what is happening or impacts to the lakes to identify any issues or problems."

Doug Grant also requested the Advisory Council review impacts exotic swan populations have on public freshwater lakes. The mute swan population "is a problem on many lakes already."

The Chair thanked Grant and said the two topics would be reviewed by the DNR and referred to the Advisory Council for any appropriate discussion.

## ADVISORY COUNCIL

### **Consideration of the Report of the Natural Resources Advisory Council of Public Meetings and Recommendations as to Suggestions for Substantive Amendments to the Fish and Wildlife Rules (312 IAC 9); Administrative Cause No. 08-061D**

The Chair said the consideration of this report is the "beginning of the end of a very long process that started back in the fall of 2008, and it is one that I am very proud of the work that this

Commission and the staff have brought forward.” He then deferred to the Chair of the Advisory Council, Patrick Early.

Patrick Early explained that the review of the fish and wildlife rules codified at 312 IAC 9 began 18 months ago. A Task Force was formed to spearhead the review project, with the overall project goal being to address both clarification of issues within the existing fishing and hunting rules and to solicit input from the public on recommendations for substantive rule changes. The clarification and simplification of existing rules was the first part of the review project. “Linnea [Petercheff] and Sandy [Jensen] really did a great job of organizing that and putting it together and really fulfilled that mission.” The clarification of the existing rules should make it “easier and clearer for the public to understand and for our conservation officers to enforce.”

Early said the Advisory Council completed the public meeting phase in October 2009 to address more than 1,000 suggestions received for rule amendments. The suggestions were organized into five topics, and six public meetings were held to take testimony. Two public meetings were held regarding the trout fishery at the Brookville Tail-Waters. The Advisory Council met in December “to try to, in essence, narrow down those 1,000 suggestions to a more manageable number of ideas and recommendations that we could bring to the full Commission.” Early said, “Many, many of the suggestions received dealt with the lengths of seasons and bag limits.” The Advisory Council was “very fortunate” to have Department biologists and other experts make presentations at each public meeting. “For the most part, we have stayed away from any type of recommendations on anything that involved biology.” He said the Advisory Council would defer to Department professionals regarding recommendations associated with biological issues.

Early said the remaining recommendations were separated into three areas: (A) suggested substantive amendments recommended for future rule amendment; (B) suggested substantive amendments recommended for additional review by the DNR’s Division of Fish and Wildlife as to biology and wildlife management; and (C) suggested substantive amendments requiring action by the Indiana General Assembly. Regarding recommendations in (A), the Advisory Council has “not had the opportunity to review a lot of these things with our staff specifically. These are things that we are moving forward that we felt like had some merit. We are not ready to propose any rule amendments as we sit here today or to take any kind of public testimony. These are items ready, theoretically, for us to go ahead and propose as rule amendments.” Early explained the Advisory Council “has tagged the ten recommendations in (B) as needing more study. In other words, they are not ready to put in as rule amendments.” The ten items would be assigned to the Department before the Commission’s March meeting. The recommendations in (C) are suggestions that would take legislative action, such as establishing a new crossbow license.

Chairman Poynter complimented Early, the Advisory Council, the Task Force and others for their “very collaborative effort. The outcome of this report that I am hearing from Chairman Early is good work; it’s really good work. I believe the process that we started back in September 2008 had the eyes of an awful lot of other departments of natural resources. A lot of Col. Mike Crider’s peers in law enforcement are looking at this process, because it was a process that could have been riddled with problems. It ran very efficiently.”

The Chair invited the Commission and the Department to discuss the recommendations outlined in the Advisory Council's report. He said "the Commission's Division of Hearings would be tasked with moving forward proposed rule packages." The Chair suggested the Commission set timeframes and benchmarks to "move forward efficiently with the Advisory Council's recommendations." He asked the Division of Hearings and the Department to consider the ten study recommendation items and "report to the Commission by March with a prioritization of those ten items with some specific action plan or work plan on how those items will be managed.

John Davis said, "Chairman Early did a really great job in conducting the six public meetings. There were some tough times in there, and he did a wonderful job respecting the public, staff, and everyone involved. I just want to thank him for that, for his care and diligence to that process." Besides Department professionals reporting to the Commission, "I want to make sure that we take good care of our constituents, especially with a comprehensive deer plan."

The Chair said Davis makes a "very good point, and from the beginning this process has been an open book. I mean the integrity of this process has been respected in that we made a commitment to the public when this started. We made certain statements that we would not do certain things, and we lived up to that. All of this has been in the light of day and with the input from the constituents and the Department. So, I would hope that that would continue." He suggested that Commission action regarding the Advisory Council's report could be to accept the report and to set "date-specific, priorities and action plans" for recommendation items in (B). The Chair invited comment from the Division of Fish and Wildlife and inquired whether the Department could review and prioritize an action plan for these items for presentation at the March meeting.

Mark Reiter, Director of the Division of Fish and Wildlife, said a report that includes prioritization and timeframes for rule adoption for those items recommended for further study could be prepared for presentation in March. "We can give you our opinion and where we think we ought to be heading with those items". He addressed the recommendation in (B)2, page five of the report, that the Department review all deer hunting rules. The Division's Wildlife Section has "actually gone a long ways down the road in developing a brand new deer management strategy" for Indiana. The management strategy was "briefly described" to the Fish and Wildlife Conservation Committee and the Natural Resources Summer Study Committee. "We are trying to get the word out there that we have some really substantial changes." Reiter said some of the Advisory Council's recommendations are included in the proposed deer management strategy.

The Chair said not all recommendations would require date specificity for reporting to the Commission. "Some of these might take some time. He reiterated that he wished to see a prioritization of the recommendations with coordinated reporting from the Commission's Division of Hearings and the Department at the Commission's March meeting. The report would include "how these times will move forward so that the public is aware of what is the priority", and, "if it is prudent, an action plan for how these will be brought back. This Commission can look at these items as a standing item on the agenda at least for the remainder calendar year. I don't want them to be buried."

The Chair invited Sandra Jensen, Assistant Director of the Division of Hearings, to comment on the rule adoption process as it relates to the Advisory Council's recommendations in (A).

Jensen said the Advisory Council and the Steering Committee agreed from the outset that substantive amendments would begin being proposed in March 2010, and that "anything new would go forward as efficiently as possible with a goal of being through the entire rule adoption process by the end of 2010." She had not yet discussed with the Department the recommendations in (A), whether there are any unknown biological concerns. The proposal in (A)4 to institute a telecheck program involves a "substantial amount of money which is just not available right now". Jensen said after discussions with the Department, "it might be possible to present proposed rules as early as March on some of these less complicated recommendations." She stated that for any item in (A) that is not brought forward for preliminary adoption in March she would offer a report.

The Chair said any proposed rules ready for preliminary adoption at the March meeting "would be great." He suggested for items needing further review, a timeframe with benchmarks should be offered at the March meeting for when those items would be brought forward. "I want to be very clear to the public who came here on this issue and to be recognized in the minutes that this is where the work starts. This is where the substantive changes happen. I don't want that to be buried. I can't let this process stop."

The Chair suggested, "So, if we can shoot for March, and if it is the will of the Commission that we task the Department and the Division of Hearings with making a report as it pertains to (A)—that we will have that report and potential rule changes—some of them brought forth at our March meeting—that we would accept this report as amended with those benchmark dates of March with a full report, prioritization, and schedule, is that fair?" Jensen responded, "That's fair with me." She asked whether proposed rules resulting from this process should be presented to the Advisory Council before consideration by the Commission. The Chair replied, "I don't think we need to create more work for ourselves. This has been well-vetted. Let's get it done."

Larry Klein asked whether the Advisory Council's report was made available to the public. The Chair responded the minutes of the Advisory Council meetings, agendas, and the public testimonies were all made available to the public.

Patrick Early responded that the synthesis of the 1,000 suggestions was explained at the December Advisory Council meeting, including the recommendations in the report. "People that had the opportunity to attend our meetings in person or would have followed the process and read the minutes would have had access to what the recommendations were. No one has had the opportunity to react publicly to any of these recommendations, and that's a process that will occur" through the rule adoption. John Davis noted the Advisory Council minutes are posted on the Commission's website. Jennifer Kane, Paralegal for the Division of Hearings, said a Commission webpage was created and "specifically dedicated to the fish and wildlife rule review project."

Patrick Early moved to accept the "Report of the Natural Resources Advisory Council of Public Hearings and Recommendations as to Suggestions for Substantive Amendments to the Fish and

Wildlife Rules” with modification that the Commission’s Division of Hearings and the Department report back to the Commission regarding timeframes and prioritizations at the Commission’s March meeting. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

#### **PERSONNEL ACTIONS**

##### **Consideration of permanent appointment of Rob Ackerson as Assistant Property Manager of Mixsawbah Fish Hatchery, Walkerton**

Randy Lang, Fisheries Biologist with the Division of Fish and Wildlife, presented this item. He said the Division recommended Rob Ackerson for permanent appointment as Assistant Property Manager of the Mixsawbah Fish Hatchery, Walkerton. He reported Ackerson has worked 13 years in the Bodine Fish Hatchery in Mishawaka. “We are very fortunate to have people like Rob Ackerson moving up in our program. We need this kind of experience and knowledge in our fish culture operations.” Ackerson has “proven his ability as assistant property manager and his ability to grow and develop in the position. We are very proud of his work.”

Larry Klein moved to approve for permanent appoint of Rob Ackerson as Assistant Property Manager of Mixsawbah Fish Hatchery. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

##### **Consideration of personnel interview for the position of Assistant Manager at Mounds State Park (Anderson) and Fort Harrison State Park (Indianapolis)**

Dan Bortner, Director of the Division of State Parks and Reservoirs, presented this item. He said Dustin Clark was selected through the interview process as the candidate for Assistant Property Manager at Mounds State Park and Fort Harrison State Park. Clark was previously employed with Florida State Parks, “but he is a native Hoosier from the Hagerstown area and a graduate of Ball State University. It is good to have [Dustin] back, and he certainly comes well-qualified.”

Donald Ruch moved to approve appointment of Dustin Clark as Assistant Manager at Mounds State Park and Fort Harrison State Park. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

#### **INDIANA STATE MUSEUM AND HISTORIC SITES**

##### **Consideration of request from the Indiana State Museum and Historic Sites for approval of deaccession of items from the collection**

Katherine Gould, Assistant Curator for the Indiana State Museum, presented this item. She is Chair of the Collections Review Committee. Gould said the items on the list have been deaccessioned through the in-house processes, “which is part of an effort to improve the quality of the Museum’s collection. The items have also been reviewed by the appropriate curators, the Collections Review Committee, and Museum administration officials.” Gould explained that the proceeds of the sale of the deaccessioned items would be deposited in the Indiana State



Museum's dedicated acquisition fund, which is used to purchase "more appropriate" objects for the collection.

Doug Grant asked where the auctions were held. Gould responded that the Museum uses an Indianapolis auctioneer, Christy's of Indiana, Inc. The auctioneer holds onsite as well as online auctions which are open to the public.

Grant noted the values of items proposed for deaccession are nominal. He asked whether items of considerable value, such as T.C. Steele paintings, were ever deaccessioned. Gould said the Museum is restricted from deaccessioning T.C. Steele items. But items of greater value are subject to the same deaccessioning process as items with nominal values.

Robert Wright moved to approve deaccession of items from the Indiana State Museum collection as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of request by Indiana State Museum for Natural Resources Commission approval of NASA Space Shuttle artifacts with temporary donation restrictions**

Katherine Gould also presented this item. She explained that NASA is discarding some materials from its Space Shuttle Program which are scheduled to be decommissioned through Federal surplus regulations. The Indiana State Museum has "made an effort to acquire a number of the artifacts and has gone through quite a lengthy application process." She said the Museum has submitted a list of requested objects as contained in the Commission packet.

Gould said restrictions are imposed on the Museum in accepting the NASA objects. The Museum would need approval from the Commission to accept the restrictions. The two major restrictions are that (1) the object would need to be put in public display within the first year of acquisition; and (2) the material must be retained for a minimum of five years before removing the material from the collection or doing anything with it other than for purposes for which the material was accepted.

Thomas Easterly noted the total value of the items is approximately \$3.5 million. "We are not paying \$3.5 million, are we?" Gould responded, "No. This is an outright donation." The cost encumbered by the Indiana State Museum would be costs for shipping.

Jane Ann Stautz asked, "Regards to the plans of needing to have items on public display within the first year, is this part of a current exhibit or exhibit you have planned?" Gould responded the Museum does not have a current schedule for exhibition. She noted that a biology curator and a technology curator are working on the application process. "When we know what we are going to get, which could take up to a year or longer, they will start working on plans to making [the material] publicly accessible in some way at the Indiana State Museum or at one of our historic sites".

Phil French asked whether the Museum had an estimate of the shipping costs. Gould said the Museum has "no idea of the shipping costs. We have submitted a list, but we don't know what, if anything, from that list we will be getting. We do not know when we will be getting it, and

how much we will be getting at each increment.” She noted, however, the Collections Review Committee has allocated a percentage of the acquisition fund to cover anticipated shipping costs.

Patrick Early moved to approve request by Indiana State Museum to accept donation restrictions associated with acquisition of NASA Space Shuttle artifacts. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

#### **DIVISION OF LAW ENFORCEMENT**

#### **Consideration of preliminary adoption of amendments to 312 IAC 6, which governs navigable waters, to address the use of aerators; Administrative Cause No. 09-188W**

Steve Lucas, Director of the Commission’s Division of Hearings, presented this item. He said during its September meeting, the Commission gave preliminary adoption to new rules to address the placement of aerators on public freshwater lakes. This proposal led to additional queries from the Commission. Michael Reed asked about the Commission’s ability to write rules for waters other than public freshwater lakes. Vice Chair Stautz suggested the need to have standards for aerators that would not qualify for the general license established in the rules given preliminary adoption in September. Lucas said the two queries were “related, but are being reviewed on different tracks.” He said the latter issue would be presented to the Commission in a future meeting.

Lucas said the rule proposal currently before the Commission would address the placement of aerators in navigable waterways. He said Kari Evans, the Department’s Chief Legal Counsel, agreed the Commission could adopt aerator rules for navigable waters. Lucas said the “proposed rules are consistent with what has been pretty much the tact for the last few years.” They would apply parallel standards to navigable waters to those being applied to public freshwater lakes. “The consequences are pretty similar. We are talking about bodies of water that have public use paired with private riparian ownership along the shoreline.”

Lucas said the proposal is “very close” to the rule given preliminary adoption in September but would apply to navigable waters. The placement of aerators in navigable waterways is not a “preeminent issue or as high profile today as it is with public freshwater lakes, but our history has been that often what starts with public freshwater lakes we later find to be an issue on navigable waters.”

Robert Wright asked for an example of navigable waters. Lucas responded that bodies of water that would qualify as navigable waters, and where aerators might be an issue, would include the West Fork of the White River in Indianapolis, the St. Joseph River in South Bend, or perhaps bays of the Ohio River. “But it seems most likely to arise as an issue on fairly small or medium navigable rivers in an urban area.”

Wright continued, “What about the Wabash?” Lucas responded, “the Wabash River is navigable, and particularly where there is a highly developed area along the shore, issues arising from the placement of aerators seem feasible.” Wright then asked, “The person who might have the right to put an aerator would be the adjacent landowner?” Lucas answered in the affirmative.

Doug Grant asked, “You can’t put [an aerator] in December or January, is that how I read it?” Lucas responded the proposed rule would create a general license, as did the rule given preliminary adoption in September. A general license means a riparian owner “would not have to go through the whole license review process” if the aerator were placed in the navigable waterway in March through October. “For public freshwater lakes, most people have been interested in March.” A person who wished to place an aerator in navigable waters other than in these months would need to go through the full licensure process. The Division of Water would review the application under the Flood Control Act and the Navigable Waters Act, with input from the Division of Fish and Wildlife for biological consequences and the Division of Law Enforcement for safety issues.

Robert Wright moved to approve for preliminary adoption amendments to 312 IAC 6, which governs navigable waters, to address the use of aerators. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

#### **DIVISION OF WATER**

#### **Consideration of an application by the Wildwood Dam Conservancy District for a Flood Control Revolving Fund loan in the amount of \$160,000 for costs associated with the refinement and clarification of the District Plan**

Terri Price, Water Planner for the Division of Water, presented this item. She explained the Flood Control Revolving Fund—a loan available to governmental entities—was established and codified at IC 14-28-5. The Fund is available to municipalities, conservancy districts, small cities and towns. Prior to a 2008 statutory amendment, both the State Board of Finance and the Commission were involved in the application process. In 2008, the Commission was given sole responsibility for review and approval of the applications. Price said loans cannot exceed \$300,000 and must be repaid in ten years at 3% interest.

Price said the Wildwood Dam Conservancy District received a loan for \$150,000 in 2007, and its current loan balance is \$135,000. The conservancy district’s dam was damaged during the June 2008 floods, and the current loan request of \$160,000 would be used to “rework the district plan so [the district] can go on to the next phase and do repairs to the dam”. Price said the district planned to seek a long-term loan with the U.S. Department of Agriculture, and it anticipates paying the balance of the Fund loans in 2010 and 2011. The current Flood Control Revolving Fund balance is \$1,011,119.00. She explained the funds loaned to the district are to be used for engineering reports and district plans, but they cannot be used for construction. Price then requested the Commission give approval for a loan through the Flood Control Revolving Fund of \$160,000 to the Wildwood Dam Conservancy District.

Donald Ruch moved to approve application by the Wildwood Dam Conservancy District for a Flood Control Revolving Fund loan in the amount of \$160,000 for costs associated with the refinement and clarification of the District Plan. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

## DIVISION OF FISH AND WILDLIFE

### **Consideration for approval of preliminary adoption of amendments to 312 IAC 9-3 and 312 IAC 9-10-4 that govern the taking and possession of exotic mammals, including wild (feral) hogs and cervids; Administrative Cause No. 09-166D**

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She explained the proposal would amend the rules governing the taking and possession of exotic animals. Proposed is the removal of the family Suidae (wild boar and other exotic swine) from the exemption list at 312 IAC 9-3-18.5(a) with a new rule proposed at 312 IAC 9-3-18.6 to govern this species. She said the proposed rule would also allow exotic animals that have escaped captivity into the wild to be taken by anyone. The proposed amendments would clarify the possession and sale of the exotic mammals and that they cannot be released into the wild.

Petercheff said proposed 312 IAC 9-3-18.6 governing wild boars is needed to clarify requirements for the possession and taking. The Division of Law Enforcement, Division of Fish and Wildlife, and the State Board of Animal Health (the "BOAH") met to discuss the proposed rule, and they "agreed upon this new rule language". Petercheff said wild boars are a "major disease threat" to domestic hog operations, because they carry pseudo-rabies which can be transferred to domestic swine. They carry brucellosis, which is a human health threat, and other diseases such as TB. Wild boars also destroy habitat for native species and private property.

Petercheff said the Midwest Association of Fish and Wildlife Agencies and American Health Association have passed resolutions calling for feral swine control. The Department has received calls from persons seeking to establish high-fenced hunting preserves for wild boars. Petercheff also noted BOAH does not allow the importation of the exotic species in Indiana unless a permit is obtained. BOAH has not issued any permits, but wild boar importation "is not strictly prohibited" in BOAH's rules. The proposed rule would prevent the importation of these animals and "clearly prevents the sale and possession of the animals, and prevents high-fenced hunting, but allows the animals to be taken from the wild throughout the year."

Petercheff explained proposed amendments to 312 IAC 9-10-4 would add exotic cervids (Cervidae) to the game breeder license as a result of statutory amendments governing livestock operations. The governing statute states clearly that to be defined as a Cervidae livestock operation, the operator must hold a game breeder license to "market and sell the meat and products from those animals. It clearly states in that statute as well that it does not allow for the hunting of those animals." She said the Indiana Deer and Elk Farmers Association ("IDEFA") approached the DNR, and the proposed language was developed with the group's input. Petercheff said IDEFA had indicated its support for the proposed rule amendments.

Cliff Carley, a member of the IDEFA Board of Directors, said, "My only concern that I see today is one of the things is that anybody can shoot an exotic animal when it gets out. I guess I can go to Rick Miller's place, cut his fence, and then shoot his \$400,000 worth of deer when they come out. Nobody can do anything about it." He said a "timeframe or timetable" should be added to the rule proposal in which an escaped exotic animal can be taken. Carley explained he has an elk

that he exhibits in the public arena. “If the elk gets out at the Hamilton County Fair, you know, just anybody could shoot him. I don’t know if that’s the right thing to do.”

The Chair asked Carley whether his concerns were brought up during discussion between the Department and the IDEFA. Carley responded, “No. This kind of blind-sided me this morning when I came in.”

Petercheff explained the Department met with IDEFA regarding the proposed amendment to 312 IAC 9-10-4 to which the IDEFA has expressed support. Carley’s comments are directed to proposed amendments to 312 IAC 9-3-18.5(b).

The Vice Chair reflected, “Along those lines, I had the same thought about if there is an escape of an exotic animal that appropriately had been contained and escapes for one reason or another, or there are people in pursuit or trying to recapture [the animal] legitimately. Versus the scenario where the [animal] is out there and causing other problems, and you question who the owner is. You may not be aware of the owner, and then the ability to shoot. I don’t have the right words yet as to what a recommendation would be to accommodate that type of situation where it is a recent release or escape.”

Mark Ahearn said this discussion was the “kind of discussion question that you have in property law in your first year. You own an animal. It gets over your fence. It goes into your neighbor’s. What property rights exist? I’m not sure how we address that either.”

Thomas Easterly asked, “Isn’t that the kind of question you can deal with after preliminary adoption before final adoption, or is that too far a-field?” The Chair responded, “It would seem that that would be a natural outgrowth of comments from this, which is what that process is intended for.”

Petercheff explained the rule proposal was initiated due to a recent incident involving the escape of six red deer from an exotic Cervidae farm in Northern Indiana, and “nobody did anything about it.” She said area landowners and hunters have inquired about the legality of taking the deer. “We have hunters all the time who find animals that have escaped, particularly from Cervidae facilities that have ear tags and are shot by hunters inadvertently.” The escaped animals may pose a “serious disease threat to Indiana’s native wild animal population.” She noted a cougar escaped from a USDA-licensed facility in 2007, and currently the rule only allows the resident landowner or tenant to take the animal on their property. A timeframe could be included in the proposed amendment, but DNR believes the rule is today “overly restrictive”.

The Chair said he agreed with Carley that the issue needs to be addressed. “There are obviously some conundrums that are of fairly serious nature especially with this particular item.” He asked Carley whether he would be agreeable to address the issue through the rule adoption process.

Carley responded that the Department stresses the escaped animal may pose a serious health threat to native wildlife. But deer and elk farmers within the IDEFA raise animals that are “as healthy as they can be. We get monitored by [BOAH]. We are CWD certified. We’ve done herd inventory every year. Our animals aren’t sick.”

The Chair said the proposed rule was targeting those Cervidae farmers and those farmers of other animal species that “may not be as reputable”. He asked the Department whether it was possible to meet with IDEFA and other Cervidae farmers to draft proposed language to address a timeframe in which an escaped animal could be taken.

Petercheff said the Department has met with the IDEFA regarding proposed amendments in 312 IAC 9-10-4 and can continue to meet for discussions, but “I’m not sure what I can do after preliminary adoption to add language in here unless its public comment given to the Commission as part of the rule promulgation process”.

Sandra Jensen asked whether the Commission could give preliminary adoption to the proposed rule amendment with instruction to the Department to coordinate with IDEFA and others to draft proposed language to address the issue prior to the actual publication of the preliminary language.

Robert Wright asked, “What happens if they can’t agree?” Jensen responded if an agreement on proposed language cannot be reached, “you go forward with the language you have”. Wright continued, “What is the problem with just tabling this issue until the March meeting, and let them work out their agreement.”

Petercheff said a delay would prevent the proposed amendments to govern the possession and taking of wild boars from moving forward. “The wild boar population is a serious matter for the Department. We are very concerned that if we prolong the process for this rule adoption that this could continue to be more of a problem and affect Law Enforcement’s ability to take action.” She noted the IDEFA had been “pushing for the proposed amendments to 312 IAC 9-10-4.” She added the Department was “agreeable to working with the groups to draft modified language.”

Patrick Early asked whether the rule amendments could be given preliminary adoption, but relocating the proposed language governing “escaped cervids” into a separate rule proposal.

The Chair asked Carley whether the removal of proposed amendments to 312 IAC 9-3-18.5(b)(3) regarding escaped animals would address his concerns.

Carley said, “That’s okay with me on that end of things,” but the proposed amendments to 312 IAC 9-3-18.6 that would govern wild boars would prevent him from raising Russian boars. “You are taking away my ability to be able to do that, because there is a market for those things, just like there are for deer and elk. I don’t like the idea of not being able to import them.... It’s no different than any other farming operation... Are the elk next if we can’t import pigs?”

The Chair said the Commission has addressed cervid operations for several years. “There is a specific issue with the feral hogs that does require something of a substantive nature.”

Bill Herring, resident of Indiana, said there is one area that has not been discussed directly regarding captive cervids. That is the “idea of security. We talked about deer and various species getting out and causing problems. Why did they get out? Well, one reason that I can think of,

one possibility, is because the perimeter fencing just is not adequate.” He said there are “serious concerns about disease spread.” Some diseases, such as CWD, were spread by contact. He said the existing language requires “only a single eight-foot fence, and there is no requirement for a T-top or Y-shape at the top of the fence to further discourage deer from jumping either in or out. “There’s nothing that says you can’t have a perimeter fence near large trees that may blow over and breach the pens. There’s nothing that says you have to have a double fence in order to almost totally prevent” contact with other wild animals or domesticated cattle. He concluded perimeter security has not been “adequately addressed at this time. It needs to be very soon so we do not have a serious incident of disease associated with these operations.”

Patrick Early moved to give preliminary adoption to the proposed rule amendments, but amending the proposed amendments at 312 IAC 9-3-18.5(b)(3) to remove applicability to escaped cervids. Lucas asked Early whether his motion would result in (b)(3) reading “an animal other than a cervid that has escaped from captivity into the wild”. Early answered in the affirmative.

Ahearn asked, “We are not leaving (b) as originally written? We’re still partially amending?”

Lucas responded that under Early’s motion, escaped cervids would be excepted from the proposed amendments.

The Vice Chair said the Commission had two other options regarding the rule proposals: (1) strike the proposed amendments in (b)(3) and deal with those amendments in a separate rule proposal; or (2) leave the proposed amendments in the rule package, but with instructions to Department staff or the hearing officer to address the concerns by a certain date prior to publication.

Early said the Commission “needs to act on the issue as it relates to feral hogs.”

Ahearn said that, as motioned, the proposed language in (b)(3) seems to “protect” the escaped exotic animal species that the Department seeks to allow any individual to take.

Jensen stated that the publication of the proposed rule language will not occur until the Office of Management and Budget has completed its fiscal review, which is routinely taking from three to six months. She observed that the continued discussion between IDEFA and the Department about the language in (b)(3) during that time period will not slow the rule adoption process down. Jensen noted, however, that the Department and the Division of Hearings needs “clear direction from the Commission” whether the proposed language should be moved forward if compromise language cannot be agreed upon.

The Vice Chair responded that if the parties do not agree on language, then the proposed amendments should remain as proposed by the Department, and “let the hearing process and public comments address it.”

Early withdrew his original motion. He then moved to give preliminary adoption to amendments to 312 IAC 9-3-18.5, 312 IAC 9-3-18.6, and 312 IAC 9-10-4, as proposed by the Department,

but with instructions to the Department to coordinate with the IDEFA and other deer and elk farmers to attempt to include language to amend 312 IAC 9-3-18.5(b)(3) regarding the taking of escaped cervids. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Ahearn asked the Department to report to the Commission at a future meeting regarding the discussions with IDEFA and others.

The Vice Chair asked the Department to also consider other stakeholder groups, such as a local zoo or other groups that may have an interest in exotic animals that escape into the wild.

## **NRC, DIVISION OF HEARINGS**

### **Consideration of rule processing, report of public hearing, and recommendation for final adoption of amendments to 312 IAC 8-2-3, governing the use of firearms, hunting, and trapping on DNR properties; LSA Document #09-470(F), Administrative Cause No. 09-109D**

Steve Lucas, Hearing Officer, presented this item. He explained the rule proposal presented for final adoption was initially two separate rule proposals to which the Commission gave preliminary adoption at previous meetings. Both proposals apply to the same rule section, 312 IAC 8-2-3, and were combined for administrative efficiency.

Lucas said the amendment to 312 IAC 8-2-3(c) was precipitated by a previous amendment regarding the possession of handguns on DNR properties. The previous amendment addressed the possession of a firearm, but it did not address the discharge of the firearm. The amendments in 312 IAC 8-2-3(e) would provide a new opportunity to allow for the use of moving targets on supervised shooting ranges where the Department determined a hazard to public safety would not result in their use. Lucas recommended the Commission give final adoption to the amendments as presented.

Donald Ruch moved to give final adoption of amendments to 312 IAC 8-2-3, governing the use of firearms, hunting, and trapping on DNR properties. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of report of public hearing and comments, and recommendation of final adoption of amendments to 312 IAC 9, governing definitions, restrictions and standards applicable to wild animals, the hunting, taking, and trapping of mammals except deer, and the taking of birds (2nd Technical Rule Package); LSA Document #09-479(F); Administrative Cause No. 09-026D**

Sandra Jensen, Hearing Officer, presented this item. She said the rule proposal was the second clarification package initiated through the Comprehensive Fish and Wildlife Rules Enhancement Project. The proposal amends rules that establish definitions, general standards, and standards applicable to birds and other mammals except deer. “The primary purpose of this package was to enhance clarity for consumers and law enforcement.”



Jensen said no member of the public attended the public hearing. A written comment was received addressing the proposed definition of “game bird” at 312 IAC 9-1-7.5. She said that as the proposed rule was moving forward and after publication of the proposed rule, it was realized that the statutory definition of “game bird” was amended by adding mourning doves. She said the amendment would make the rule consistent with the statute. Jensen explained an amendment to the definition of “game bird” then required another revision at 312 IAC 9-4-7(b) and (c) because the subsections govern hunting opportunities that are not applicable to mourning doves.

Jensen explained that 312 IAC 9-4-2 amended the definition of “youth” as an individual who is less than 18 years of age on the date of the hunt in order to be consistent with Indiana statute. However, Federal regulations establish youth hunting days for waterfowl and migratory birds that is separate from youth hunting opportunities established by state law. For this waterfowl season a “youth” is defined by Federal law to be an individual under the age of 16. Jensen said subsection (e) is proposed to be amended so the administrative rule will be consistent not only with the Indiana Code but also with Federal regulation. Jensen recommended the proposed rules be given final adoption as appended to the Hearing Officer’s Report as Exhibit A.

Thomas Easterly moved to approve for final adoption amendments to 312 IAC 9 governing definitions, restrictions and standards applicable to wild animals, the hunting, taking, and trapping of mammals, except deer, and the taking of birds. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of preliminary adoption of amendments to 312 IAC 3-1-2.5 which identifies provisions of the Code of Judicial Conduct which are applicable to the Commission’s administrative law judges; Administrative Cause No. 09-121J**

Steve Lucas presented this item. He said there are two entities within State government with statutory mandates to implement the “applicable provisions” of the Code of Judicial Conduct. These are the Division of Hearings which reviews decisions by the Department, the Geologists Licensure Board and the Soil Scientist Registration Board; and the Office of Environmental Adjudication (the “OEA”) which reviews decisions by the Indiana Department of Environmental Management. The Division of Hearings worked with OEA in 2007 to propose standards that helped clarify which provisions apply. Lucas said some of the provisions in the Code of Judicial Conduct “really don’t make sense for administrative law judges...such as the standards for elections and the prohibitions on judges holding proceedings that are televised.” The Open Door Law provides that if someone wants to televise one of our proceedings, “we generally have to let them.” In 2007, parallel rule were adopted through the Commission and by OEA.

Since these rules were implemented, Lucas said the Supreme Court changed the Code of Judicial Conduct. That in turn causes necessary amendments to 312 IAC 3-1-2.5 so “our standards match court standards”.

Lucas said the Commission’s administrative law judges also provide mediation services under IC 4-21.5-3-5 of AOPA. “Typically court judges don’t do mediation, because of the way the Code of Judicial Conduct is written.” He said the amendment to 312 IAC 3-1-2.5(e)(3) would allow

an ALJ to perform mediation services outside the administrative proceeds, as long as a fee is not charged for the service. “Where that might come up most often is when a state agency has a matter it wants mediated but the matter is not governed by AOPA. Our situation is a little bit different than the courts in this context, because the courts have general jurisdiction. We don’t have general jurisdiction. For example, we don’t have any jurisdiction over what the State Department of Health does relative to a package plant or a mobile home park. Our limited jurisdiction does not seemingly present the potential conflicts that a court of general jurisdiction could have.” He said if the proposed rule amendments were given preliminary adoption, the Division of Hearing would again cooperate with OEA in the hearing process and to make the rules of the two entities comparable.

Robert Wright moved to give preliminary adoption of amendments to 312 IAC 3-1-2.5 which identifies provisions of the Code of Judicial Conduct which are applicable to the Commission’s Division of Hearings. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

**Consideration of amendments to the “Procedural Guidelines for the Interpretations of the Conservancy District Article” nonrule policy document to provide guidance pertaining to the reimbursement of expenses as specified in IC 14-33-2-20; Administrative Cause No. 10-007C**

Steve Lucas also presented this item. He said a statutory provision governing conservancy districts states that the “expenses of the hearings and other expenses of necessary investigations and surveys, together with any expense incurred by the Commission in subsequent studies of district plans are payable initially out of the general money of the Commission. The district shall repay the expenditures, not to exceed 30% of the amount paid by the district to independent private engineers.” To the best of his knowledge, the statute has never been implemented. He said an amendment was proposed to the nonrule policy document governing conservancy districts to incorporate this legislative directive. The proposed amendments would “give some structure for how the [provision] would be applied” by the Commission and the Department.

Alan Hux, attorney with the firm Taft Stettinius & Hollister, indicated he was speaking as a board member of the Indiana Conservancy District Association (the “ICDA”). He requested that the Commission “follow through with the way this has been handled since, well ever since I’ve been involved, and I’ve been involved with conservancy districts for almost 30 years.” Hux acknowledged the statutory provision regarding collection of expenses, but he added, “I’m not aware of any time that any charges have been charged to these conservancy districts.” He said the ICDA is concerned that the collection of expenses will have a “very chilling affect on the formation of conservancy districts. A lot of times” conservancy districts are formed by small rural communities that have recreational facilities with dams classified by DNR as “high hazard” dams. “The only way [the communities] have to finance or get money to provide for these improvements is through the formation of a conservancy district.”

Hux said his firm is representing 18 freeholders who have petitioned for the formation of a conservancy district to address improvements to the community’s dam. “It’s going to be a very expensive process”. He said that he believed the initial engineering costs for this project would

be approximately \$50,000 to \$75,000. The Commission's fee collection would add "another \$15,000 to \$25,000" to the cost of conservancy district formation. The only way that freeholders have to raise money, especially for the dam or watershed projects, is through exceptional or special benefits assessments, which are basically taxes. "So, all we are doing is just increasing their taxes to take care of a problem that helps the environment by maintaining the dams, repairing the dams, or putting in sewer systems." Hux said the ICDA's position is, notwithstanding the statute, to request the Commission and DNR "continue their past practice of not charging these fees to these conservancy districts in order to try to keep those costs down."

Robert Wright asked who was currently paying for any engineering costs associated with the formation of a conservancy district. Hux responded the engineering costs are being paid by the conservancy district. IC 14-33-2-20 provides that the Commission "may charge [the conservancy district] an added cost for holding the hearings—in other words, the hearing officer's cost, DNR's cost for reviewing the plan. We would reimburse the State for those costs." He said one problem with the proposed amendment is "there are no standards at this point in time about what those costs are going to be. Is it going to be \$500 an hour for a hearing examiner? Are we going to have to pay \$300 a day for a DNR engineer to look at the district plan...or unit of work? This is a reimbursement of costs that the DNR or the State has never put on the backs of the freeholders or the taxpayers."

Ron McAhrn observed the governing statute has a cap of 30% of the amount paid to the private engineers for the preparation of plans. Given staff salaries, the reimbursement "could never approach" costs estimated at \$15,000 to \$25,000. He agreed the past practices of the Commission have not been to collect these fees, but the statute "does not say 'may'; it says [the Commission] 'shall'" be reimbursed for costs incurred for its role in the formation of conservancy districts. "We are not talking about a lot of money, and we are probably talking about some nuisance on our end to" collect the fees, but "we are encumbered by the statute".

Thomas Easterly inquired of Hux: "The practical effect of not [implementing the statute] is your freeholders are asking all the other residents of Indiana to pay that cost for them, right?"

Hux responded, "I guess it's no different than what was talked about here when the hearing officers do mediation for some of the other agencies. The taxpayers are paying that." He said his concern was for a situation where the Department classifies a dam as "high hazard", and "one of the only ways the dam could be fixed—so they can have dollars, get grants, or to raise taxes to pay that—is...to form a conservancy district.... Some of those costs included in that are reimbursement, at this point, unascertainable costs because there are no objective standards about what those costs would be.... There's no way I can advise a conservancy district...regarding the costs of state fees."

Mark Ahearn observed the Indiana General Assembly had "expressed its will" by enacting IC 14-33-2-20.

Hux responded, "That's our problem. It's there. It has never been done. It says that you shall do it. The only way we can get by with that possibly is to change the legislation." Hux said he "certainly understands" the Commission's situation regarding the statutory provision.

Ahearn recommended that the Commission's Division of Hearings and the Department develop some guidelines to add certainty regarding reimbursement costs.

Easterly noted the average hourly rate within Indiana Department of Environmental Management is \$69. "The costs of state employees are low." He said that "if there is a system to recover actual costs, those costs will be low but they will be taking that burden off other taxpayers and putting on people that are getting the service."

Phil French asked whether there was a "simple way" to provide guidance as to costs incurred by the Commission.

Lucas said the Commission could give the Division of Hearings and the Department instruction to draft a guidance document. He noted the proposed amendment would be applied only to conservancy districts that are formed starting April 1, 2010. A proposed guidance could be drafted for presentation at the March meeting, if requested. When the Commission meets in March, no reimbursable fees would yet be generated by the agencies under the amended nonrule policy document.

Ahearn noted that a guidance document would be helpful for the constituents.

Mark Ahearn moved to approve amendments to the "Procedural Guidelines for the Interpretations of the Conservancy District Article", Information Bulletin #36 (Fifth Amendment), to provide guidance pertaining to the reimbursement of expenses as specified in IC 14-33-2-20. In addition, he directed the Commission with assistance from the Department to draft a guidelines for the calculation of reimbursement of costs. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

### **Adjournment**

The meeting was adjourned at approximately 12:04 p.m., EST.