

NATURAL RESOURCES COMMISSION

Minutes - November 25, 1997

MEMBERS PRESENT

Michael J. Kiley, Chair
Jack Arnett, Vice Chair
Larry Macklin, Secretary
John Goss
Mary Titsworth Chandler
Steve Cecil
Jane Anne Stautz
Damian Schmelz
Joe Siener
Tom Cobb

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Tim Rider
Sharon Turk

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
Carrie Doehrmann	Executive Office
Angie James	Executive Office
Gregg McCollam	Fish and Wildlife
Glen Salmon	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Mark Cottingham	Fish and Wildlife
Matt Abriani	Water
Rebecca Kuhr	Water
Virginia Simone	Legal Counsel
Mary Ann Habeeb	Legal Counsel
Angila Prather	Legal Counsel
Burney Fischer	Forestry
Tom Lyons	Forestry
Shannon Young	Forestry
Jon Winne	Forestry
John Bacone	Nature Preserves
Jim Slutz	Oil and Gas
Mike Massonne	Soil Conservation
Jim Ray	Soil Conservation

GUESTS

William Moreau

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:10 a.m., EST, on November 25, 1997 in the Auditorium of the Indiana State Library, Ohio Street, Indianapolis, Indiana. With the presence of ten members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of the October 29, 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 the interim study committees of the Indiana General Assembly had concluded their activities for 1997. The DNR testified before the Natural Resources Study Committee, the Agricultural Matters Evaluation Study Committee, and the Water Resources Study Committee. Macklin said there was an "excellent, excellent" report from the Legislative Services Agency to the Agricultural Matters Evaluation Study Committee which showed a very minimal economic impact upon county tax revenues attributable to lands purchased through the Heritage Trust Fund.

Macklin said the Lake Study Committee has just commenced activities. He expected the committee to meet again soon, quite possibly during or immediately prior to the legislative session.

The Director said the Indiana General Assembly held its organizational meeting on November 18. He said, "We have no idea of legislation bearing upon DNR at this particular point."

Macklin reported there have been several meetings to coordinate activities for construction of the new Indiana State Museum. He said an "ad hoc task force" has been formed to help move the museum effort forward.

Macklin reported the Midwest Conference of Natural Resources Directors met recently. The conference was held at Maumee Bay State Park near Toledo. He attended the meeting together with Lori Kaplan and Jack Costello. Eric Myers made a presentation. "It was a good conference."

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, was not present.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, said the advisory council did not meet in November. He said the "Ayres Tea Room" was being set up in the Indiana State Museum in anticipation of the Holiday Season.

Costello reported upon a "successful operation" to control deer at state parks. He said approximately the same ratio of deer were taken as last year, but the numbers were larger because hunts occurred at ten parks as compared to eight last year.

The Chair asked Costello if scientific studies at the state parks showed any habitat improvement where hunts had taken place. Costello responded that "we do see some progress." Numbers were

reduced sufficiently during the controlled hunts in 1996 so that hunts were not required this year at Pokagon State Park or New Harmony State Park.

Joe Siener, Chair of the Advisory Council for the Bureau of Water and Resource Regulation, said his council did not meet in November.

Lori Kaplan, Deputy Director for the Bureau of Water and Resource Regulation, was not present.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said his bureau had employed a new attorney to replace Sylvia Wilcox. He said Wilcox had been selected the new administrative law judge for the NRC's division of hearings. Ehret indicated he felt confident Wilcox "would do a good job for the commission." Ehret also reflected the Division of Oil and Gas has selected a new field office manager for Evansville.

Ehret invited the commission to attend the Indiana Society of Mining and Reclamation Seminar set for December 8 and 9. He said Damian Schmelz was scheduled to attend, and it was always gratifying to staff to enjoy the active participation of commission members.

BUREAU OF LANDS AND CULTURAL RESOURCES

Personnel Interviews

Consideration of Permanent Appointments for Martin State Forest and Starve Hollow State Recreation Area

Tom Lyons of the Division of Forestry presented this item. He presented Jonathan Winne for permanent appointment at Martin State Forest and Shannon Young for permanent appointment at Starve Hollow State Recreation Area. Lyons said both had successfully completed their one-year probations and that management at the division was "very enthusiastic" about the candidates. "We're very pleased to recommend both."

Damian Schmelz moved to grant permanent appointment status to Jonathan Winne and Shannon Young. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.
Division of Nature Preserves

Consideration of Preliminary Adoption of Ginseng Rule Recodification; Administrative Cause No. 97-125N

John Bacone, Director of the Division of Nature Preserves, presented this item. He said that ginseng is "an economically important product" in Indiana. At the federal level, the ginseng is regulated by the U.S. Fish and Wildlife Service. Bacone explained the DNR has, for several years, monitored and regulated the harvest and sale of ginseng under U.S. Fish and Wildlife Service oversight.

According to Bacone, the U.S. Fish and Wildlife Service has recently expressed "concern over the increasingly small size of ginseng plants harvested." With the high prices demanded for ginseng sales, the pressure on the resource is ever more intense. If a size limit is not provided as a ginseng quota, the concern is the plant may become extinct in the wild.

Bacone said the proposal was for the recodification of the ginseng rules from 310 IAC 11 to 312 IAC 19. Most aspects of the existing language would be retained, but notable changes would allow the harvest of only mature plants (with three or more prongs) and only when a flowering or fruiting stalk is attached. He said the division was optimistic establishing this harvest quota would help aid the recovery of the wild ginseng population in Indiana.

Steve Cecil asked where in Indiana ginseng lived in the wild. Bacone responded the plants were distributed throughout the state except in the former prairie region of Northwest Indiana.

Joe Siener noted the U.S. Fish and Wildlife Service had prohibited the collection of ginseng from its properties. Jack Costello said the DNR had done the same through a nonrule policy document approved recently by the commission, but the prohibition did not apply to other than DNR properties.

Bacone noted there were a few technical changes to the language proposed for preliminary adoption as contained in the commission packet. He asked the commission to give preliminary adoption to the proposal and commit it to public hearing.

Tom Cobb asked what opportunities were provided for enforcement and suggested sanctions should apply to ginseng buyers as well as ginseng diggers. Bacone said the division depended largely upon conservation officers for enforcement and noted sanctions were identified at 312 IAC 19-1-10.

Damian Schmelz moved to give preliminary adoption to the recodification of the ginseng rules at 312 IAC 19, including the technical changes offered by Bacone, and for the proposal to be committed to public hearing. The motion was seconded by Jane Stautz. Upon a voice vote, the motion was carried.

BUREAU OF MINE RECLAMATION

Division of Reclamation

Consideration of Preliminary Adoption of Rule to Require Annual Reports of Lands Disturbed by Surface Coal Mines

Angila Prather, attorney for the Division of Reclamation, presented this item. She said the proposal would adopt 310 IAC 12-5-159 to define "mined area" and set standards for the preparation by coal mine operators of an "annual report" of lands disturbed by surface coal mining.

Steve Cecil asked whether coal mine operators were not always required to prepare annual reports of disturbed areas. Paul Ehret answered, "Not really, not in this state." He said requiring the reports was a common practice in some coal mining states, including Illinois, but the practice was not currently required in Indiana.

Jane Stautz moved to give preliminary adoption to 310 IAC 12-5-159 to require annual reports of lands disturbed by surface coal mining and to commit the proposal to public hearing. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

BUREAU OF WATER AND RESOURCE REGULATION

Division of Fish and Wildlife

Consideration of Proposal to Name the Access Site at Dixon Lake the "Lewis Kennedy Access Site"

Glen Salmon of the Division of Fish and Wildlife presented this item. He suggested the access site at Dixon Lake be named the "Lewis Kennedy Access Site" in favor of its benefactor. He said Brianna Landis and Ruth Kennedy wrote that their grandfather, Lewis Kennedy, purchased the property in 1932 to ensure his descendants would always have access to the lake. The donation of the site was made contingent upon it being named for Lewis Kennedy. Salmon clarified signage at the site would reflect that it provided access to Dixon Lake, as well as the name of the benefactor.

The Chair asked whether a letter of appreciation might be sent to the Kennedy family for its generous donation. "This really is very nice, and we ought to do something for these folks." Larry Macklin responded that he agreed a letter was appropriate and would be prepared.

Joe Siener moved to name DNR's access site at Dixon Lake the "Lewis Kennedy Access Site." The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Consideration of Biennial Amendments to Fish and Wildlife Rules

Mark Cottingham of the Division of Fish and Wildlife presented this item. He explained that numerous issues were addressed in the proposed biennial amendments to the fish and wildlife rules. Included among them are modifications to seasons or other terms for hunting various wild animals (including deer, turkeys, rabbits, crows, turkey, quail, Virginia rails, and woodcocks), modifications to the section identifying endangered and threatened species of birds, a proposed new section to govern the importation of wild animals for subsequent release or sale, a proposed new section to governing the use of contraceptives in free-ranging deer, establishment of a special firearms hunting season for youth hunters, modifications to sport fishing standards (including those for trout and salmon, yellow perch, bass catfish, muskellunge and tiger muskellunge, paddlefish, and exotic species), amendments to the standards applicable to mussels, and modifications to charter fishing, commercial fishing, and aquaculture standards.

Cottingham said some of the concepts were previously reviewed by the Deer Advisory Committee and others by the Fish and Wildlife Conservation Committee. He said the concepts were also identified in the most recent issue of Focus.

Joe Siener asked when the public hearings would be conducted. Cottingham responded that dates had not been selected, but the hearings were likely to be in late January 1998.

The Chair observed the proposed rules were a "full plate" and seemed likely to draw controversy. He said he looked forward to the report of public hearings.

Damian Schmelz moved to give preliminary adoption to the biennial amendments to the fish and wildlife rules and to commit them to public hearings. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

Natural Resources Commission, Division of Hearings

Consideration of the Proposed Lake Bruce Conservancy District; Administrative Cause No. 97-075C (Fulton Circuit Court; Cause No. 25CO1-9702-CP-40)

Tim Rider, Hearing Officer, introduced this item. He explained that for consideration were technical recommendations to the Fulton Circuit Court with respect to the proposed Lake Bruce Conservancy District in Fulton County. The district was envisioned for the purposes of (1) developing forest, wildlife areas, parks and recreation facilities in connection with beneficial water management; and, (2) the operation, maintenance, and improvement for water-based recreational purposes.

Rider said a public hearing was conducted in Rochester in July to consider the proposed district. He said he believed the petitioners had established each of five technical items anticipated by the Conservancy District Act. The district appeared to be necessary because Lake Bruce is in need of corrective measures to control eutrophication and sedimentation of the lake. The proposed district holds promise of economic and engineering feasibility. The proposed district seems to offer benefits in excess of costs. The proposed district proposes to cover and serve a proper area. The proposed district could be established and operated in a manner compatible with established conservancy districts or other projects. Rider emphasized that the decision whether or not to form a district rested with the Fulton Circuit Court, however, and the Court was not bound by the NRC's technical findings.

Stephen Studer spoke as attorney for the petitioners seeking to form the district. He said he was "very much in support of Judge Rider's recommendations." Studer said it was "very clear" Lake Bruce was "dying and dying very quickly." He said it was critical action be taken to control eutrophication of the lake.

John Merlau spoke as an attorney who represented citizens opposed to the district. He said the report relied upon in support of the district was 20 years old and no longer factually valid. He complained the hearing officer did not give due deference to the testimony of opponents at the public hearing, particularly the expert testimony of Robin W. Scribailo.

In July, Fulton County Surveyor Donald R. Towne wrote the hearing officer to express serious concerns with the proposed district. During the commission meeting, these concerns were repeated. "We have nothing against the conservancy district, per se. What we're questioning is the lake enhancement project itself for the possibility of flooding farmland."

Chairman Kiley said the commission looks at a proposed conservancy district "from an engineering standpoint" and from the perspective of the other measures set forth in the statute. "It would ordinarily be the will of the commission to review recommendations of the hearing officer, and unless there are technical problems, to forward it along to the circuit court for action." He observed that whether to form a district is within the discretion of the local circuit court, and the management of an existing district is also a local matter under the supervision of its freeholders' board of directors.

Tom Cobb moved to approve the recommendations of the hearing officer as the commission's recommendations to the Fulton Circuit Court on the technical issues pertaining to the proposed Lake Bruce Conservancy District. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Consideration of the Report, Findings of Fact and Conclusions of Law with Nonfinal Order of the Administrative Law Judge (Objections attached) in the matter of Cummings v. DNR, Culver Property Management, Roberts, Culver Cove Co-Owners Assn., Inc., Tanguy, and Allsop; Administrative Cause No. 96-186W

Virginia Simone, attorney for the DNR, said the parties are circulating a written agreement which she expected to be signed by all parties. She asked the commission to continue consideration of the report and nonfinal order of the administrative law judge.

Andrea Roberts, attorney for Larry Cummings, said the parties had already expended considerable time and effort in the case. She said Glen Roberts was the individual who had filed objections, although neither he nor his attorney were present for the commission meeting. She said her client opposed a continuance and asked the commission to adopt the findings and nonfinal order of the administrative law judge.

Simone asked to respond. Chairman Kiley suggested efficiency might best be served by granting a one-month continuance, and if the agreement was not finalized before the next commission meeting, the item could then be revisited.

Damian Schmelz moved to continue this matter for one month to allow the parties to final their settlement agreement. The motion to continue was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of the Hearing Officer for Final Re-Adoption of Oil and Gas Regulations (312 IAC 16 and 312 IAC 17) and the Repeal of 310 IAC 7; Administrative Cause No. 97-088G; LSA #97-57(F)

Steve Lucas presented this item on behalf of the hearing officer, Jennifer Kane. He said the commission had given this recodification of oil and gas rules final adoption during its recent meeting in New Harmony, but because the Indianapolis Daily Star had not published notice of the original hearing, a second hearing was required. Lucas said the recodification did not make substantive changes and was not anticipated to be controversial. Just as no one had appeared to testify at the original hearing, no one appeared for the second hearing or otherwise commented on the proposal. He recommended the proposed recodification of the oil and gas rules be given final adoption.

Damian Schmelz moved to give final adoption to recodification of the oil and gas rules at 312 IAC 16 and 312 IAC 17 and for the repeal of 310 IAC 7. The motion was seconded by Mary Titsworth Chandler. Upon a voice vote, the motion carried.

Adjournment

At 10:52 a.m., EST, the meeting adjourned.