

# **NATURAL RESOURCES COMMISSION**

Minutes of June 21, 2001

## **MEMBERS PRESENT**

Michael J. Kiley, Chair  
Rick Cockrum, Vice Chair  
Larry Macklin, Secretary  
Damian Schmelz  
Lori Kaplan  
Jerry Miller  
Jane Anne Stautz  
Steve Cecil  
Raymond McCormick

## **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas

## **DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Carrie Bales	Executive Office
John Davis	Executive Office
Paul Ehret	Executive Office
Andy Cullen	Executive Office
Kristen Oliver	Executive Office
Robert Waltz	Entomology and Plant Pathology
Neil Ledet	Fish and Wildlife
Gwen White	Fish and Wildlife
Terry Coleman	State Parks and Reservoirs
John Friedrich	Forestry
Lee Casebere	Nature Preserves
George Bowman	Water
Jim Ray	Soil Conservation

## **GUESTS**

Bob Dickinson	David Culp
Mary Culp	Peter Hippensteel
Larry Clemens	Tina Feather
Paul DeMarco	Robert Lowden

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 7:01 p.m., EST, on June 21, 2001 in the Potawatomi Inn, Pokagon State Park, Angola, Indiana. With the presence of nine members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of May 22, 2001. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. "It's always a pleasure to visit Pokagon State Park, and we're glad also to welcome our guests here this evening."

The Director announced Bill James has been appointed Acting Director of the Division of Fish and Wildlife. Following years of dedicated service to the agency, Gary Doxtater is looking forward to retirement this fall. In the interim, Doxtater will be assigned special projects. A nationwide search for a new permanent Division Director will be commenced very soon.

Macklin said on May 25 there were opening ceremonies for an important Abandoned Mine Lands project for a site near Bicknell. He said the ceremonies were "well-attended by appreciative town's folks."

The Director reported, "Last Monday was a great day for Indiana" when Governor Frank O'Bannon announced a \$13.9 million settlement against the Guide Corporation, an Anderson auto parts manufacturer, for environmental damages to the West Fork of the White River. The settlement will help assure the health of the river and future accountability for those whose actions may cause environmental harm. The Director praised the efforts of both DNR and IDEM staff in helping achieve success in pursuing a successful conclusion.

Macklin said "a week or so ago, I was at Fort Wayne for the Becoming an Outdoor Woman program. Each year it just gets better and better." He said this effort was pursued "in concert with the Fort Wayne JOURNAL-GAZETTE folks."

Director Macklin concluded by saying the DNR's annual awards ceremony was held recently. "It's great for us to be able to recognize the folks in the agency who make a special effort in pursuit of our missions."

Chairman Kiley then reflected, "We might take a minute to recognize Lori Kaplan, who in addition to being a member of the Natural Resources Commission, is the Commissioner of the Indiana Department of Environmental Management." He invited her to provide additional information on the settlement with the Guide Corporation.

Lori Kaplan said in late 1999 a very serious fish kill was reported on the White River. At the time, employees at IDEM, the DNR, and other agencies began efforts to identify the cause of pollution, as well as what should be done to address the pollution and to pursue

whomever was responsible. As a result of those efforts, data was collected and “in almost record time, both federal and state lawsuits were initiated against the Guide Corporation and others believed to be responsible. That was in April 2000, and in just a little more than a year, a settlement has been achieved.” She said in addition to the very substantial amount of money involved, Guide Corporation would plead guilty to a criminal violation. “To all the staff at DNR, I thank you for your help, and I thank you, Director Macklin.” She said proceeds from the settlement would be used for erosion control, habitat improvement, and land acquisition for better river access, as well as for environmental remediation.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported his council met last month at West Lafayette and visited Prophetstown State Park. He said the council had not been there for about three years, “and it’s just coming along great. It’s probably going to be one of the best parks in the state.” Miller reported the items on the council agenda were recommended favorably for action by the NRC.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, reported upon the draining of Whitewater Lake in order to repair its spillway. He said the necessity for draining the lake was viewed favorably at the local level.

Davis announced the successful completion of two timber sales, one for Yellowwood State Forest and one for Morgan-Monroe State Forest. There were protesters but the “sales went smoothly and without serious incident.”

Davis said he attended on June 8 “the dedication of six additions to the National Historic Register at Columbus, Indiana. There is modern architecture that has been done there, and folks from the National Park Service” also attended. He said, “It was a very nice presentation.”

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported his council did not meet in May.

David Vice, Deputy Director for the Bureau of Resource Management, was not present.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reflected upon the AML groundbreaking ceremony at Bicknell that was discussed previously by Larry Macklin. “It was a very nice ceremony, and I really enjoy doing those AML projects.” He said they were good projects for the DNR and for Indiana citizens.

Ehret said the annual meeting of the surface coal mining Bond Pool Committee was held earlier in the week in Jasonville. He indicated Damian Schmelz was acting chair for the meeting. “The bond pool continues to be healthy, and we avoided forfeitures, so that’s good news.”

Ehret indicated DNR “staff has been giving a lot of support to staff at IDEM for the Water Pollution Control Board groundwater rules. It has been a long and arduous task, and we have been with them the whole way.”

Ehret reflected “a lot of work is going on in the Division of Soil Conservation.” He introduced Pete Hippensteel, who is the Chairman of the State Soil Conservation Board. Ehret said “we have been working on strategies for the effective expenditure of Clean Water Indiana Funds. The Indiana General Assembly gave us \$1 million for that.” He said for the July meeting the Soil Conservation Board also would consider expenditures from the Lake and River Enhancement (LARE) Funds. “The July meeting is going to be a very busy one for us.”

## **BUREAU OF LANDS, RECREATION AND CULTURAL RESOURCES**

### **DIVISION OF FORESTRY**

#### **Consideration of a Request by St. Anne’s Golf Course for an Easement for Installation and Operation and Maintenance of a Water Line on Selmier State Forest**

John Friedrich of the Division of Forestry presented this item. He said St. Anne’s Golf Course lies on property adjacent to Selmier State Forest in Jennings County. When the golf course contacted the DNR about placing a water line across the state forest, the golf course was informed of the need to obtain a written easement. St. Anne’s Golf Course then decided to instead place the pipeline on private property. When a new landowner along the proposed route balked at the installation, the golf course made a last minute route change that took the pipeline back across the state forest. DNR discovered the change when the property manager observed pipeline installation work as it neared conclusion. The project was allowed to proceed to completion.

Friedrich said the agency was particularly concerned with the unpermitted construction activity because the site is known to be rich in archaeological sites. Subsequent review of the area suggests, however, that there was not major damage to archaeological resources.

Friedrich indicated the agency began enforcement action against the St. Anne’s Golf Course. On the other hand, the golf course should be credited for cooperating with the DNR in allowing the placement of a dry hydrant in one of the golf course’s ponds. He said the Division of Forestry now recommended approval of an easement for maintenance of the water line.

Rick Cockrum expressed concerns that St. Anne’s Golf Course would persist in placing a waterline in the state forest, even after having been informed of the need to first obtain an easement from the agency. “I have a problem if there is no recourse here.” Friedrich

responded the apparent recourse would be to have the waterline removed, a remedy that did not seem totally satisfying.

Damian Schmelz reflected the Commission has sometimes called in oil and gas operators and others who have violated agency standards. Regardless of whether a fine or other penalty ultimately results, being brought before the Commission to answer for inappropriate conduct helps to send an important message.

Jerry Miller moved to defer consideration of this item until the July meeting and to direct DNR staff to ask St. Anne's Golf Course to come before the Commission and answer as to its conduct. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of the Ivanhoe Dune and Swale Nature Preserve in Lake County**

Lee Casebere of the Division of Nature Preserves presented this item. He said the proposed nature preserve includes about 94 acres and is located near the south bank of the Grand Calumet River in Lake County. The tract contains high-quality dry and mesic sand savanna, mesic and wet sand prairie, marsh, and pond and shrub swamp. Dedication would continue protection of the globally significant "ridge and swale" topography found nearby in the Clark and Pine Nature Preserve. The site formerly contained populations of the Karner Blue butterflies, and efforts will be undertaken to reintroduce the species. He said the site was "definitely worthy of dedication" and that the Division of Nature Preserves recommended approval.

Raymond McCormick said he thought the semantics of the request by the Division of Nature Preserves were confusing. He asked whether this action would authorize acquisition of the site by the DNR. Chairman Kiley responded that "dedication" is a legal step to recognize and protect properties as nature preserves where those properties contain critical natural resources. Casebere added the site would continue to be administered by the Indiana Chapter of The Nature Conservancy.

Damian Schmelz moved to approve dedication of the Ivanhoe Dune and Swale Nature Preserve in Lake County. The motion was seconded by Jane Anne Stautz. Upon a voice vote, the motion carried.

### **Consideration of the Dedication of Additions to the Beanblossom Bottoms Nature Preserve in Monre County**

Lee Casebere also presented this item. He said the proposed additions are 80-acre and 65-acre tracts adjacent to the existing 200-acre Beanblossom Bottoms Nature Preserve in

northwestern Monroe County. The nature preserve and the proposed additions are owned and managed by the Sycamore Land Trust, and they were all purchased with assistance of the Indiana Heritage Trust. Casebere said the additions include mesic floodplain forest, abandoned fields that are reverting to wetland vegetation, and over a half-mile of Beanblossom Creek. Due to the diversity of native plant species found on the nature preserve, the site is used for wetland plant identification classes conducted by Robert Hohlenborck for IDEM and DNR, as well as classes at Indiana University.

Casebere distributed a map showing the location of the nature preserve relative to adjacent publicly-held lands. These include the Restle Unit of the Muscatatuck National Wildlife Refuge and the Restle Natural Area. He said the nature preserve would be managed in concert with these other properties. He recommended the additions for dedication.

Damian Schmelz moved to approve the two additions to the Beanblossom Bottoms Nature Preserve in Monroe County consistently with the recommendations of the Division of Nature Preserves. The motion was seconded by Jane Anne Stautz. Upon a voice vote, the motion carried.

#### **DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY**

##### **Information Concerning the Status of Gypsy Moth Expansion and Report of an Insect Survey of DNR Properties**

Robert Waltz, Ph. D., Director of the Division of Entomology and Plant Pathology, presented this item. He said he would update the Commission concerning the expanding quarantine area of the gypsy moth, as well as concerning an important new project the agency will undertake this coming year.

Waltz said, "We have completed our gypsy moth treatment for this year." Approximately 2,000 acres in three counties were treated with pheromone flakes that are designed to entice male gypsy moths to the tops of trees, although females are generally found near the ground. This treatment confuses the insect and greatly reduces the likelihood of successful mating. The way the process works is that an isolated population that "is starting in an area collapses." Unfortunately, the treatment is not effective for the treatment of well-established gypsy moth populations.

Waltz reflected in the short-term, gypsy moth populations are generally "falling back." He attributed this contraction of their range to the "cold, wet weather we had this spring." He added, however that "it's an ongoing story. The gypsy moth comes down for a period of time and collapses and goes back and forth," but the overall trend is for an expansion of its range.

Waltz said, "the only positive thing I've seen come out of gypsy moths so far is in the last legislative session we were able to receive funding for surveys of exotic insects on DNR

properties.” A team of entomologists from within Indiana and neighboring states will look at insects—particularly butterflies and moths—in different habitats in an effort to assess how they may be affected by the onslaught of gypsy moths or by treatment efforts directed to gypsy moths. “We’ll go on to inventory other insect species to the degree possible.” He said one of the concerns was for the adverse impact of gypsy moths even after their numbers diminish. Trees are weakened by massive populations of gypsy moths and are then susceptible to other insects and to diseases.

Waltz said \$50,000 was provided from another DNR division to help with the research. “But the major money we have here is about \$200,000 from the Indiana General Assembly, and that will be something that will go for several years. It will be a tremendous addition to our knowledge of Indiana insects and our management of DNR properties.” He concluded, “Gypsy moths are invading Indiana. We all know that. We need good information to deal with the invasion and to manage our properties, as well as to address associated problems on a statewide basis.”

## **BUREAU OF RESOURCE REGULATION**

### **DIVISION OF SOIL CONSERVATION**

#### **Information Concerning Rulemaking Authority to Designate Protected Ecological Zones on Waterways**

James Ray of the Division of Soil Conservation presented this item. He explained the Lakes Management Workgroup was established by the Indiana General Assembly to consider issues of public concern with respect to the use and management of Indiana’s inland lakes. The workgroup made its Final Report in 1999. Because of boating impacts to lake ecology, the workgroup then recommended legal authority be established to restrict or prohibit boats in areas susceptible to sediment resuspension or where important rooted aquatic plant beds exist.

In 2000, the Indiana General Assembly implemented these and other workgroup recommendations in House Enrolled Act 1075 and Senate Enrolled Act 44. As a result of amendments contained in HEA 1075, IC 14-15-7-3 now allows the Natural Resources Commission, by rule, to establish zones on public waters where boating activities may be limited or prohibited because of their potential for harm to fish, wildlife, botanical resources.

Ray reminded the NRC that, when the watercraft rules were recodified at 312 IAC 5, the additional rulemaking authority for ecological protection was incorporated. The recodification will become effective January 1, 2002.

Ray indicated a series of multidivisional intradepartmental meetings were held to discuss the potential for implementation of the new authorities described in HEA 1075 and SEA

44. Discussions specific to ecological protection zones have led to the notion of identifying a “pilot site” for rule development.

Jim Ray said the intradepartmental meetings considered a variety of conditions where special regulation might be warranted. He said included among these are areas critical to wildlife nesting or fish spawning. The presence of species listed by Indiana as being threatened or endangered could be an important factor—one example being a lake where cisco are present. Mussel beds might need protection. Ray noted the authority applied to more than inland lakes—rivers, streams, and Lake Michigan would also be potential sites for special controls.

Ray gave a slide presentation to help illustrate sensitive areas that might appropriately be subject to regulation. One slide showed a tranquil lake including both submersed and emergent vegetation—“the types of things that you wouldn’t want to see destroyed.” A slide depicted an inlet stream into a lake, where growing within the stream were “the types of plants that will trap sediments and nutrients” that would otherwise adversely impact water quality in the lake. Another showed a “significant riverine wetland that would certainly warrant consideration” for special protection. A marl bed on a lake was shown, and Ray identified where the marl was being resuspended by swimmers and boaters. In another slide, he pointed to vegetative islands in a lake and scars on the lakebed nearby that were caused by boats. “The sort of activity that has eliminated a lot of the vegetation—uprooted it and otherwise destroyed it.”

Ray said developing rules to restrict boating activities to protect ecological resources would involve several divisions within the DNR. Also, there would be involvement “from a number of professionals outside the agency, and certainly the general public. There are a number of complex issues that need to be addressed. It’s certainly not going to be an easy thing to do. There will sometimes be conflicting views among current users.” He said the agency would be challenged to determine “what actually constitutes necessary and appropriate justification for designating an area.” Jim Ray then indicated he would attempt to answer any questions.

Jerry Miller reflected setting zones for ecological protection would be difficult, both for DNR staff and for the NRC in the rule-adoption process. Chairman Kiley responded that setting idle speed zones for ecological protection would conceptually be “no different, from an enforcement standpoint, than the idle speed zones already established within 200 feet of the shoreline of a lake.” What rule adoption would do is “extend and expand those idle zone areas,” based largely on testimony received at hearings, where needed at designated sites for environmental protection.

There were no further questions from the Commission. The Chair reflected this item was for informational purposes and did not require action.



**Consideration of Initiation of Informal Agency Action and Public Review for Possible Rulemaking to Establish Zones on Lake Wawasee and Lake Syracuse where the Use of Watercraft May Be Limited or Prohibited to Foster the Protection of Fish or Wildlife or for Botanical Resource Management**

Jim Ray indicated this proposal was a possible site-specific application of the preceding informational item. The Wawasee Area Conservancy Foundation, the Wawasee Property Owners Association, and the Syracuse Lake Association have urged there are areas on the two lakes that are ecologically sensitive and warrant special protection. A 1996 DNR LARE Program-funded diagnostic and feasibility study focused attention on the issue of aquatic vegetation on these lakes. The study concluded the protection of lake margin wetland areas “should be a priority.” The three referenced organizations have requested the Commission to establish, by rule, watercraft-limited zones pursuant to IC 14-15-7-3 to protect the wetland areas.

Paul DeMarco expressed agreement with the presentation by Jim Ray as it outlined the ecological needs of Indiana’s inland waters, and he said his presentation had particular application to Lake Wawasee and Lake Syracuse. At the same time, there was a need for “a certain amount of time for public education” to increase citizen awareness of why restricted zones would be established. He said the Wawasee Area Conservancy Foundation, the Wawasee Property Owners Association, and the Syracuse Lake Association could play a key role in improving citizen awareness.

Bob Dickerson of the Wawasee Property Owners Association said, “We support what you’re talking about doing.” He agreed with DeMarco that “the real key is education. We’d be better to take it a little slower” to get where we want to go, bringing as many people along in the process as possible.

DeMarco added, “I’m very much pleased with Dave Vice’s comments in the newspapers that ‘one size does not fit all.’ I would strongly urge we have a lot of input” to help citizens understand the justification for the restricted boating zones. He said Conklin Bay on Lake Wawasee would be a good illustration of what would be needed to be responsive to a multitude of user groups.

Chairman Kiley said he thought the recommended order for this agenda item was appropriate. The Department of Natural Resources should begin review of the petition to establish restricted boating zones on Lake Syracuse and Lake Wawasee in support of ecological protection. He reminded the Commission the recodified watercraft rules go into effect on January 1, 2002. He said this review process should move quickly enough to allow the Commission to establish these zones before the next boating season. Unless there were questions or contrary thoughts from the Commission members, DNR staff should get started as soon as possible. He asked if there were additional comments, and none were offered. Chairman Kiley then stated, “All right, it’s in the mill.”

## LEGAL PROCEEDINGS

### NRC DIVISION OF HEARINGS

#### **Consideration of Recommendation of Hearing Officer as the Report of the Natural Resources Commission with Respect to the “Petition for Creation” filed on July 21, 2000 in the matter of *Petition for the Creation of the Illiana-Brunswick Conservancy District*; Administrative Cause Number 01-075C**

Steve Lucas presented this item on behalf of Jennifer Kane, Hearing Officer. He said the proposed district is located in Lake County and was sought for the purposes of flood prevention and control, as well as for improving drainage. Lucas said the public hearing did not generate controversy. The hearing officer concluded there was insufficient evidence to determine the technical elements with respect to flood prevention and control, but she did make favorable findings with respect to the technical findings relative to improving drainage. Lucas added that David Hollenbeck, attorney for the petitioner, telephoned earlier during the day and expressed acquiescence in the report of the hearing officer. Lucas said the report of hearing officer was being tendered for consideration by the Commission, and if approved referral to the Lake Circuit Court.

Raymond McCormick asked if approval of this document by the Commission would mean citizens within the district could be required to participate in drainage projects against their will. Lucas responded the Commission does not determine whether or not to form a conservancy district. This function is placed by statute in the local circuit court. The NRC serves essentially as a friend-of-the-court, making technical findings, and those findings are *prima facie* evidence for a subsequent hearing conducted by the court. If a district is formed, the district has authority similar to a municipality to address the approved purpose or purposes. The district acts through a board of directors and under the general supervision of the court. Within this structure, a citizen could be subjected to governmental requirements, but they would be the requirements of the conservancy district not the NRC.

Rick Cockrum asked about the consequences of this Commission action relative to the functioning of the proposed district. Lucas responded this stage was the third toward formation of the district. First, citizens petition for establishment. Second, the Lake Circuit Court evaluated the basic procedural elements of the petition, and finding them to suffice, referred the petition to the Commission to make technical findings.

Upon the receipt of findings by the Commission, the Lake Circuit Court will schedule the proceeding for another hearing at which the petitioners and any remonstrants may offer evidence that bolsters or refutes the technical findings. If the court determines to form the district, an initial board of directors is appointed by the county commissioners with members of the board subsequently elected by its freeholders. Before work is commenced on a project, the DNR's Division of Water will review the “district plan” and any “units of work.” Appeals can also be taken at these stages, although they rarely are.

The Commission also makes technical findings to the court when a proposal to dissolve a district is presented.

Jane Anne Stautz moved to approve the report of the hearing officer as the report of the Natural Resources Commission with respect to the petition to create the Illiana-Brunswick Conservancy District in Lake County. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

**Consideration of Request for Instruction from the Commission in the matter of *Hoosier Environmental Council v. DNR and Foertsch Construction Company*; Administrative Cause Number 97-065R**

Steve Lucas presented this item in his capacity as Director of the NRC's Division of Hearings. He said after the Commission agenda was prepared, the parties telephoned that they had agreed to a process to move the case forward. First, they agreed the NRC would be identified as the "ultimate authority" under AOPA. Second, they asked the NRC to approve Tim Rider as a special administrative law judge to complete actions for a final agency determination. Rider had presided over the case before his transfer to the Indiana State Board of Tax Commissioners. If this approach is agreeable to the NRC, Chairman Kiley would be asked to request the Indiana State Board of Tax Commissioners to consent to Rider's appointment. Lucas said at issue is a determination of an award for litigation expenses, including attorney fees, under Indiana SMCRA.

Rick Cockrum asked whether the stipulation—that the Natural Resources Commission is the ultimate authority for determining litigation expenses—would apply only to this case or whether it would apply to all SMCRA cases. Lucas responded, that as a stipulation, it would apply only to this case.

Rick Cockrum moved to approve the procedures agreed by the parties as the Commission's response to the "Request for Instructions from the Commission." The motion was seconded by Jane Anne Stautz. By a voice vote, the motion carried.

**Consideration of Preliminary Adoption of Modifications of Historic Rehabilitation Tax Credits; Administrative Cause Number 01-007H**

Steve Lucas also presented this item. He said for consideration was a proposed amendment to the rules, governing the historic rehabilitation tax credit, to reflect the reality of potentially changing credit authorizations by the Indiana General Assembly. He said recipients of the credit are placed in a queue, but how soon they can recognize the credit is dependent upon how much credit the Indiana General Assembly allows in a particular year. If the amount increases or decreases, the Division of Historic Preservation and Archaeology needs to modify when the credit can be taken. A secondary purpose of the amendment is to allow the Division of Historic Preservation

and Archaeology to withdraw the credit if found to be based upon misrepresentation or fraud.

Steve Cecil moved to give preliminary adoption to proposed 312 IAC 23-3-5 to address modifications to the approved historic rehabilitation tax credit. The motion was seconded by Rick Cockrum. Upon a voice vote, the motion carried.

## **ADJOURNMENT**

At approximately 8:50 p.m., the meeting adjourned.

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## **FUTURE MEETINGS**

July 19, 2001, 10:00 a.m. (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

August 21 and 22 (Clifty Falls State Park)

September 19 (site to be announced)