

NATURAL RESOURCES COMMISSION
Meeting Minutes, March 20, 2018

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Laura Hilden
Jeffrey Holland
John Wright
Bart Herriman
Mark Newman

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
David Bausman	Executive Office
Lloyd Arnold	Executive Office
Tara Wolf	Communications
Elizabeth Gamboa	Legal
Dan Bortner	State Parks
Russell Retherford	Oil & Gas
Mark Basch	Water
Jamie Miller	Water
DJ Smith	Water
Allison Mann	Water

GUESTS PRESENT

Paul Arlinghaus	Erin Huang
Jason Masnick	Lynn Burry
Maureen Turman	Ethan Long
John Whalen	Martin Wolf

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:02 a.m., ET, on March 20, 2018, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of seven members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's January 16, 2018, minutes.

Jane Ann Stautz moved to approve the minutes of the meeting held on January 16, 2018, as presented. John Wright, seconded the motion. Upon a voice vote, the motion carried. Bart Herriman abstained from the vote stating that he was not present at the January 16, 2018, meeting.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Director Clark was not present to provide a report.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis mentioned that the Land Holding Divisions have been meeting to discuss the 2018 recreation season. Davis stated that while at a Division of Fish and Wildlife conference in February, at the Kankakee Fish and Wildlife Area, it rained so much that crews were dispatched to the levees to address flooding issues. He said that the crews worked to minimize the flooding along the Yellow River and Kankakee River working for 20 days in a row. Davis noted that there were 11 levee breaches on Department property throughout the state.

Davis noted that the Indiana General Assembly passed legislation to amend IC 14-22-2-8 to clarify rifle use on public lands.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith mentioned the rain and high water has been an issue for the last several weeks from South Bend all the way through the Ohio River Basin. Smith stated that flooding has been keeping the Division of Law Enforcement busy with water rescues. Smith said the Department is now focused on recovery efforts and assisting communities impacted by flooding. He stated that the Ohio River crested at about 35 feet and had an impact on Utica in Clark County, which has a population of 776 people, and said the Department is working with U.S. Homeland Security to address approximately 100 homes with significant damage. He stated that staff from the Division of Water will meet with local officials in Utica to get the residents back in their homes.

Smith stated that the Division of Water processed an emergency rule that became effective on March 14, 2018, and temporarily adds provisions to exempt licensure requirements under IC 14-28-1 and 312 IAC 10 to facilitate the repair or reconstruction of bridges and culvert crossings and the stabilization and repair of unstable stream banks. Smith noted that the emergency applies

in the 35 counties where the Governor of Indiana made a declaration of a Disaster Emergency. Smith said that a project manager would not have to get a permit before work begins on bridges, culvert crossings, and unstable stream banks as long as that work is an identical structure or would have no impact on the flow of the waterway.

Smith noted that the 2018 Indiana General Assembly has concluded and the Department's Omnibus Bill was passed. He noted that the amendment to IC 14-22-2-8, to clarify rifle use on public lands, allows the Commission to adopt rules to address the use of rifles for deer hunting on Department property. "We will be operating as we were basically in 2016." Smith said that David Bausman, Legislative Director, spent a good portion of time providing educational information and technical assistance to State Legislators on the impact of some of the bills. Smith thanked Bausman for his hard work during the legislative session.

Smith stated that the Division of Law Enforcement has had two deaths since the Commission January 16, 2018, meeting. Smith noted that Major Michael Portteus and Sargent Ed Bollman passed away. Smith said that Major Portteus served for more than 30 years with the Department in the Division of State Parks and the Division of Law Enforcement. Smith noted that Sgt. Bollman had been with the Department since 2003 and was the Assistant Commander for District 4.

The Chair introduced David Bausman, Legislative Director for the Department.

Bausman stated that he looks forward to working on legislative and public policy for the Department.

The Chair noted that the Advisory Council has not met since January 2018.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated the Committee met on February 14, 2018. She said there would be an additional meeting scheduled, but that there was nothing to report.

Information: Remaining 2018 meeting dates (Fort Harrison State Park–Garrison, Indianapolis)

The Chair noted that the remaining 2018 Commission meeting dates have been scheduled for May 15, July 17, September 18, and November 13.

DNR, EXECUTIVE OFFICE

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

No items were identified for referral to the Advisory Council.

NRC DIVISION OF HEARINGS

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the Koontz Lake Conservancy District; Administrative Cause No. 17-113C

Sandra Jensen, Hearing Officer, presented this item. Due to the appointment of new Commission members, Jensen provided additional background information as to the Commission's role in conservancy districts.

Jensen stated that on October 9, 2017 the Petition to establish a Koontz Lake Conservancy District (KLCD) was referred to the Commission for review in accordance with IC 14-33-2-17. Jensen explained that the Commission, in coordination with the Department's Division of Water, acts as a friend of the court. She noted that the conservancy district establishment is a determination that is made by the circuit court and in this instance, the KLCD establishment petition is before the Starke County Circuit Court.

Jensen said that the role of the Commission is to receive information from potentially interested government entities, conduct public hearings, and receive evidence from petitioners and remonstrators, to make recommendation to the circuit court. Jensen stated that the recommendations in the Report relate to the necessity of the KLCD; the promise of economic and engineering feasibility for the intended purposes for the conservancy district; the examination of the benefits compared to the cost and damages associated with the intended purposes of the KLCD; whether the KLCD covers a proper area; and whether the KLCD can be operated in a manner with other conservancy districts and other water management projects.

Jensen stated the KLCD is being established for the purposes of improving drainage, preventing loss of topsoil from injurious water erosion, and the operation maintenance, and improvement of works of improvement for water based recreational purposes.

Jensen stated that Indiana Department of Environmental Management (IDEM) included in its response that the KLCD's plans are consistent with IDEM's mission to improve water quality. She noted that there were no other substantive comments received Outside of comments from the Departments Division of Water.

Jensen stated that the KLCD intends to establish tax assessments, which would provide funding for the installation and ongoing maintenance of sediment and nutrient barriers on the four ditches that carry surface water runoff into Koontz Lake. She noted that the sedimentation and nutrient

loading into Koontz Lake primarily comes from agricultural pursuits. Jensen stated that the nutrient loading increases the frequency of blue-green algae blooms and the increased growth rate of invasive aquatic vegetation, which is crowding out Koontz Lake's native species. Jensen said that the overgrowth of vegetation dies and sinks to the bottom of the lake creating a soft and mucky lake bottom, and decreased oxygen levels in deeper waters results in a decreased rate of vegetation decay.

Jensen stated that the KLCD is planning, in coordination with the U.S. Army Corps of Engineers (USACE), to dredge the lake to eliminate some of the sedimentation from the three to seven feet depth. Jensen said that the dredging project would be partially funded by the USACE. Jensen explained that the KLCD proposes to install an aeration system to allow circulation of water to increase oxygen levels to improve the decay of the vegetative material. The KLCD also intends to conduct bio-augmentation to improve the ability of Koontz Lake to repair itself and improve biodiversity of plant life within the lake.

Jensen stated that the KLCD has a contingency plan to save the collected revenue and implement strategic dredging on a smaller scale as funding becomes available if the USACE does not fund a portion of the project. Jensen noted that David Smith with the Department's Division of Water is optimistic that most, if not all, of the KLCD plans could be accomplished if permit requirements are met, and the KLCD would be economically and engineering feasible and necessary for the benefit of Koontz Lake. Jensen stated that because Koontz Lake is a public freshwater lake of which the Division of Water would have regulatory oversight.

Jensen stated that the cost obligations of the KLCD would be approximately \$208 per \$100,000 of assessed property value. She noted that the public hearing was conducted near Koontz Lake and no remonstrance was received. Jensen stated that Ethan Lowe, attorney for the KLCD, and Martin Wolf, freeholder within the proposed KLCD and part of the KLCD Steering Committee, were present to answer questions.

The Chair opened up the floor for questions from the Commission.

Herriman asked what methods would be used to deal with the runoff from the ditches into Koontz Lake.

Jensen explained that the placement of nutrient and sediment barriers, described as filter strips, would be installed across the ditches to address the runoff.

The Chair recognized Martin Wolf with the KLCD steering committee, who elaborated that sediment/nutrient barriers contain biologically active charcoal that restricts the passage of sediments while also reducing nutrients from entering lake waters. Wolf explained that the barriers have not been maintained properly, and also noted that the barriers will be placed in the ditches a mile from the lake.

Jeffery Holland noted that there was a typographical error on page 34 of the Hearing Officer's Report with regard to suspended solids concentration of 10 mgL¹. Holland stated that the suspended solids should be "milligrams per liter to the minus one, the liter is a denominator in that unit. So it should be milligrams over liters or liters minus one." Holland said that at the

beginning of the Hearing Officer's Report it discussed the dredging between the three to seven foot contours, indicating depth. He stated the report provides that dredging cannot take place shallower than three feet, but he noted that later in the report it states, "three to seven feet distance from the shoreline."

Jensen stated that she will make changes to the Hearing Officer's Report so that it is consistent with the contour line.

Bart Herriman moved to accept the Hearing Officer's Report, as amended as the Natural Resources Commission's Report with respect to the Petition for the Establishment of the Koontz Lake Conservancy District. John Wright seconded the motion. Upon voice vote, the motion carried.

Consideration of report on rule processing, public hearing, and Hearing Officer analyses with recommendations as to final action of amendments to 312 IAC 6.2 governing Great Lakes Basin Water Management; LSA Document #17-400(F); Administrative Cause No. 15-076G

Sandra Jensen, Hearing Officer and Mark Basch, Section Head, Water Rights/Use Section of the Department's Division of Water, presented this item.

Basch explained that the proposed amendments to 312 IAC 6.2 govern the management of ground and surface water within the Great Lakes Basin. Basch noted that the Great Lakes-St. Lawrence River Basin Water Resources Compact ("Compact") was agreed to by all of the eight Great Lakes States and two Canadian Provinces and signed by President Bush on October 2, 2008.

Basch stated that the Compact governs water management, conservation and efficiency, and the diversion of water from the Great Lakes Basin. Basch said that 312 IAC 6.2 assists with Indiana's implementation of the Compact by governing the registration and permitting of water withdrawal facilities; providing for voluntary conservation and efficiency programs, as well as mandatory conservation and efficiency programs for new and increased withdrawals, diversions, and consumptive uses.

Basch stated that since 1983 Indiana has had a significant water withdraw facility registration program. Basch said that the Water Resource Management Act requires any water withdraw facility of either ground or surface water with the capacity to pump greater than 100,000 gallons per day to register with the Department and to report its water use annually. Basch noted that currently there are 4,126 registered water withdraw facilities in Indiana and in 2016 approximately 2.3 trillion gallons of water were reported to have been withdrawn by those water withdrawal facilities statewide. Basch stated that approximately 25% of the water withdraw facilities located within Indiana are located within the Great Lakes Basin. He added that 728 billion gallons of water were withdrawn from the Great Lakes Basin in 2016.

Basch stated that all the information about the significant water withdraw facility registration program is located on the Department's webpage at www.in.gov/dnr/water/4847.htm. Basch recognized Allison Mann with the Division of Water for her contributions and maintaining the data.

Basch explained that the proposed rule amendments to 312 IAC 6.2 are in response to a petition submitted to the Commission on June 4, 2015, by Save the Dunes, the Natural Resources Defense Council, the National Wildlife Federation, and the Alliance for the Great Lakes.

Basch stated that the Department evaluated the Petitioners' suggested rule revisions and recommended the addition of new definitions for "baseline volume abandonment" and "discontinued significant water withdrawal facility." Basch explained that "baseline volume abandonment" means the voluntary and affirmative termination of a facility's baseline volume or that the facility is considered discontinued by the Department. Basch said that "discontinued significant water withdrawal facility" would be defined to be when the water withdrawal equipment of a registered facility has been removed, or is not maintained in a good state of repair, for a continuous period of more than five years. Basch noted that in addition to the proposed definitions, there is a proposed expansion to the salmonid stream list. Basch stated that the Department, in consultation with the U.S. Fish and Wildlife Service, reviewed the salmonid stream list as required under the Compact.

Basch added that a portion of the proposed amendments to 312 IAC 6.2-2-3(b) would allow for all or a portion of a facility's baseline volume to be sold or transferred. He noted that each state in the Compact is required to do a baseline volume assessment and is given one year to list all registered water withdraw facilities. Basch stated that the Compact allows for the transfer of a water withdraw facility's capacity.

Basch noted that the petitioners, as well as the Northwest Indiana Forum and Northern Indiana Public Service Company, have reviewed the proposed amendments. Basch recommended the Commission give final adoption to the proposed rule amendment package.

Basch noted that Kay Nelson, Director of Environmental Affairs at the Northwest Indiana Forum, could not be present at today's meeting, but Nelson requested her comments be read to the Commission.

Good day!

I've asked Mark if he would be so kind as to read my comments into today's record as I am out of state and unable to attend.

I have had the privilege of working on the Compact from the beginning. I worked with both the industrial and environmental stakeholders within the Lake Michigan basin to get to this final stage today. Indiana was the only Great Lakes state to have joint resolution of support for the Compact in 2006 whereby industry and environmental stakeholders shared their willingness to move the Compact process forward with the assistance of the Indiana legislature.

Indiana's position of grandfathering the registered water withdrawal users has placed Indiana in an exciting position of having immediately available access to Lake Michigan water for future economic development projects. The most recent hearing held in South Bend resulted in the finalization of language before you today that formally adopts the manner in which exciting future development can proceed.

The Northwest Indiana Forum supports the language before you today for final adoption. We would like to personally thank the many staff members at DNR who have worked diligently with the stakeholders to arrive at this point.

Thank you for permitting Mark to read my comments into the record.

Kay Nelson

Herriman requested an example of how a facility's baseline volume could be sold.

Basch stated that in December of 2009 each state was given a year to lock in the facility's baseline volume, capacities, consumptive uses, or diversions, if the facility had any. "If a facility, say was even a farmer and he has an irrigation level, of course that has a baseline value that was assigned to that particular facility. If he were to sell that property, then that ownership could change to another owner. Sometimes if he has a couple different facilities, a couple wells, maybe selling one of those wells, then there could be a portion of the baseline volume transferred. Usually it's in that respect where it is a change of ownership."

Jensen stated that all the statutory requirements have been met in regards to rule adoption. Jensen explained that after publication of the rule language, the Legislative Service Agency recommended that revisions be made at 312 IAC 6.2-1-2(8) to address style and format concerns, and those have been corrected. She also noted that proposed definition of "inactive significant water withdrawal facility", which was originally proposed at 312 IAC 6.2-1-2(11) was removed. Jensen said that, in her opinion, the recommended revisions do not cause the rule to "substantially differ" from the rule language that was published in the Indiana Register. Jensen observed that the Office of the Indiana Attorney General will determine whether the proposed changes are of a substantial difference, but noted, in any event, the revisions are supported by written comment and are a logical outgrowth of the rule as originally proposed. Jensen offered that all of the revisions are included in "Exhibit C" of the Hearing Officer's Report.

John Wright moved to give final adoption to the proposed amendments to 312 IAC 6.2 governing Great Lakes Basin Water Management, as provided in the report at Exhibit C. Jane Ann Stautz seconded the motion. Upon voice vote, the motion carried.

Consideration of repeal of nonrule policy document, Information Bulletin #21, which provides guidance for drilling in karst prone areas; Administrative Cause No. 16-109G

Jensen also presented this item and the remaining item together.

Jensen stated that the Commission approved Information Bulletin #21 and #58 at a time when the Commission did not yet have rules in place governing drilling in karst prone areas and oil

and gas drilling units and well spacing for horizontal wells. Jensen stated that with adoption of the new oil and gas rules at 312 IAC 29, which took effect on December 30, 2017, the nonrule policy documents have become unnecessary. Jensen stated that because the content of both nonrule policy documents are redundant with language in 312 IAC 29 the Department and the Division of Hearings are seeking the repeal of Information Bulletin #21 and #58.

Holland stated that in that IB #21 guidelines for drilled wells using a tank system instead of open pits to store drilling fluids is preferred and that that language does not appear to be included in 312 IAC 29. He asked whether the tank system is still preferred over open pits for storing drilling fluids.

Russell Retherford, Director of the Division of Oil and Gas, explained that an operator can, under 312 IAC 29, use an open pit with a liner or a tank system for storing drilling fluids. Jensen clarified that under the nonrule policy the pits were not required to be lined, but under 312 IAC 29, open pits are required to be lined. It is that change in pit construction that facilitated the Department's removal of a stated preference. Retherford concurred.

Jeffery Holland moved to repeal the nonrule policy document, Information Bulletin #21. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

Consideration of repeal of nonrule policy document, Information Bulletin #58, which provides requirements for oil and gas drilling units and well spacing for horizontal wells; Administrative Cause No. 16-110G

See previous discussion.

Jeffery Holland moved to repeal the nonrule policy document, Information Bulletin #58. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 10:46 a.m., ET.