

**NATURAL RESOURCES COMMISSION**

Minutes - August 26, 1999

**MEMBERS PRESENT**

Michael J. Kiley, Chair  
Larry Macklin, Secretary  
John Goss  
Jerry Miller  
Damian Schmelz  
Jane Ann Stautz  
Steve Cecil  
David Hensel  
Jack Arnett  
Joseph Siener  
Rick Cockrum

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Steve Lucas  
Sylvia Wilcox  
Tawnya Whittington

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

David Vice	Executive Office
Carrie Doehrmann	Executive Office
Angie James	Executive Office
Brent Shike	Executive Office
Mark Reiter	Fish and Wildlife
Gary Miller	Parks and Reservoirs
John Friedrich	Forestry
Paul Bykowski	Law Enforcement

**GUESTS**

Andrew Cullen	House Speaker John Gregg's Office
Paul Burris	

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the natural resources commission at 10:05 a.m., on August 26, 1999 in the Matthew Welch Room of the Indiana State Museum, Indianapolis. With the presence of 11 members, the Chair observed a quorum.

Jerry Miller moved to approve the minutes of July 27, 1999. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's report. Macklin said August has been "a busy and enjoyable month." Director Macklin reported, "We had another great year at the State Fair. I want to take this opportunity to congratulate our fine staff and their efforts in preparations for the fair and in their services at the DNR building." He added, "We are looking at some really exciting things for next year at the fair."

Director Macklin reported that the State Budget Committee recently met and approved \$28M in Capital funds for C.R.&R. Work at our properties. This is a part of an overall capital dollars appropriation for the biennium of about \$90 million. He noted, "this is the largest influx of capital funds since the inception of the DNR in 1965 to repair and restore our properties."

Director Macklin announced that Carrie Doehrmann, David Vice, and he joined Lori Kaplan (Commissioner of IDEM) and her staff in West Lafayette to meet with the Mayor and visit properties with state/local development partnerships. While there they viewed the new wastewater facility, a nature center, and recently restored Celery Bog wetland areas. Macklin said he also recently spoke to the Soil and Water Conservation Districts in French Lick.

Director Macklin stated that Dr. George Parker has made available his report regarding "Ecological Conditions of Indiana's State Parks." This report discusses the ecology condition of each park and makes recommendations on deer reductions for fall 1999. Dr. Parker's report indicates the data was collected on vegetative conditions within 20 state parks during June to determine the condition of park habitats in relation to white-tailed deer. This fifth year of the annual assessment found the DNR's deer reduction program is beginning to produce recovery in those parks where reduction has occurred for at least four years. In his report, Dr. Parker strongly encourages the DNR to continue the program of ecological restoration. Macklin added that D.J. Case has finished his work in the Indiana Dunes area and will be sending his final report to the agency by September 1.

John Goss, Commission member and Tourism and Film Development Division Director for the Department of Commerce, discussed the new fall tourism campaign. He said, "This is the best received television spot since I've worked here." Goss indicated the new fall advertisement has been shown locally and will air on national television Saturday, August 28, during the Notre Dame football game on NBC. Goss also presented a map showing DNR properties where people can horseback ride, hike, swim, fish, camp, and

engage in other recreational activities. He said one million copies of the map will be printed next year.

Jerry Miller, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, reported the Annual Meeting of all past council members was held in Brown County. The only item on the Advisory Council agenda was a proposed REMC easement, and that item was passed along favorably to the Commission.

David Vice, Deputy Director for the Bureau of Resource Management, said attendance this year at the State Fair set a record. "We're having more and more people come through our building as well." He said on the second Saturday of the Fair, a mathematical calculation suggested "approximately 21,000 people went through the DNR building." Vice also said the wild game cookout was a great success. The cookout served 1,500 people, with the line at one time "stretching back four city blocks." Vice added, "We have a great working relationship with Bill Stinson, Director of the Indiana State Fair, and his staff." He said the DNR is "looking to make the DNR building a twelve-month opportunity, and we are also looking to expand."

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, said his Council did not meet. "We are giving the new deputies a chance to get their feet wet, and we expect to meet soon."

## **BUREAU OF LANDS AND CULTURAL RESOURCES DIVISION OF FORESTRY**

### **Consideration of Request by South Central REMC for a Four-Year Permit for the Installation, Operation, and Maintenance of an Underground Electric Cable Across Yellowwood State Forest**

John Friedrich of the Division of Forestry presented this item. He explained that to supply private customers in Brown County just north of Bear Lake on Yellowwood State Forest, the South Central REMC uses an aboveground electric line that requires a 40-foot-wide corridor cleared for line protection. The span is still vulnerable to storm damage because of the height of adjacent trees.

South Central REMC now requests a permit to install, operate, and maintain a 7200 volt, three-phase, underground electric cable across portions of Yellowwood State Forest. The cable would be installed in a trench to a depth of about four feet. A portion of the existing line would be shifted to run parallel and within ten feet of Bear Creek Road. Where possible, the cable would be installed within the disturbed roadway area, shortening the length crossing the state forest from 3,080 to 2,155 feet. Because of difficult terrain, however, the cable path may leave the disturbed roadway at some locations.

A second portion of the current line leaves the roadway and crosses open terrain in the state forest for about 1,617 feet. This portion would be buried in the existing cleared right-of-way that is cleared for the above-ground line.

The utility poles that support the lines along the second portion would be removed and the area reforested. Telephone lines that use poles along the first portion would prevent removal of the poles, but the corridor will not require intensive clearing as it has in the past.

Friedrich said the Division of Forestry recommends approval of the permit. He noted that the written materials in the Commission packet reflect the need for archaeological clearances, but these have since been obtained. Implementation of the permit would have several benefits to the agency and for public use of Yellowwood State Forest. The length of the utility line on the property would be decreased. The utility line would no longer require regular, intensive clearing. The reduction of corridor clearing does have detrimental aspects: cleared utility corridors provide open habitat certain species of wildlife prefer, and these corridors support the growth of berries and other edible plants that people gather. The Division of Forestry believes, however, the benefits would exceed the detriments.

Jerry Miller moved to approve the request by South Central REMC for a four-year permit for the installation, operation, and maintenance of an underground electric cable across Yellowwood State Forest. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried.

## **BUREAU OF RESOURCE MANAGEMENT DIVISION OF FISH AND WILDLIFE**

### **Consideration of a Request for the Installation of a Fiber Optic Transmission Line through Splinter Ridge Fish and Wildlife Area**

Mark Reiter of the Division of Fish and Wildlife presented this item. He explained the proposal was for the placement by Williams Communications, Inc. (doing business as "Vvyz, Inc.") of fiber optic transmission line. The line would use right-of-way owned by Texas Gas Pipeline Company and would cross Splinter Ridge Wildlife Management Area near Brooksburg as part of a linkage between Atlanta and Chicago. The line would cross about three miles of the DNR property.

Reiter said the Division of Fish and Wildlife recommended approval with the following conditions: (1) Assist points and splice boxes must not be above ground. (2) No construction may take place during an open hunting season. (3) A fee would be paid for disturbance of Splinter Ridge Fish and Wildlife Area.

The Chair asked Reiter what fee the DNR was seeking for the easement. Reiter responded he did not have a figure but was looking for direction from the Commission.

Rick Cockrum said he did not believe the Commission had enough information to set a fee. Once a number was selected, some precedent would be set, and a rational basis was needed for the fee, both for this case and future cases. The Commission should not seek an excessive fee, yet the Commission was responsible for protecting the interests of Indiana citizens relative to public properties. Jane Ann Stautz added she believed the disturbance to be caused by placement of the line, as well as the benefit to be derived, were properly to be considered in establishing a fee.

Rick Cockrum moved to defer consideration of this item until DNR can present a rational basis for determining compensation for the disturbance to result from placement of the cable. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

### **Consideration of a Request for a Residential Easement for Electrical Service Across Hillenbrand Fish and Wildlife Area**

Mark Reiter also presented this item. He said Paul Burris was requesting an easement across Hillenbrand Fish and Wildlife Area to service his residence. Burris has indicated he needs an easement for power and water to be buried underground along former County Road 575 North. The Division of Fish and Wildlife was recommending denial of the permit, however, because Burris may have an easement option across an adjacent parcel.

Paul Burris said he had originally hoped to use the access lane across property owned by Sexton (shown in the packet to be owned by Waters) for the power and water easement. Sexton has denied that option, and Burris now seeks an easement from the DNR north of the lane but adjacent to it. Burris said he is building a new residence on-site, which is nearing completion, and is anxious to obtain electricity and water.

Chairman Kiley asked whether what is described as former CR 575 North (essentially the access lane) was dedicated by Greene County and whether the road has been vacated. Burris responded he had inquired of the County as to the status of the roadway without receiving a complete response. He believed the road had been abandoned. The Chair responded that non-usage of a road does not constitute legal transfer to the private property owner. A formal vacation process must be pursued by the County.

Rick Cockrum offered the perspective that Burris might be entitled to use the access lane for his easement. The status of County Road 575 North west of County Road 1500 West was a critical issue.

Jane Ann Stautz said she did not believe there was sufficient information before the Commission on which to determine whether to grant to Burris his easement request. She asked whether the legal status of the access lane could be clarified.

Chairman Kiley said the Commission was sensitive to the plight of Paul Burris. There might be a hardship situation that would call for the placement of an easement on DNR

land. At the same time, the Commission's general policy was not to place burdens on public lands under DNR stewardship. He believed the Commission wanted to be sure of legal options before making an imprudent decision.

Steve Cecil said determining the legal status of county roadways, in an area such as this one that was formerly a surface coal mine, was often confusing. He believed he might be able to assist, however, in his capacity with INDOT.

Joe Siener moved to defer this item for 30 days to allow DNR and INDOT to work with Paul Burris and clarify the legal status of the western extension of County Road 575 North. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

### **Consideration of a Request for a Water-Line Easement Across Crosley Fish and Wildlife Area**

Mark Reiter also presented this item. He said Dupont Water Company was seeking to install a new six-inch water main parallel to an existing four-inch water main across Crosley Fish and Wildlife Area. For this purpose, Dupont Water Company desired a permanent easement 30 feet wide.

Reiter indicated the Division of Fish and Wildlife recommended approval of the request. Because no record has been located to support existence of the current water main, the Division asked that Dupont Water Company pay the "going rate" for purchase of the easement. That rate would be in the amount of \$1 a foot.

Joe Siener indicated he would abstain from voting on this item. He said the company for which he was employed has a contractual relationship with the Dupont Water Company. Siener noted, however, the Dupont Water Company was a rural service provider that was "shocked" the DNR would seek payment for the easement.

Steve Cecil moved to approve the permanent easement in favor of the Dupont Water Company across Crosley Fish and Wildlife Area with a fee of \$1 per foot. The motion was seconded by Jack Arnett. Upon a voice vote the motion carried. Siener abstained.

## **LEGAL PROCEEDINGS NRC DIVISION OF HEARINGS**

### **Consideration of Report, Findings of Fact and Conclusions of Law, with Nonfinal Administrative Judgment of the Administrative Law Judge in Rose Acre Farms, Inc. v. Jackie Ault and James Curry; Administrative Cause No. 98-026F**

The Chair reported this item deferred until the October meeting.

**Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the Matter of Petition for Rate Increase by Quakertown Marina, Inc.; Administrative Cause No. 99-079P**

Sylvia Wilcox, Hearing Officer, introduced this item. She reminded the members that, during the March 1998 meeting, the Commission approved a nonrule policy document for an informal process providing administrative review of ratemaking recommendations for resorts and marinas under lease with the DNR. The process was used successfully last year and applied again this year to rate increase petitions.

At issue in this proceeding is a request by Quakertown Marina, Inc. to raise rates on Brookville Lake for the year 2000. As stated by Quakertown, "We request permission to increase the annual rate from \$450.00 to \$490. It has been many years since this location has had a rate increase." Wilcox said in determining whether to recommend a rate increase be granted, the DNR analyzes similar facilities and compares rates to those sought in the petition. In addition, comment is solicited during public hearing. DNR reflected the increase was within the range of comparable facilities, and public comments received were generally favorable to the increase. One citizen expressed some concerns for services at the marina, including access to pumpout facilities, but the citizen said if a rate increase is needed to keep the marina in business, he favored its approval.

Wilcox concluded that based upon the evidence received, she believed the Commission should recommend the rate increase for approval by the U.S. Army Corps of Engineers.

Gary Miller of the Division of State Parks and Recreation spoke briefly. He clarified that the request was an increase in buoy rather than slip rental. Miller also reflected the concerns expressed by the citizen were for operations not buoy rates.

Jane Ann Stautz moved the Natural Resources Commission recommend to the U.S. Army Corps of Engineers that the petition by Quakertown Marina, Inc. for a marina buoy rate increase be approved from \$450 to \$490. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.

**Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the Matter of Petition for Rate Increase by Pleasure Craft Marina; Administrative Cause No. 99-081P**

Sylvia Wilcox, Hearing Officer, also introduced this item. She said the matter was governed by the same nonrule policy document as applied to the previous agenda item. At issue is a request by Pleasure Craft Marina for a "cost-of-living increase for our slip rental. As of December 1998, the cost of living rate increased 1.6%. The amount of [increased] slip rental would be \$27.50." The marina is located on Lake Monroe.

Wilcox said an opportunity for hearing was also provided in this proceeding, but no person appeared or otherwise commented on the requested rate increase. Once again, evidence submitted by the DNR indicated the rate was within the range of similar slips rates. She recommended that the Commission recommend approval of the increase by the U.S. Army Corp.

Jerry Miller moved the Natural Resources Commission recommend to the U.S. Army Corps of Engineers that the petition by Please Craft Marina for a marina slip increase of 1.6% be approved to a range from \$1,722 to \$1,750. The motion was seconded by Dave Hensel. Upon a voice vote, the motion carried.

**Consideration of Preliminary Adoption of Rule to Extend the Application of a No-Boat Zone in a Channel Adjacent to Trail Creek, in Michigan City, that Harbors a Gaming Boat; Administrative Cause No. 99-085L; LSA #99-83**

Steve Lucas presented this item. He said a temporary no-boat zone was established in the channel adjacent to Trail Creek that harbors the Blue Chip Gaming Boat. The no-boat zone was set by rule because of the potential for hazards for public safety. The zone was made temporary, however, because facilities surrounding the gaming boat were still being developed, making the final physical configuration uncertain, and because of concerns that the no-boat zone might be perceived as privatization of public waters.

Lucas said earlier this summer, Lt. Ed Troche of District 10, Division of Law Enforcement, re-evaluated the site. Troche observed: "The signage at the entrance of the channel notes that shallow water is present but does not designate the site as a no-boat zone. As a result, even though the area has been authorized as a no-boat zone by the Natural Resources Commission, effectively it is not. A vessel entering the channel could not lawfully be ticketed. Even so, enforcement problems have not been experienced at the site since the gaming boat began operations. There does not appear currently to be a need to extend beyond December 31, 1999 the rule authorizing a no-boat zone for the channel."

Steve Cecil expressed continuing concerns for potential safety concerns within the channel. The potential remained for personal injury caused by a collision with the very large gaming boat.

Rick Cockrum echoed those concerns. He recommended a rule be given preliminary adoption to extend application of the no-boat zone indefinitely.

Jack Arnett said he was very familiar with the site and that it posed no serious safety hazard. He said the Division of Law Enforcement was not troubled by the potential for personal injury, and the Commission ordinarily deferred to staff expertise. Arnett urged the current no-boat zone be allowed to lapse.



Rick Cockrum moved to give preliminary adoption to a rule amendment to extend indefinitely the no-boat zone on the channel adjacent to Trail Creek holds the Blue Chip Gaming Boat. The motion was seconded by Steve Cecil. A voice vote was taken, and the majority voted in favor of preliminary adoption with the proposal to be committed to public hearing.

## **ADJOURNMENT**

At 11:16 a.m., EST, the meeting was adjourned.