

## NATURAL RESOURCES COMMISSION

Minutes - July 27, 1999

### MEMBERS PRESENT

Michael J. Kiley, Chair  
Larry Macklin, Secretary  
John Goss  
Terri Moore  
Jerry Miller  
Damian Schmelz  
Jane Ann Stautz  
David Hensel  
Steve Cecil

### NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas  
Tawnya Whittington

### DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

David Vice	Executive Office
Jack Costello	Executive Office
Paul J. Ehret	Executive Office
Carrie Doehrmann	Executive Office
Angie James	Executive Office
Brent Shike	Executive Office
Mike Nickolaus	Oil and Gas
Mona Nemecek	Oil and Gas
Beth Hernly	Oil and Gas
Julie Hendricks	Fish and Wildlife
Bill James	Fish and Wildlife
Dick Gantz	State Museums and Historic Sites
Eric Myers	Foundation and Trust
Lee Casebere	Nature Preserves

### MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the natural resources commission at 10:01 a.m., on July 27, 1999 in the Matthew Welch Room of the Indiana State Museum, Indianapolis. With the presence of nine members, the chair observed a quorum.

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

Larry Macklin provided the Director's report. Director Macklin spoke about the Congressional Medal of Honor Memorial that was unveiled in late May at White River State Park. He noted that the sails light up at night to list all award winners. Director Macklin said that the Indianapolis Zoo recently opened its arboretum along the canal, with both indoor and outdoor elements.

Director Macklin announced that on August 30, 1999 at 11:00 a.m., EST, the Indiana State Museum will hold its official groundbreaking ceremony. He also said the garage for joint use by the NCAA building, Indiana State Museum, and Eitelgoerg Museum is now open. In the near future sod will be placed outside the Eitelgoerg Museum. Director Macklin said the Historical Society held the grand opening for its new building, and although across West Street from the White River State Park, the Historical Society is participating with White River State Park in promotional and educational efforts. He said the mission of the Historical Society is distinguished from the mission of the Indiana State Museum in that the former is primarily concerned with the preservation of Indiana historical documents while the latter is primarily concerned with depicting Indiana's cultural and paleontological history through the presentation of exhibits.

Director Macklin said the Midwest Conference for officers was held in June, and that at the annual law enforcement meeting, Steve Kinney was recognized as outstanding officer. He also said the DNR had a successful booth at the Indiana Black Expo.

Director Macklin said the 1999 Natural Resource Interim Study Committee may look at ways of making the surface coal mining bond pool more effective and at making cemetery law more sensitive to social issues and cultural preservation. He reported the reorganization of the executive office is "working well, the people are settling in," and he is proud of the management team.

Jerry Miller, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, reported the council met on June 14 at Clifty Falls State Park. He said the members "witnessed changes, and everything is really going great" at the facility. He also advised the Commission that "everything on the agenda passed."

Jack Costello, Deputy Director of the Bureau of Lands, Cultural and Recreational Resources, reported "camping and swimming attendance is up" at DNR's properties. He said there is 4 1/2 to 6 million inventory of tree seedlings. "There is so much interest, we have to have a lottery" to determine who may purchase seedlings from the DNR's Division of Forestry.

David Vice, Deputy Director for the Bureau of Resource Management, said nearly 8,000 acres of public and private lands have been treated for the control of gypsy moth in northern Indiana. In addition, there are now 45 counties that are quarantined for the larger pine shoot beetle.

Vice said that for the first time, the entire 466 miles of the Wabash River was surveyed at the same time in order to provide a comprehensive study of the fish community. He said there was "great press coverage, including eleven TV stations, 15 newspapers, and eight radio outlets attending the media day." Vice noted that conservation officers on non-duty time conducted the Sgt. Karl Kelly Youth Camp for approximately 150 children. The camp is geared to cultivate young people's respect for natural resources and for the responsibilities of conservation officers. The camp was held in Franklin County.

Paul Ehret, Deputy Director of the Bureau of Resource Management, said he attended his first Soil Conservation Board meeting since the reorganization. During the meeting, the board approved the Lake and River Enhancement Budget.

Ehret said the federal Office of Surface Mining Control and Reclamation and DNR's Division of Reclamation have just entered a cooperative agreement that gives jurisdiction to the DNR jurisdiction to regulate mining on federal lands. He explained most other coal mining states had previously entered similar agreements, but Indiana has few opportunities for surface coal mining to take place on federal lands. The agreement should help promote consistent and efficient regulation of permitting and enforcement functions, in the event a permit application for mining on federal lands is received.

Ehret reported DNR's Division of Oil and Gas is working with IDEM, the US Fish and Wildlife, and Black Beauty Coal Company to clean up lands along the Patoka River. "Hopefully, we'll get some lands cleaned up and some old wells plugged down there."

In response to a question from the Commission, Ehret said DNR's Division of Water is continuing to monitor conditions at Sylvan Lake Dam. He said there is a wet area that suggests some seepage. One possibility is a fabric panel on the dam is not functioning properly, a relatively inexpensive condition to correct. If that is not the case, the DNR will have to review other options.

## **BUREAU OF LANDS AND CULTURAL RESOURCES PERSONNEL INTERVIEWS AND PERMANENT APPOINTMENTS**

### **Personnel Interviews for Limberlost State Historic Site**

Terri Moore presented this item. She said, "as is typically the situation for personnel appointments, we had two excellent candidates." She reported that after difficult deliberations, the personnel committee determined to recommend Randall Lehman be selected as the Historic Site Curator for the Limberlost State Historic Site in Geneva.

Jerry Miller moved to approve Randell Lehman as the Historic Site Curator (Property Manager) for Liberlost State Historic Site. The motion was seconded by David Hensel. Upon a voice vote, the motion carried.

### **Permanent Appointment of Darren T. Bridges**

Tom Lyons introduced Darren T. Bridges, Assistant Property Manager at Martin State Forest. He said Bridges was appointed in July, 1998 and was now recommended for permanent appointment. Lyons reflected that DNR's Division of Forestry was very pleased with the performance of Bridges and looked forward to his extended tenure with the agency.

Damian Schmelz moved to approve the permanent appointment of Darren T. Bridges. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

### **Permanent Appointment of Julie Hendricks**

Bill James presented Julie Hendricks, Assistant Property Manager of East Fork State Fish Hatchery, for permanent appointment. James states that East Fork is the newest and largest warm-water fish hatchery. He states that "Julie has filled the bill really well." Hendricks had worked for the DNR for twelve years before her appointment, and "she is an outstanding employee and an outstanding person."

Jerry Miller moved to approve the permanent appointment of Julie Hendricks. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried. Division of Nature Preserves.

### **Consideration of the Dedication of Tribbett's Woods Nature Preserve, Jennings County**

Lee Casebere of the DNR's Division of Nature Preserves presented this item. He said the proposed nature preserve is a 31.6 acre tract of land in Commiskey, Indiana. At the present time, the land is owned and managed by The Nature Conservancy. Funds from the Indiana Natural Heritage Protection Campaign helped to acquire the property. Casebere said this woods has been in the Tribbett family since 1887. The woods is a fine example of an old-growth southeastern flatwoods. Casebere said the division of nature preserves recommended this site for dedication.

Chairman Kiley indicated that appreciated should be shown to Ida Tribbett for preserving the woods. He asked how that might best be accomplished. Following further discussion by the Commission, the determination was made a letter would be drafted for signature by Chairman Kiley and Director Macklin to express Indiana's appreciation to Ida Tribbett.

Damian Schmelz moved to approve the dedication of the Tribbett's Woods Nature Preserve. The motion was seconded by Terri Moore. Upon a voice vote, the motion carried.

### **Consideration of the Dedication of Slackwater Bottoms Nature Preserve, Pike County**

Lee Casebere also presented this item to the Commission. He said the proposed nature preserve is an 88 acre tract of land located in the Patoka River bottoms of Pike County.

Both the nature preserve and the adjacent tract will eventually be transferred to the Patoka River National Wildlife Refuge. The tract contains a very high quality example of bottomland timber, unusual not only in the species of trees present, but also in their size. A significant feature here is the presence of a rare shrub called Virginia willow which reaches the northern edge of its distribution in southwestern Indiana. He said the DNR's Division of Nature Preserves recommended this site be dedicated.

Damian Schmelz moved to approve the dedication of the Slackwater Bottoms Nature Preserve. The motion was seconded by David Hensel. Upon a voice vote, the motion carried.

### **DIVISION OF STATE MUSEUMS AND HISTORIC SITES**

#### **Consideration of Acceptance of Donation of the Posey House as an Addition to the Corydon State Historic Site in Harrison County**

Richard Gantz, Ph.D., Director of the Division of Museums and Historic Sites, presented this item. He explained that The Daughters of the American Revolution is seeking to donate the Posey House to the Corydon State Historic Site. The DAR wishes to donate the property along with as many contents of the property that the DNR wishes to retain. The home was built in 1817 by the son of one of Indiana's Territorial Governors, and it is one of about ten houses still standing from the period when Corydon was the state capital.

Jerry Miller moved to approve the acceptance of donation of the Posey House as an addition to the Corydon State Historic Site. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

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

#### **Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Amendments to the Oil and Gas Rules (310 IAC 16); Administrative Cause Number 98-203G; LSA #98-253(F)**

Steve Lucas, Hearing Officer, introduced this item. He said that with a few technical changes described in the written materials, the proposed amendments were noncontroversial and were recommended for final adoption. Lucas introduced Mike

Nickolaus of the DNR's Division of Oil and Gas who he said would brief the Commission on the contents of the proposal.

Mike Nickolaus explained that an amendment offered to 312 IAC 16-5-20 would lengthen from two to five years the permissible period for "temporary abandonment." This change would reduce paperwork both for the operator and the agency. With the amendment, the amount of unproductive time spent on temporary abandonment concerns would be reduced, so the agency would be better able to give serious consideration to whether temporary abandonment should be granted or renewed.

Nickolaus said an amendment offered to 312 IAC 16-5-9 would allow the agency to consider alternative methods for well construction. The well operator must show that any alternative method chosen (1) will not cause the pollution of, or endanger, or threaten an underground source of drinking water; (2) will not damage a source of oil or gas; and (3) is designed to confine injected fluids to the approved interval or intervals. The amendments would also modify 312 IAC 16-5-14 to require the packer for a Class II well to be set inside cemented casing within 200 feet above the permit injection zone.

Jane Ann Stautz moved to approve for final adoption the amendments to 312 IAC 16 as more particularly described by the hearing officer in his written report. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

**Consideration of Recommendation for Approval of Nonrule Policy Document Providing Recommended Guidelines for the Construction of Wells and the Type and Setting of Pumps for Water Wells Constructed in 1986, 1988, 1989, 1990 and 1991; Administrative Cause #99-088W**

Steve Lucas presented this item. For consideration is a nonrule policy document to establish and memorialize the guidelines for water well construction that were in effect between 1986 and 1991. He explained a water well placed during this period that did not conform to these standards is not unlawful, but the well owner is disqualified from obtaining relief under the groundwater emergency law. Water wells constructed before 1986 had no minimum well construction standards. In effect, every well constructed before 1986 qualifies for relief under the groundwater emergency standards, and wells constructed after 1991 must conform to standards provided by rule (currently codified at 312 IAC 12) in order to qualify. Approval of this nonrule policy document by the NRC will underline its continued legal vitality, explain the historic context of the 1986-1991 guidelines, and cause their inclusion among regular commission nonrule policy documents.

Jerry Miller moved to approve the proposed Nonrule Policy Document for the Guidelines for the Construction of Water Wells. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing and Recommendation for Final Adoption of Amendments to Rules for the Collection and Sale of Wild Ginseng (312 IAC 19); Administrative Cause Number 99-041N; LSA #99-51.**

Steve Lucas, Hearing Officer, presented this item. The proposed rule amendments would delay the opening of the wild ginseng harvest season in order to protect plants from being harvested when immature. During a previous rule-adoption process, ginseng dealers argued that the opening of the season should be delayed for two weeks to allow ginseng to mature and produce fruits and seeds for continued propagation of the species.

At the time of the prior rule adoption, however, the seasons were set by statute and merely repeated in the rule. For this reason, the ginseng dealers asked (and DNR staff concurred) that the NRC adopt a nonbinding resolution asking the General Assembly to amend the statute to allow for the deferral of the harvest season. The NRC approved the resolution, and the most recent General Assembly enacted HEA 1212 to delegate authority to set the season to the NRC. Based upon HEA 1212, this rule proposal would set the opening of the ginseng harvest season for September 1. Lucas said during the current rule adoption process, only two persons commented on the proposed change to opening of the harvest season, and both favored the proposal.

Lucas said he recently communicated with John Bacone, Director of the Division of Nature Preserves. Bacone reported that during a recent meeting with the U.S. Fish and Wildlife Service, concerns were expressed on a national level for decline in the harvest of ginseng and for the tendency of some ginseng diggers to harvest immature plants. Federal regulations were being considered to prohibit the export of immature ginseng. Bacone reflected that the proposed rule, though not directly impacted by the proposed federal regulation, would be consistent with and supportive of it.

Lee Casebere of the division of nature preserves said the number of ginseng roots required to produce of pound of dried ginseng has steadily increased over recent years. Because of market pressures, ever smaller and generally less mature plants are being harvested.

Lucas said two other items were also included in the proposed rule change. One would have deferred the opening of the ginseng selling season. This proposal drew adverse public comments, and it was no longer recommended by DNR's Division of Law Enforcement or Division of Nature Preserves for final adoption. Lucas said he asked that the Commission not give this item final adoption. The third and final change would clarify that a person is prohibited from possessing immature harvested wild ginseng, as well as from selling it.

Jane Ann Stautz moved to approve the amendments to the rules regulating the collection and sale of ginseng as described by the hearing officer. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

## **ADJOURNMENT**

At 11:57 a.m., EST, the meeting was adjourned.