

**ADVISORY COUNCIL**  
February 21, 2022, Meeting Minutes

**ADVISORY COUNCIL MEMBERS PRESENT**

Patrick Early, Chair  
Bill Freeman, Vice Chair  
R. Ross Williams  
Tim Karns

**NRC, DIVISION OF HEARINGS STAFF PRESENT**

Elizabeth Gamboa  
Scott Allen  
Billie Franklin

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Chris Smith,	Executive Office
Ryan Mueller,	Executive Office
Steve Hunter	Law Enforcement

**GUESTS PRESENT**

Tom Shevlot

**Call to Order**

Patrick Early, Chair, called to order the regular meeting of the Advisory Council at 10:00 a.m. ET on February 21, 2022. With the presence of four members, the Chair observed a quorum.

Chairman Early offered opening remarks, noting that presently the Advisory Council, which should have seven members, has only has four members appointed. The Chair noted that he had previously discussed the role of the Advisory Council with Dan Bortner, Director of the Department of Natural Resources (Department). The Chair recognized the Department is working with the Governor's Office to fill vacant Advisory Council member positions and stated they are looking at the possibility of bringing on Tom Shevlot and Ross Jeff Clark. He noted that Shevlot is currently a Council Member with the City of Lawrence and has a love for the outdoors.

**Election of Officers (Chair and Vice Chair)**

Tim Karns moved to slate the officers now standing for the 2022 term: Patrick Early, as Chair, and Bill Freeman, as Vice Chair. Ross Williams seconded the motion. Upon a voice vote, the motion was unanimously carried.

## Reports of Deputy Directors

Ryan Mueller, Deputy Director of the Regulatory Bureau, provided his report. Mueller stated the Division of Entomology is participating in more than twelve education and outreach events in the next several months, focusing on invasive species. He noted some of the events include the Indiana Home and Garden Show, Indiana Hardwood Lumbermen's Association, and the National Invasive Species Awareness Week. Mueller said the spotted lanternfly is an invasive species that was spotted in one southern Indiana county that can have detrimental effects on orchards and vineyards. The Department is monitoring the infestation to determine what management strategies will need to be implemented.

Mueller said the Division of Historic Preservation and Archaeology received fifteen proposals and recommendations for funding that were approved through the Historic Preservation Fund Grant Program, a federal program of the National Park Service. He noted the 2022 grant-funded projects include a national register nomination, eleven building rehabilitations, and three archeological surveys at state properties totaling \$620,000 in funding.

Mueller said the United States Congress passed an infrastructure law that would reauthorize the Abandoned Mine Land (AML) Program for another fifteen years. Mueller stated the law allocates \$11.3 billion for states and tribes to remediate public and environmental safety hazards remaining from pre-law mining activities. He noted that Indiana will receive approximately \$25 million per year for the next fifteen years. Mueller also stated there is an additional \$4.7 billion available to states and tribes to plug orphaned oil and gas wells. Mueller anticipates the Division of Reclamation using all the funds available to address the 1,500 orphaned oil and gas wells in Indiana.

Freeman asked if the assets used to plug orphaned wells were private or public funds.

Chris? Smith replied that there are both private and public funds available to plug orphaned wells through the AML program and the Department keeps track of issues with mines that relate to health, safety, or environmental concerns so that it can prioritize the available funds.

Mueller said Dave Knipe became the new Director for the Division of Water in November 2021. He noted Knipe has thirty years of experience with the Department, is a licensed engineer and a certified floodplain manager.

The Chair asked if the mine owners are responsible for reclamation of the properties.

Mueller clarified that the AML program addresses issues that were prior to law related to mining activities. He noted a bond pool that operators now pay into that is used for reclamation.

Chris Smith, Deputy Director of the Land Management Bureau, provided his report. He stated the Boat, Sport, and Travel Show just began and goes until February 27, 2022. The Department has a noticeable presence at the show.

Smith said the new fish and wildlife fees approved by the Commission on September 21, 2021, went into effect and the staff has been doing a great job with outreach and answering fee-related questions.

Smith stated Next Level Trail Program received over sixty applications that are being reviewed by the Department. Grant recipients are anticipated to be announced in the Spring of 2022. He noted the project applications will be broken down into local projects and regional projects.

Smith stated the Department's holiday gift packs were extremely successful again this year. The pack included an annual pass, a gift card for the campground or inns, and a subscription to Outdoor Indiana magazine. Smith said gift pack sales ended in January 2022, with over 11,400 packs sold, which is over 1,000 more than were sold the prior year.

Smith said registration will be February 25, 2022, for the spring turkey draws on Department properties and will end on March 14, 2022.

Smith stated the Division of Forestry held its annual open house to inform of the last year's accomplishments and upcoming projects. Smith said the Division went through a certification process where two independent auditing agencies spent two weeks on Department properties and private state forests to review practices and give opinions on the forestry work being done. He noted a report from the audit should be available in February.

Smith reported the Department is preparing for construction of the new Inn at Potato Creek State Park, making it the Department's eighth inn after its 2024 completion. It will be the first inn built since the Spring Mill Inn in 1939. He said Hafer Designs is the architectural engineer company from Evansville that has been selected to do the design work for the Potato Creek Inn and the Department will work with the Indiana Department of Administration to select a project manager in March 2022.

Smith noted the planning is continuing for Becoming and Outdoors Woman Program that will take place at Ross Camp, registration will start on March 1, 2022.

Smith stated avian influenza was detected in commercial turkey flocks in Dubois County and Greene County in February 2022. He noted the Indiana State Board of Animal Health (BOAH) has the lead and the Division of Fish and Wildlife is supporting BOAH by assisting with testing and monitoring the wild bird population in the area to ensure influenza has not spread outside the four facilities in which it was found.

The Chair asked if wild birds was the carrier of the avian influenza.

Smith answered that wild birds such as geese can be carriers. It is not usually fatal to the wild birds, but it is almost always fatal, in poultry. He noted the facilities have done a great job with their biosecurity and keeping domestic birds and wild birds from mingling.

Freeman asked if a hunter would know if he shot a wild bird with avian influenza and if there was testing that could be done for avian influenza.

Smith responded that a hunter would not know if he shot a wild bird with avian influenza, but the Department could possibly set up facilities around the infection area to track the avian influenza for goose hunters. He noted the Department could also do some netting and testing of wild waterfowl.

The Chair asked about the status of the Department hiring a deer biologist.

Smith stated Joe Caudell, who was the previous deer biologist for the Division of Fish and Wildlife, has returned as the deer biologist.

### **Approval of minutes of meeting held on August 11, 2022**

The Chair requested a motion for the approval of the Council's August 11, 2021, meeting minutes.

Bill Freeman moved to approve the minutes, as presented. Ross Williams seconded motion. Upon a voice vote, the motion unanimously carried.

### **Legislative Update**

Chris Smith provided the legislative update for Caitlin Smith, Legislative Director for the Department. He noted that Caitlin Smith was testifying before a legislative committee and unable to attend the Advisory Council meeting.

Chris Smith stated that Senate Bill (SB) 186 is being considered by the Indiana General Assembly which will codify the Department's reorganization changes approved at the March 16, 2021, Commission meeting. He noted the change eliminates and renames divisions and bureaus that have been merged by the Department. Smith said SB 186 also establishes the Indiana State Park Inns Authority as a body corporate and politic for the operation, management, and administration of inns and associated facilities by the Department.

Smith said the Department is tracking House Bill (HB) 1100, which is a rulemaking bill that would narrow how an administrative rule is made and the Department's ability to create or amend administrative rules. He said HB 1100 language is too broad and the Department hopes to have an opportunity to make some changes to the bill to ensure the Department is responsive and timely especially regarding temporary rules. Smith noted that if HB 1100 were passed with the current language it could hamper the Department's flexibility with regards to the rulemaking process.

Mueller provided legislative updates regarding SB 269 and HB 1139. Mueller said the bills would place fewer dams under the jurisdiction of the Department but would focus more on the high hazard potential of dams, those dams that have the potential for loss of life and significant

property damage downstream. Mueller said high hazard potential dam owners will have to develop an emergency action plan under the proposed legislation.

Williams asked if dams would be repaired or dewatered.

Mueller clarified that SB 269 and HB 1139 focus on what kinds of dams the Department would be inspecting and have jurisdiction over.

Freeman asked is the Department had a database of high hazard dams in Indiana.

Mueller answered there is a database maintained by the Department of the high hazard dams in Indiana. If someone wanted to know about a particular dam, they would contact the Division of Water's Dam Safety Program. Mueller noted there is a process where someone downstream from a dam could petition the Department to have a particular dam classified as a high hazard dam.

Karns asked if there was currently a bill that would eliminate Administrative Law Judges (ALJ) or alter the administrative process that would impact the Department.

Smith answered that there wasn't anything currently that would eliminate the administrative process as it relates to the Department. He asked Commission Director Gamboa if she knew of anything related to the administrative law process.

Gamboa stated HB 1063, *de novo* judicial review of certain agency actions, deals with judicial review of ALJ's decisions. She noted the trial court currently does a paper review of the ALJ's decisions, but the proposed legislation would eliminate the trial court review and the trial judge would hold a new hearing not giving deference to the expertise of the agency.

The Chair introduced Elizabeth Gamboa as the new Natural Resources Commission Director replacing Sandra Jensen who retired in October 2021. He noted ALJ Dawn Wilson retired at the end of December 2021.

Gamboa noted another ALJ has been hired for the Division of Hearings and will start on April 4, 2022. Gamboa started with the Commission's Division of Hearings on January 24, 2022. She said she had been a staff attorney with the Department from 2016 to 2019, then she was an ALJ with the Office of Administrative Law Proceedings.

### **Consideration for policy change to all Class-one-E-Bikes to operate on trails on public lands owned and operated by the Department**

Chris Smith presented this item. Smith stated last year the Department implemented a temporary rule to allow e-bikes on Department property. Smith said the class one e-bike is already defined by the Bureau of Motor Vehicles. He stated class one e-bikes have an electric motor that helps when the operator is pedaling up to twenty miles per hour.

Smith said the e-bikes are being utilized on the mountain bike trails, so they are not going the maximum speed of twenty miles per hour. He said the e-bikes have been received very well with very few complaints or issues. The Department would like to continue to let people operate e-bikes on the properties and expand the user base to allow people who are not able to use a traditional bike to use the e-bike.

Williams asked if traditional mountain bikers have been receptive to the e-bikes being used on the mountain bike trails.

Smith said the Department has a good relationship with the Hoosier Mountain Biking Association and a few other groups in the state, who install and maintain the trails on Department properties. Those groups see the e-bike users as an opportunity to broaden their base. He recalled one person who was giving an e-bike user a hard time until learning the guy had a disability and needed the e-bike because he was unable to physically operate the traditional bike on the trail.

Karns stated e-bikes are heavier than traditional mountain bikes, asked if there was any type of negative impact to the trails, and asked if there was any way to know how many e-bike users are on the trails.

Smith stated there is no way for the Department to know how many e-bikes are on the trails because the trail tags do not distinguish between the types of bikes. He said they are not seeing any damage or negative impact to trails from the use of e-bikes and the biker associations and groups that maintain those trails have not indicated any issues.

Smith stated the Department supports the creation of a permanent rule to allow the use of class one e-bikes to be used on Department properties.

Smith noted the Division of Fish and Wildlife is finishing up the Got INput process where members of the public can make comments and suggestions related to fish and wildlife rules. Smith said there may be opportunities for potential fish and wildlife rule amendments to be vetted by the Advisory Council in 2022 as some of the suggestions make their way through the rulemaking process.

## **Adjournment**

The meeting adjourned at 10:37 a.m., ET.