

Minutes of the October 19, 2004

**Joint Meeting of the
Advisory Council for the Bureau of Water and Resource Regulation
and the
Advisory Council for the Bureau of Lands and Cultural Resource Regulation**

Members Present for the Advisory Council for the Bureau of Water and Resource Regulation

Raymond McCormick
Thomas Fischer
Charles Amlaner, Jr.
David Click
Daniel Willard
Donald Mann
William Pippenger
Donald VanMeter
William Wert

Members Present for the Advisory Council for the Bureau of Lands and Cultural Resources

Jerry Miller
Jeffrey Gore
Clarence Long
Lester Ponder
Jim Trachtman

Call to Order

Raymond McCormick, Chair of the Advisory Council for the Bureau of Water and Resource Regulation, called the meeting to order at approximately 10:07 a.m. With nine members present, the Advisory Council for the Bureau of Water Resource Regulation had a quorum. With five members present, the Advisory Council for the Bureau of Lands and Cultural Resources did not have a quorum. Their actions of the latter Advisory Council are unofficial, and the perspectives expressed are those of its individual Advisory Council members.

Approval of the Minutes of Joint Meeting of June 23, 2004

Lester Ponder moved to approve the minutes of the June 23, 2004 joint meeting of the Advisory Councils. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Report of Proceedings of the Natural Resources Commission

Raymond McCormick reported on the July 20, 2004 meeting of the Natural Resources Commission.

Clarence Long inquired of the status of Goose Pond. McCormick responded that the owner of Goose Pond is Maurice Wilder from Clearwater Florida. "He has placed 7,000 of the 8,000 acres that he owns in the Wetlands Reserve Program so it is permanently protected with a perpetual easement." McCormick noted that the land was in the process of being restored, and the restoration process will probably conclude in 2007 or 2008. "The State is in negotiation with Mr. Wilder to acquire the property and an appraisal has been done, and an offer has been made." Long also inquired for the source of income. McCormick stated the funding was coming from a "multitude of sources—everything from matching grants from the North American Waterfowl Management plan; a \$1 million commitment from the Lilly money that the Nature Conservancy received; a commitment of funds from Ducks Unlimited; funds utilized from the Upland Game Bird Habitat and Waterfowl Stamp Funds, and matching funds from the federal government." He added that INDOT has been involved in the process, because of requisite modifications to the state highway that runs through the property.

Paul Ehret reported that the Division of Water sent out 80 letters to high hazard dam owners, due to noncompliance of law requiring a facility inspection by a professional engineer. "Failure to comply could lead to enforcement action and possible fine." He noted that compliance has been a "mixed bag" with over half of the dam owners submitting plans. "We are giving them a little time, because this is a new law." He reported that the Division of Water has removed a high hazard dam known as Raysville Dam in Knightstown, which has been on the "worst list" for 15 years. "The public grew more comfortable with the removal of the dam. The lake was somewhat of a popular recreation area, but was of sufficient height as to present risk to downstream residents."

Ehret said Indiana DNR staff, along with other state DNR directors and the Corps of Engineers, met in French Lick. Topics discussed were shared problems, issues such as speedier permits, information sharing between state DNRs and the Corps of Engineers, and the idea of 'lead district.' He explained the concept is to have a single Corps district as lead on particular issues to bring consistency to Corps rulings and decisions.

Ehret reported that Governor Kernan attended the turnover of 2,600 acres from the Army to Charlestown State Park. He also reported that the Division of Reclamation won another award from the Abandoned Mine Land Program (AML) awarded by the Office of Surface Mining for a project in Warrick County called "Coal's Creek. Ehret said an extension of the AML Program until November 20 has been accomplished through the approval of a "continuing resolution". West Virginia's Senator Byrd is currently working on an extension through the end of June, with hopes of another extension of ten years. "The AML program brings into Indiana \$4 to \$5 million per year."

Ehret announced a Natural Resource Damages settlement, and he said the entity involved agreed to plug all remaining abandoned wells in New Harmony State Park. The entity has also agreed to clean up remaining tank and surface facilities that remain in the park. He also announced that Director Goss was elected Vice Chair of the Great Lakes Commission.

Ehret reported that the Division of Forestry and the Division of Entomology and Plant Pathology have identified 23,000 ash trees for cutting in Steuben and LaGrange Counties. The trees to be cut are among and near those infected by the emerald ash borer. "We are hoping that by mid-November we will have started to take those trees down. We are making some initiative to allow for the burning of that wood. There are a lot of Amish landowners that depend on wood burning." Under the initiative, the wood must be combusted by May 2005, and the Department of Agriculture, with costs as high as \$3 million, would finance the tree removal. Ehret reported that there was a "very successful" Summer Study Committee, with processing or passage of numerous DNR initiatives.

Ehret introduced Gregg McCollam, Assistant Director of the Division of Fish and Wildlife. McCollam briefly explained the requirement of the Comprehensive Wildlife Strategy (CWS). He stated that it was necessary to contract with D. J. Case & Associates to develop the CWS. McCollam introduced Tim Longwell, Project Coordinator with D. J. Case & Associates.

Longwell stated, "This is a great opportunity for us to develop a [CWS] of wildlife conservation for Indiana." He said there is opportunity to manage species of greatest concern. "The objective of this is not just to take care of the threatened and endangered species, but to keep the common species common." Longwell said the CWS also offers an opportunity to integrate strategic plans and funding processes from both within the agency and through private partners, integrating long-range planning actions, and developing new partnerships for conservation. Longwell explained that Congress has required all 50 states and the six U.S. territories to draft a CWS for submittal by October 2005. The CWS will also provide access to federal funding through the U.S. Fish and Wildlife Service. Longwell said the CWS would provide tools to reach across state borders in coordinating strategies.

Federally Required elements (of the CWS):

- Abundance and distribution of species
- Location and condition of critical habitats
- Impediments (threats) to conservation
- Prioritized actions for conservation
- Coordination with land management agencies and organizations
- Monitoring and evaluation procedures for adaptive resource management

Longwell noted that the Division of Fish and Wildlife identified 70 habitats, sub-habitats, and guilds. Longwell gave contact information: D. J. Case & Associates cws@djcase.com.

Daniel Willard noted that the Indiana Academy of Science's invertebrate species would be used as one of the ways to build the list of habitats. He asked how the issues of species of special concern and the development of guilds and keystone species were "melded." Longwell stated that the issues were not necessarily melded. "There are some representative species that are species of special concern. However, in a given habitat if there is a species of special concern there is a representative species so we are tracking, monitoring, and measuring that representative species in that specific habitat."

Charles Amlaner announced that an "extremely comprehensive" digital mapping exercise for the entire state to characterize all 70 of these habitats was currently underway with the same timeline. "The universities, and professors in ecology and forestry, and the like, as well as many of the staff in the DNR are actually engaged in this process." He noted that there are 15 authors on the project as to ultimately yield a new digital book with possible hardcopy. The book will be the "most comprehensive up-to-date digital look of this state." Amlaner said that Indiana State University is the coordinator, with assistance from Purdue, Indiana University, Ball State, and a number of other institutions across Indiana. Daniel Willard stated that it would "be really nice if we could get some sort of document that really shows folks the abundant set of resources that we've got."

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to 312 IAC 11-3-1 Governing Construction of Piers (Administrative Cause No. 04-164W)

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He noted that the proposal contained recommendations that are supported by the Lakes Management Workgroup. Hebenstreit explained that the Legislators created the Lakes Management Workgroup, and the workgroup has met since 1997. "Eventually, the legislation expired, and the group is no longer authorized by the Legislators." He said Director Goss a year ago re-created the group, and the group is meeting voluntarily, but are unfunded.

Hebenstreit said the rule proposal was originally passed in 1999 to deal with and create a general license for piers placed on public freshwater lakes. "The rule was designed to reduce the number of individual permits to be required, and also to make it easier for the normal homeowner to put out his pier without going through the permitting process." Hebenstreit said the 1999 rule was well written, but today's pressure for development on lakes and the number of people that want to be on the lakes have created a number of controversies related to pier issues.

Hebenstreit explained that criteria are established such that if the criteria are met a pier can be installed without a permit. "If the criteria are not met, that does not mean you cannot get a permit. It just means you have to file an application." He also explained that 312 IAC 11-3-1 (8) was preliminarily adopted in response to some developments that have occurred on the lakes. He explained situations "where persons have acquired property not on the lake, and then bought a piece of property on the lake to install piers in

conformance with the present rule accommodating 30, 40, or 50 homeowners.” He said these situations would now come before the Department for review.

Hebenstreit explained that amendments would recognize the public’s right to use a particular area of a lake, as well as requiring that a pier must be placed on the homeowner’s property, or with permission on another property, “because we are seeing people put piers out in easements.” An amendment is also proposed that would prevent larger developments installing piers that basically “wall off” a section of a lake creating an area of exclusive use, as well as requiring piers to be removed from the lake from December 1 to March 1. “It has always been assumed that temporary piers would be put in and taken out during winter months, but in reality that is not always happening. It may also be an impetus for people not to make large piers.” He said there were also technical amendments proposed, and reiterated that the Lakes Management Work Group endorsed all amendments. Hebenstreit said the amendments are similar to provisions contained in Wisconsin’s pier rules.

Daniel Willard noted that the Inn of the Four Winds “seems to multiply slips like rabbits.” He asked, “Is there any thought to the carrying capacity for some of our lakes as far as the number of boats and people? Hebenstreit said the proposed rules would primarily apply to the natural lakes in the northern one-third of the state. He said the Lakes Management Work Group, however, has discussed this issue.

Ehret noted that the issues brought up by Willard related more to marina. “We recognize that is an area we need to work on.” He said the proposed amendments were the “low hanging fruit” issues, but it was recognized that much greater detail regarding pier configurations, size, and shape would have to be addressed in the future. Willard stated, “Folks have the right to use the public water. On the other hand the public waters may not be able to stand that.” Ehret noted that the Lakes Management Work Group also raised these points. “This brings it into the realm of public scrutiny. The Lakes Workgroup has been very productive.”

Charles Amlaner moved to recommend Commission preliminary adoption of amendments to 312 IAC 11-3-1 governing the construction of piers. David Click seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to Rules Governing the Sale and Possession of Endangered Species (Administrative Cause No. 04-145D; LSA #04-253)

Linnea Petercheff, presented this item. She gave a brief overview of the proposed rule amendments. Petercheff said that Jim Mitchell was also present to discuss in more detail the amendments relating to deer. She explained that current state rules do not allow for the sale of an endangered species including the fur or a part regardless where the animal was obtained. Petercheff stated, however, that current rules “provide for the possession of endangered species and the taking of for scientific purposes.”

Petercheff said an amendment would provide sales exemptions for species or their parts considered endangered in Indiana. “The exemptions are for licensed fur buyers, individuals selling manufactured products of an endangered species, and for a hunter or trapper that lawfully took the animal in another state.” Petercheff explained that sufficient documentation would be required to demonstrate the animal was obtained legally out of the state. Another amendment would clarify that a permit is required to possess a live wild animal endangered in Indiana, but exempting zoological parks. Also proposed is a permit requirement for possession of a part of an Indiana endangered species that was obtained legally after the effective date of the amendment.

Petercheff said an amendment would allow use of a crossbow to take a deer during the late archery season. She said an amendment is also proposed to establish designated areas for taking wild turkeys in the spring season. Other amendments would add the Mole salamander to list of native species, and modernize the common and scientific names of reptiles and amphibians native to Indiana by using the legal names provided by The Center for North American Herpetology.

Petercheff introduced Jim Mitchell, DNR’s Deer Biologist. Mitchell explained that urban and suburban deer have “dramatically” increased east of the Mississippi River. “We have all found that hunting is the most effective way to limit the population, but there are a lot of restrictions on hunting and communities are hesitant to use hunting.” He stated that discussions with other state deer biologists began ten years, and Ohio encouraged hunters to contact landowners in urban areas and provided extra permits that could only be used in an urban area.

Mitchell said that Indiana followed Ohio’s lead and established urban deer hunting zones limited to archery allowing the take of an extra two deer. “None of us either in Division of Fish and Wildlife or Law Enforcement foresaw the problem that we were going to have.” Mitchell said the current rules encourage unethical activity. He said the proposed rule amendment would set the bag limit for hunting deer in an urban zone of four antlerless deer.

Charles Amlaner observed that 312 IAC 9-5-7(g) references compliance with the Animal Welfare Act, but he said the Act “actually doesn’t mention any of the endangered species listed. The Animal Welfare Act speaks primarily to the USDA type animals that are associated with food and fiber. The exemption [in the proposed rule] is referring to a large extent to endangered species and more native species.” Amlaner asked whether the Act “was working” for the DNR. Petercheff stated that the Act includes all warm-blooded animals, and added, “It probably doesn’t need to be in there.” She said the Act covers wild animals. Amlaner responded that it “does not cover wild animals” just laboratory animals. “It’s appropriate to mention it, but it appears, at least from this language, that it is inclusive of those animals that you name, and it is not.”

Charles Amlaner moved to recommend Commission preliminary approval of amendments to 312 IAC 9 governing the sale and possession of endangered species. Daniel Willard seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Recommendation for Approval of Nonrule Policy Document
Addressing Geocaching on Department of Natural Resources Properties,
Information Bulletin #46 (Administrative Cause No. 03-128T)**

Nila Armstrong, Streams and Trails Specialist, Division of Outdoor Recreation, presented this item. Armstrong said she was representing the Geocaching Committee, a subcommittee of the DNR Property Use Committee. She noted that the DNR has worked “closely” with Indiana Geocaching, and said the group endorses the nonrule policy document. Geocaching is a “hot activity that is growing fast.” Armstrong explained that geocaching is “somewhat like a scavenger hunt” where persons locate individual cache all over the world with cache locations listed as GPS coordinates on the Internet (www.geocaching.com), as well as other clues to location. Armstrong said the only equipment needed is a GPS unit, which may include an electronic compass and topography maps. “Caches do not contain contraband or food,” but may contain souvenirs.

Armstrong noted that there are caches on DNR properties, with over 20 caches at Fort Harrison State Park alone. She said that, with the increasing popularity of the sport, it became apparent that guidelines should be established for property managers to regulate the activity through licensing. “It may be that some caches may encourage persons to detour from park pathways and establish new paths.” She said the nonrule policy document prohibits geocaching on properties administered by the Divisions of Nature Preserves (properties dedicated under IC 14-31-1), Museums and Historic Sites, and Outdoor Recreation. Armstrong provided the members with an example of an Internet log sheet from an original geocache located in Fort Harrison State Park. “This is a continuous game.” She also explained that with “virtual cache” the location is the cache, and no container is physically present. “We want to control the caches that are actually hidden on our property.”

Donald Mann asked, “Can I assume that we have DNR employees out checking to see if these caches are really on the property?” Armstrong said that property managers have found them. She also noted that geocaching “brings people to the DNR properties.”

Gary Burgan, representing Indiana Geocaching, stated that discussions with DNR regarding geocaching have been ongoing for the past three years. He urged that the requirement to check any cache “at least once a month” in Item 4(8) “seems a little extreme. We figure the cache is checked on each time someone finds it.” He recommended the requirement be extended to “at least once every six months.” McCormick said, “It sounds reasonable.”

Donald VanMeter asked, “How many people in Indiana are engaged in this activity?” Burgan approximated 3,000 to 4,000. “The number of caches in Indiana is approaching a little over 2,000.” Burgan also explained that the national organization posts the geocache, but there are local approvers for each cache. “We do not approve cache on private land.” Click said it “sounded like a good thing.” Willard inquired whether injuries have been reported while persons were engaged in geocaching on DNR

properties. Burgan said there have not been any accidents reported in Indiana. Vanmeter asked whether Burgan approved all Indiana caches. Burgan affirmed that he approves all caches according to national guidelines. He mentioned that some caches exist on nature preserves, but they would be pulled in the near future pursuant to the DNR's policy. Willard asked to what extent the activity might "impact our natural resources?" Burgan said some paths have been established in public areas, but he has not seen impacts in state parks. Armstrong added, "We have left it to the property managers for approval or disapproval, because they best know their park."

Charles Amlaner asked, "What kinds of best practices, in terms of state regulation, are out there in the United States right now? In other words, are we the first state to deal with this?" Burgan responded that Indiana was "actually one of the last." Amlaner further questioned, "What pitfalls have other states experienced by setting up a policy like this?" Burgan said the "best thing" is property managers know where the caches are located, as well as property managers would now issue permits. "It takes the burden off me, as a Hoosier, to seek out and make sure" cache is not located in sensitive areas. "It puts the burden on you." Amlaner inquired further regarding the pitfalls of establishing a policy. Armstrong said the proposal follows policies from Illinois, Missouri, Ohio, and Minnesota. John Bergin from Division of State Parks and Reservoirs explained that other states have been contacted, but survey results were not currently available.

Clarence Long asked whether the DNR would have authority to issue a license. Armstrong said each property manager would have the authority to issue a license. Long questioned whether this would put undue pressure on the property manager. Armstrong explained, "It works out pretty good. We have a double system. Burgan approves it along with the property manager." Armstrong further explained that the number of licenses that can be issued is determined by the size of the property. "DNR must approve the cache."

William Pippenger moved to recommend Commission approval of the nonrule policy document addressing geocaching on Department of Natural Resources properties (Information Bulletin #46) with the amendment to Section 4(8) to require any cache to be inspected "at least once every six months" rather than "at least once each month" as proposed. Vanmeter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Approval of the Dedication of Thomastown Bottoms Nature Preserve, Scott County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the Division of Nature Preserves and the Division of Fish and Wildlife jointly acquired the property utilizing Indiana Heritage Trust funds totaling 1,400 acres. Bacone noted that the property was a mature second growth bottom hardwood forest. "It's a pretty amazing area. It's probably one of the largest bottom land hardwood forest in the state."

Bacone said that typical bottomland hardwood forests consist mainly of ash and silver maple, but in the instant property there is a “big component of oak and hickories, plant diversity, and found on the site is the federally listed threatened northern copperbelly water snake.” He said the Divisions of Nature Preserves and Fish and Wildlife will jointly manage the property, and noted the entire area is open for hunting. Bacone announced that Cliff Chapman, Regional Ecologist, was also present to answer questions.

Daniel Willard asked, “How come this area is so rich?” Chapman explained that the area is “very poor” farmland. “This land was cut over and was farmed, but the bottoms are extremely wet. It’s failed 19th century farmland, but has grown up.” Bacone added, “The farmers and everybody are very interested in this kind of use of the land.”

Charles Amlaner moved to recommend Commission approval of dedication of the Thomastown Bottoms Nature Preserve in Scott County. Lester Ponder seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Approval of a Request by Benton County for an Easement to Rebuild Bridge within the Pine Creek Wildlife Area

Jim Arthur, from the Division of Land Acquisition, presented this item. He explained that Benton County has proposed to “re-do” a one-lane bridge, and require “roughly a little more than a ½ acre of land within our property.” He noted that DNR acquired the land in 1999, and the proposal is a widening of the existing road with a two-lane bridge. Arthur said the DNR is requesting compensation. “We are requesting what we paid for the land. We paid approximately \$3,000 per acre” with an added sum of \$1,600 for the perpetual easement. “We will get our money back.”

William Pippenger moved to recommend Commission approval of a request by Benton County for an easement to rebuild bridge within the Pine Creek Wildlife Area. Donald VanMeter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Approval of a Request by Crawford County Water Company, Inc. for a Long-term and a Temporary Construction Easement Across Harrison-Crawford State Forest

Ehret explained that this request was before the Councils in June, and was rejected because the licensee made request without offering due compensation. Ehret said that John Davis met with Crawford County Water Company representatives, and the Water Company offered an easement compensation of \$11,000 as well as providing DNR future hookups to the water supply line free of charge. Ehret related, “John Davis has indicated that he felt, under the circumstances with the compromise easement payment and the ability of DNR in the future to hook up at no charge to the water line that, that was a fair compensation for the reduction of the easement payment. Basically, John was happy with the arrangements, and he thinks it’s fair.”

McCormick asked whether the hook up was free or the water itself. Ehret said the hook up would be free, but he thought there would be a charge for any water supplied to the property. Vanmeter commented, "I would hate to see us deviate" from the nonrule policy document easement formula. "If the value of hooking up plus the cash is equal to the formula amount, I don't have any problems with it." Ehret stated that the current proposal is not in writing, and suggested drafting the proposal before the request is presented to the Commission.

Jeff Gore inquired whether the hookup was for the nature preserve's use or could the hookup be sold in the business corridor. Bacone explained that a tap-in would offer the ability to provide water for fire hydrants. "The nature preserve does get some prescribed burning." Amlaner commented, "I still have a concern about actually protecting the land and habitat. We have invested, as an agency, in a fairly sizable piece of property that ultimately what we are talking about is increasing the industrial or residential influence of this area." He noted that the Councils have not yet been informed of the potential impact of the residential and industrial expansion. McCormick said, "I would think that if there were some great benefit to society or Harrison-Crawford State Forest, [Crawford County Water Company] should be here professing those benefits." Ehret said the Crawford County Water Company attended the previous meeting; however, DNR staff indicated to company representatives their attendance was unnecessary.

Jim Trachtman commented that the area was, in general, an economically depressed area, and added that with an illustration of the benefits "I would be more moved, you know, to help with this. If there is an economic benefit maybe we should be partners rather than cause a hurdle." Amlaner commented that he was "very sensitive to that argument," but added the mission of the combined advisory group is "not for economic benefit to that area. We are protectors of the habitat." Trachtman said, "This is in the realm of other things that we do—sewer, water, and electrical easements." Thomas Fischer said, "All we are asking for is a formula of compensation that has been set up." William Wert said that with the consideration of a reduced fee, "We are in essence subsidizing private industry."

David Click moved to recommend Commission disapproval of the current verbal offer for easement compensation of \$11,000 with free waterline hookup. He further moved to recommend Commission approval of the easement on receipt of compensation according to the easement compensation formula contained in Information Bulletin #28 (First Amendment) of \$34,012. Charles Amlaner seconded the motion. Clarence Long suggested approving the proposal with the "proviso that we get full compensation." McCormick stated that a motion was pending, and a motion to amend would need to be presented. Pippenger noted that the \$4.38 per foot assessment had not been met. David Click asked, "Bottom line is we are sending it back until they meet that formula and come up with a written agreement, right? McCormick indicated that the amendment to the motion failed, and directly called for a vote. Upon a voice vote, the motion carried.

Information Item: Marketing DNR

Dionne Wisniewski, DNR Marketing Director, stated that she has lived in Indiana for approximately 4 ½ years. “It’s a wonderful thing to come to work everyday with people that are passionate and love what they do.” Wisniewski said the current Indiana Recreation Guide will expand with assistance from the Department of Commerce and a private ad agency, and commented regarding the success of the Seven Jewels and the environmental license plate campaigns. She said the Bureau of Motor Vehicles has agreed to carry environmental license plate posters and other information in its license branches to “remind citizens to purchase an environmental license plate. September license sales have gone up, so it is working.”

Wisniewski said the DNR would continue marketing the Seven Jewels and may introduce a “customer loyalty” program. “It’s important to communicate with those that are loyal to our product and reward them.” She said that grants are being pursued to “revamp” the *Indiana Wildlife Viewer Guide* with possible Internet posting. Wisniewski also noted an “overhaul” of the DNR’s Web Site is planned to ensure format and material consistency. She listed priority marketing objectives are to increase, where appropriate, visitation and participation, and revenue.

Click said he “frequently” visits the on-line fishing guide, but he noted the information was usually out of date. “It’s a day late.” McCormick said the Web Site information regarding waterfowl migration populations and other hunting news also was not current. “People want to know the daily migration population. People love to look at the kind of bucks that were taken. People want information real quick.” Wisniewski agreed, “The fresher the Web Site the more attraction there is.”

Meyers commented that “it is a luxury” that Director Goss has a background in tourism. He noted that environmental license plate purchasers are surveyed every five years. “People learn of the environmental plate, firstly, on seeing them on the road; and, secondly, accessing information at license branches.”

ADJOURNMENT:

Meeting adjourned at 1:07 p.m.

NEXT MEETING:

December 9, 2004, 10:00 a.m., The Garrison, Fort Harrison, Indianapolis