

NATURAL RESOURCES COMMISSION
Minutes - April 23, 1996

MEMBERS PRESENT

Michael Kiley, Chair
Jerry Miller
Jack Arnett
John Goss
Joseph Siener
Jodi Perras
Steve Cecil
Sherman Anderson
Mary Titsworth
Damian Schmelz
Terri Moore

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
David Herbst	Executive Office
Paul Ehret	Executive Office
Louise Krick	Executive Office
Lori Kaplan	Executive Office
John Bergman	State Parks and Reservoirs
George Seketa	Fish and Wildlife
John Bacone	Nature Preserves
Matt Abriani	Water
Ken Smith	Water
Rebecca Kuhr	Water
Andy Pedersen	Water
Thomas Kidd	Outdoor Recreation
Emily Kress	Outdoor Recreation
Bill Bruggen	State Museum and Historic Sites

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas	Hearings
Cheryl Hampton	Hearings

GUESTS PRESENT

John Schrock
David Case
Alan Hux
Jon Voelz
Dick Mercier

MONTHLY REPORTS

Michael Kiley, Chair, called to order the regular meeting of the commission at 10:03 a.m., EST, in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana. With the presence of eleven commission members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the March 21, 1996 meeting. The motion was seconded by Sherman Anderson and approved by voice vote of the commission.

Jack Costello presented the Director's Report on behalf of Patrick Ralston. He explained that the Director had met with a delegation from the Falls of the Ohio State Park. The delegation is seeking an increase in fees for the property.

Costello also reported that the Director spoke to a leadership conference in Terre Haute. He said Ralston had recently met with Congressman Lee Hamilton concerning matters of concern to the Department.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, said his council met in April. He noted that two items on the present NRC agenda were recommended for approval. The council also reviewed as an informational item the Trails 2000 document.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, reminded the membership that Buffalo Riders will take place at Ft. Benjamin Harrison on May 4.

David Herbst made a few comments on behalf of Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation. Herbst reflected that the Advisory Council has been focused upon identifying and responding to various issues relating to conservancy districts. He noted that one item on the NRC agenda was a product of this process, that item proposing procedures for review conservancy districts.

Herbst also spoke as Deputy Director for the Bureau of Water and Resource Regulation. He explained efforts by the Division of Water and other divisions to assist in permit application training. He said a new publication and video "should assist the regulated community" in the permitting process, including a reduction in the number of incomplete permits.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said he was privileged to attend the re-opening of Reservoir 26 in Sullivan County. John Goss presided on behalf of the Lt. Governor, and Ehret said he enjoyed participating in a ceremonial restocking of bass and blue gill.

Ehret reported that the Interstate Gas Compact will hold its conference in Indianapolis beginning on May 5. Governor Bayh and other Governors from oil producing states will attend, as will Representative McIntosh, Representative Hamilton, and other dignitaries.

Ehret said the Coal Combustion by-products conference will convene in October. In addition, he noted that his divisions were currently working hard on budget issues.

BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Personnel Interview

There was one personnel interview reported upon for the month of April. Jack Arnett made the presentation and recommended Drew Daily for the Assistant Property Manager at Potato Creek State Park.

Jerry Miller moved to approve Drew Daily as Assistant Property Manager at Potato Creek State Park. The motion was seconded by Sherman Anderson. Upon a voice vote, the motion carried.

Permanent Appointments

John Bergman of the division of state parks recommended permanent appointments for Dan Konter, Assistant Property Manager at Quabache State Park and Kevin Snyder, Assistant Property Manager at Dunes State Park.

Jerry Miller moved to approve each of the two employees for permanent appointment. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Douglas Woods Nature Preserve. Dekalb and Steuben Counties.

John Bacone, Director of the Division of Nature Preserves, presented this item. He explained that the proposed Douglas Woods Nature Preserve is located in Dekalb and Steuben counties about 2 1/2 miles east of Hamilton. The property is owned and managed by the Nature Conservancy and was purchased with some of the Indiana Heritage Trust fund.

Bacone explained that the property shows much diversity. The natural features include dry-mesic and mesic upland forest containing oak, hickory, ash, basswood, beech and sugar maple; floodplain forest borders Fish Creech which meanders around for over a mile through the Nature Conservancy property. He indicated that Fish Creek is a very high quality stream, and it supports several mussels that are significant from both the state and federal standpoint. Bacone stated that the division of nature preserves recommends approval of dedication as a nature preserve.

Damian Schmelz moved to approve the dedication of Douglas Woods Nature Preserve in Dekalb and Steuben Counties. The motion was seconded by Terri Moore. Upon a voice vote, the motion carried.

DIVISION OF MUSEUMS AND HISTORIC SITES

Consideration of Negotiating a Contract for the Operation of the State Museum Parking Lot

Bill Bruggen, Assistant Director for Museums and Historic Sites, presented this item. He explained that the agency is able to lease property on a long-term basis with the recommendation of the museum board of trustees and with the approval of the commission. Bruggen noted the museum would like to lease the parking operation for a minimum of five years with an option of additional five years. He hoped that at the end of five years, the museum would be in a new building and would not need a parking lot contract. He also stated the museum had asked for proposals and received six very good proposals from local and even international parking operations. The board of trustees chose Dension Parking which is an Indianapolis firm. Bruggen asked the commission to approve Dension Parking, Inc. as the lessee.

Jerry Miller moved to approve the contract for the operation of the state museums parking lot to Dension Parking, Inc. The motion was seconded by Joe Siener. Upon voice vote, the motion carried.

BUREAU OF WATER AND RESOURCE REGULATIONS DIVISION OF WATER

Consideration of the 39 North Conservancy District Approval of District Plans

Matt Abriani of the division of water presented this item. He said the 39 North Conservancy District submitted its district plan on March 22, 1996 for approval by the commission. The district was ordered established on April 4, 1995, for the purposes of water supply, and for the improved collection, treatment and disposal of sewage and other liquid wastes.

The necessity for a sewer and water supply system is the result of poor ground water quality, sewage backup in residences, contamination of water wells, poor soils, a high water table, and steep slopes.

Costs for the conservancy district would include connection of the water supply and wastewater systems to the City of LaPorte. The total cost for this system is estimated at \$3,675,000, with a cost of \$38.00 per equivalent dwelling unit for sewers and \$37.00 per equivalent dwelling unit for water supply. Financing of the water supply and sewer systems would be attained through grants, tax incremental financing, and conservancy

district bonds. Abriani stated both state department of health and the department of environmental management had commented favorably upon the District Plan, and the division of water also supported its approval.

Jack Arnett moved to approve the 39 North Conservancy District Plan. The motion was seconded by Damian Schmelz. Upon voice vote, the motion carried.

Consideration of the West Central Conservancy District Unit of Work

Matt Abriani also presented this item. He stated the West Central Conservancy District located in Hendricks County submitted its Fourth Unit of Work on March 8, 1996 for approval by the commission. The conservancy district was established on February 28, 1992 for the purposes of improved collection, treatment and disposal of sewage and other liquid wastes. The total estimated cost for the Fourth Unit of Work is \$600,600,000 and is consistent with the first amendment for the district plan as approved by the commission. Both IDEM and ISDH have given favorable recommendations concerning the Fourth Unit of Work for the conservancy district, and the division of water also supported its approval.

Sherman Anderson moved to approve West Central Conservancy District fourth unit of work located in Hendricks County. The motion was seconded by Jodi Perras. Upon voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Request by Department of Transportation to Transfer 49 Acres of Restored Wetlands in Washington County to the Department of Natural Resources

George Seketa of the division of fish and wildlife, presented this item. He stated a request has been received by the department of transportation to transfer 49 acres of restored wetlands in Washington county to the department of natural resources.

Seketa indicated a memo of understanding dated January 28, 1991 between the department of transportation and the department of natural resources with the federal Fish and Wildlife Service outlines the procedure by which wetland losses due to department of transportation projects can be mitigated. He also noted a portion of State Route 39 was relocated in Washington County to replace a bridge and straighten out a curve, during which twelve acres of wetlands were destroyed.

The division of fish and wildlife recommends acceptance of the 49 acres as mitigation for the loss of the twelve acres of wetland.

Sherman Anderson moved to request by the department of transportation to transfer 49 acres of restored wetlands in Washington County to the department of natural resources

as mitigation. The motion was seconded by Damian Schmelz. Upon voice vote, the motion carried.

DIVISION OF OUTDOOR RECREATION

Outdoor Recreation Presented Report on Trails 2000.

Emily Kress, Director of the Division of Outdoor Recreation, presented this item. She explained that "Trails 2000" is an unofficial document intended to help explain the process being implemented to consider the development of public trails within the state. The item was being presented for information and not for commission action.

Kress reminded the commission that in March it approved the Statewide Comprehensive Outdoor Recreation Plan ("SCORP"). She said the SCORP is an official publication, setting forth goals and objectives for recreational usage in Indiana, and intended primarily to qualify for land and water conservation plan funding. While some of the agency employees and volunteers who have participated in developing "Trails 2000" hoped to see its contents included in the SCORP, they were not because a consensus has yet to be achieved.

Kress directed particular attention to the Trails Advisory Group and thanked them for their tireless efforts. She also discussed the National Recreational Trails Act or the Symms Act and explained that the development of "Trails 2000," within the broader context of the SCORP would qualify Indiana for federal funding. The amount of the funding is anticipated to be \$263,000 in 1996 with the prospect of similar funding in future years.

Michael Kiley noted that the commission by no means is adopting the Trails 2000 document as a policy. He also noted, for the record, that the presentation and the fact that Indiana Trails 2000 guide is not accepted by the commission but nevertheless made part of the record of the meeting.

OTHER MATTERS

Information Item: Presentation of publication "Indiana Conservation A Field" by the Division of Law Enforcement

Jeff Wells, Conservation Officer of the division of law enforcement presented this item. He reviewed a new publication, Indiana Conservation A field, that the conservation officers of the division of law enforcement are publishing. He said new issues will be delivered quarterly. Wells indicated the first 20,000 issues were distributed across the state, but the division hoped to expand distribution in the future. He noted there is a home delivery charge of \$6.

Consideration of the Resolution for Acceptance of Indiana Wetlands Conservation Plan

Dave Case introduced this item. Case explained that he had contracted with the department of natural resources to develop a wetlands conservation plan having application throughout Indiana. Wetlands are a valuable asset to the state, he said, but wetlands present complexities both in terms of individual utility and land usage. Case noted that wetlands are present in all 92 Indiana counties, even though 85% of the state's original wetlands have been lost. Because of competing needs for the lands where wetlands are located, including development and agriculture, the preservation of particular wetland sites can be controversial. [For more information, including the Resolution, see the Indiana Waterland's Conservation Plan at <http://www.state.in.us/dnr/fishwild/inwetcon/wetconpl.htm>.]

With this background, Case said Indiana embarked upon the development of an "Indiana Wetlands Conservation Plan." A wetlands advisory workgroup process was developed, including representation from such diverse groups as the Indiana Wildlife Federation and the Indiana Farm Bureau. There were two elements to the process, one a technical advisory group with regulatory agency participation and the other made-up of citizen participants. The groups developed a draft plan, and the plan was circulated in December 1995 for public comment. Approximately 60 people sought and received copies of the draft plan.

Case noted a copy of the draft plan was included in the commission packets. He said he hoped to receive comment on the proposal from the commission and that the commission would give the proposal its blessing as a guidance document for staff within the department of natural resources. Case said the workgroup process was facilitated, and while all members agreed to the process and the overall purposes of the document, not every participant agreed to every element of the "Indiana Wetlands Conservation Plan."

Jon Voelz of the Indiana Wildlife Federation spoke in support of the proposed plan. "I served on the wetland advisory group, and it was a great experience. I came to that position through a survey of our members that said, 'wetlands conservation is a priority of our membership.'" He congratulated Case and his staff on "an excellent job with the plan, as well as the DNR staff who spent long hours on the technical aspects of the plan."

Steve Cecil congratulated Dave Case on his effort in developing the draft plan and successfully bringing together such diverse but significant interests. Cecil reflected upon his own participation in the technical advisory team. He said the "Indiana Wetlands Conservation Plan" was an important tool and help provide "a direction to go" relative to wetlands management.

John Goss inquired how the information contained in the proposed plan would be disseminated to the public. Case responded that there was an intention to work with key persons at the local level, such as county surveyors. As local leaders became better

acquainted with the issue of wetlands management, an opportunity would develop to assist the public in general.

Terri Moore expressed her appreciation for including the Indiana Farm Bureau in the workgroup process. She said that there was a pressing need to protect the environment, including the appropriate preservation of wetlands. At the same time, agriculture served an important role in the social and economic fabric of Indiana. The legitimate interests of the farming community must also be recognized and protected. Moore stressed that education was essential, and the Indiana Farm Bureau could provide invaluable assistance in providing education.

Jerry Miller urged the development of a speakers bureau to help communicate the information and conclusions contained in the "Indiana Wetlands Conservation Plan." He said there needed to be a major effort at outreach with zoning boards, area plan commissions, and similar local governmental agencies. "Those entities are the first line of action that get the requests to do real estate developments and everything else." He also congratulated Case on his effort.

Dave Herbst followed with his congratulations to Dave Case and to DNR staff. "Especially, I want to thank Ed Hansen. He put together the grant proposal and is working on another one."

The Chair added his appreciation. "Thanks to you, Ed. This is for sure a very important issue for us. For the state to preserve the natural resources of this state, wetlands are almost the beginning and end of natural resources."

LEGAL PROCEEDINGS DIVISION OF HEARINGS

Consideration of Proposed Nonrule Policy Document to Provide Guidelines for the Procedural Functions of the Natural Resources Commission, Division of Hearings, and Department of Natural Resources in the Establishment and Development of Conservancy Districts; Administrative Cause Number 96-018C

Steve Lucas, Director of the Division of Hearings, presented this item. He explained that for consideration was a proposed nonrule policy document. If approved, the document would establish a comprehensive approach to how proceedings are conducted relative to the formation, management, and dissolution of a conservancy district. Lucas thanked Kenneth Smith and his staff in the division of water for their assistance in developing the document. He noted that the document was one segment of the public participation process being pursued by the advisory council for water and resources regulations to address a variety of management issues regarding conservancy districts, and he expressed appreciation to the advisory council for its generous efforts in this regard.

Lucas noted that the document was lengthy and contained numerous important elements. He said he would not attempt to cover every item within the document but would provide an overview of a few of the highlights, then provide an opportunity for commission questions and comments.

The document would delegate authority to the director of the division of water to handle noncontroversial units of work and district plans. This streamlining would reduce by several weeks the period required to review the vast majority of consensus units and plans.

The hearing officer appointed to help review a proposed new conservancy district would have a new, affirmative duty to consult with the presiding circuit court or its clerk as to whether any formal remonstrance had been filed prior to submittal of a petition to the commission. If so, a prehearing would be held to attempt to develop a consensus as to how most equitably to conduct the public hearing. The hearing officer would be encouraged to use the most informal approach which appeared workable for a particular district, but with an understanding that due process rights of citizens must be respected. These aspects of the proposed document were largely motivated as a result of concerns from remonstrants that there was "not a level playing field" for consideration of the technical issues bearing upon the creation of a district. These concerns have been raised in a few contentious hearings (particularly in Northwest Indiana), and during a general workgroup process designed to identify issues of local concern along the Lake Michigan shoreline.

Reference would be newly made to mediation and facilitation. Where disputes were apparent to the commission's hearing officer (or to the director of the division of water, if not within the jurisdiction of a hearing officer), mediation or facilitation could be used to help bring interested persons together.

The proposed document would also bring the process into conformity with a clarification caused by the recodification of natural resource laws in P.L. 1, 1995. Lucas explained that a prior nonrule policy document had required both an administrative and civil hearing where territory was sought to be added to a district, applying the more conservative approach to ambiguous statutory language. The recodification clarified that the use of an administrative hearing or a civil hearing were alternatives, and not cumulative requirements, depending upon which of two options advocates chose in order to seek the addition of territory.

Lucas said the recommendations of the advisory council for the bureau of water and resource regulation, the division of water, and the commission's division of hearings were for adoption of the nonrule policy document. He said that, if approved, the document would be published June 1, 1996 in the Indiana Register and become effective on that date.

Jodi Perras said the proposed nonrule policy document appeared an important effort toward governmental streamlining. She said her agency, IDEM, was also constantly

seeking to streamline its processes and to make its programs more efficient. Perras asked two questions:

Had there been public input into the proposal ?

Also, because the proposed document contained technical and legal language, she asked if a simpler version might be prepared for public outreach.

Lucas responded that the ambitious review process by the advisory council was open to the public and included opportunity for public comment. He explained that the current proposal was merely the first of several aspects of conservancy district management to be moved forward from the advisory council to the commission for final action. Another and more controversial effort was currently being reviewed by a technical committee constituted by the advisory council to address the complexities of benefit-cost analyses. The rigors of public participation would be more apparent when the commission viewed the results of the benefit-cost analysis project. Lucas also reflected that the division of water had told him it planned to prepare a handbook for public assistance in addressing issues pertaining to conservancy districts, and the handbook would include procedural elements in addition to many items more substantive in nature.

Chairman Kiley reflected the document was a good effort to simplify the bureaucracy. He emphasized that the commission would yet be the arbitrator of controversial matters. Where there is no controversy, or where through efforts of the division of water or the hearing officer a consensus is developed, the document would notably shorten the period required to move a conservancy district forward. The unnecessary expense would be eliminated for having a district's attorney, or perhaps its engineer or another technical person, come to a commission meeting where there was no controversy.

Damian Schmelz moved to approve the proposed nonrule policy document to address conservancy district procedures and to authorize its publication in the June 1, 1996 Indiana Register. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

At approximately 11:15 a.m., EST, the meeting was adjourned.