

NATURAL RESOURCES COMMISSION

January 20, 2015

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Patrick Early
Thomas Easterly
Phil French
Doug Grant
R. T. Green
Laura Hilden
Don Ruch

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Joseph Hoage	Executive Office
Cheryl Hampton	Land Acquisition
Steve Hunter	Law Enforcement
John Bacone	Nature Preserves
Linnea Petercheff	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Shawn Rossler	Fish and Wildlife
Dan Bortner	State Parks and Reservoirs
Terry Coleman	State Parks and Reservoirs
Phil Bloom	Communications

GUESTS PRESENT

Josie Escamillo	Erin Huang	Dennis Lange
Gail Moon	Debra Lange	Eric Lange
Samantha Loutzenhiser	Jack Corpuz	Bill Herring
Barb Simpson	Rachel Eble	Jill Sheridan

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on January 20, 2015 at Fort Harrison State Park,

Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of ten members, the Chair observed a quorum.

The Chair asked for a motion for the approval of the Commission's November 18, 2014 minutes.

Sandra Jensen, Director of the Commission's Division of Hearings noted a clerical error on page four, second paragraph. She explained that the word "free" should be amended to "pre" to read "and **pre**-reviews of permit applications for submission".

Doug Grant moved to approve the minutes for the meeting held on November 18, 2014 with modification on page four, as follows:

"and pre-reviews of permit applications for submission to the Department of Environmental Management and the Department of Natural Resources."

Phil French seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF OFFICERS

R. T. Green made a motion to slate the officers now standing to go into the next term—Bryan Poynter, as Chair, Jane Ann Stautz, as Vice Chair, and Cameron Clark, as Secretary. Thomas Easterly seconded the motion. Upon a voice vote, the motion was unanimously carried.

REPORTS OF THE DNR DIRECTOR AND DEPUTIES DIRECTOR

Director Cameron Clark provided his report, and stated that the DNR was represented this past weekend at the Kokomo Outdoor Show. He said the attendance at the event exceeded expectations, and booth space was sold out. "I think we can consider that a success." Phil Bloom, Director of the Division of Communications, and staff from the Divisions of Fish and Wildlife, Law Enforcement, and State Parks and Reservoirs represented the Department.

Clark reported that the 2015 Legislature has convened. He stated that a few bills will be introduced that "have gotten a lot of attention in the past, which we'll be paying close attention to." He also noted that the DNR has also submitted its proposed budget, which will be presented to the Ways and Means Committee on January 21. "Essentially, [the proposed budget] is the same as our Fiscal Year 2015 less 3%. We did, however, get approval to include an additional \$1.5 million for the general fund for the Law Enforcement Division with the idea that it would free up the same amount from the fish and wildlife legal fund for the Division of Fish and Wildlife." Clark explained that there are two sets of revenue opportunities that have been preliminarily approved for the Division of State Parks and the Division of Forestry, which may make up for the fiscal shortfall.

The Chair asked whether there were particular bills that are of concern for the Department.

Clark noted that a bill has been filed to legalize high-fenced hunting and the Indiana Forest Alliance has a sponsored bill that would set aside 36,000 acres of state forest ground from logging. He said there are a few other bills, but these are currently of most concern.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. He explained that the Division of Forestry is under his Bureau, and stated that Jack Seifert, State Forester, and Director of the Division of Forestry, has been his whole life, a forest and land owner, and has in the past submitted acreage to the Classified Forest and Wildlife Lands Program. Davis explained that the program is a tax deferment. The forest land in the program does not have to be a working forest or timbered, but there must be a resource management plan approved by the Division of Forestry. Davis said Seifert anticipates placing more of his privately held land into the Classified Forest Program. Davis explained that he and Joe Hoage, the Department's Chief Legal Counsel, filed a letter providing details of the matter with the State Ethics Commission. After further discussion with the DNR and the Commission's Division of Hearings, the State Ethics Commission ruled that a process would need to be set up to include the Natural Resources Commission. Davis explained that the process agreed upon would involve Seifert applying for entry of his acreage into the Classified Forest Program, including a management plan. Davis said he would review Seifert's application, and tender the application to the Commission as an information item. "In the presence of the Commission, during the Commission meeting, I will make a decision about accepting it into the Classified Forest Program or not accepting it. ... That will begin the process that will allow for someone to appeal." Davis added, "I don't expect to give you much detail, I think purposely, about the information that I have except that it is acreage, location, and that I'm making a decision.

Jensen explained that the Commission would sit as the ultimate authority for this matter, so the "Commission meeting is being used as a publication process and a start date for anyone to file an appeal of the application approval or disapproval."

Thomas Easterly asked, "So that's the reason there is very little detail, because we might have to sit later and review it?" Davis and Jensen answered in the affirmative.

The Chair asked, "Why is that an issue?"

Davis explained that in general terms it is a matter of providing "day light" on the process.

The Vice Chair noted the process would also provide transparency.

Davis also reported that the very popular toboggan run at Pokagon State Park is open until the last full weekend in February. "The popularity means that people are lined up in those stairs and in that tower waiting to go down the toboggan and cheering each other."

He noted that in November 2014, about six weeks before opening, park staff discovered a separation in the tower that needed repair. He commended the Department's Engineering Division and the Division of State Parks and Reservoirs for their "incredible effort they made to get that looked at by competent structural engineers and get it fixed." Davis also noted that because of the toboggan's popularity, the Department hit a milestone in social media.

Phil Bloom, Director of the Division of Communications, explained that the Saturday before the toboggan run opened on the Friday after Thanksgiving, Ginger Murphy, Assistant Director for Stewardship with the Division of State Parks and Reservoirs, posted a fairly simple message on the Division's Facebook page announcing the opening day. "Within a matter of weeks, that thing blew up on Facebook and social media." Bloom noted that one of the key metrics to look for in effectiveness of a Facebook post is "reach." He noted that by December 4th the reach for that simple post was 1.9 million people, which was "far and away ten times bigger than any post we have done anywhere else." Bloom also noted that the revenue during that same timeframe increased at the toboggan run. "It's kind of interesting how social media can take off; and that's our shining example."

Davis commented, "I think this illustrates a lot of really important things about our assets, about the public, about making money, about being able to respond to take care of those assets, and having people ready to do the work."

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. He noted that there were a couple of key staff changes. Paul Diebold has accepted the position of Assistant Director, Preservation Services, in the Division of Historic Preservation and Archaeology. "Paul was formerly the Section Team Leader so is very familiar with that aspect of the work." Smith advised that Marvin Ellis has been promoted to Assistant Director of the Abandoned Mine Lands Program under the Division of Reclamation. Smith offered that "Marvin is also a long-term employee, most recently he was Field Operations Coordinator."

Smith reported that the Division of Reclamation is preparing for a January 22 public meeting in Petersburg regarding an Abandoned Mine Land project addressing underground mine subsidence in the area, which has been an historic issue. He also noted that the Division of Water staff has been working with the Indiana National Guard to address a sinkhole in a dam at Brush Creek Reservoir, which is part of the Mascatatuk Urban Training Area. Smith explained that an evaluation was conducted and confirmed the loss of reservoir water through the dam advising that the dam was patched and monitoring wells were installed.

Smith reported that the Division of Entomology and Plant Pathology will present to the Commission for preliminary adoption a proposed rule to repeal 312 IAC 18-3-18 governing the control of emerald ash borer ("EAB") removing the state quarantine. Smith noted that the last EAB survey showed that all but four counties (Posey, Knox, Vanderburgh, and Gibson) in the state now test positive for EAB, but the adjoining

counties and areas of Illinois are infested. Smith observed that by removing the state quarantine, the federal quarantine of the entire state will be in effect.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council met the previous week. He said the first item discussed was in regards to the Division of Forestry's Classified Forest and Wildlands Program policy document. Early noted that Jack Seifert will be presenting a nonrule policy document to the Commission as to "what is and what isn't allowed on classified forest properties, what type of recreational activities, what type of improvements...to make sure that there is a little bit more direction in determining whether or not a property or a use of a property would qualify." Early noted the Classified Forest and Wildlands Program may become more popular. He explained that in the urban counties there are tracts of land that are being re-assessed from agricultural to residential. "What's happening is that all these counties are under revenue pressure and they need more property taxes. And with the property tax caps that are out there, they are looking at every opportunity they can to create this revenue somehow." He stated that the Classified Forest and Wildlands Program allows a minimum of ten acres to be enrolled into the program and the property is then assessed for property tax purposes at \$1 an acre. Early said there is pending legislation that would prohibit assessors from changing the nature of land if an owner has not used the land in a different way. He noted that the Division of Forestry would like to have a policy in place to assure consistency in the review process.

Early said the second agenda item discussed was in regards to the proposed amendment to 312 IAC 9-3-3(d)(4) to allow for the use of rifle cartridges during the deer firearms season. The Commission gave preliminary adoption to this amendment at its September 16, 2014 meeting. He said two persons provided comment, and one was for and one against the proposal. "There was quite a bit of discussion amongst the members of the Council, because one of the things we did do...all of us went through the process of reading the public comments." He noted there were over 1,900 public comments submitted, and reflected that "it is certain there is as many people that are opposed to [the proposal] as there are for it." Early noted that the Advisory Council requested the Commission be made aware of the unanimous concern about the proposal moving forward, and stated that each member voiced their concerns individually.

Early said the proposed rule amendment is "strictly a social issue. It's whether or not our public would like to have this. ...The thing that is difficult, as we move forward with this, is we know from the 1,900 plus comments that...there is no clear consensus that this is the right thing to do." He noted that the rule proposal has caused a divisive atmosphere amongst hunters. "We have to manage the resource for hunters, but we also have to manage the resource for farmers, and for tree farmers, for everybody." He concluded, "As we go forward...I'm just asking that we ought to think about what the endgame on this is, because if we know that out of 2,000 comments that a significant portion is opposed to this change, and they are worried about public safety...how much of the [rule adoption] process do we go through...and do we start trying to make modifications?" He noted that there is significant division between sportsmen on whether the proposed rule amendment is the right course.

The Chair said, “I don’t think that’s unanticipated. That was very well stated, and I appreciate the work of the Advisory Council took on that in deliberation. I appreciate your effort to summarize their comments.”

The Vice Chair asked for clarification on the rule adoption process. “It is out for public comment. So we need to allow that to proceed. And then it’s a matter of determining the number of public hearings...or whether you would withdraw it? I’m just asking what are those options?”

Jensen reported that the State Budget Agency just recently approved the fiscal analyses for the proposed rule, and the next step would be to schedule public hearings. She explained that public hearings cannot be held until the proposed rule has been published in the Indiana REGISTER. Jensen noted that any significant changes, such as the withdraw of the proposed amendment to 312 IAC 9-3-3(d)(4) or substantial amendments to the language, would require action by the Commission. She explained that any proposed amendment to the preliminary adopted language could be presented to the Commission for consideration at its March meeting. “Otherwise, we will publish the language essentially as presented for preliminary adoption...and once that is done any revisions...would have to be a logical outgrowth of the rule as presently proposed and would have to be based on a written comment.” She explained that the Attorney General’s Office would review and make its own determination as to logical outgrowth. Jensen noted that the Commission would also have the option to withdraw the amendment to 312 IAC 9-3-3(d)(4) and grant final adoption to the remaining amendments.

CHAIR AND VICE CHAIR

Updates on Commission and the AOPA Committee

The Chair reported that the Commission continues to work through the process of hiring a second administrative law judge. He noted that the first round of interviews are concluded and the Commission’s Personnel Committee would conduct the second interviews of the recommended applicants. He stated that it is anticipated to have a new administrative law judge by the Commission’s March meeting “so we can move the work of the Commission a little more fluidly as we anticipate our workloads in [the Division of Hearings] to get ever more busy.” The Chair noted that he has communicated regularly with Sandra Jensen “trying to manage...in light of the fact that, for all practical purposes, it consists of two people. When you have two people in that office conducting the volume of work, and the very diverse nature of the work that goes on in there, it is extraordinarily time consuming. They’ve done a very admirable job to this point. So, having a second administrative law judge is important. We will continue to report back to the Commission with any of the items that we feel are necessary, proactively, to continue the management of the Division of Hearings.” He noted that the information item on today’s agenda, Item 7, is a step to proactively manage and “not wait until we hit the concrete wall. ...It’s going well to this point and we hope there are changes within the

Division of Hearings before the next meeting. We are making some administrative and management changes along the way.”

Vice Chair Jane Ann Stautz, Chair of the Commission’s AOPA Committee, reported that the Committee has not met since August 2014. “I do want to echo what you said with regard to Judge Jensen and Jennifer [Kane] with the work and the effort there in the office to manage the workload, public hearings...and the challenging resources. We do look forward to interviewing the final candidates” for the administrative law judge position. She said the AOPA Committee may meet prior to the Commission’s March meeting.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Meyer (Fred and Dorothy) Nature Preserve in Morgan County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve is located along State Road 67 in Morgan County, and is a great example of a high quality rugged, forested community. Bacone provided photographs and map of the proposed nature preserve, which provide a glimpse of what the area looks like and how the area is dissected. “There are a number of rare species that call this area home.” He noted that the acreage is owned and managed by the Central Indiana Land Trust, and was acquired with the assistance of the Indiana Heritage Trust as well as other raised funds. Bacone recommended the area be dedicated as a nature preserve. He then introduced Rachel Eble from the Central Indiana Land Trust.

Rachel Eble said, “I’ll just say how excited we are to have the property being under consideration to be included in the Nature Preserve system.”

Thomas Easterly moved to approve the dedication of the Meyer (Fred and Dorothy) Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Sally Reahard Woods at Mosquito Creek Nature Preserve in Harrison County

John Bacone also presented this item, and stated that the proposed nature preserve is a very large tract in Harrison County located across the road from the Department-owned Mosquito Creek Nature Preserve. “It is a very rugged area and contains limestone glades, remnant caves, cliffs, and a number prairie and forest natural communities.” Within the

tract there are a number of rare, endangered or threatened plants and animals, and Mosquito Creek, a high quality stream remnant, runs through the property. He said the tract is owned by The Nature Conservancy. Indiana Heritage Trust funds were used to assist in the acquisition. Bacone recommended the area be dedicated as a nature preserve.

The Chair commented that the proposed nature preserve “seems like a very large nature preserve relative to what we usually see.” Bacone agreed, and stated that The Nature Conservancy has been acquiring the tracts over the last 25 years from six different owners.

The Chair asked whether there is potential for additional acreage to be added to the nature preserve. Bacone said that there is little chance for additional growth, but noted that there is land owned by the Department and another privately owned 40-acre tract, which the Department is hoping to acquire to add to the existing nature preserve across the road.

Donald Ruch moved to approve the dedication of the Sally Reahard Woods at Mosquito Creek Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of Department report regarding citizen petition to amend 312 IAC 8-2-8 to clarify the operation of a motorized cart by or on behalf of a person with a disability and to allow operation at locations other than within a campground; Administrative Cause No. 13-204P

Ric Edwards, Director of Safety and ADA Compliance, presented this item. He explained that a petition for rule change was filed with the Commission, and the Commission’s Division of Hearings forwarded the petition to the DNR Director. Subsequently, a review committee of Department representatives was formed to examine the petition to amend 312 IAC 8-2-8 to clarify the operation of a motorized cart by or on behalf of a person with a disability and to allow the operation of a motorized cart in areas other than a campground. He said the Review Committee determined that it was reasonable to allow an individual who is transporting an individual with a disability to operate the motorized cart as long as the operator has a valid driver’s license and is transporting a person who qualifies as a person with a disability. “As far as operating anywhere other than in the campground, [the Review Committee] felt strongly that the golf cart should be limited to the area of the campground for a number of safety reasons.” He noted that the Department does not have the authority to allow operation of a motorized vehicle on public roads.

Dan Bortner, Director of State Parks and Reservoirs, explained that many of the privately owned campgrounds, the KOAs and Disney, allow golf carts outside of the campground, but most of those properties are small, fairly flat, and do not have the terrain as found at Brown County or Clifty Falls State Parks. “It’s a different element. Our campgrounds

don't have rolling terrains; they are fairly flat so we are okay [operating golf carts] inside the campgrounds. But if you go beyond those gates, the very things that make these places special and beautiful are not conducive to having that type of vehicle out there.”

Edwards noted that in the review of the petition, it was determined that the statutory definition of a “person with a disability” is defined as someone who is eligible to receive social security disability income. “So an individual with a mobility disability who is actually working would not qualify under this section. So we are trying to propose legislation to amend the definition to include a person with a mobility disability under the Americans with Disabilities Act definition; therefore, include...people with a job, but still with a mobility disability.” He noted that once the statute is amended, the Department will propose a change to the rule.

Davis clarified that IC 14-19-1-1 currently refers to the Social Security Administrative definition (42 U.S.C. 416), but should be corrected to refer to a definition that covers an employed person with a mobility disability (28 CFR § 35.137).

Easterly asked whether a bill was filed to correct this error. Chris Smith indicated that there is an amendment being drafted to be included in one of the Department's bills. Davis said the amendment would probably be included in the Department's omnibus bill.

Easterly reflected that if the bill is enrolled, then the statute would be amended by July 1. He asked, “Do we have a way to allow the ones that could [operate a motorized vehicle] in the interim or do they have to wait another season?”

Davis said the Department would not disallow an employed person with a mobility disability from operating a motorized vehicle in a campground. Edwards said the Department would try to accommodate persons with a mobility disability, but noted that the current statute restricts the Department if the Department receives a complaint.

The Chair called for a motion to accept the Review Committee's report and to approve further action as recommended by the Committee.

Cameron Clark moved to accept the Committee's report and recommendation regarding the pursuit of amending IC 14-19-1-1 to correct the federal citation with subsequent amendment to 312 IAC 8-2-8 to allow a person with a valid driver's license to operate a motorized vehicle within a campground on behalf of a person with mobility disability. Thomas Easterly seconded the motion.

The Vice Chair stated, “I would like to have the record reflect that, again, the opportunity to accommodate as needed at the various parks to, in this interim period, allow those with any kind of a mobility disability to have access in the campground area.”

The Chair called for a voice vote. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report of rule processing, consideration of public comments, analysis and recommendation regarding final adoption of amendments to rules governing river otters and squirrel hides (312 IAC 9-2 and 312 IAC 9-3); LSA Document #14-341(F); Administrative Cause No. 14-054D

Sandra Jensen, Hearing Officer, presented this item. She said the proposed rule would amend 312 IAC 9-3-18.2 (312 IAC 9-3-18.4 and 312 IAC 9-10-12) to establish a trapping season for river otters. Amendments to 312 IAC 9-2-3 would allow the sale of hides from legally taken river otters and squirrels. Jensen explained that the amendment to allow the sale of squirrel hides originated from a citizen's petition for a rule change filed by Wayne Langman. She noted that Langman's petition for rule amendment was included in the Division of Fish and Wildlife's biennial rule review process. Jensen said the rule amendments would allow for the taking of river otters in 64 counties from November 15 through March 15 with a first year statewide quota set at 600 river otters. She noted that the Department reviewed the comments and submitted a response to the Hearing Officer, which was included in the Hearing Officer's Report. In its response, the Division of Fish and Wildlife supported amendments to the published rule language.

Jensen reflected, "There is no dispute that the river otter population is somewhat high in certain parts of Indiana, whereas, in central Indiana...the population is still relatively low." She noted that the proposed rule is written to accommodate the diverse population numbers by allowing trapping in those areas where the river otter population seems to be sustainable. She said the Division of Fish and Wildlife conducted a river otter feasibility study in 1994. Jensen stated that the rule proposal is based on resource management, but noted that a definitive population number was not provided. However, Jensen noted, "The anecdotal evidence indicates that in those counties where trapping would be allowed there are already river otters being trapped accidentally by people trapping for other species." She said that in some areas the river otters are becoming nuisance species for those who have stocked ponds and fisheries. Jensen also noted that one comment reflected that in certain counties, river otters are being struck by vehicles. "It makes perfect sense that certain counties have larger populations than other counties. And, in that regard, it's my belief that the evidence that the Department has put forward makes perfect sense to allow a limited harvesting in those areas where the river otter populations are the greatest."

Jensen noted that the Department recommended three revisions be made to the published language. A technical revision to 312 IAC 9-3-18.2(h)(1) would combine proposed subdivisions (1) and (2). She noted that 50 CFR 23.69, which is cited in the subdivision (h)(1), refers to the substantive matters addressed in both subdivisions. Combining the subdivisions would simplify the rule language.

Jensen explained that the second revision involves 312 IAC 9-10-12(e). She explained that this revision will differentiate the means by which a fur buyer is required to

document the date and method of lawful acquisition for bobcats and badgers from the manner of recording the date and method of lawful acquisition of all other species of wild animals.

Jensen added that the third revision eliminates 312 IAC 9-10-12(i) for the reason that after further consideration the Division of Fish and Wildlife has concluded that this regulation is unnecessary.

Jensen noted that the revisions are supported by the Division of Fish and Wildlife and by written comment and in compliance with IC 4-22-2-29. She recommended the proposed rule as presented in Exhibit D with revisions, and attached to the Hearing Officer's Report, be given final adoption.

Erin Huang, Indiana State Director for the Humane Society of the United States (IHSUS), stated that she represents IHSUS members and supporters. She asked that the Commission reject the proposed rule to establish a hunting and trapping season for river otters. Huang noted that IHSUS submitted comments online during the public comment period and again during the public hearing. "The number of people that are concerned for animal welfare in the community has grown significantly. So we do ask that you give this due consideration." She asked the Commission to also consider the ecological and population consequences of opening a trapping and hunting season, the environmental consequences, and the social component.

The Chair noted that Gail Moon presented additional written comment at today's meeting and each Commission member was provided a copy. He then recognized Gail Moon.

Gail Moon, from Hamilton County and representing herself, stated that she was present at today's meeting to "speak for those that cannot speak for themselves and that is the otters." Moon said the whole concept of trapping is "reprehensible to many people. It's long; it's agonizing. I feel it is unnecessary. It exposes an animal to days of pain, days of exposure to the elements, fear, unable to take themselves away from the situation and hide, which animals prefer to do when they are hurt or injured. I just feel the whole process is horrific. I don't like hunting in any form, but give me a gunshot over a trap any day."

Patrick Early moved to give final adoption to rule amendments governing river otters and squirrel hides (312 IAC 9-2 and 312 IAC 9-3) as presented in Exhibit D of the Hearing Officer's Report. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

The Chair reflected, "In light of folks...coming today or those who have opinions contrary, perhaps, to what the Commission adopts, and in light of what Pat [Early] offered before regarding the Advisory Council, I just want it to be known—and I hope our record here at this Commission shows—that this body takes public comment very seriously. ... We take requests for rule changes from citizens seriously as evidenced by things that come before us almost every meeting as a result of a citizen petition. ..."

Comments from the Advisory Council, citizens are taken seriously and into consideration. I hope our record shows that and we will continue to do so.”

Discussion Item: Considerations associated with the temporary suspension of the Division of Hearings preparation of transcripts; Administrative Cause No. 14-165A

Sandra Jensen also presented this item. She explained that formal Commission action was not being requested, but the purpose of this agenda item is to gather input and advice from Commission members. 312 IAC 3-1-14 requires the Natural Resources Commission to “employ or engage the services of a stenographer or a court reporter either on a fulltime or part-time basis to record evidence taken during a hearing.” Jensen explained that under this rule the Commission’s administrative law judges are required to have an employee serve as a court reporter to record proceedings under IC 4-21.5 (Administrative Orders and Procedures Act or AOPA). She noted, however, IC 4-21.5-3-25(g) specifically states that a state agency, including the Commission, is not required at its expense to prepare a transcript unless it is required under the indigent exception (IC 33-37-3-2).

Jensen noted that presently the Division of Hearings does not have a court reporter; however, the paralegal is serving in that capacity. She said the Commission approved a nonrule policy document (Information Bulletin #1 (3rd Amendment)) that specifies transcription fees of \$3.80 per transcript page. If requested, the court reporter would prepare the transcript from AOPA proceedings. Jensen noted that presently the Division employs only a paralegal as its one and only administrative support person. Therefore, when a transcript is requested the transcript must be prepared by the paralegal while she continues to fulfill all other office responsibilities. Jensen observed that the addition of a second administrative law judge holds the potential for doubling the occasions that the paralegal will be required to be out of the office serving as a court reporter.

Jensen added that in most instances the entity requesting a transcript is the entity seeking judicial review in a circuit court, which is typically a limited number of occasions annually. Jensen advised that providing this service to one or two individuals becomes disruptive to providing service to the broad range constituency of the Commission. Therefore, “for the time being, until we can employ a court reporter, we would suspend the preparation of transcripts.” Jensen explained that the suspension would add a cost to those individuals who seek transcripts and the cost would be the difference between the Commission’s cost per transcript page (\$3.80) and what is customarily charged by a court reporting company (reported to be \$5 or \$6 per page). “So there is a little bit of a difference...but it’s not a great number of people being affected.” Jensen noted that an amendment to the rule or the nonrule policy document would not be required but asked for the Commission’s input or desire for additional information for consideration. Jensen also requested the Commission’s preference with respect to providing broad-based notice to those that may most likely be impacted by the suspension, such as attorneys who practice before the Commission.

The Chair said the suspension of the preparation of transcripts “seems to be a prudent, practical, and meaningful way to eliminate the potential for conflict.” He noted that the backup materials for this agenda item provide the metrics of suspending transcription. “For the benefit of a few the cost and time is significant.” The chair stated that notification of the suspension of transcription would not be necessary.

Phil French asked, “If we are only going to have a limited number of [transcripts] prepared, why aren’t we outsourcing it? What we charge and what the actual cost of pages for the State is probably a lot more than [\$3.80].” He reflected that it is the responsibility of the Commission and Department to stay within the budget and “not try to justify why we’re a lower cost producer for a transcript... Why do we need a fulltime person? Why aren’t we outsourcing all the time, when needed?”

Jensen offered that whether or not the Division continues to provide transcription services, a second support person is necessary to the Division’s continued effective and efficient operation. Jensen observed that providing transcription services was but a minor portion of the previous court reporter’s responsibilities. With a second support person in place it was reasonable to provide this service. Having, hopefully, temporarily, lost that second support staff person, Jensen noted that it seems tenable to continue providing the service.

Thomas Easterly asked how the Division of Hearings is notified of the need to prepare a transcript.

Jensen explained that an AOPA proceeding is digitally recorded with corresponding log sheet. She said currently any party seeking a transcript files with the Division of Hearings a letter requesting preparation of a transcript. If transcription service is suspended and request for transcript is received, the recording and log sheet would be forwarded to a court reporting service. Jensen noted that this is the practice of other state agencies. She said it would be necessary, however, that any transcript prepared by an outside court reporting service would be delivered to the Division of Hearings for staff review as to accuracy of the transcription.

Easterly then asked, “Why is this just a temporary sort of thing? Why don’t we just say we’re not going to do it, period?”

Jensen reflected that she would need to review the history behind the adoption of the rule and the nonrule policy document. She indicated she was not opposed to ending transcription service permanently, but “I think the Commission [provided transcription] as a public service to the parties... We had control over the process at that point.”

The Chair stated, “Commissioner Easterly and Phil [French], you bring up great points. Why don’t we just suspend it... Whether it’s temporary or long-term, if it turns into long-term we’ll change it later... There is an avenue available for those who request” transcripts.

Easterly noted that the Department of Environmental Management changes its business practices. “This would be another piece down that road. Yes, when you go to court you still need [a transcript], but that’s very rare. So, we should think about being upfront about it in telling people what we are going to do in the future even if we can temporarily start now.”

The Chair indicated his agreement with Easterly’s comments.

Before adjournment, R. T. Green inquired regarding re-establishment of quail in the Midwest through the USDA’s Regional Conservation Partnership Program (RCPP).

Mark Reiter noted that there are several programs in the Midwest that states are joining to review re-establishing quail populations. He explained, however, that in order to receive RCPP funds through the new USDA fund program Indiana would need to receive an invitation to participate. He noted that the Department has not yet received an invitation.

Adjournment

The meeting was adjourned at approximately 11:20 a.m., EST.