

Members

Rep. Markt Lytle, Chairperson
Rep. James Bottorff
Rep. Richard Mangus
Rep. Phyllis Pond
Sen. Potch Wheeler
Sen. Becky Skillman
Sen. Richard Young
Sen. James Lewis



NATURAL RESOURCES STUDY COMMITTEE

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Authority: IC 2-5-5-1

MEETING MINUTES¹

Meeting Date: October 9 & 10, 2001
Meeting Time: 1:00 P.M.; 9:00 A.M.
Meeting Place: Pokagon State Park,
Meeting City: Angola, Indiana
Meeting Number: 3

Day One Meeting 10/9/2002

Members Present: Rep. Markt Lytle, Chairperson; Rep. James Bottorff; Rep. Richard Mangus; Rep. Phyllis Pond; Sen. Potch Wheeler; Sen. James Lewis.

Members Absent: Sen. Becky Skillman; Sen. Richard Young.

Staff Present: Jeanette Adams, Legislative Services Agency

Call to Order: Chairman Lytle called the meeting to order at 1:00 P.M.

Issue: Humane Treatment of Nuisance Wildlife

Laura Nirenberg, Wildlife Orphanage, Inc. from LaPorte, Indiana, discussed a concern with the disposal of wildlife by commercial operators in the nuisance wildlife control business. (This concern had been expressed in HB 1460-2001). Some disposal methods that these people use are not humane. Commercial operators are required to have a

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Department of Natural Resources (DNR) permit for animal removal, and more training and education on humane disposal methods should be required before DNR grants these permits.

DNR staff advised the Committee that a homeowner who destroys a nuisance wild animal must notify the DNR of this action. The purpose of this law is to distinguish private nuisance removal from commercial removal or poaching.

An advisory group in the DNR Division of Fish and Wildlife is currently working with Ms. Nirenberg's concerns. DNR will have recommendations and will deal with the problem through rule making. DNR's recommendations will not be available in time for the final Committee meeting on October 23. If DNR determines that a bill is needed, DNR will advise the Committee and Rep. Pelath (author of HB 1460-2001). Chairman Lytle stated that at this time, a recommendation from this Committee is not needed to take care of the concern.

Issue: Conservation Officers Youth Camp

Dick Mercier, Sportsmen's Roundtable (SR), and Steve Rilenge, Central Indiana Chapter of the Safari Club, proposed that DNR appoint a full time Conservation Officer (CO) to coordinate the Youth Camp program which is currently run by volunteers in the nonprofit Indiana CO's Organization. The camp is now held one week per year for 130 kids, but the hope is to expand it to a full summer program as in Kentucky which operates a camp serving 6,000 kids. The Safari Club will donate a \$20,000 trailer to be used by the camp coordinator for public information and education purposes in the off season. A notebook of information on the camp was distributed to members.

The DNR Director has the authority to make this appointment now. DNR recognizes the value of the camp but cites fiscal concerns. There would be no cost to DNR if one of the current officers can be designated to this post, but there would be a reduction in current services performed by the appointee.

A statute has been passed to direct DNR to establish a hunter's education program. (Exhibit A) Similar legislation could be enacted to require appointment of a camp coordinator. Members discussed whether recommending a law on this topic would be micro managing the department. Chairman Lytle stated that having a camp coordinator is a good idea, and that a decision will be made at a later time as to whether to do this by statute or administratively.

Issue: Remedies for Disobeying Citations for Game Law Violations

Dick Mercier, SR, stated that when an Indiana resident fails to appear in court for a game law violation, the court issues a warrant. SR recommends that If the person does not appear in 30 days, the court should notify the Bureau of Motor Vehicles (BMV) and the person's driver's license should be suspended until the person appears in court and the case is concluded. However, when a nonresident fails to appear, the court should notify the BMV equivalent in the person's state to take away the person's driving privileges.

Lt. Col. Jeff Wells, DNR Enforcement Division, stated that the resident portion of this proposal parallels Indiana law for driver's license violations. Out of state violators are responsible for hundreds of cases each year. The Committee asked Col. Wells and Mr. Mercier to provide information about whether other states have a practice similar to SR's proposal to deal with nonresident violators, to obtain the BMV's opinion on this proposal, and to provide more data.

Issue: Senior Citizen Fishing License

Dick Mercier, SR, testified that Indiana receives \$5.81 from the federal government for each fishing license sold in the state. By giving "free" fishing licenses to persons over age 65, Indiana loses a considerable amount of federal revenue. A change in the law for over age 65 fishing to a \$2.75 license fee will bring over \$1million in federal money to the DNR Division of Fish and Wildlife. (A regular fishing license costs \$13.) A handout gives other information on this topic (Exhibit B)

DNR staff stated that DNR is not opposed to this proposal, recognizes that it means more money for the department, and noted that fishing license revenue funds both the Law Enforcement Division and the Division of Fish and Wildlife.

Issue: Gravel Extraction Permits and Archeology Concerns

John Schula, Martin Marietta and Indiana Mineral Aggregates Association, stated that members came to this meeting to discuss the DNR process for obtaining various permits in the light of historical preservation concerns. Speakers today will address experiences with three different kinds of permits.

Sean Schneider, Silver Creek Sand, New Albany, described experiences in obtaining a permit to extract minerals in a flood plain where Native Americans once lived. The full text of his remarks was presented in writing (Exhibit C). Mr. Schneider described interactions with DNR's Division of Historic Preservation and Archeology (DHPA), the substantial funds he has spent for archeological studies, and his fears of intimidation or prosecution. The state requires certain archeological work and gives a list of approved contractors. The cost of the required work can balloon beyond the cost that is contracted for with the approved contractor. A business person needs to know the final cost of work before a project starts. The fact Caesar's Casino has spent over \$15 million on archeology on 10 acres of land worries all who have interests in the same geographic area.

Kenneth Mulzer, Mulzer Crushed Stone, Tell City, described his business which involves shipping crushed stone down the Ohio River. He can not charge extra for the product when the costs of archeological surveys get out of control. He spent over \$750,000 and had a one year delay just to get permits for one project. It is difficult to get loans when you do not know project costs. The Caesars' experience is important because it sets a precedent.

John Hamm, Liter's of Indiana, Jeffersonville, also distributed written remarks (Exhibit D). For his project to build a distribution terminal, DNR, without site examination, initially set aside 22 of his 32 acres for preservation. After Mr. Hamm spent \$32,000 for archeological studies, DNR eventually allowed him to develop 17 more acres or about half of his property, He believes that the original legislative intent to preserve history has escalated administratively. And he believes that because the public does not like his kind of business, the archeology laws are used to fight expansion of his business.

What these four individuals would like is to know the costs of surveys up front before a project starts.

John Davis, DNR Deputy Director, stated that these businesses do not risk retaliation from DHPA, and that DNR will be glad to meet with the parties to discuss the permit process. Caesar's is not a precedent for future requirements; it was an exceptional situation, the most magnificent find in Indiana of a Native American community. Some of the problems these men experienced were with the contractors they hired to do the

archeological surveys. There is an opportunity for early coordination with DNR before survey work starts. DNR will open its files to show where finds are most likely to occur.

Chairman Lytle recommended that the group meet with DNR to get an understanding of the system and then, if concerns remain, to ask any of their legislators to revisit the Committee.

In response to a question as to whether DNR would prefer to do all the archeological work itself rather than relying on contractors, the response was that DNR would prefer to do the work, but significantly more staff would be required. DNR stated that the list of contractors would be reviewed.

John Molitor, Historic Landmarks Foundation (HLM), cautioned that it is essential to protect human remains and significant artifacts. However, costs might be more predictable if government rather than the business person hired the contractor.

Chuck Brown, HLM and Historic Bethlehem, stressed the need for a buffer between historic property and sand and gravel operations. There are artifacts and they do need to be preserved. There has to be a balance.

Issue: Method of Setting of Fish and Wildlife Fees

Paula Yeager, Indiana Wildlife Federation (IWF), stated that all DNR fish and wildlife license fees in IC 14-22 should be set by the Natural Resources Commission (NRC) rather than by the legislature in order to simplify the process and insure periodic review. This same procedure is now used to set hunting license fees. Details of the proposal are in a handout (Exhibit E).

Gary Doxtater, speaking for himself, stated that he favors the proposal.

Dick Mercier, SR, stated that he did not like the amount of the hunting fee increase set by NRC, but that the increase was needed to keep the Division of Fish and Wildlife in business. Hunting fees had not been increased in 14 years. SR supports the proposal.

Kathy Kurtz, Lake James resident speaking for herself, stated that DNR does good work and needs money for its operations. However, the legislature should raise fees, not the NRC.

Members generally opposed the proposal, and will not have a draft prepared to implement it. However, members commented that this Committee could review DNR's fees without the need for any statutory changes. Chairman Lytle suggested that the IWF work with a legislator on the suggestion that DNR fees be subject to a cost of living adjustment.

Issue: Boat and Boating Matters

Al Schnellker, Indiana Marine Trade Association (IMTA), discussed issues which are detailed in a handout (Exhibit F). The Association has dropped its proposal (presented at the first meeting) to title all boats. Suggestions that remain relate to display of dealer plates, repeal of the \$12 minimum excise tax fee to store boats in Indiana but not use them, requiring registration of a boat only in state of the owner's domicile, and reducing excise tax fees to certain users. **Pat Casey (IMTA)** stated that dealers are not collecting the \$12 storage fee. IMTA proposals will be considered at the final meeting.

Issue: Horse Trails on State Property (Addition to the Posted Agenda)

Greg Hershberger, Indiana Trail Riders Association (ITRA), stated that DNR plans to cut off part of the horse trail in Salamonie State Park. The organization asks for an opportunity to repair the damaged part of the trail and to continue to ride. There are only three DNR properties north of US 40 that have horse trails, of which the Salamonie trail is the most scenic and beautiful. He was told that DNR made the final decision to close the trail last Friday.

John Davis, DNR Deputy Director, stated that he had been to the site and has seen the plan for the trail. He believes that the off limits part is as small as possible. Chairman Lytle asked DNR to keep an open mind on this topic, keep working on it, and look at adding more horse trails. There are not too many opportunities to add trails in the north because the properties are small. Before any final decisions on the Salamonie trail are made, Mr. Davis will meet with Representative Pond, who has expressed interest in this issue,

Jody Weldy, President, ITRA, stated that the organization works to close off unauthorized or dangerous trails. You cannot have a horse trail on property purchased with federal fish and wildlife funds. **Bruce Weldy, ITRA**, noted that the Association plan is workable, and they are willing to protect an area and police themselves.

Issue: Relocation of Pioneer Cemeteries (Addition to the Posted Agenda)

Chairman Lytle has received a petition with over 2,000 signatures supporting the concept that pioneer cemeteries should not be portable and human remains should not be relocated. This topic will be discussed at the final Committee meeting.

Issue: Karner Blue Butterfly Report (Addition to the Posted Agenda)

DNR distributed a written report (Exhibit G) to fulfill the legislative requirement that the Division of Nature Preserves monitor the status of this butterfly, act to keep the butterfly viable, and report on this work.

Adjournment: There being no further business, Chairman Lytle adjourned the meeting at 5:15 P.M.

Day Two Meeting 10/10/2002

Members Present: Rep. Markt Lytle, Chairperson; Rep. Richard Mangus; Rep. Phyllis Pond; Sen. Potch Wheeler.

Members Absent: Rep. James Bottorff; Sen. Becky Skillman; Sen. Richard Young; Senator James Lewis.

Staff Present: Jeanette Adams, Legislative Services Agency

Call to Order: Chairman Lytle called the meeting to order at 9:25 A.M.

Issue: Constitutional Right to Hunt and Fish

Rep. John Ulmer presented his proposal for a House Joint Resolution (Exhibit H) to amend the Indiana Constitution to give people a right to hunt, fish, and harvest game, subject to laws and rules prescribed by the General Assembly or under its authority. This proposal has not been previously agreed to by a General Assembly. Rep. Ulmer believes

that this right is an important part of our heritage and pioneer spirit, is threatened and must be secured by the Constitution. Several other states have a similar amendment, for example, GA, RI, AR, MN, VT, and VA have specific amendments and other states have indirect protections (CA, FL, IA, LA, ME, TN, AL, WI). The amendment does not restrict the legislative or executive branches from regulating hunting and fishing, just as the regulation of firearms occurs along with a Constitutional right to bear arms. Courts uphold the principle that constitutional rights can be regulated. It is important to put this language in the Constitution now before anti-hunting and animal rights groups, which are starting to get active now, put pressure on the legislature to ban hunting and fishing. Rep. Ulmer volunteered to take the lead in bringing this issue to the public and raising funds for this purpose.

Chairman Lytle stated that in conversation, **Attorney General (AG) Steve Carter** stated that if the amendment is adopted, DNR could continue to do the same work that it does now. The AG will give a written opinion on this subject before the next legislative session.

Mr. R. Sexton, Wildlife Fund of America, stated that there is no question that DNR can continue to regulate activities and asked the Committee to give serious consideration to the proposal.

Judge William Garrard, Court of Appeals, spoke in favor of the proposal because hunting promotes respectful use of firearms, provides a learning experience consistent with our heritage, and is a social experience for family and friends. He provided a study showing no correlation between youth hunting activities and youth firearms violence (Exhibit I). He believes that the concern expressed about an amendment restricting the DNR and the General Assembly's ability to regulate is not a valid argument, if the regulation is reasonable.

Dick Mercier, SR, stated that the 50,000 members of his organization strongly support the amendment and would like to extend protection to a right to trap.

Charlie O'Neill, Indiana Wildlife Federation, supports the amendment and the addition of a right to trap. Hunting is important for wildlife resource management. The amendment is needed to insure the future of wildlife sport in Indiana.

Senator Bob Meeks, attended the meeting to speak in favor of the amendment. He stated that most people now believe that they have this constitutional right. Letting the people vote on the proposal is a good idea.

Dan Mathis, DNR Legislative Liaison, stated that DNR opposes the proposal. DNR has concerns about its ability to regulate hunting and fishing activities under the amendment. Decision making would move from the legislature to the courts, and there is a concern about how regulations would be interpreted by the state and federal courts. There could be an adverse effect on fees and federal dollars.

Judge Garrard, in response a request for comment from the Committee, stated that he cannot say what any particular court would do. However, In his opinion, this is an illusory problem. A person can sue for any reason, but proving the case can be difficult. Someone probably will contest DNR's ability to regulate, but the chances that they will prevail are slim.

Rep. Ulmer stated that the amendment language is clear that DNR can continue to regulate under it. The language of the amendment was revised to meet DNR's concerns.

Sen. Meeks stated that the constitutional right to bear arms is tempered by many laws which have been upheld in case law.

Mr Mathis stated that there is a consensus of concern at DNR and among people who administer the same kinds of laws in other states. Most have serious misgivings about the proposal.

John Davis, DNR Deputy Director, stated that DNR supports hunting, fishing, and trapping 100%. However, he supports the concern expressed by Mr. Mathis and worries about moving control from the legislature to the courts. He also worries that the proposal will bring focus to those groups who oppose hunting and fishing.

Rep. Ulmer stated that he is shocked that DNR opposes the amendment as it supports the DNR. The language makes it clear that there is rule making authority. Now is the time for this amendment. He will continue to work with DNR on these differences of opinion, and is sensitive to its concerns.

Introductions

Chairman Lytle introduced **Terry Coleman, DNR Northern Region Supervisor for Parks**, and **Randy White, Property Manager at Pokagon State Park**. Mr. White thanked members for meeting at the park, and described the park, its very popular toboggan run, a new bike trail, and newly constructed cabins. A successful summer season has just been concluded. He suggested that raising the \$50,000 statutory limit on work that can be done in-house would be of great benefit to the park. Mr. Coleman agreed with this suggestion.

Issue: Open Burning

In response to the request of **Rep. Pond, Terry Coleman, Northern Regional Director for the Indiana Department of Environmental Management (IDEM), South Bend Office** [a different individual from the "Terry Coleman" from DNR who also attended this meeting], presented information on the topic of open burning. He distributed a handout (Exhibit J) to describe current law. Open burning is generally illegal in Indiana with some exceptions such as for burning clean wood products. No burning at all is allowed in two areas: (1) Lake and Porter Counties; and (2) Clark and Floyd Counties. Tires, treated wood, and asbestos may never be burned. Health department inspectors help IDEM to enforce the burning law. Local laws, which may be more restrictive than state laws, are encouraged. Wood structures (barns) may be burned if non wood products are first removed. An IDEM variance can be requested to burn outside the rules; these are commonly sought by fire departments.

Issue: Severe Silt Build Up in Lakes: Item deferred until next Committee meeting.

Adjournment: There being no further business, Chairman Lytle adjourned the meeting at 12:30 P.M.