

Members

Rep. David Cheatham, Chair
Rep. Steven Stemler
Rep. Joseph Pearson
Rep. William Friend
Rep. Jack Lutz
Rep. Richard Dodge
Sen. Greg Walker, Vice-Chair
Sen. Randall Head
Sen. Edward Charbonneau
Sen. Robert Deig
Sen. James Lewis
Sen. Richard Young



WATER RESOURCES STUDY COMMITTEE

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Authority: IC 2-5-25

MEETING MINUTES¹

Meeting Date: August 26, 2010
Meeting Time: 1:00 p.m.
Meeting Place: State House, 200 W. Washington St., 156D
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. David Cheatham, Chair; Rep. William Friend; Rep. Jack Lutz; Sen. Greg Walker, Vice-Chair; Sen. Randall Head; Sen. Edward Charbonneau; Sen. Robert Deig; Sen. James Lewis; Sen. Richard Young.

Members Absent: Rep. Steven Stemler; Rep. Richard Dodge; Rep. Joseph Pearson.

Call to Order. Rep. Cheatham, Chair of the Water Resources Study Committee, called the meeting to order at 1:00 p.m. After an introduction of the committee members, the Chair announced the first topic of the agenda, which concerned the removal of sand and gravel from creek beds.

Removal of Sand and Gravel from Creek Beds. The Chair called upon Patty Geyman, Jefferson County, to present the issue. Ms. Geyman's remarks concerning a 2009 statute and rules governing gravel and debris removal that she believes are unduly restrictive on landowners who own creekside property are set forth in Exhibit A.

Ron McAhrn and Chris Smith, Department of Natural Resources (DNR), provided an overview of the history and development of the law that governs removal of sand and gravel from a floodway (See Exhibit B). According to Mr. McAhrn, DNR attempts to strike a balance between landowners' property rights and impacts that the removal of material from the creek could have on the flooding of other people's property, habitat loss, fishery impact, destabilization of the stream and bank, and downstream flooding. Removal of creek rock could change the course of the creek and increase the flow of the creek. Operating a rock crusher upstream could result in increased rocks and other sediment downstream.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Paul Ogden, an attorney, introduced his uncle, Paul Buchanan, who has been hauling gravel from creek beds for commercial purposes since the late 1950s. Mr. Ogden distributed a presentation describing the "dry" creeks in southern Indiana (Exhibit C). He noted that unlike creeks in other parts of the state, these creeks are dry for most of the year, and often flow only after a heavy rain. In the past, before the government subsidized farmers to open creek channels with bulldozers, flooding of the farmers' fields was common. The federal government also subsidized the removal of gravel that was left in the field due to the natural flooding of the land. Currently, county roads that are built near the creek could be undercut by the course of the creek water. DNR rules limit the amount of creek rock that can be removed from the floodway. Because some obstructions can not be removed without a permit, the obstructions could increase flooding in surrounding areas.

Mr. Buchanan explained that based on his experience, the new rules will increase flooding and erosion of creek banks. If water is forced into a bank, lighter rains can cause damaging erosion as well.

Bob Kraft, Indiana Farm Bureau, stated that gravel and debris removal from streams is an ongoing concern for Farm Bureau members.

Dedicated Funding for Conservation. Jennifer Boyle, Executive Director of the Indiana Association of Soil and Water Conservation Districts, distributed information about surrounding states' natural resources conservation funding mechanisms (Exhibit D) and a fact sheet pertaining to a group of Indiana organizations that met to discuss conservation funding in Indiana (See Exhibit E). Ms. Boyle explained that a diverse group of organizations has come together to explore long-term funding for water, wildlife, and working farms and forests in Indiana. The group encourages the legislature to begin to study the issue.

Ray Chattin, Knox County Soil and Water Conservation District, explained his vision of sustainability and conservation. He is an Indiana Master Farm Conservationist as was his father. He noted that for the past 60 years, Indiana has witnessed soil loss in excess of 100 million tons as well as unrestricted use of commercial fertilizer. Recent occurrences of phosphate pollution and blue-green algae in Geist Reservoir and the potential danger that toxins associated with these organisms can pose are alarming. In Indiana, more money will have been spent on a football stadium than on the Clean Water Indiana Program for the entire century if nothing changes. He supports the creation of a sustainable natural resource funding advisory committee.

Glenn Pratt, Sierra Club, stated that the Sierra Club shares the goals of the group seeking dedicated funding.

Conservancy District Expenses. The Chair provided background information about conservancy district expenses, and called upon Alan Hux, Association of Indiana Conservancy Districts. Mr. Hux explained that while the statute on the establishment of new conservancy districts (IC 14-33-2-20) requires the district to reimburse DNR for certain fees, DNR has not sought reimbursement in the past. The General Assembly considered repealing the statute during 2010, but did not. After the session, DNR has put forth a non-rule document that sets forth how the fees will be determined in the future.

Dick Thompson stated that a newly created conservancy district should not be hampered by having additional fees charged to it.

Mr. McAhron stated that DNR's financial officer had inquired as to how much money had been collected under the statute. At that point, it was discovered that DNR had not been collecting the fee that the statute requires the agency to collect. Subsequently, the DNR developed the

non-rule document. Mr. McAhron stated that DNR may be able to request the Natural Resources Commission to stay the implementation of the document pending the next legislative session, during which the section may be amended.

Next Meeting. The next meeting of the Committee will be held on September 30, 2010, at 1:00 p.m. in Room 156 D.

Adjournment. The meeting was adjourned at 2:55 p.m.

July 28, 2010

Request for review of IAC10-5-9 and 10-5-10

Hello, my name is Patty Geyman, I live in Jefferson Co. in a small "burg" called China. My husband Rusty and I live on the farm where his parents lived. The farm has been in the Geyman family for 58 years. The farm property includes a part of the West Fork of the Indiana Kentucky Creek.

For the last 58 years we have been keeping the creek free from debris, such as rock and downed trees, in order to protect our property, our neighbors property and the county road from flood and erosion. I was deeply dissappointed to find out that a new code to restrict our ability to protect our property from flood was approved in May of "09". I was doubly dissappointed when I did some research and found out a public meeting was held in regards to this issue without my knowlege. I would have attended this meeting. Perhaps we would not be here discussing this issue today.

I did a little more research and found out that we could fill out a form to get a General License at no cost to the landowner. I filled out the form and was approved but only because the flood of Aug. "09" was a regulatory flood throughout the state.

The problem with the general license is ,

1. The fact that the general license was created with the notion that farmers and landowners remove the rock only for the pupose of using the gravel. The fact is that the gravel is removed in order to reduce flood and erosion.

2. That there is a 50cu limit on removing gravel with notice. Unless a bar of gravel has been washed in by a regulatory flood or greater thana regulatory flood. The fact is the only way of proving that we had incurred a regulatory flood is by a gauge on a bridge that is approx. 15 miles from our property on a different fork of the creek. It is entirely possible for us to have a much larger flood at our house than where the gauge is located.

3. That there is a limit on the size of a flood before a complete bar of gravel can be removed. Why should it matter what size a flood is? If a regular flood washes in a bar of gravel and it is restricting the flow of the water it should most definately be removed.

4. Why is there a 30 day time limit on the removal of the gravel if permission was granted? The permission is good for 2yrs. So what makes the difference if it takes 30 days, 50 days ar even a year. Your still removing the same bar of gravel.

5. Why can't a landowner push rock up on the creek bank in order to slow down erosion?

6. Why can't a rock crusher be used in the creek? I know that comments have been made saying that it is an "ulgly practice" but there is nothing uglier that a persons crops or homes being flooded unnecessarily. If only the rock had been removed to prevent it in the first place. The fact is that since this code has passed the one person who could keep our creek clean has basicly gone out of business, because without being able to crush the rock in the creek he would have to pass on the higher cost of removal of the gravel to his customers. Which would make his costs as much a quarry stone.

After reading the minutes of the past NRC meetings involving discussions of this topic I was of the understanding that the NRC and the IDNR was not concerned with peoples property or their livelyhoods. All I was reading was how the landowners had too much control of their land and how they must be stopped. The excuse was made because of the destruction of fish spawning areas and the death of all the crawdads. But I did not see where there was any type of actual research to this accusation. In the early 1960's there were at least 4 rock removal operators on Indiana Kentucky Creek alone. Not to mention the Jefferson Co. Highway dept. using creek rock on the county roads.

THE HISTORY OF THE UNITED STATES

The first part of the history of the United States is the period of discovery and settlement. It begins with the arrival of Christopher Columbus in 1492 and continues through the early years of the 17th century.

The second part of the history is the period of the American Revolution. It begins with the signing of the Declaration of Independence in 1776 and ends with the signing of the Constitution in 1787.

The third part of the history is the period of the early republic. It begins with the signing of the Constitution in 1787 and ends with the beginning of the Civil War in 1861.

The fourth part of the history is the period of the Civil War. It begins with the outbreak of the war in 1861 and ends with the signing of the Emancipation Proclamation in 1863.

The fifth part of the history is the period of Reconstruction. It begins with the end of the Civil War in 1865 and ends with the beginning of the Gilded Age in 1870.

The sixth part of the history is the period of the Gilded Age. It begins with the beginning of the Gilded Age in 1870 and ends with the beginning of the Progressive Era in 1890.

The seventh part of the history is the period of the Progressive Era. It begins with the beginning of the Progressive Era in 1890 and ends with the beginning of the New Deal in 1933.

The eighth part of the history is the period of the New Deal. It begins with the beginning of the New Deal in 1933 and ends with the beginning of World War II in 1941.

The ninth part of the history is the period of World War II. It begins with the beginning of World War II in 1941 and ends with the end of the war in 1945.

The tenth part of the history is the period of the Cold War. It begins with the end of World War II in 1945 and ends with the end of the Cold War in 1991.

The eleventh part of the history is the period of the post-Cold War era. It begins with the end of the Cold War in 1991 and continues to the present day.

At that time there was an abundance of fish and fishing holes. Now because there were only 2 operators on the same creek the gravel has filled up most of the larger spawning areas and fishing holes. The fact is that by keeping the creeks free from excess gravel we are protecting the fish spawning sites that are already there. I can prove this because just below our bar of gravel there has been a pool of water there for as long as my husband can remember. But this is slowly disappearing because there is another bar of gravel getting larger downstream from us on another persons property.

This is not a "one size fits all" code. I can only speak of the Indiana Kentucky Creek. Maybe in other parts of the state this code makes perfect sense. But for those of us who live in this part of the state it seems like just another way for the government to have a little more control of our lives. I have talked to many of our neighbors about this issue and most of the responses were quite negative. A lot of them told me that if they have to fill out a form to keep their creeks clean then they would just let it go and let the creeks take out the roads.

I feel like this code will eventually backfire on the state and end up costing the taxpayers in the long run. When the roads are washed out or the bridges are destroyed the taxpayers will end up paying for the repairs. When some of these problems could be avoided. A few years ago the State of Kentucky stopped landowners from removing rock from their creeks. Because of the floods of Aug. 2009 there was so much debris and rock built up in the creeks that there was extensive flooding and erosion in the counties of Trimble and Carroll. To date the NRCS has contributed 1,168,212.00 to Trimble Co. and 928,870.00 to Carroll Co. for the removal of the debris and road construction. Do we want this to happen in our state? Why would we, if we have landowners willing to do the work that needs to be done without the use of taxpayer money.

We had a meeting with some of the IDNR representatives earlier this year at the Inn of Clifty Falls. They told us that they "want our fields to flood" in order to slow down the water. That "natural" erosion was a good thing that shouldn't be controlled. That the "County had lots of money to repair the roads" so we shouldn't worry about that. And they can't help it if we were to feel bad if our neighbors home gets flooded. And, farmers are "stupid" for raising crops along the creek. Their ultimate goal is for the creeks to fill up with rock like they were before people moved here. They did not want to hear our concerns about this issue.

When we remove a bar of gravel from a creek we do not try to change the direction of the creek. We only want to remove the gravel that is obstructing the flow of the water. Sometimes when there is erosion occurring we would push some gravel up at this place to help protect it from further erosion. I know Mother Nature can't be controlled but we shouldn't just give in to it either. If there is proof that removing bars of creek rock causes some sort of adverse reaction to the wildlife I would like to see it. Look at it this way, If you have a home you probably have some sort of drainage around your property, perhaps a ditch to protect it from flooding. If this ditch becomes filled with debris wouldn't you clean it out to protect your property? Now imagine how you would feel if you were required to fill out a form to get permission to remove the debris from your ditch. What I am explaining is the same concept only on a larger scale. It's only common sense.

I could understand a landowner needing a General License if they needed to change the flow of the creek or if they were working near a bridge, but not for simply removing debris from their own property. I believe that the codes 10-5-9 and 10-5-10 have unduly restricted the ability of landowners to protect their property from flood and erosion. If the state of Indiana wants complete control of the flood plains and floodways then the state should buy all the land designated in those areas. Until that happens, the landowners should have the ability to protect themselves against Mother Nature without government interference. We are talking about non-navigable waterways. In southern Indiana you could have extended periods of time where a stream would not have apparent water

flow. If there is very little water in the creek how can this affect the habitat of the fish?

Article 10-1-2 sec. a. states," This article establishes minimum standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the PEOPLE of Indiana. Please, when discussing this issue keep the peoples welfare as the main goal.

Thank You,
Patty Geyman
Madison IN

July 27th 2010

Geyman property at China Manville Rd.

Pic. 1



Pic. 2



Fallen trees
and erosion

Geyman property cont.

Pic. 3



Pic. 4



Pool of water at Geyman's



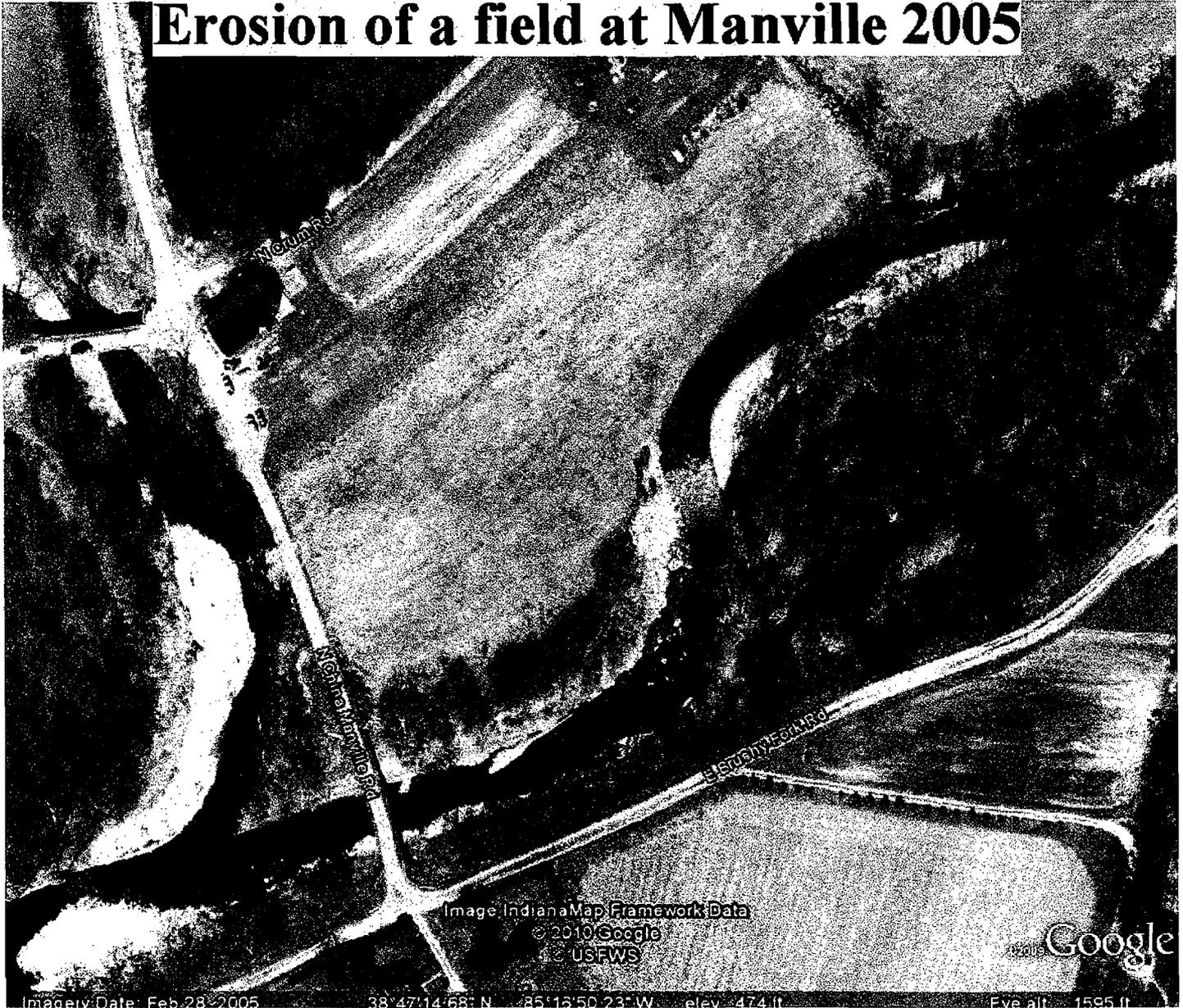
Pic. 5



Pic. 6

Erosion near Manville

Erosion of a field at Manville 2005



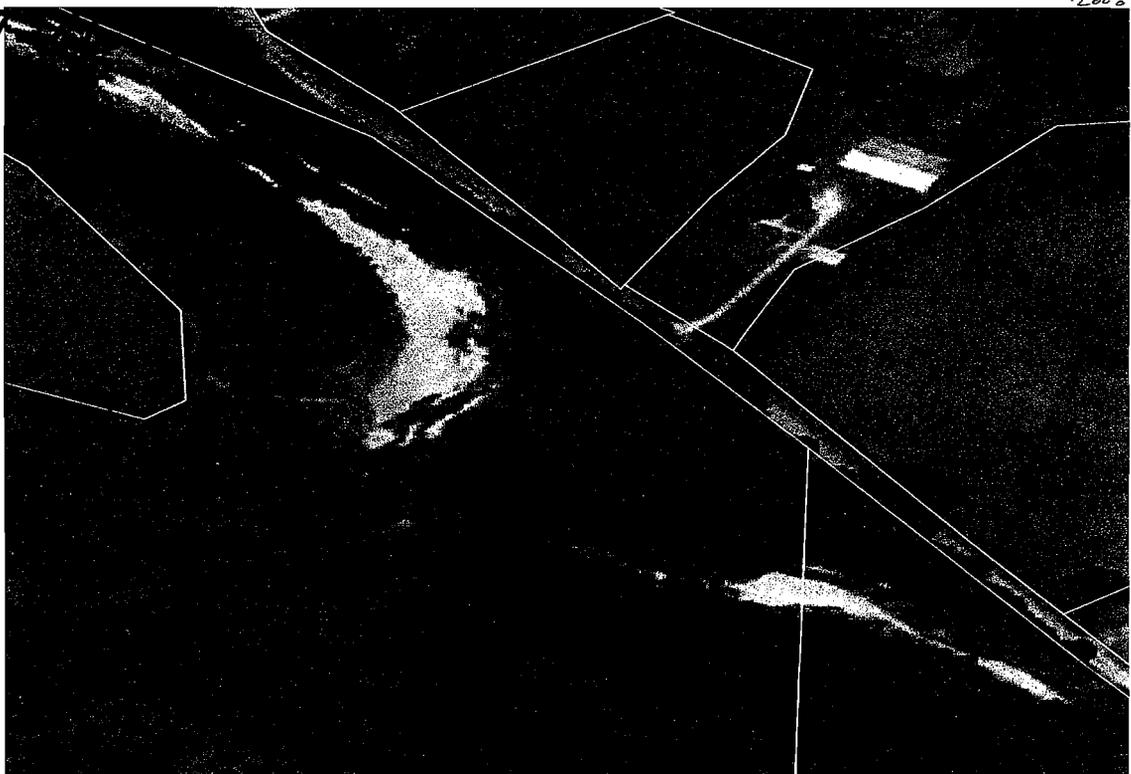
Geyman's creek 2005

Distance from creek to road approx. 65 ft.



Geyman's creek 2008

Distance from creek to road approx. 48 ft. as of 7



Creek Rock in Indiana
Background & overview of regulation

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General Topics

- › Flood Control Act requires permit for activities in the floodway
- › State of Indiana vs. Harrison Adams
- › 1990's - 2008: Uneven DNR regulation of creek rock removal
- › 1990's - 2008: Increasing concern over environmental impacts
- › October 2007: Rulemaking initiated at request NRC
- › May, 2008: NRC gave Preliminary Approval to rule package.
- › January, 2009: Two Public Hearings - only one attendee.
- › March, 2009: NRC gives Final Adoption to rule package.

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IC 14-28-1-22

- › A person who desires to erect, make, use, or maintain a structure, obstruction, deposit or and excavation, in or on a floodway must apply for a permit.
- › The Director shall issue a permit only if the structure, obstruction deposit or excavation
 - Doesn't unduly restrict floodway
 - Isn't an unreasonable hazard to life or property
 - Won't have an unreasonable impact on fish, wildlife, botanical resources

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State v Adams

- ▶ Cited for violation of Flood Control Act – excavation of accumulated rock without a permit
- ▶ Overturned by Court of Appeals 1992
 - Activity consistent with purposes of statute
 - Did not excavate natural stream bed
 - Did not alter the “present” water course of stream

8/26/2010

4

Uneven Regulation

- ▶ Court ruling interpreted to limit regulated excavation to disturbance of “natural stream bed” or “altering water course of the stream”
- ▶ DNR continued to regulate excavation in stream, though not aggressively

8/26/2010

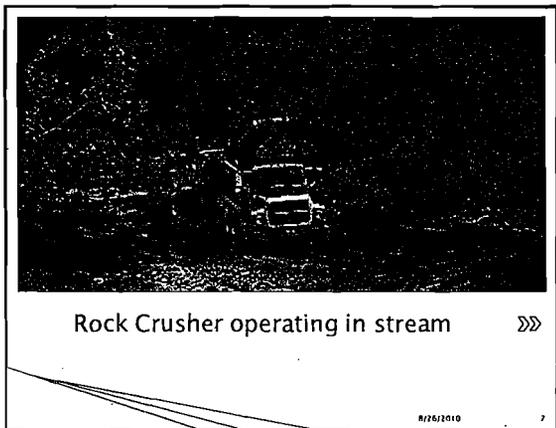
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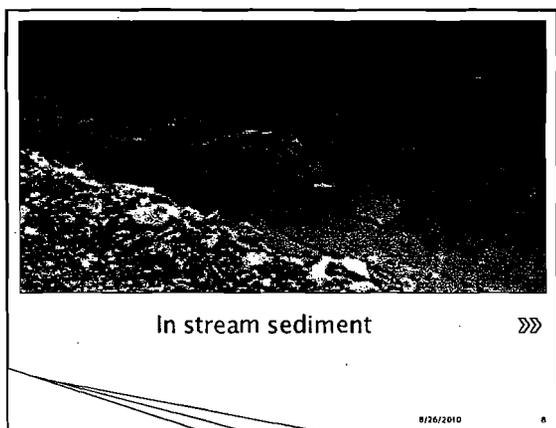
Increasing levels of complaint

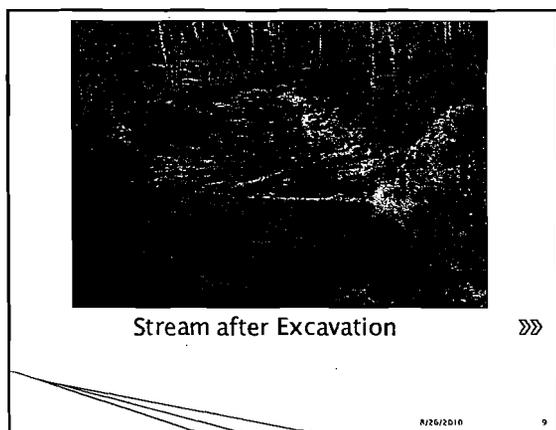
- ▶ Habitat loss
- ▶ Fishery impact
- ▶ Destabilization of the stream and bank
- ▶ Downstream flooding

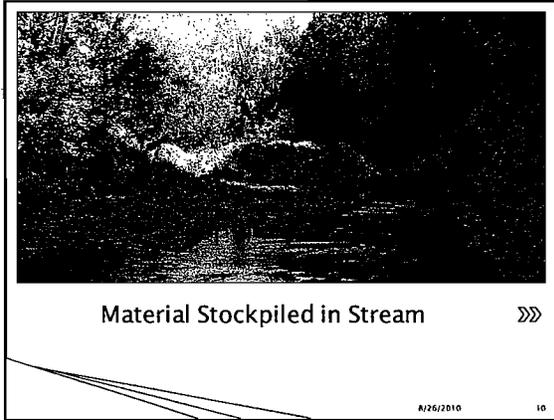
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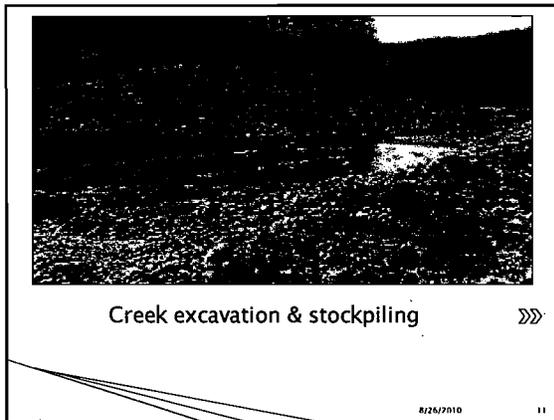
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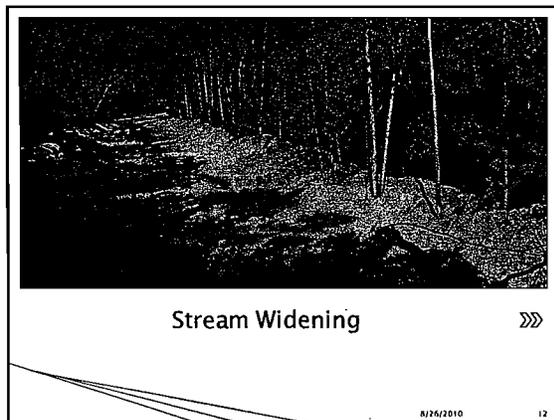












NRC Request of Rule Consideration

- ▶ The intent was to strike a balance:
 - ▶ stream protection
 - ▶ property rights

- ▶ Established – two levels of two general licenses
 - ▶ Avoidance of spawning season
 - ▶ Generally based on amount of material proposed to be removed
 - ▶ and sensitivity of the area

- ▶ Larger amounts and certain areas require standard permit application and review process.

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Rule Proposal

- ▶ Creek Gravel Removal authorized under three options:
 - General License: No notice to DNR required, 25 cubic yards of material may be removed per year.

 - General License with Notice: Notice to DNR required but must be acted on within 10 days or it is approved, 50 cubic yards of material may be removed per year.

 - Standard Construction in a Floodway Permit: A person can still apply for a standard Construction in a Floodway permit

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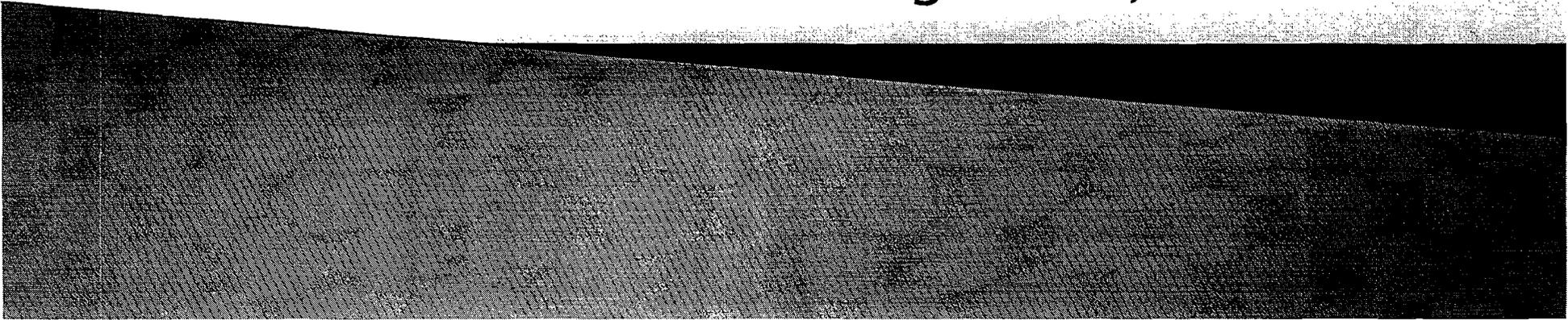
Permissible Motorized Equipment >>>

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Exhibit C
Water Resources Study Committee
August 26, 2010

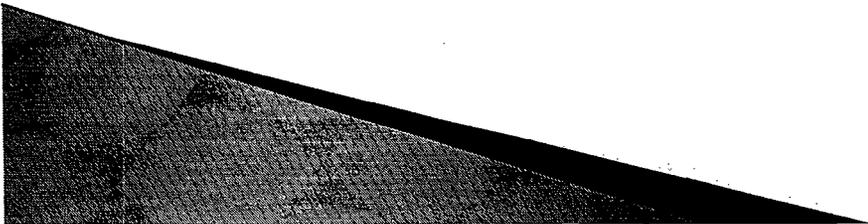
**PRESENTATION OF PAUL
BUCHANAN**
by Paul K. Ogden, Attorney at Law

Water Resources Study Committee
August 26, 2010



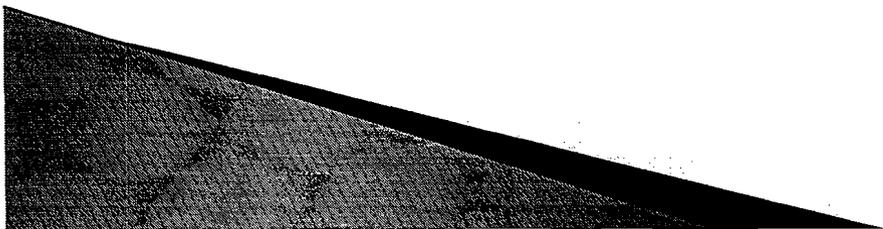
I. BACKGROUND

- ▶ My name is Paul K. Ogden. I am a lawyer with the law firm of Roberts & Bishop. I am here to represent myself as well as my uncle Paul Buchanan who has lived in Southern Indiana for 84 years.
- ▶ Paul Buchanan is 84 years old and has derived his living hauling gravel from the creeks since the late 1950s.



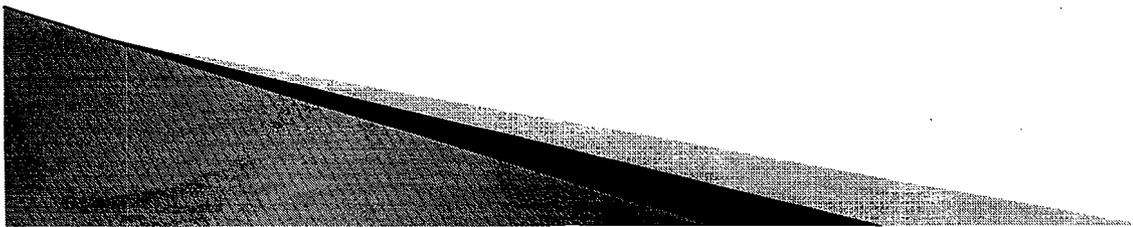
II. “DRY” CREEKS OF SOUTHERN INDIANA; NOT ALL CREEKS ARE THE SAME

Not all creeks are the same. Many creeks in far southern Indiana are “dry” creeks which include many sections without running water. The only time they fill up is during storms. When a rain storm hits it will get as high as high as a person’s head or higher. Then within a few days, the creeks will be dry again.



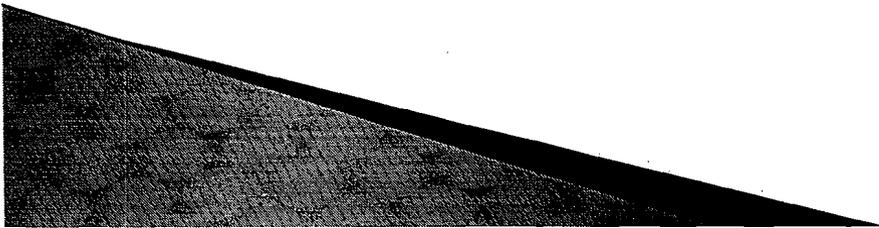
II. “DRY” CREEKS OF SOUTHERN INDIANA; NOT ALL CREEKS ARE THE SAME (cont.)

- ▶ Without running water, rocks that are deposited in the creek channel do not get broken down by erosion. The rocks sit there waiting for the next storm. These rocks eventually build up in the stream channel creating an obstruction.



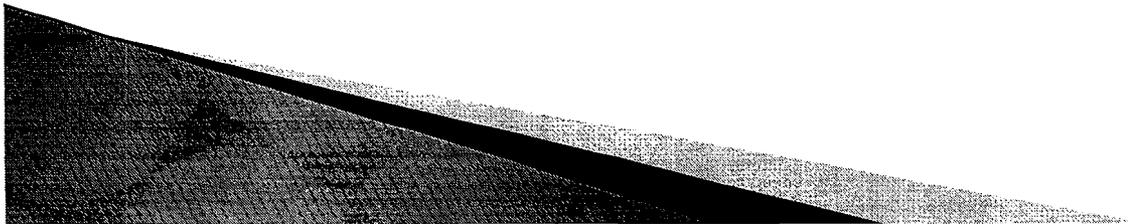
III. FLOODING HISTORY OF SOUTHERN INDIANA CREEKS

My uncle Paul Buchanan was born in this house near China, Indiana. (See Picture 1). The house is across from the Lower Dry Fork Creek. At 84 years old, my uncle knows more about the history of these Southern Indiana creeks than perhaps anyone in this room. He relayed to me that history.



III. FLOODING HISTORY OF SOUTHERN INDIANA CREEKS (cont.)

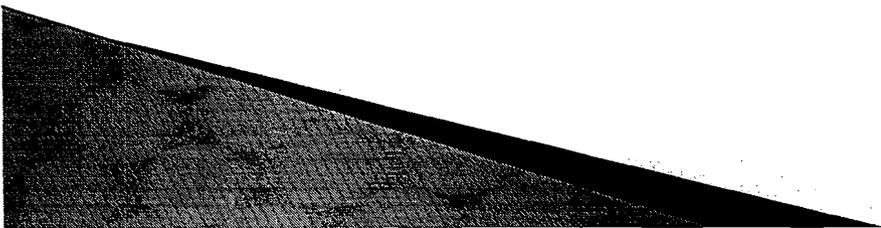
- ▶ Paul's experience is 14 years with no machinery in the creeks and 68 years with machinery. Early in his life flooding of farmers' fields was common. Then in the 1940s the federal government subsidized farmers to open up the channel of the creek on their property with bulldozers.
- ▶ The last damaging flood in the area was in 1958, a flood which washed away top soil from my grandfather's which Paul Buchanan owns today. If you look at the field in Picture 1, that field was filled with water. When the water receded about 2 feet of gravel was left in its place. The federal government subsidized cleaning it up.



III. FLOODING HISTORY OF SOUTHERN INDIANA CREEKS (cont.)

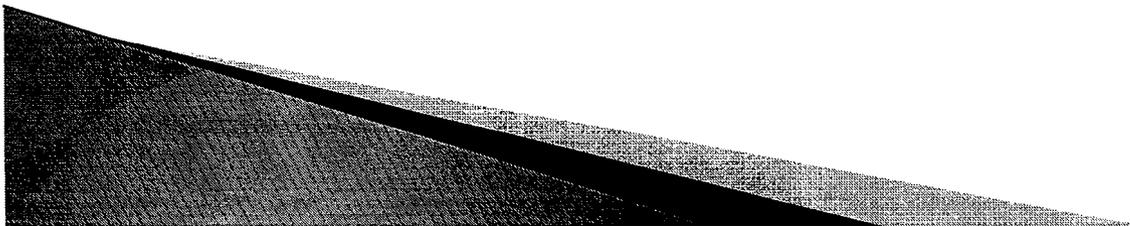
These floods were typical leading up to 1958. By cleaning out the channels of creek rock, the flooding stopped. There have been no significant floods down there since 1958.

After the 1958 flood, my uncle bought machinery and was involved with a business providing gravel to private individuals and government for roads, parking lots and other projects.



IV. EFFECT OF STEEP RESTRICTIONS ON REMOVAL OF CREEK GRAVEL

- ▶ A More Flooding
 - build up of gravel bars causes water to be pushed out of the bank
- ▶ B. Clean Up Costs for Government, i.e. Taxpayers
 - pre 1958, the government paid for clean up of farms after flooding; no reason to think that will not happen again



IV. EFFECT OF STEEP RESTRICTIONS ON REMOVAL OF CREEK GRAVEL (cont.)

- ▶ C. Undercutting Creek Channel Walls Leading to Erosion of Farmer's Fields and Undermining of County Roads
 - water that stays in creek channel during storms run chiefly along the side, undercutting creek banks
- ▶ D. Higher Prices for Consumers of Gravel
 - consumers have to pay to ship in quarry stone which is three times more expensive than creek rock. (\$210 per 15 ton v. \$70)



V. INTENT OF FLOOD CONTROL STATUTES

I would point you to IC 14-28-1-1 which discusses the legislative intent behind the Flood Control Article. That intent is to:

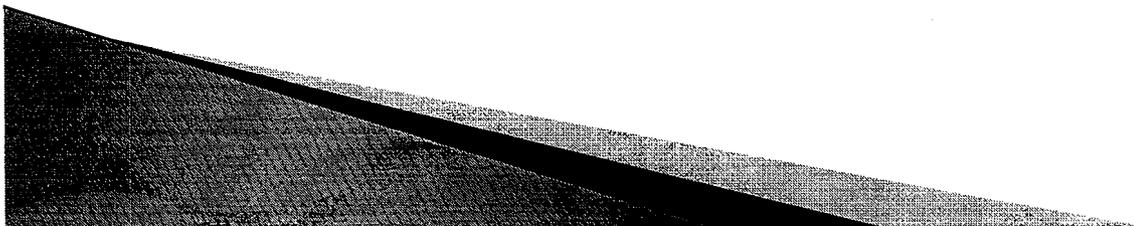
- ▶ A. Prevent and limit floods
 - DNR's limits, which will be discussed, are undermining this intent.

V. INTENT OF FLOOD CONTROL STATUTES (cont.)

- ▶ B. Keep creek channels “clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways.”
---DNR’s limit has resulted in a build-up of gravel bars in the creek.
- ▶ C. Protect water resources from diminishing
---There is less water in these creeks than ever before. That’s because with the creek rock build-up is pushing the water toward the banks and out of the creek channel. Water is not being preserved.

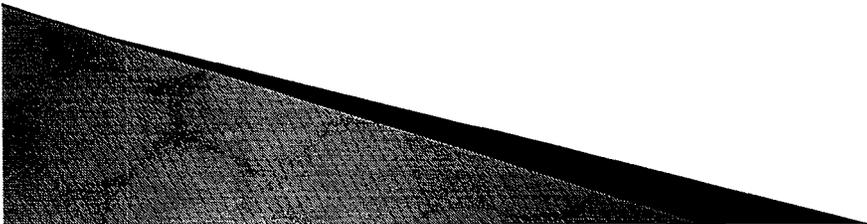
VI. DNR REGULATIONS ON GRAVEL REMOVAL

- ▶ Beginning around 2008, DNR placed sharp limits on the removal of creek rock.
- ▶ Only 25 cubic yards were allowed to be taken out without notice to the department. See 312 IAC 10-5-9.
- ▶ Otherwise limit is 50 cubic yards unless it is removal of creek gravel related to a flood. See 312 IAC 10-5-10
- ▶ Anyone wanting to remove creek gravel has to comply with numerous regulations under 312 IAC 10-5-10:
 - written notice
 - identify route to and from getting gravel; limits on access
 - limits on type of equipment
 - signs
 - 30 day period
 - No removal of gravel during April, May or June which is fish spawning a few stray puddles with minnows in them. season. There are no fish in these “dry” creeks. At best there are
 - approval of plan from fish and wildlife which could impose additional conditions.



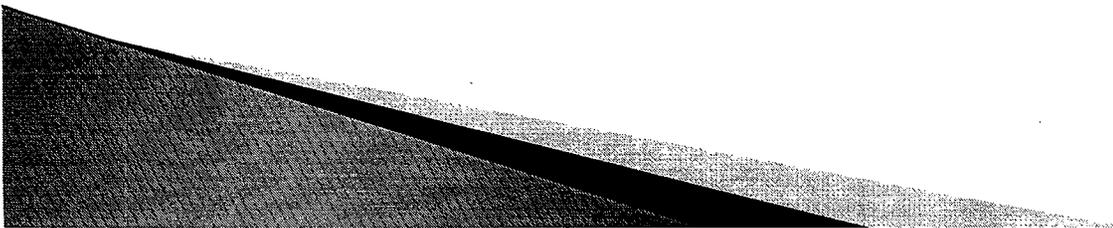
VII. POSSIBLE CHANGES IN LAW

- ▶ First, we need to realize that we have a valuable natural resource in these “dry” creeks, i.e. creek gravel. We need to allow people to remove that gravel. Doing so provides a cheaper source of gravel for consumers but more importantly clears the creeks of rock obstructions that cause flooding.
- ▶ One problem is that DNR is using a one size fits all policy when it comes to creeks. Without the presence of water, the rocks in these “dry” creeks do not break down and simply build up in the creek channels leading to flooding and erosion along the banks.



VII. POSSIBLE CHANGES IN LAW (cont.)

- ▶ The 50 cubic yard limit is far too restrictive and is resulting in a build up of gravel bars that obstruct the creek flow. It is not clear why there has to be any limit at all on these dry creeks, but certainly not a 50 cubic yard limit.
- ▶ Onerous regulations associated with 210 IAC 10-5-10 need to be repealed. They do nothing to protect the creek and make it so difficult for a lay person to comply with the law that individuals who dare remove creek rock will inevitably be flagged for violations.
- ▶ Bottom line is that DNR regulations, especially as applied to “dry” creeks undermines the legislative intent for flood control set forth in IC 14-28-1 et seq.





Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

C 14-28

ARTICLE 28. FLOOD CONTROL

C 14-28-1

Chapter 1. Flood Control

C 14-28-1-1

Legislative intent

Sec. 1. The following are declared:

(1) The loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. To prevent and limit floods, all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana should be regulated, supervised, and coordinated in design, construction, and operation according to sound and accepted engineering practices so as to best control and minimize the extent of floods and reduce the height and violence of floods.

(2) The channels and that part of the flood plains of rivers and streams that are the floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways.

(3) The water resources of Indiana that have been diminishing should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(4) A master plan or comprehensive plan for the entire state to control floods and to accumulate, reserve, and protect the water resources should be investigated, studied, and prepared, policy and practices should be established, and the necessary works should be constructed and placed in operation. *As added by P.L. 1-1995, SEC. 21.*

C 14-28-1-1.2

Boundary river" defined

Sec. 1.2. "Boundary river", for purposes of this chapter, means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

As added by P.L. 135-1997, SEC. 11.

C 14-28-1-1.3

Boundary river floodway" defined

Sec. 1.3. "Boundary river floodway", for purposes of this chapter, means the floodway (as defined by C 14-8-2-102) of a boundary river.

As added by P.L. 135-1997, SEC. 12.

C 14-28-1-2

Flood control" defined

Sec. 2. As used in this chapter, "flood control" means the following:

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preconstruction elevation.

(10) The outlet structure shall:

(A) be supported by a headwall, sloped wall, or anchored end section; and

(B) conform to the bank of the waterway.

(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.

(12) Construction debris and material not used as backfill shall be removed from the floodway.

(c) A person who elects to act under this section must comply with the general conditions under subsection (b). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546; errata filed Jan 16, 2002, 1:14 p.m.: 25 IR 1906; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3880; readopted filed Jul 21, 2008, 12:00 p.m.: 20080813-IR-312080072RFA*)

312 IAC 10-5-9 Creek rock removal from a nonnavigable waterway; general license without notice

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 9. (a) This section establishes a general license without notice for the removal of creek rock from a waterway that is subject to IC 14-28-1. A person must:

(1) own; or

(2) have written permission from a person who owns;

the parcel of a waterway where creek rock is removed in order to qualify under this section.

(b) Without a written license under IC 14-28-1 and without notice to the department, a person may remove creek rock from the parcel, if the person satisfies each of the following conditions:

(1) Not more than twenty-five (25) cubic yards of creek rock is removed within one (1) calendar year from the parcel.

(2) The creek rock is removed exclusively by the following methods:

(A) Hand.

(B) Hand tools.

(C) Scoop-type excavating equipment. The use of a bulldozer or rock crusher does not qualify under this clause.

(3) The creek rock is removed between July 1 and March 31 of the following year. This restriction does not apply to creek rock, other than slab rock, that is removed from a sand bar or gravel bar and was deposited during any of the following:

(i) a regulatory flood;

(ii) a flood greater than a regulatory flood; or

(iii) a flood for which the governor declares a disaster.

(4) The creek rock is removed only from sand bars and gravel bars within the waterway. The excavation of waterway banks does not qualify under this subdivision.

(c) A navigable waterway is governed by 312 IAC 6. (*Natural Resources Commission; 312 IAC 10-5-9; filed May 12, 2009, 11:27 a.m.: 20090610-IR-312080614FRA*)

312 IAC 10-5-10 Creek rock removal from a nonnavigable waterway; general license with notice

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 10. (a) Except as provided in subsection (j), this section establishes a general license with notice for the removal of creek rock from a waterway that is subject to IC 14-28-1. A person must:

(1) own; or

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(2) have written permission from the person who owns;
the parcel of a waterway where creek rock is removed in order to qualify under this section.

(b) Without a written license under IC 14-28-1 but with notice to the department, a person may remove creek rock from the parcel, if the person complies with this section.

(c) A person who wishes to remove creek rock under this section must file a written notice, on a department form, with the division of fish and wildlife. The notice must include the following information:

(1) Identification of the waterway and a description of the parcel where the removal would occur, including the following:

(A) Terminal points of the project.

(B) Access routes to the project referenced to a readily discernable landmark, such as a bridge or a dam.

(C) The project and access routes must be illustrated on at least one (1) of the following:

(i) A United States Geological Survey topographic map.

(ii) Another map determined by the department to satisfy the purposes of this clause.

(2) The name, address, and telephone number of the person who is seeking the general license. If any of the activities would be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.

(3) Documentation to demonstrate the person seeking the general license is the owner of the parcel (or has written permission from the person who is the owner of the parcel).

(4) A statement in which the person agrees to comply with the following conditions:

(A) Creek rock would be removed exclusively through the use of hand-operated equipment or mechanical means, such as an excavator with a bucket with minimal fallback, and would not be pushed and stockpiled. Examples of equipment that qualify for use under this clause include a small tractor, backhoe, or front-end loader. Examples of equipment that do not qualify under this clause include a bulldozer or a rock crusher.

(B) No access road would be constructed to do any of the following:

(i) Destroy more than one-half (1/2) of an acre of trees within a floodway.

(ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.

(iii) Raise the elevation of the floodplain.

(iv) Cross a waterway.

(C) Access to the project would be exclusively from one (1) side of the waterway.

(D) Not more than fifty (50) total cubic yards of creek rock would be removed from the waterway within one (1) calendar year. This restriction does not apply to creek rock, other than slab rock, that is removed from a sand or gravel bar and was deposited during any of the following:

(i) a regulatory flood;

(ii) a flood greater than a regulatory flood; or

(iii) a flood for which the governor declares a disaster.

(E) Extraction would be limited to the following:

(i) July 1 through March 31 of the following year.

(ii) A maximum of thirty (30) days.

(d) The following areas do not qualify for a general license under this section unless approved in writing by the department:

(1) Within one-half (1/2) mile of any of the following:

(A) A species listed in the "Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern)", Information Bulletin #2, Fourth Amendment (August 1, 2007), published in the Indiana Register at 20070815-IR-312070469NRA.

(B) A known mussel resource.

(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(2) Within a river or stream listed in the Outstanding Rivers List for Indiana, Information Bulletin #4, Second Amendment (May 23, 2007), published in the Indiana Register at 20070530-IR-312070287NRA.

(e) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the division of fish and wildlife shall provide a written response that does one (1) of the following:

(1) Approves the terms of the notice.

(2) Requires additional information with respect to any of the following:

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- (A) the effects upon the capacity of the floodway;
- (B) the safety of life or property; or
- (C) the effects upon fish, wildlife, or botanical resources.

(3) Provides additional conditions to the approval.

(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1.

If the department does not respond under this subsection in a timely fashion, the written notice is approved.

(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (e) must be posted by the person in a conspicuous location at the site of the project.

(g) The authorization for activities conducted under this section expires two (2) years after the date of issuance by the department.

(h) The authorization for activities conducted under this section does not waive permit requirements of other state, federal, or local government.

(i) A person who elects to act under this general license with notice must comply with:

(1) the terms of the written notice provided under subsection (c); and

(2) any additional conditions provided by the department under subsection (e).

Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or this article.

(j) A navigable waterway is governed by 312 IAC 6. (*Natural Resources Commission; 312 IAC.10-5-10; filed May 12, 2009, 11:27 a.m.: 20090610-IR-312080614FRA; errata filed May 27, 2009, 11:11 a.m.: 20090624-IR-312080614ACA*)

312 IAC 10-5-11 Prospecting in a nonnavigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5;

Affected: IC 14-28-1; IC 14-29-1; IC 14-22-34-12

Sec. 11. (a) This section governs prospecting in a nonnavigable waterway that is subject to IC 14-28-1 and this article.

(b) Unless otherwise provided in this section, a person must not engage in prospecting in a nonnavigable waterway except as approved by the department in a written license.

(c) Without a written license or notice to the department, a person may engage in prospecting in a nonnavigable waterway upon compliance with each of the following conditions:

(1) Lawful ingress to and egress from the waterway is obtained.

(2) Written permission is obtained from the property owner or owners.

(3) Prospecting is performed exclusively by one (1) or a combination of the following processes:

(A) Without the use of equipment.

(B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.

(C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.

(4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.

(5) Activities occur exclusively between sunrise and sunset.

(6) No mussels are taken as prescribed by 312 IAC 9-9-3.

(7) No endangered species are taken as prescribed by IC 14-22-34-12.

(d) In addition to the waterways disqualified by 312 IAC 6-5-10(d), the following waterways do not qualify for prospecting under subsection (c):

(1) Cedar Creek in Allen County and Dekalb County from river mile 13.7 to the confluence with the St. Joseph River.

(2) Galien River in LaPorte County and its tributaries.

(3) North Fork of Wildcat Creek in Tippecanoe County and Carroll County from river mile 43.11 to river mile 4.82 and the South Fork of Wildcat Creek in Tippecanoe County from river mile 10.21 to river mile 0.00.

(4) Trail Creek in LaPorte County and its tributaries.

(5) Tributaries of the East Branch of the Little Calumet River.

(6) Tributaries of the St. Joseph River that have their confluences downstream of the Twin Branch Dam in Mishawaka.



Picture 1: photo of Paul Buchanan's farm.



Picture 2: photo of Dry Fork Creek facing bridge.



Picture 3: Dry Fork Creek showing incline.



Picture 4: Dry Fork Creek taken from bridge.



Picture 5: another view from bridge.



Picture 6: View of Dry Fork Creek after heavy rain showing water flow that collects on one side due to incline.

Comparison of surrounding states natural resources conservation funding mechanisms

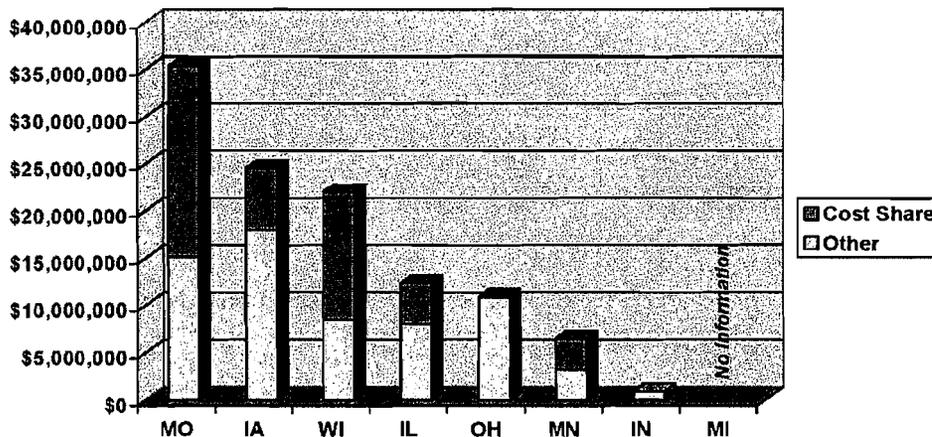
Provided to the Water Resources Study Committee

August 26, 2010

Notables

- In 2010 the Central Indiana Land Trust, in partnership with The Conservation Fund, published the first green infrastructure plan for central Indiana, and possibly the first regional plan in the state. What is green infrastructure: “The infrastructure that sustains a community is both built (e.g. roads, utilities) and natural (e.g. drinking water, clean air, forests,” and healthy soils.) A green infrastructure plan is the big picture, including networks of natural and park lands, green roofs, and ecologically friendly storm water management systems.
- In Indiana our drinking water comes from both groundwater (72%) and surface waters (28%). Implementing best management practices and protecting natural lands are proven components in providing clean drinking water, through filtration of pollutants from runoff and recharge of groundwater sources.
- A one-acre wetland can typically store about three-acre feet of water, or one million gallons – Indiana has lost 85% of its wetlands, or about 4.7 million acres. Today there are approximately 813,000 acres of wetlands.
- 2,882 stream segments in Indiana are listed on the 2010 303(d) list of impaired waters. Impairments include E.coli, impaired biotic communities, PCB’s in fish tissue, and mercury in fish tissue.
- This fall, Iowa voters will decide whether or not to amend their constitution to dedicate 3/8 of 1% of sales tax the next time the legislature increases the sales tax.
- Graph below depicts the amount of state funding specifically to Soil and Water Conservation Districts in the Midwest.

Total 2005 State Funding Appropriations to Conservation Districts per State



Missouri

State Characteristics

- Population of 5.6 million
 - 70% urban; 30% rural
- 69,704 square miles in size
- 81 State parks

Mechanisms to fund natural resources conservation

1. Missouri Conservation Sales Tax

- a. Passed in 1976; constitutionally protected
- b. 1/8th percent sales tax
- c. Revenue in FY 2004: \$93 million
- d. Money goes to the Department of Conservation, which manages fish, forest, and wildlife resources
- e. Money is administered by the Conservation Commission with its members appointed by the Governor

2. Parks & Soil Sales Tax

- a. Passed in 1984 to support soil and water conservation along with state parks
- b. 1/10th percent sales tax
- c. Revenue in 2008: \$82 million
 - i. Revenue is split 50/50 between soil/water & the parks
- d. Contains a sunset provision
 - i. Voted on and passed by citizens four times so far
 - ii. Latest vote in 2006 passed by a 2 to 1 margin; renewed for another 10 years

Ohio

State Characteristics

- Population size is 11,485,910
- Land size 40,948 square miles
- # of parks

Mechanisms to fund natural resources conservation

1. Bonds

- a. \$200 million bond for parks and recreation passed via a constitutional amendment in 1993 – all funds have since been allocated

2. Clean Ohio Fund

- a. \$200 million statewide, 4-year bond passed in November 2000 by voters
- b. Fund is divided into four sub-programs: Brownfield Revitalization, Clean Ohio Conservation Program, Farmland Preservation, and Recreational Trails

- c. In 2008, voters overwhelmingly approved a ballot initiative that provides another \$200 million towards the Clean Ohio Fund

3. Other

- a. Tax check-off
 - i. Provides revenue to fund land acquisition
- b. License plate programs
 - i. Sportsman's plates, conservation plates, Ohio scenic river plate, and Ohio state park plate
 - ii. Each program supports projects that help acquire land for conservation, wildlife or water quality
- c. Water Pollution Control Loan Fund
 - i. Effort to target non-point source pollution that threatens water resources
 - ii. 90% of funding has been used for land acquisition

Illinois

State Characteristics

- o Population of 12.8 million
 - o 88% urban; 12% rural
- o 55,584 square miles in size
- o 42 State parks

Mechanisms to fund natural resources conservation

1. Open Space Lands Acquisition & Development

- a. Dedicated funding source statutorily enacted in 1989
- a. Goal is to provide grants to local governments for acquisition and development of parks and open spaces. Matches funds provided by park districts, municipalities, forest preserve districts and other local governmental entities, providing up to 50% of funding.
- b. 35% of Real Estate Transfer Tax
- c. FY 2005 revenue: \$38 million; FY 2009 revenue: \$14 million

2. Natural Areas Acquisition Fund (NAAF)

- a. Dedicated funding source statutorily enacted in 1989
- b. Goal is the protection of natural areas, wetlands, and other high quality natural communities
- c. 15% of Real Estate Transfer Tax
- d. FY 2005 revenue: \$16.3 million; FY 2009 revenue: \$6 million

3. Conservation 2000

- a. Statewide conservation program designed to promote ecosystem-based management of privately held land in a public-private partnership. Regional based program funds 9 programs across 3 state agencies.
- b. Most of its funding is dedicated to planning and management activities, but a portion of its funds go towards land acquisition.
- c. Originally set to expire in 2006, but was extended through 2009.

- d. General fund appropriations. Appropriations dropped from \$13.4 million in FY 2002 to \$2.78 million in 2007.
 - e. Even when legislature appropriates funds, not assured of receiving funds. It is largely defunct now due to economy.
- 4. Tax Check-Off**
- a. Nongame tax check-off that funds the Illinois Natural Heritage Program.
 - b. Averages \$206,000 per year, but is being challenged by more check-off options.
- 5. Local Financing**
- a. Municipalities, counties, conservation districts and park districts have a number of local financing options for open space including, bonds, sales taxes and property taxes.
 - b. OSLAD matches funds provided by park districts and other local government entities, providing up to 50% of the funding. Grant awards up to \$750,000 are available for acquisition projects, while development/renovation projects are limited to \$400,000 grant maximum.
 - c. SWCDs are not taxing units of government but do receive funding from local sources like Indiana. Also receive appropriations from legislature, but have been woefully underfunded and subjected to sweeps or non-appropriation.

Indiana

State Characteristics

- Population of 6.3 million
 - 71 % Urban: 29 % rural
- 35,866 square miles in size
- 25 State parks & recreation areas

Mechanisms to fund natural resources conservation

1) Non-game Wildlife Tax Check-off

- a) The only source of funding for the DNR non-game program, which researches and protects threatened and rare species.
- b) Averages about \$250,000 per year.

2) Indiana Heritage Trust

- a) The IHT and the environmental license were enacted in 1992. This was the first specialty license plate.
- b) It is the state's only program dedicated for natural lands acquisition, **including such places as state and local parks, forest lands, fish and wildlife habitat, nature preserves, recreation areas and historic sites.**
- c) Receives funding through three sources: general fund appropriations, environmental license plate revenues and partner matching dollars. Receives funding through two sources:
- d) Appropriations (which have been a mix of general fund and BIF), environmental license plate revenues (which are declining with the proliferation of special plates). Additionally, half of the money in the fund is placed in the Discretionary Account which requires for every \$3 of state funding, there is \$1 of nonstate money brought to the project – in reality it has been leveraged at a higher ratio).
- e) Since 1995 IHT appropriations have averaged approximately \$1.5 million/year; total appropriations add up to \$28.5 million (including Received \$3 m in start up funds from existing

accounts); **The environmental plate is the #1 specialty license plate with total funds of \$26 million.**

3) Clean Water Indiana

- a) Enacted in 1999, the CWI Program was created to protect and enhance the water quality of Indiana's lakes, rivers and streams, by reducing the amount of polluted storm water runoff from urban and rural areas entering surface and ground water.
- b) Appropriations History:
- c) Receives approximately \$3.7 million/year in cigarette tax funds (since 2005)
- d) Since inception, CWI has only received three additional biennial appropriations:
 - 2001 \$2 million from Build Indiana Fund (only half was allocated)
 - 2007 \$1 million
 - 2009 \$500,000 (not allocated as of yet)

4) Boat Fee (LARE)

- 5) Boat owners are charged an annual fee of \$15 to the state's Lake and River Enhancement Program (LARE). Provides approximately \$1 million/year for cost-share projects and grants.
- a) Appropriations last three biennium:

	1. LARE Fees	2/3 LARE Fund	1/3 Enforcement Fund
FY 2005-06	\$5,050,729	\$4,685,811	\$ 364,918
FY 2007-08	\$6,325,856	\$4,685,856	\$1,640,000
FY 2009-10	\$6,194,682	\$4,603,882	\$1,590,800

6) Trust Fund/Direct Appropriation

- a) The Indiana Heritage Protection Act, passed in 1983, created the first public-private partnership for natural lands protection. The fund was established by a \$5 million one-time general appropriation, which was matched by a contribution to the fund by The Nature Conservancy.

Minnesota

State Characteristics

- o Population of 5.2 million
 - o 71 % Urban: 29 % rural
- o 76,610 square miles in size
- o 66 State parks

Mechanisms to fund natural resources conservation

1) Non-game Wildlife Tax Check-off

- a) Established in 1980; a tax check-off on personal income tax form.
- b) Raises approximately **\$1 million/year** for non-game research and habitat acquisition.

2) Environment and Natural Resources Trust Fund

- a) Constitutionally protected funding enacted by the voters in 1988 and renewed in 1998 through 2024. The program dedicates **\$28-35 million/year** (\$28 M is FY 2005 data). Hoped to reach \$1 B by 2025.
- b) Mechanism: 40% of the net state lottery proceeds

- c) Funds projects with long-term benefits: land acquisitions, biodiversity surveys, and innovative community –based conservation projects.

3) Stamp Program-

- a) Trout & Salmon
- b) Pheasant
- c) Duck
- d) Wild Turkey
- e) Deer License surcharge

4) Payment in-lieu-of-sales Tax on Lottery Tickets

- a) MN lottery is exempt from general sales taxes so the state imposes a 6.5% in-lieu-of-sales tax on lottery tickets.
- 5) In 2000, lottery funds were redirected to fund both fish & game and parks & trails receive 72% of the funding the other 28% goes to the general fund. \$25-40M/biennium

6) Constitutional Amendment – Portion of Sales tax

- a) Constitutional amendment was renewed by voters in November 2009. Amendment dedicated 3/8ths of one percent of state sales tax over 25 years to conservation.
- b) \$86 M – habitat, \$86 M - water
- c) Funds arts, trails, water and habitat.

7) License Plate

- a) Established in 1995 to protect critical habitat; proceeds are nearly \$2M/year.
- b) In 1986, the Reinvest in Minnesota program RIM was est. by a recommendation from the Citizen’s commission to Promote Hunting and Fishing.
 - i) \$2M from Legislature/ every other year (Bonding)
 - ii) \$2M from license plates/ annual
 - iii) private donations of land and cash

8) Bonds for Land Acquisition

- a) The legislature approves capitol budget projects every other year, including selling bonds for land acquisition. In the period from 1971 to 2001, nearly \$1 billion has been appropriated for land and restoration. From \$40 M approximately year.

9) County Property Tax Exemption

- a) Native Prairie Tax Exemption Program was created in 1980. MN has approximately 500 landowners and 12,000 acres enrolled in this program statewide.
- b) Wetlands Tax Exemption Program was created in 1979.

Iowa

State Characteristics

- Population of 3 million
- 55,869 square miles in size
- 69 State parks

Mechanisms to fund natural resources conservation

1. Iowa Environmental Protection Charge (EPC)

- a. Royalties from all deposits of petroleum products into a non-exempt underground and non-exempt above ground storage tanks in Iowa.
- b. The rate is 1 cent/gallon of petroleum products deposited in qualifying tanks.
- c. The funds are deposited into the Iowa Comprehensive Petroleum Underground Storage Tank Fund. This fund is administered by a six member board that uses the fund to clean up the release of any petroleum products and investigate and clean up past contamination.
- d. Collected \$20,995,594.55 in FY 2005

2. Wildlife and Duck Stamp Revenue

- a. In 1996, the Wildlife Habitat Stamp Program generated \$600,000 per year and the state Duck Stamp Program generated \$150,000 per year

3. Resources Enhancement and Preservation (REAP)

- a. Passed in July 1989 by the legislature for open space, county conservation, city parks, state land management and conservation.
- b. It is authorized at \$30 million/year for 10 years (\$20 million/year of standing appropriation, \$10 million/year from lottery proceeds).
- c. It has only been funded at between \$3-18 million in recent years.

4. Lottery

- a. In 1996, the state established a 1:1 match for distribution of the portion of lottery proceeds slated for natural areas protection. Approximately \$500,000/year in the first year.

5. Constitutional Amendment for Conservation

- a. In 2006, legislation passed that created the Iowa Sustainable Natural Resources Funding Task Force and their findings were issued in April of 2007. Legislation was passed to establish "Sustainable Nat. Res. Funding Interim Study Committee" to look at these issues and the advisory committee's findings. Set the stage for leg. To be introduced in House and Senate Nat. Res.
- b. Legislature approved it as a constitutional amendment on the 2010 ballot for 3/8th of 1 percent of the next increase of the sales tax to be constitutionally protected for conservation. The sales tax has been at 6.25% over the last 15 years; the next increase will likely be 7%.
- c. Estimated at approximately \$150 million/year (more than double the current funding), these funds would be used for fish and wildlife habitat, natural areas, parks and trails, as well as soil and water conservation.

Michigan

State Characteristics

- Population of 10 million
- 56,803 square miles in size
- 87 State parks

Mechanisms to fund natural resources conservation

1. Michigan Natural Resource Trust Fund

- a. Passed in 1976; constitutionally protected
- b. Acquisition of land for public recreation and environmentally significant lands
- c. Oil and gas lease revenues; average \$29.4 million per year
- d. 75% goes towards land acquisition and 25% towards capital improvements

Wisconsin

State Characteristics

- Population of 5.6 million
 - 68 % Urban: 32% rural
- 54,310 square miles in size
- 46 State parks

Mechanisms to fund natural resources conservation

1. Knowles-Nelson Stewardship Program

- a. Passed in 1989; reauthorized in 2007 through 2020
- b. General obligation bonds
- c. In 2010, funding will increase to **\$86 million per year - a 40% increase over the current funding level.**
- d. Goal is to preserve valuable natural areas and wildlife habitat, protect water quality and fisheries, and expand opportunities for outdoor recreation.

2. Non-game Wildlife Tax Check-off

- a. Established in 1996, this program receives funds from the personal income tax check-off and corporate tax returns (added in 2000).
- b. Approximately **\$600,000/year** is dedicated for non-game research and habitat acquisition. It is matched 1:1 with state general tax funds.

3. Environmental License Plate Program

- a. Established in 1995 to fund the Bureau of Endangered Resources.
- b. Approximately \$500,000/year (in FY 1997).

1. Department Funding

- The Department of Natural Resources spends approximately \$120 million/year on fish and wildlife activities (based on FY 2004-05 budgets).
 - \$68 million is from the sale of hunting and fishing licenses
 - \$20 million in Federal dollars
 - \$18 million in bonds to acquire hunting and fishing land (Knowles-Nelson)

- \$8 million from state general fund
- Wisconsin has become increasingly reliant on user fees and has begun to search for other sources of funding for the DNR. The reliance on user fees has led to a pattern of raising fees to maintain funding levels. This has had the effect of causing resentment in the gaming/fishing community who feel they bear too much of the burden.

Kentucky

State Characteristics

- Population of 4.3 million
- 40,598 square miles in size
- 52 State parks and public use areas

Mechanisms to fund natural resources conservation

1. Mineral Tax/License Plate Sales/Environmental Fines

- a. In 1994, legislators passed enabling legislation for the Kentucky Heritage Land Conservation Fund.
- b. Monies are derived from a portion of the unmined mineral tax, monies received from environmental fines, and the sale of environmental license plates.
- c. The money generated is used to purchase land from willing sellers for nature preserves, state parks and forests, wildlife management areas, recreation and environmental education areas, wild river corridors, and wetlands.
- d. Distributed in as follows:
 - i. 10% to the Department of Fish and Wildlife Resources
 - ii. 10% to the Department of Parks
 - iii. 10% to the Division of Forestry
 - iv. 10% to the Nature Preserves Commission
 - v. 10% to the Wild Rivers Program
 - vi. 50% to Local Governments, State Colleges, Universities, and other state agencies. In
 - vii. From 1995-2007, \$35.3 million with 29,000 acres purchased.

2. Purchase of Agricultural Conservation Easement Program (PACE)

- a. PACE was established in 1994.
- b. Initial funding was provided through a \$10 million state bond issuance paid by tobacco settlement funds.
- c. PACE gives the state the authority to purchase agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture. Donors of conservation easements are eligible to receive federal and state income tax and estate tax benefits.
- d. Received \$400,000 annual appropriation from the state, but has recently been left unfunded.
- e. Last tally showed over 600 applications for easements with no money available.

3. Tax Check Off

- a. Raises approximately \$70,000 each year.

- b. Proceeds go to the Nature and Wildlife Fund with funding split between the Kentucky Department of Fish and Wildlife Resources and the Kentucky State Nature Preserves Commission.
- c. The Nature and Wildlife Fund protects and manages state nature preserves and protects nongame wildlife.
- d. The two agencies cooperate on programs that protect rare plants and animals; acquire and protect forests, wetlands, and prairies; and manage wildlife.

4. Local Financing

- a. Financing options for parks and open space include general obligation bonds, property taxes and the occupational license tax (income tax).
- b. There are no local sales taxes in Kentucky.
- c. Local governments generally do not seek voter approval for bond issuances.
- d. A property tax for PDRs or park expansion/improvements was instituted by the legislature and these do require a referendum, which can be initiated by voters or by the County/Urban County Council.

Background

In the spring of 2009 a small group of committed organizations met to discuss Indiana's investments in conservation. Organizations include: Indiana Association of Soil and Water Conservation Districts, Indiana Conservation Alliance, Indiana Farm Bureau, Indiana Wildlife Federation and The Nature Conservancy.

The group has a vision to grow our state's investment in water, wildlife and working farms and forests throughout the state. Effective conservation is strategic and planned; stable funding is an important part of that. The conservation community understands that the time is not right to increase funding, but we do believe that the time is right to explore, to analyze and to look for ways Indiana can position itself to be ready when the economy does turn around. Our hope is that Indiana would have its plan for dedicated conservation funding in place when state revenues are on a positive growth trend. We recognize the process will take time and effort, but the result will be protection of our natural resources for generations of Hoosiers to come.

We have spent considerable time gathering information from other successful states with conservation funding streams. This information and these contacts will be vital as we move forward.

Moving Forward

We are currently working with a few members of the General Assembly with the hopes of establishing a legislative task force to look at the issue of sustainable funding for Indiana's natural resources, including water, wildlife, working farms and forests, public lands and private lands. There are numerous federal programs that are under-utilized, such as the State Wildlife Grants and Land and Water Conservation Fund, and Conservation Reserve Enhancement Program. It is possible that with increased funding we could broaden the impact of these programs. There are a variety of examples of other Midwestern states where conservation funding is exemplary, but to name a few:

1. Michigan takes a portion of the royalties from oil and gas leases to provide \$29 million/year for land acquisition and capital improvements.
2. Illinois dedicates 15% of the Real Estate Transfer Tax, which translates into \$38-\$14 million/year for natural lands protection.
3. In Nov 2008, Minnesota passed the largest statewide ballot for conservation in state history. Minnesotans dedicated 3/8th of 1 percent of their sales tax for conservation and the arts, thus raising \$86 million/year for habitat and \$86 million/year for water.

Next Steps

1. To really evaluate the funding picture we need a thorough analysis of what is needed: What are the historic and current uses of Indiana's conservation dollars? Where does Indiana stand in comparison to surrounding states in conservation spending? Where should we be going and how do we get there?
2. Meet with partners from NRCS, IDEM, ISDA, and DNR to gather information to questions above.
3. Continue to meet with key legislators.
4. Encourage the Legislative Council to assign the topic of sustainable natural resources funding to the Natural Resources Summer Study Committee.

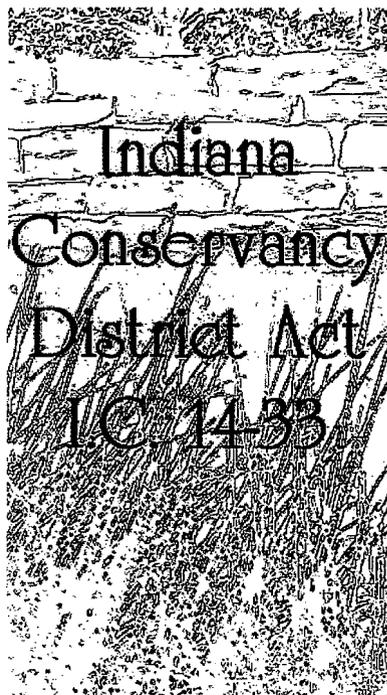
For more information about the Indiana Conservancy District Act contact:

Indiana Department of Natural Resources
Division of Water
402 West Washington Street,
Room W264
Indianapolis, IN 46204
Attention: Project Development

or call (317)-232-4160 or toll free at
1-877-928-3755 (1-877-WATER55)

Email: water_inquiry@dnr.state.in.us

<http://www.IN.gov/dnr/water>



What is a Conservancy District?

The Indiana Conservancy District Act, I.C. 14-33 provides a vehicle by which landowners can organize a special taxing district to solve problems related to water resources management. Problems that can be addressed through the Indiana Conservancy District Act are as follows:

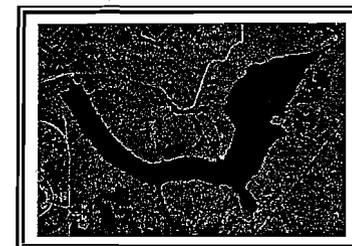
- 1) Flood prevention and control.
- 2) Improving drainage.
- 3) Providing for irrigation.
- 4) Providing water supply, including treatment and distribution, for domestic, industrial, and public use.
- 5) Providing for collection, treatment, and disposal of sewage and other liquid wastes.
- 6) Developing forests, wildlife areas, parks, and recreational facilities where feasible in connection with beneficial water management.
- 7) Preventing the loss of topsoil from of injurious water erosion.
- 8) Storage of water for augmentation of stream flow.
- 9) Operation, maintenance, and improvement of any work of improvement for water based recreational purposes, or other work of improvement that could have been built for any other purpose authorized by the Act.

How can a Conservancy District be formed?

To form a district, a petition is circulated in the area to be included in the district and is filed in the circuit court of the county having the most land in the proposed district.

What area can be in a Conservancy District?

Boundaries of a conservancy district are based upon the identification of properties expected to be benefited by the establishment of the district. Any area may be included in a district regardless of its political boundaries; however, the district needs to be contiguous with all other parts of the district and cannot overlap another district established for the same purpose.



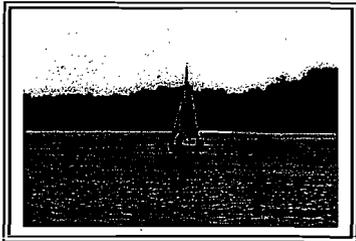
**Exhibit F
Water Resources Study Committee
August 26, 2010**

How is a Conservancy District established?

Once the circuit court determines the petition bears the necessary signatures and is correct as to form and content, the court will refer the petition to the Natural Resources Commission, which will determine whether the proposed district:

- 1) Appears to be necessary.
- 2) Holds promise of economic and engineering feasibility.
- 3) Offers benefits in excess of costs and damages.
- 4) Serves the public health immediately or prospectively.
- 5) Proposes to cover and serve a proper area.
- 6) Could be compatible with other water management or water supply projects.

When the circuit court receives the Commission's findings, the court will schedule a hearing for the establishment of the district.



What does it cost to form a Conservancy District?

The cost to establish a district varies with the size of the proposed district and is estimated to cost a minimum of \$5,000. This figure does not include the cost of the district plan and the proposed works of improvement.

Who manages the Conservancy District?

After a conservancy district is established by the circuit court, an initial board of directors is appointed by the county commissioners. The subsequent directors are then elected by the freeholders of the district.

Who controls the work of a Conservancy District?

The jurisdiction over activities of a conservancy district ultimately lies with the circuit court that established the district.

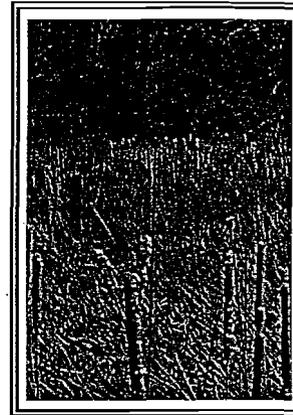
The Natural Resources Commission acts as a friend to the court by providing technical review and recommendations for specified district activities, which include: **establishment, district plan, unit of work, addition of area, addition of purpose, and dissolution of a district.**

The day to day operations of a conservancy district; however, are accomplished through the conservancy district's board of directors.

What is the role of the Board of Directors?

One of the first responsibilities of the initial board of directors is to develop a district plan. The district plan consists of an engineering report that sets forth the general, comprehensive plan for accomplishment of the purpose or purposes for which the district was established.

The board of directors shall be responsible to place the district plan in operation by implementing the approved purpose(s) and by providing operation and maintenance as provided for in the district plan.



Who approves the district plan?

After the board of directors prepares the district plan, it must be reviewed and approved by the Natural Resources Commission. If the plan accomplishes, in an economical manner, the purpose or purposes for which the district is established, it will be forwarded to the circuit court for review and approval.

How does a Conservancy District pay for its works of improvement?

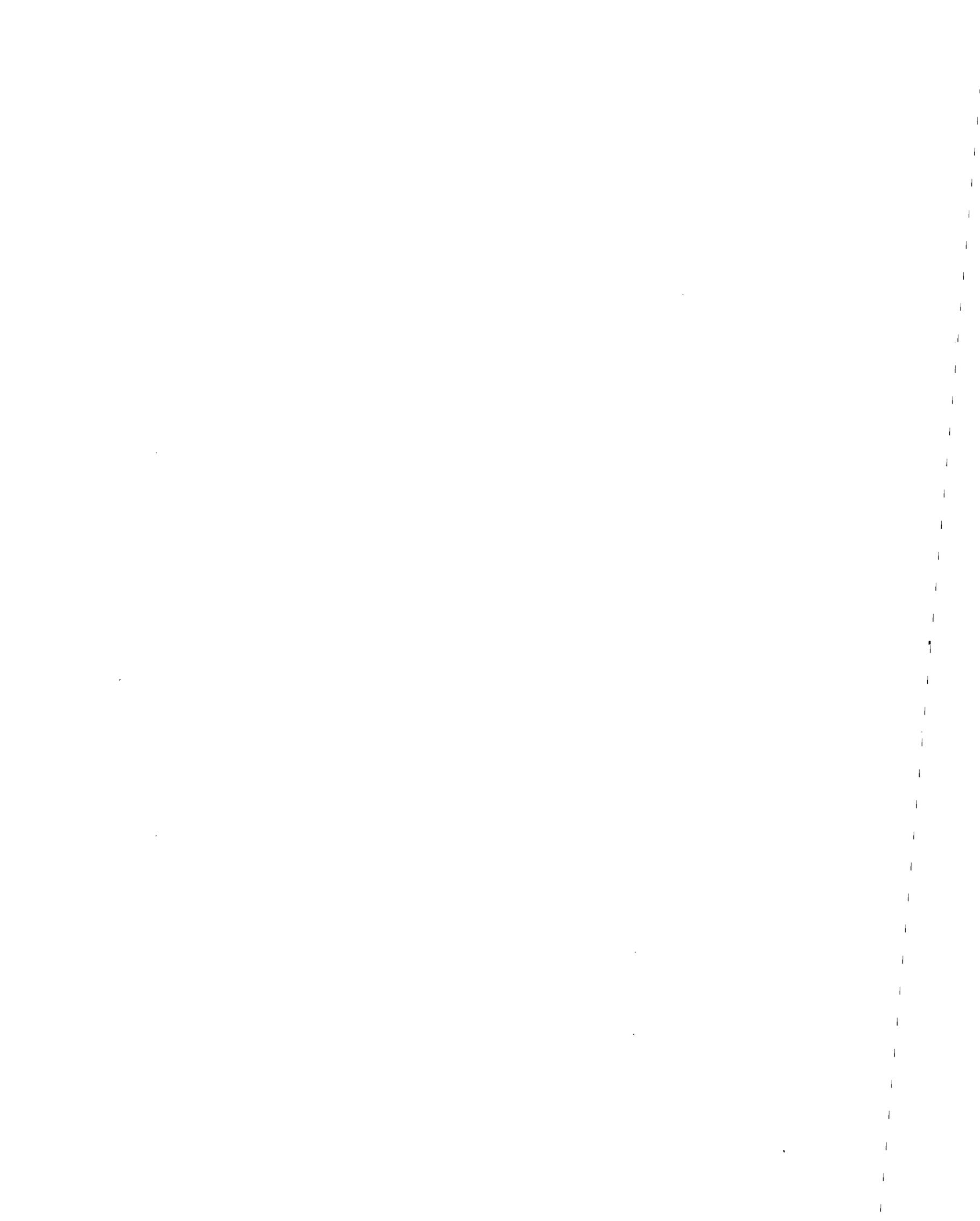
Expenses and obligations of the district may be paid from any of the following:

- 1) The receipt of gifts from any source.
- 2) The receipt of funds from governmental agencies.
- 3) The receipt of funds from the sale of services accomplished by the purpose or purposes for which the district was established.
- 4) The receipt of funds from the collection of assessments from land that receives exceptional benefits from the operation of the district plan.
- 5) The collection of assessments for maintenance and operation of works of improvement.

IC 14-33-2-20

Expenses

Sec. 20. The expenses of the hearings and other expenses of necessary investigations and surveys, together with any expense incurred by the commission in subsequent studies of district plans, are payable initially out of the general money of the commission. The district shall repay the expenditures, not to exceed thirty percent (30%) of the amount paid by the district to independent private engineers for the preparation of plans, to the commission from the district's planning money. Commission expenses include expenses incurred by an assisting or a cooperating state agency.



NATURAL RESOURCES COMMISSION
Information Bulletin #36 (Fifth Amendment)
Effective April 1, 2010

Subject: Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33).

I. History

A. Background

(1) The development of conservancy districts is an active option for addressing a variety of land use issues at the local level. Freeholders within contiguous geographic areas may use a conservancy district to achieve a dependable drinking water supply, to provide for sewage collection and treatment, to improve flood control, to reduce soil erosion, or to achieve any of numerous other water resource community goals, either singly or in combination. IC 14-33-1-1.

(2) A circuit court determines whether to approve the establishment or dissolution of a conservancy district and has jurisdiction for oversight of an existing conservancy district. IC 14-33-2-26. Management of the district is under the control of a board of directors, selected initially by the county commissioners and subsequently by the freeholders of the district. IC 14-33-5-11.

(3) Important roles are also served by the natural resources commission (sometimes referred to as the "commission") at six crucial stages in the formation, management, and dissolution of conservancy districts. At two of the stages, hearings for public input are required. At the other four, hearings may be requested. These stages also provide the primary forums for the receipt and evaluation of scientific and technical data upon which the court adjudicates and the board manages. In the receipt and evaluation of technical data, the commission brings together reports and analyses of the department of natural resources (sometimes referred to as the "DNR"), acting primarily through the division of water, as well as other state and local agencies. Most common among these are the department of environmental management, state department of health, and utility regulatory commission.

B. Development of Information Bulletin

(1) In 1996, a comprehensive commission policy was established for procedural functions relating to the formation and development of conservancy districts. (Information Bulletin #12, 19 IR 2801, superseded). Four developments were identified by the commission in support of the policy:

(A) The absence of a policy led to public uncertainty and discomfort, particularly among persons who oppose the formation of a conservancy district or who oppose the development of a project within an existing conservancy district. Concerns had been expressed that the conservancy district process should be reevaluated to assure all citizens within the boundaries of a proposed or existing district would have meaningful access to the hearing processes.

(B) The complexity of the economic and environmental issues supported the need for a consistent policy. Not the least of these issues were the regulatory functions of the state agencies and their coordination with local governmental entities bearing upon the functions of conservancy districts.

(C) The commission and the DNR had experienced a statutory evolution regarding hearing processes that had not yet been accommodated for conservancy district hearings. Most noteworthy was IC 4-21.5 (sometimes referred to as the "administrative orders and procedures act" or "AOPA") and the "sunset review" process for these agencies that resulted in 1990 and 1991 legislation.

(D) The recodification of natural resources laws resolved a statutory ambiguity relative to adding territory to conservancy districts. Compare IC 13-3-3-6(a) as recodified at IC 14-33-4-2(b) by P.L.1-1995. In part to address the ambiguity, the commission implemented Information Bulletin #6, published at 17 IR 1836 (April 1, 1994). With the recodification, Information Bulletin #6 was reconsidered and amended.

(2) In response to these developments, Information Bulletin #12 provided guidelines for implementation of conservancy districts processes, where those processes were within the commission's jurisdiction. A flexible guidance was designed to help the commission fully and fairly review pertinent issues. Responsibilities were identified and delegated to the commission's division of hearings, and to the DNR, so as to foster better coordination among these and other agencies.

(3) The primary purposes of Information Bulletin #36 were the (1) refinement of the purposes previously addressed in Information Bulletin #12; (2) integration of the "contiguity" analysis contained in Information

Bulletin #6; (3) clarification of agency treatment of initiatives to add a purpose to an existing district; (4) inclusion of standards for determining whether a district qualifies for the purpose of flood prevention and control; and (5) consideration of conservancy district elections.

(4) The six crucial stages in which the commission serves are considered separately in the information bulletin. These stages are as follows:

- (A) Consideration of technical issues prior to formation of a district.
- (B) Development of a district plan.
- (C) Development of a unit of work.
- (D) Addition of territory to an existing district.
- (E) Addition of a purpose to an existing district.
- (F) Dissolution of a district.

The commission on September 16, 2003, approved amendments to this information bulletin, for additions to conservancy districts in Hendricks County. These amendments were published in the Indiana Register and became effective on November 1, 2003. In 2004, the Indiana general assembly amended [IC 14-33-4-2](#) by deleting the extraordinary requirements for Hendricks County. The legislation became effective July 1, 2004, and the information bulletin was amended to remove the 2003 amendments.

In January 2010, the commission approved amendments to help implement [IC 14-33-2-20](#), which provides for the repayment by a conservancy district to the commission, the DNR, and other state agencies for certain expenses.

II. Consideration of Technical Review Prior to Formation of a District

A. Petition Referral

(1) As provided in [IC 14-33-2-17\(b\)](#), after a court determines a petition to create a district is in proper form and has the needed signatures, the petition is referred to the commission for technical review. The issues for review are set forth in subsection (c) and include whether:

- (A) the proposed district appears to be necessary;
- (B) the proposed district holds promise of economic and engineering feasibility;
- (C) the proposed district seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
- (D) the proposed district proposes to cover and serve a proper area; and
- (E) the proposed district could be established in a manner compatible with similar governmental entities.

(2) At least one public hearing shall be held. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." [IC 14-33-2-19\(a\)](#). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." [IC 14-33-2-19\(b\)](#). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject matter of the proposed district.

(3) Information received at public hearing, in written statements, and from the agencies is incorporated by a hearing officer in a recommended factfinding report to the commission. The recommended report is placed on an agenda for consideration during a public meeting of the commission. During the public meeting, the commission may also receive additional information. If newly discovered information is offered that could not reasonably have been offered before preparation of the recommended report, and the newly discovered information significantly refutes any of the five findings in the technical review, the commission may remand the matter to the hearing officer for further proceedings.

(4) When the commission is satisfied as to the adequacy of the technical review, it adopts a factfinding report for submission to the circuit court. The commission's factfinding report is prima facie evidence of the facts in all subsequent proceedings. [IC 14-33-2-23](#). After receipt of the report from the commission, the court sets another hearing at which an opportunity for additional evidence is provided. [IC 14-33-2-25](#).

(5) Of the six stages considered in the information bulletin, the initial stage has most frequently evoked controversy. Persons participating in the process at this stage have occasionally urged the full application of the AOPA. Key elements of AOPA are that all testimony must be given under oath, there is an opportunity for the cross-examination of witnesses, and there is a prohibition on substantive ex parte communications between a party and the administrative law judge (or, if applied to conservancy districts, the hearing officer).

(6) AOPA does not have direct application to the commission's role prior to formation of a district. AOPA is typically concerned with the issuance or failure to timely issue an agency "order". The commission's factfinding report is not an order. The circuit court issues the order whether to create a conservancy district following a judicial hearing. In addition, the application of AOPA to hearings which may be attended by hundreds of citizens would be unwieldy. Finally, the hearing officer is often unaware of the identity of remonstrators before the hearing date.

(7) On the other hand, fairness requires the full participation by remonstrators and by citizens seeking additional information, as well as by the petitioners. The development of a complete factfinding report is also supported by full citizen participation, particularly the freeholders to a proposed district. The process should be conducted in a manner which both is and has the appearance of being impartial. To these ends, the following guidelines are established:

(A) Referrals by a court for the technical review anticipated by IC 14-33-2-17(b) shall be directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2200

(B) As soon as practicable after the receipt of the referral, the director of the division of hearings shall appoint a hearing officer. The hearing officer shall conduct actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(1) The hearing officer shall promptly provide a copy of the referral to the DNR's division of water, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject matter of the referral. An invitation for comment as well as the address and telephone number of a contact person within the division of water shall accompany the referral. The address for the contact person is as follows:

Division of Water--Project Development
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(2) The hearing officer shall contact the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(3) The hearing officer shall forward a letter to each of the parties with the following:

- (a) A copy of this information bulletin.
- (b) Contact information for the person within the division of water who will coordinate technical reviews.
- (c) The location, date, and time of any public hearing scheduled under IC 14-33-2-19.
- (d) A party's opportunity to request an informal conference to develop procedures for the conduct of any public hearing. The request for an informal conference shall be filed with the commission and served upon all parties at least 14 days in advance of the date scheduled for the public hearing.

(4) As soon as practicable after the receipt of a request under (3)(d), the hearing officer shall schedule an informal conference. Notice shall be provided to the parties and to the contact person from the Division of Water. Notice may be provided by regular U.S. mail, facsimile mail, e-mail, or telephone. During the informal conference, the hearing officer shall attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

- (a) The process shall be conducted in the most informal manner practicable that supports fairness and meaningful public participation.
- (b) If issues in dispute are identified which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded, and the trial rules of discovery applied.
- (c) The hearing officer shall provide written notice to the parties of any second hearing and shall announce the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer shall make a reasonable effort to conduct the second hearing so that the submission of a recommended factfinding report to the commission is not delayed.

(5) The hearing officer shall draft and tender to the commission a recommended factfinding report. A copy of the report shall be forwarded to each party, to the division of water, to any agency that commented upon

the proposed conservancy district, and to any other person requesting a copy. The hearing officer shall enclose with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(6) Following action by the commission, the hearing officer shall cause its factfinding report to be filed with the court and served upon the parties, the division of water, and any other person requesting a copy.

B. "Contiguousness" of District Boundaries

(1) As part of the factfinding report, the commission is required to determine and communicate to the court whether a proposed district would "cover and serve a proper area." IC 14-33-2-17(c)(5). Also, as provided in IC 14-33-2-22, the factfinding report must include "findings on the territorial limits of the proposed district."

(2) Factors for determining appropriate district boundaries are set forth in IC 14-33-3-1. Among these factors is that "each part of the district is contiguous to another part." The statutory requirement of contiguousness forms an important element to the geographic requirements of the conservancy district article. If lengthy but narrow boundaries are created to incorporate outlying areas into a district, problems could be posed to adjacent areas, particularly if residents of these areas are not allowed to enter the district. The establishment of a district with exclusive boundaries may hinder attempts by the residents to form a new district. These problems may be acute where a purpose of the district is to provide water supply or sewage disposal.

(3) To establish a consistent and viable framework for determining what is "contiguous" within IC 14-33-3-1, the commission shall seek to prevent the formation of a conservancy district which is comprised of unrelated, unconnected parcels of land. Property to be included in the district must properly be related to a purpose for which the district is being established in both general nature and proximity.

(4) Ordinarily, "contiguous" anticipates that each part of the district adjoins every other part. Contiguousness may be made contingent upon the grant of an easement or other written license, to connect improvements across a parcel which is not included in the proposed district, because the parcel is unlikely to benefit directly from the district's formation.

(5) A district boundary, which is excessively long and narrow, does not satisfy contiguousness. What is excessively long and narrow would be evaluated on an individual basis and is more likely a major concern for districts which would provide sewage disposal or water supply than for districts which would provide other services.

(6) Where the district would provide flood prevention and control, contiguousness should encourage a coordinated effort within a watershed.

(7) Where the district is to provide sewage treatment or water supply, freeholders must typically be provided an opportunity to connect to an adjacent line or to enter the district. An "adjacent line" is one that is either (1) used to carry sewage and located within 300 feet of the freeholder's building; or (2) used to carry water supply and located on an easement or license that adjoins the freeholder's property.

C. Review Standards for Purpose of Flood Prevention and Control

One purpose for which a conservancy district can be established is flood prevention and control. IC 14-33-1-1(a)(1). In order to receive a favorable determination by the commission under IC 14-33-2-17 for the purpose of flood prevention and control, a petition must ordinarily show the district would accomplish at least one of the following:

- (1) The removal of obstructions and accumulated debris from a waterway channel.
- (2) The cleaning or straightening of a channel.
- (3) The development of a new and enlarged channel.
- (4) The construction or repair of dikes, levees, or other flood protective works.
- (5) The construction of waterway bank protection.
- (6) The establishment of a floodway.

All works for the purpose of flood prevention and control must be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to affect the best flood control obtainable that complies with IC 14-28-1-29.

III. Development of a District Plan

A. Statutory Structure under Conservancy District Article

(1) Following the creation of a conservancy district by the circuit court, the district is required to establish a "district plan." As provided in IC 14-33-6-2, a "district plan consists of an engineering report that sets forth the general, comprehensive plan for the accomplishment of each purpose for which the district was established." The district plan includes physical and technical descriptions, maps, preliminary drawings, cost estimates based upon preliminary engineering surveys and studies, copies of agreements with other governmental entities, and works of improvement.

(2) The board of directors is required to submit a district plan to the commission for its approval within 120 days after the appointment of the board members, unless a time extension is obtained from the commission. IC 14-13-6-3. "The commission may reject a plan or any part of a plan." IC 14-13-6-4(d). "After receiving the approval of the commission, the board shall file the district plan with the court." IC 14-13-6-5(a). Following the filing by the board of directors, the court sets the district plan for a hearing. IC 14-13-6-5(b).

B. Agency Processing and AOPA Review

(1) The Conservancy District Article does not address review of the "approval" process at the state agency level, but licenses are addressed by AOPA. Included within the definition of "license" is any "approval" required by law. IC 4-21.5-1-8. The term "license" is similarly defined at IC 14-11-3-1, a section which also specifies the DNR director or his designee issues most licenses for IC 14. The commission is the "ultimate authority" for these license determinations. IC 14-10-2-3. "Ultimate authority" is defined in AOPA as the entity "in whom the final authority for an agency is vested by law." IC 4-21.5-1-15.

(2) With this background, the following guidelines are established:

(A) The board of directors of a district shall submit any proposal for or pertaining to a district plan to the division of water.

(B) The division of water shall assist the board in identifying licenses likely to be required to implement the district plan. The division of water shall coordinate with the department of environmental management, the utility regulatory commission, and the state department of health concerning any comments pertaining to the development of a district plan.

(C) The division of water shall review and evaluate comments and alternative proposals to the district plan that may be submitted by other interested persons. The division of water shall consider only technical, engineering, and scientific issues necessary to the development of the district plan. The division may use facilitation or mediation.

(D) The director of the division of water shall approve or disapprove the district plan. The division director shall provide notice of the action, and of the opportunity to seek administrative review under AOPA, to the board of directors and to any other person requesting a copy of the notice. The director of the division of water shall act upon any request to extend the time to file a district plan. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a district plan.

(E) Administrative review and any subsequent judicial review shall be governed by AOPA, IC 14-10-2-2, and 312 IAC 3-1.

IV. Development of a Unit of Work

A. Statutory Structure under Conservancy District Article

(1) To implement a district plan, the board of directors of a conservancy district "shall order the preparation of the detailed construction drawings, specifications, and refined cost estimates.... The implementation may involve all or part of the works of improvement if the part constitutes a unit that:

(A) can be constructed and operated as a feasible unit alone; and

(B) can be operated economically in conjunction with other proposed works set forth in the district plan." IC 14-33-6-8(a).

"When the drawings, specifications, and cost estimates have been prepared to the satisfaction of the board, the board shall by resolution tentatively adopt and submit the drawings, specifications, and cost estimates to the commission for approval." IC 14-33-6-8(b).

(2) "Upon the receipt of the written approval," the board provides shall provide a "hearing on the drawings, specifications, and cost estimates at which any interested person must be heard." IC 14-33-6-9.

(3) The process of the development of a unit of work is similar to that for the preparation of a district plan. An important distinction is that no judicial hearing is required following agency approval.

B. Agency Processing and AOPA Review

With this background, the following guidelines are established:

- (A) The board of directors of a district shall submit any proposals for or pertaining to a unit work to the division of water.
- (B) The division of water shall assist the board in identifying licenses likely to be required to implement the district plan. The division of water shall coordinate with the department of environmental management, the utility regulatory commission, and the state department of health concerning any comments pertaining to the development of a unit of work.
- (C) The division of water shall review and give due consideration to comments and alternative proposals to the unit of work which are submitted by other interested persons. The division is limited to consideration of the design and construction of structures needed to implement the district plan. The division may use facilitation or mediation.
- (D) The director of the division of water shall approve or disapprove the unit of work. The division director shall provide notice of the action, and of the opportunity to seek administrative review, to the board of directors and to any other person requesting a copy of the notice. The director of the division of water shall act upon any request to extend the time by which to file a unit of work. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a unit of work.
- (E) Administrative review and any subsequent judicial review shall be governed by AOPA, IC 14-10-2-2, and 312 IAC 3-1.

V. Addition of Territory to an Existing District

A. Alternative Procedures

Unless otherwise specified by statute, territory may be added to an existing district according to either of two procedures. The procedures are here separately considered:

B. Additions Initiated with the Circuit Court

(1) Pursuant to IC 14-33-4-2(b)(1), territory may be added according to the same procedure as is provided for the establishment of a district. A petition to add territory shall be supported as follows.

(2) After a court determines a petition to add territory to a district is in proper form and bears the needed signatures, the petition is referred to the commission for a technical review. The issues for review include whether:

- 1. the proposed addition appears to be necessary;
- 2. the proposed addition holds promise of economic and engineering feasibility;
- 3. the proposed addition seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
- 4. the proposed addition proposes to cover and serve a proper area; and
- 5. the proposed addition could be implemented in a manner compatible with similar governmental entities, most notably the existing conservancy district.

(3) The director of the division of hearings shall appoint a hearing officer to conduct at least one hearing in the county seat where land in the conservancy district is located. The hearing officer shall provide notice in a newspaper of general circulation in each county containing land in the district and in the proposed addition. Each interested person shall be provided an opportunity to be heard. An agency with jurisdiction over the subject matter of the district and the proposed addition shall be provided an opportunity to comment.

(4) A proposal for addition of territory may be relatively minor and involve only a small area with little or no measurable affect to the freeholders within the existing district. Following the public hearing and the receipt of agency comments, the hearing officer shall report to the director of the division of water as to whether the proposed addition is likely to have more than a de minimis effect upon the operations of the district.

(5) Upon receipt of the report from the hearing officer, the director of the division of water shall determine if the proposed addition of territory is de minimis and if further review by the commission is unlikely to be productive. If

the division director makes such a determination, the hearing officer's report shall be forwarded directly to the court as the commission's factfinding report. This report shall be submitted within 30 days of receipt by the division of water of a completed petition to add territory to a district.

C. Additions Initiated with the Board of Directors

(1) As provided in IC 14-33-4-2(b)(2), an addition of territory to an existing district may also be initiated by a board resolution. The resolution follows a petition by the majority of freeholders or the municipality in the area proposed to be added. The resolution and petition are filed with the court, and the court sets the matter for hearing. Notice of the hearing shall be sent to the following:

- (A) The commission's division of hearings.
- (B) The freeholders in the existing district.
- (C) The freeholders in the area proposed to be served by the additional territory.

(2) Upon receipt of the notice, the division of hearings shall notify the DNR's division of water and other state agencies which appear to have jurisdiction over the subject of the addition.

(3) A board wishing to apply IC 14-33-4-2(b)(2) shall inform the division of hearings as soon as practicable, and not later than 45 days before a hearing is set under IC 14-33-4-2(d), so as to facilitate expeditious discussions with state agencies. Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of territory, or to object to the addition of territory. See particularly IC 14-33-4-2(e).

VI. Addition of a Purpose to an Existing District

A. Alternative Procedures

A purpose may be added to an existing district according to either of two procedures. The procedures are here separately considered.

B. Additions Initiated with the Circuit Court

Pursuant to IC 14-33-1-4(1), the same procedure may be used as is provided for the establishment of a district. If this procedure is used, reference should be made to the process for the addition of territory in part V.B. of this information bulletin.

C. Additions Initiated with Petition to Board

(1) In the alternative, IC 14-33-1-4(2) provides that the district board may add a purpose based upon a petition signed by at least 10% of the freeholders of the district. If the board approves a resolution supporting the petition, the resolution and petition are filed with the circuit court, and the court sets the matter for hearing. The court forwards a notice of hearing to the commission along with a copy of the resolution "at least 30 days before the date of hearing." IC 14-33-1-5.

(2) Upon receipt of a notice from the circuit court, the division of hearings shall notify the DNR's division of water and other state agencies that appear to have jurisdiction over the subject of the addition. A board wishing to apply IC 14-33-1-4(2) shall inform the division of hearings as soon as practicable, and not later than 45 days before setting a hearing under IC 14-33-1-5(b), so as to facilitate expeditious discussions with state agencies. Adequate review is essential to a favorable comment by the commission to the court. The director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or to condition the addition of purpose, or to object to the addition of purpose. See particularly IC 14-33-1-5(e).

VII. Dissolution of a District

A. Alternative Grounds

A conservancy district may be dissolved under IC 14-33-15 because the district is "no longer of benefit" or under IC 14-33-16 because "construction of works of improvement has not begun within six (6) years after the district plan."

B. Improvements Not Begun within Six Years after the District Plan

Where a dissolution is sought on the grounds that works of improvement were not begun within six years after the district plan, the commission has no statutory role.

C. District is No Longer of Benefit

(1) A district dissolved due to loss of benefit applies "the same procedure used to establish a district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit." IC 14-13-15-1.

(2) Because the process is essentially the same for the dissolution as for the establishment of a conservancy district, a similar analysis applies to the development of an appropriate process for dissolutions as was applied to the establishment of a district. With this background, the following guidelines are established:

(A) Referrals by a court for the technical review anticipated by IC 14-33-15-1 shall be directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room 501
Indianapolis, IN 46204-2200

(B) As soon as practicable after the receipt of the referral, the director of the division of hearings shall appoint a hearing officer. The hearing officer shall conduct actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(1) The hearing officer shall promptly provide a copy of the referral to the DNR's division of water, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject matter of the referral. An invitation for comment, as well as the address and telephone number of a contact person within the division of water, shall accompany the referral. The address for the contact person is as follows:

Division of Water—Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(2) At least one public hearing shall be held. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." IC 14-33-2-19(a). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." IC 14-33-2-19(b). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject matter of the proposed district.

(3) The hearing officer shall contact the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrator or other party has entered an appearance as a party to the civil proceeding.

(4) The hearing officer shall forward a letter to each of the parties with the following:

- (a) A copy of this information bulletin.
- (b) Contact information for the person within the division of water who will coordinate technical reviews.
- (c) The location, date, and time of any public hearing.
- (d) The opportunity for a party to request an informal conference to develop procedures for the conduct of any public hearing. The request for an informal conference shall be filed with the commission and served upon all parties at least 14 days in advance of the date scheduled for the public hearing.

(5) As soon as practicable after the receipt of a request under (4)(d), the hearing officer shall schedule an informal conference. Notice shall be provided to the parties and to the contact person from the division of water. Notice may be provided by regular U.S. mail, facsimile mail, e-mail, or telephone. During the informal conference, the hearing officer shall attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

- (a) The process shall be conducted in the most informal manner practicable that supports fairness and meaningful public participation.
- (b) If issues in dispute are identified during the informal conference which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded, and the trial rules of discovery applied.

(c) The hearing officer shall provide written notice to the parties of any second hearing and shall announce the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer shall make a reasonable effort to conduct the second hearing so that the submission of a recommended factfinding report to the commission is not delayed.

(6) The hearing officer shall determine whether either of the following matters is in issue:

(a) the board has failed, within two years of establishment of the conservancy district, to produce satisfactory evidence of progress in the preparation of the district plan; or

(b) federal or state money, or both, contemplated in the petition for the establishment of the district, appear to be unavailable. See IC 14-33-15-2.

(7) Information received at public hearing, in written statements, and from the agencies is incorporated by a hearing officer in a recommended factfinding report to the commission. A copy of the report is forwarded to each party, to the division of water, to any agency that commented upon the conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(8) The recommended report is placed on an agenda for consideration in a public meeting of the commission. During the public meeting, the commission may also receive additional information. If newly discovered information is offered that could not reasonably have been offered before preparation of the recommended report, and the newly discovered information significantly refutes any of the findings in the technical review, the commission may remand the matter to the hearing officer for further proceedings.

(C) When the commission is satisfied as to the adequacy of the technical review, it adopts a factfinding report regarding dissolution of the district for submission to the circuit court. The commission's factfinding report is prima facie evidence of the facts in all subsequent proceedings. IC 14-33-2-23. Following action by the commission, the hearing officer causes a copy of the commission's factfinding report to be served upon the division of water, the parties, and any other person requesting a copy. After receipt of the commission's report, the court sets another hearing at which an opportunity for additional evidence is provided. IC 14-33-2-25.

VIII. Election of Board of Directors and Notice to Commission

Neither the commission nor the DNR have jurisdiction over board elections. The board of commissioners of the county appoints the board of directors for the new district within 20 days after a court order establishing a district. IC 14-33-5-1. A person adversely affected by an action committed or omitted by the board may petition the court to enjoin or mandate the board. IC 14-33-5-24.

The board chair is required by IC 14-33-5-17 to promptly notify the commission when board members are elected or appointed. The department's division of water maintains a database of conservancy districts and board members. By this information bulletin, the commission identifies the following address for the notice required by IC 14-33-5-17:

Division of Water–Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

Service at this address will also help assure the division of water's database is current.

For more information see:

<http://www.in.gov/dnr/water/2454.htm#other>

IX. Expenses

A. Initial Payment

The commission, the department, and another state agency shall initially pay the expenses they incur in the formation, review, or dissolution of a conservation district.

B. Repayment

(1) Subject to subdivision (3), a conservancy district shall, under IC 14-33-2-20, repay the commission for reasonable expenses incurred by its employees with respect to the formation, review, or dissolution of a conservancy district with respect to the following:

(A) Preparing, conducting, or reporting upon any hearing described under IC 14-33 or this information

bulletin.

(B) Performing any investigations or surveys.

(C) Studying and acting upon the development of a district plan or unit of work.

(2) Subject to subdivision (3), a conservancy district shall repay the department or another state agency for performing activities described in subdivision (1) if the activities are performed in cooperation with the commission.

(3) The financial responsibility of a conservancy district under subdivisions (1) and (2) is limited to a maximum of thirty percent (30%) of the amount paid by the conservancy district to private engineers for the preparation of plans for the following:

(A) forming a district;

(B) developing a district plan; and

(C) developing a unit of work.

C. Application of Repayment Requirement

A conservancy district is responsible for the repayment of reasonable expenses if the conservancy district was formed subsequent to a court order issued after March 31, 2010, under IC 14-33-2-17(b) or IC 14-33-2-18(b).

X. Application and Modification

This information bulletin shall be liberally construed to support efficient administration by the commission, acting in cooperation with other agencies, of its conservancy district responsibilities. Modifications to the document may be needed based upon experience or legislative changes. Suggestions for modification of the document are welcomed and may be forwarded to the division of hearings at the address set forth previously or by e-mail to slucas@nrc.in.gov.

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- (1) In conducting their functions, the DNR and the Commission shall minimize duplication of efforts. The DNR and the Commission serve different functions with respect to conservancy districts, however, and an analysis or review by a Commission employee does not duplicate an analyses or review by a DNR employee.
- (2) Repayments for salaries shall be in the amounts compensated by the State of Indiana, determined on an hourly basis, and directly attributable to services by an employee of the DNR or Commission for review of a particular conservancy district. Reimbursements apply only to time coded and entered on the regular bi-weekly payroll submittal of the employee.
- (3) Repayments for mileage, any overnight expenses, and similar incidental expenses shall be in the amounts approved by the State of Indiana at the time of accrual.
- (4) If an employee of the DNR or the Commission travels in support of an activity pertaining to a conservancy district, as well as another professional responsibility with the State of Indiana, the employee shall seek to equitably allocate expenses attributable to services for the conservancy district. If the employee determines allocation is impracticable, the amount attributable to the conservancy district shall be determined as if the employee traveled directly to and from the site or sites pertaining to the conservancy district. Repayment from a conservancy district is not required for time attributable to attendance by a Commission member or Commission employee at a meeting of the full membership of the Commission.
- (5) The DNR and the Commission shall not include cost reimbursement for employee education or training that has general application to agency responsibilities for conservancy districts. This exclusion does not preclude reimbursement for research into engineering, scientific, or legal principles which have particular application to the conservancy district under review.
- (6) The DNR and the Commission shall not include cost reimbursement for time or expenses occasioned by personnel reassignments within the respective agencies.
- (7) This SOP shall be liberally construed to provide overall fairness to the conservancy district and to the citizens of Indiana.

