

**IN THE MATTER OF THE PIGEON)
CREEK WATERSHED)
DEVELOPMENT COMMISSION)** **Natural Resources Commission
Administrative Cause No. 24-001W**

**RECOMMENDED REPORT OF THE NATURAL RESOURCES COMMISSION
WITH RESPECT TO THE REQUEST FOR THE ESTABLISHMENT
OF THE PIGEON CREEK WATERSHED DEVELOPMENT COMMISSION**

**I. REQUEST, SUMMARY OF EVIDENCE RECEIVED AT PUBLIC HEARINGS, AND OTHER
COMMENTS**

A. REQUEST

On January 10, 2024, Assistant County Attorney Craig Emig (Emig) submitted a Written Request for Recognition of the Proposed Pigeon [Creek] Watershed [Development] Commission (Request) to the Natural Resources Commission (Commission). The Request is attached as Exhibit A. Emig attached Vanderburgh County Ordinance 12.23-029 and a letter from the Vanderburg County Board of Commissioners to the Request. The Request, in substantive part, states:

Due to the voluminous research, the problems and issues [within the watershed] are well known. Problematically because of the various jurisdictions and authorities performing these studies to cover various and differing interests, the result can seem piecemeal and disjointed. We anticipate using the newly formed watershed commission as a centralized repository of this information and a clearinghouse for common interests within the watershed. Despite the wealth of knowledge and research on this topic, this type of centralized cooperation has so far eluded the affected jurisdictions despite repeated efforts to accomplish that goal.

Aaron Bonar (Bonar) was appointed as the Commission’s hearing officer.

A watershed development commission may be established for any purpose set forth in Ind. Code § 14-30.5-3-1. Assuming the proposed development commission does not overlap with territory covered by an existing river basin commission, a county containing at least ten percent (10%) of the surface of a designated watershed may adopt a county ordinance identifying the designated watershed; specifying the area or areas of the county inside the geographic boundaries of the

designated watershed; and outlining the flood damage reduction, drainage, storm water management, recreation, or water infrastructure purposes for which the development commission as well as the infrastructure needs of the county to address these purposes. See Ind. Code § 14-30.5-2-1.

An ordinance and a written request for the establishment of a proposed watershed development commission must be submitted to the Commission, which must then hold a public hearing on the proposed watershed development commission in the county that made the request. The Commission may either establish or decline to establish the proposed watershed development commission based on six (6) statutory factors (see Section III below). Once established, the watershed development commission becomes self-governing subject to Ind. Code §§ 14-30.5-3 through 6.¹

The Request submitted here lists the purposes for which the Pigeon Creek Watershed Development Commission (Pigeon Creek WDC) is proposed as:

1. Create a centralized repository and clearinghouse for common interests in the proposed watershed development commission.
2. Regulate certain flood damage reduction, drainage, storm water management, and water quality purposes regarding Pigeon Creek, including improving existing infrastructure.
3. Manage channel expansion, channel maintenance, wood management, and debris clearing along and in Pigeon Creek.
4. Protect highly erodible soils and target streambank erosion.

To aid in gathering relevant information in accordance with Indiana Code § 14-30.5-2-2, on April 16, 2024, the Commission sent letters to the following state governmental entities that may have administrative jurisdiction over one or more of the purposes for which the Pigeon Creek WDC is proposed: the Department of Natural Resources, Division of Water (DNR); the Indiana Department of Agriculture, Division of Soil Conservation (IDOA); the Indiana Department of

¹ A different county may petition the Commission to join an existing watershed development commission at a later date. This process is governed by Ind. Code §§ 14-30.5-2-4 through 6.

Environmental Management, Office of Water Quality/Surface Water (IDEM); and the Indiana Finance Authority (IFA).

County officials, local governmental entities, and other stakeholders that were contacted to provide input included the Gibson County Surveyor's Office and Board of Commissioners; the Knox County Surveyor's Office and Board of Commissioners; the Posey County Surveyor's Office and Board of Commissioners; the Vanderburgh County Surveyor's Office, Board of Commissioners, and Soil and Water Conservation Office; the Warrick County Surveyor's Office and Board of Commissioners; the Mayors of Bicknell, Booneville, Evansville, Mount Vernon, and Princeton, Indiana; the Town of Newburgh, Indiana; the Vincennes, Indiana City Council; and the University of Southern Indiana.

The Commission scheduled a public hearing on May 22, 2024 to receive evidence and public comments regarding the Request. As required by Indiana Code § 14-30.5-2-2(d), notice of the public hearing was published on May 16, 2024 in the Evansville Courier, a newspaper of general circulation in Vanderburgh County. The Commission held the public hearing as scheduled on May 22, 2024 at the Evansville Vanderburgh Public Library Central Branch in Evansville, Indiana.

To fulfill the requirements of Ind. Code § 14-30.5-2-2(e), the Commission prepared this report discussing the requirements of Ind. Code § 14-30.5-2-2(e)(1)-(5). Each requirement is discussed individually below.

B. SUMMARY OF EVIDENCE RECEIVED FROM COUNTY AT THE PUBLIC HEARING

Bonar opened the public hearing as scheduled on May 22, 2024 to receive evidence and public comment on the proposed Pigeon Creek WDC as required by Ind. Code § 14-30.5-2-2(c). Approximately fifteen (15) persons attended. Bonar and DNR Division of Water employees Kristi Johnson and Kenneth Smith attended the public hearing.

Bonar provided an overview of the Commission's responsibilities regarding the review of the Request and then called upon the county's attorney, Emig, to present evidence in support of the Request.

County's Supporting Evidence

Emig did not formally introduce any exhibits, but did reference the Pigeon Creek Corridor Flood Risk Management Plan prepared by Christopher B. Burke Engineering, LLC.; the Lower Pigeon Creek Watershed Management Plan for Vanderburgh, Gibson, and Warrick Counties, Indiana developed by Vanderburgh County Soil and Water Conservation District; and the Watershed Management Plan for Highland-Pigeon Watershed developed by the Pigeon-Highland Watershed Steering Committee and Four Rivers Resource Conservation & Development Area, Inc. during the public hearing. These plans are available upon request from the Hearings Division but, as they are mostly considered as supporting documents for the request and not independently relevant, they are omitted from this report.

The testimony of the witnesses in support of the establishment of the Pigeon Creek WDC is summarized below:

Jeff Mueller, former Vanderburgh County Surveyor

Mueller testified that establishing the Pigeon Creek WDC will relieve private landowners and other local groups from having to scramble to maintain the Pigeon Creek watershed. It would also create a body that would have or be able to acquire the expertise needed to apply for relevant permits for projects, including storm drains, that will help manage and maintain Pigeon Creek. The proposed watershed development commission will help clean Pigeon Creek, make Pigeon Creek safer, and address longstanding issues regarding the management of Pigeon Creek.

Linda Freeman, Vanderburgh County Surveyor

Freeman testified that establishing the Pigeon Creek WDC would allow the proposed commission to raise funds and address problems related to Pigeon Creek that currently falls on private landowners. It would also benefit the entirety of the Pigeon Creek watershed as there would be a

funding mechanism in place to manage and maintain Pigeon Creek and to facilitate cooperation with private landowners and other county governments on relevant issues.

David Eichelberger, Christopher B. Burke Engineering

Eichelberger is a registered, professional engineer in the State of Indiana who has worked extensively with county surveyors around the State on drainage and other water-related projects. Eichelberger testified that establishing the Pigeon Creek WDC would help address issues such as sediment and drainage issues related to upstream developments on Pigeon Creek and allow Vanderburgh County to develop and budget for projects to address water quality and stream management issues.

C. OTHER COMMENTS RECEIVED AT PUBLIC HEARING

Following the close of the Requester's evidence presentation, Bonar opened the floor to members of the public to comment either in favor of or in opposition to the establishment of the Pigeon Creek WDC. The comments are summarized as follows:

Susan Harp, Oakhill Neighborhood Association (Vanderburg County)

Ms. Harp is in favor of establishing the Pigeon Creek WDC. Ms. Harp's home is along Pigeon Creek in Vanderburg County, Indiana. She and her husband initially wanted to clear the creek bank but were unsure who to approach for help in planning the clearing. Ms. Harp discussed logjams that form in Pigeon Creek after storms, including ones so large that the soil and trees along the creek bank became unstable, creating safety issues for those kayaking down the creek. Ms. Harp wants to see Pigeon Creek cleaned up for the benefit of the community.

Karan Barnhill, MS4 Director for the City of Evansville, Indiana (Vanderburgh County, Indiana)

Ms. Barnhill is a former County Surveyor for Warrick County. She established the joint drainage board for Spencer, Warrick, and Vanderburgh counties. Establishing the Pigeon Creek WDC in Vanderburgh County will set an example for other counties included in the Pigeon Creek watershed and may encourage those counties to establish similar commissions to manage Pigeon Creek within their jurisdictions.

David Brenner, Vanderburgh County Farm Bureau (Vanderburgh County, Indiana)

The Vanderburgh County Farm Bureau advocates for agriculture, which is affected by the current status of Pigeon Creek as an unregulated drain. Establishing the proposed commission would allow Vanderburgh County to come up with a plan and finances to manage flooding, which will help local farmers by protecting their crops from rising floodwaters.

Megan Klenk, Vanderburgh County Soil and Water Conservation District (Warrick County, Indiana)

Ms. Klenk stated that the Soil and Water Conservation District supports the creation of the proposed watershed development commission.

II. GOVERNMENTAL COMMENTS: COUNTY AND STATE

The DNR submitted a written report to the Commission, which is attached as Exhibit B. The report begins by outlining the procedure to establish a watershed development commission authorized under Ind. Code § 14-30.5 before analyzing the six (6) main factors discussed below in Section III. While noting some uncertainties regarding specific action items and recommending that specific plans for watershed management be developed, the DNR ultimately recommended that the proposed Pigeon Creek WDC be established.

Comments were received from other state, county or local governmental entities. These comments are attached as Exhibit C.

III. PROPOSED FINDINGS AND RECOMMENDATION

Ind. Code § 14-30.5-2-2(e) directs the Commission to make determinations on the following matters:

- (1) Are the purposes for which the proposed commission would be established, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, within the purposes set forth in IC 14-30.5-3-1 for which a watershed development commission may be established?

- (2) Do the purposes of the proposed commission, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, correspond to legitimate flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county seeking establishment of the commission, as set forth under section 1(b)(4) of this chapter?
- (3) Is it reasonable to expect that the establishment of a commission having powers under this article only in the county or counties from which the ordinance or ordinances were submitted under section 1(c)(1) of this chapter would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?
- (4) Is it reasonable to expect that the establishment of a commission that has powers under this article only in the area or areas inside the geographic boundaries of the designated watershed would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?
- (5) Is the territory of the proposed commission at least as large as the entirety of the same eight (8) digit U.S. Geological Survey hydrologic unit code?
- (6) Has a regional watershed study or watershed management plan been conducted in consultation with the Indiana finance authority and the department of natural resources that assesses water use, water quality, drinking water systems, wastewater management systems, storm water management, flood control, drainage management, recreational uses, natural resources, and water infrastructure needs of the watershed of the proposed commission? If so, can the establishment of the proposed commission be expected to address the needs identified in that study or management plan?

Within this statutory structure, the following findings are recommended to the Commission with respect to the Request for the establishment of the Pigeon Creek Watershed Development Commission:

The proposed watershed development commission appears to address at least one of the purposes listed in Ind. Code § 14-30.5-3-1

Vanderburgh County Board of Commissioners Ordinance No. CO.12.23-029, which was submitted as part of the Request, specifically states that flood damage reduction, drainage, and water quality are specific purposes that the establishment of the watershed development commission seeks to address. This purpose is listed in I.C. § 14-30.5-1(b)(4) as a purpose for which a watershed development commission may be formed.

The proposed watershed development commission's purpose(s) appear(s) to correspond to legitimate flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county seeking establishment of the district

This criterion is satisfied, though, per the DNR's report, there is a level of uncertainty of how the proposed commission would address the flood damage reduction, drainage, and water quality issues affecting Pigeon Creek. The Request alleges the need to reduce flood damage and address drainage and water quality issues. Testimony and exhibits presented at the public meeting focused on removing log jams from Pigeon Creek but did not say whether the log jams causes the issues.

The proposed watershed development commission would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of the county that requested the proposed commission

This criterion is satisfied, though, per the DNR's report, it is uncertain how much other counties near the watershed district would be affected by the creation of the proposed commission. In the public hearing, the testimony and public comments focused on the need to clear log jams in Pigeon Creek and how creating this proposed commission would allow Vanderburgh County to work to clear the log jams. There was little evidence provided regarding how Warrick and Gibson counties, where most of Pigeon Creek's headwaters are found, would be affected and how changes in these headwater conditions would affect Pigeon Creek's downstream waters in Vanderburgh County. In the future, Warrick and Gibson counties should join the proposed commission and the water management agencies of each county should cooperate in managing the district.

The proposed watershed development commission would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county covered by the proposed commission

This criterion is satisfied, though, per the DNR's report, the specific measures the proposed commission would take to address flood damage reduction, drainage, storm water management,

recreation, and water infrastructure issues is uncertain. The Request discussed protecting highly erodible soils, targeting streambank erosion, and implementing best practices to achieve these goals, but no specifics as to how these goals would be achieved were given. The proposed commission, if formed, must develop specific plans to achieve its goals.

The territory of the proposed watershed development commission is at least as large as the entirety of the same eight-digit U.S. Geological Survey hydrologic unit code

This criterion is satisfied according to the DNR's report, but that satisfaction largely turns on the intent and one's reading of Ind. Code 14-30.5-3-1. Given the most favorable reading of the statute, the proposed commission does reasonably comply with the spirit of the "watershed focus" section of the statute.

The proposed watershed development commission addresses the needs identified in a regional watershed study or watershed management plan conducted in consultation with the Indiana Finance Authority and the Department of Natural Resources

Both the Pigeon Creek Corridor Flood Risk Management Plan prepared by Christopher B. Burke Engineering and the Lower Pigeon Creek Watershed Management Plan prepared by Arion Consultants were submitted with the Request. During the public hearing, Emig stated that the IFA had not been contacted or consulted in drafting the Request or either plan. In response to a request for comment by the Hearing Officer, IFA responded it did not object to the formation of the watershed conservancy district. It was not clear whether DNR had been consulted in drafting either plan. Regardless, the DNR reported it does not oppose the creation of the proposed watershed development commission. The hearing officer considers this criterion to be satisfied by the lack of opposition to the plan by the IFA and the DNR.

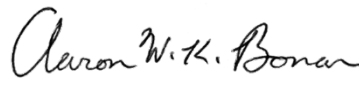
RECOMMENDATION

It is recommended that the Natural Resources Commission adopt this report as the Commission's findings and establish the Pigeon Creek Watershed Development Commission. It is recommended

that the proposed watershed development commission develop a flood damage reduction and drainage plan as outlined in Ind. Code 14-30.5-3-4 and develop a water quality improvement plan that is approved by the Commission (IC 14-30.5-3-1(b)).

It is further recommended that Warrick and Gibson counties join the proposed commission in the future, and/or that the proposed commission enters into interlocal cooperation agreements under IC 36-1-7 with the drainage boards and any other proper government entities that currently perform water management activities in Warrick and Gibson counties.

Dated: September 5, 2024



Aaron W. K. Bonar
Hearing Officer
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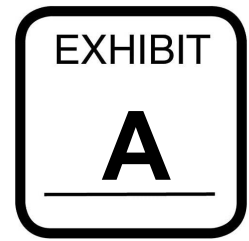
A copy of the foregoing was also sent to the following:

Craig Emig, Attorney for Requester (cemig@joneswallace.com)
Kristi Johnson, DNR Division of Water (KristJohnson@dnr.IN.gov)
Kenneth Smith, DNR Division of Water (kesmith@dnr.IN.gov)
Linda Freeman, Vanderburgh County Surveyor's Office
(lfreeman@vanderburghsurveyor.com)

Exhibit A – Request

Exhibit B – DNR Division of Water Report

Exhibit C – Comments received from state, county, or local governmental entities



VANDERBURGH COUNTY

ONE N. W. MARTIN LUTHER KING, JR. BLVD.
CIVIC CENTER ROOM # 305
EVANSVILLE, INDIANA 47708

OFFICE OF THE BOARD OF COMMISSIONERS

CHERYL MUSGRAVE, PRESIDENT
JUSTIN ELPERS, VICE PRESIDENT
BEN SHOULDERS, MEMBER

December 19, 2023

RE: Vanderburgh County - Surveyor - Drainage
Our Client No. 2019.014-001

To Whom It May Concern:

Enclosed please find the *ORDINANCE ESTABLISHING A WATERSHED DEVELOPMENT COMMISSION FOR THE PIGEON WATERSHED* and *WRITTEN REQUEST FOR RECOGNITION OF THE PROPOSED PIGEON WATERSHED COMMISSION*. We greatly appreciate your consideration of this great opportunity to address longstanding problems known to exist within the Highland-Pigeon Watershed. We expect you will realize that this application is the latest effort and best opportunity to address the long-standing problems.

Enclosed we will demonstrate that numerous studies, research, and investigations have been performed within the watershed. Due to the voluminous research, the problems and issues are well known. Problematically because of the various jurisdictions and authorities performing these studies to cover various and differing interests, the result can seem piecemeal and disjointed. We anticipate using the newly formed watershed commission as a centralized repository of this information and a clearinghouse for common interests within the watershed. Despite the wealth of knowledge and research on the topic, this type of centralized cooperation has so far eluded the affected jurisdictions despite repeated efforts to accomplish that goal.

Much effort and planning has gone into the application. A study committee has met numerous times as shown by the meeting minutes. A broad and varied array of stakeholders from the various counties have attended and participated extensively in the meetings, including surveyors, commissioners, attorneys, engineers, farmers, and developers as shown in the meeting attendance sheets. As a result of the extensive work and collaboration, we present to you our request.

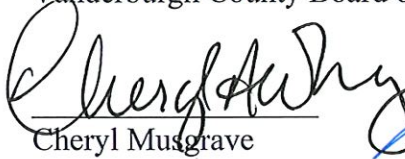
December 19, 2023

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As the meeting minutes reflect, the commission has broad support from the neighboring counties despite Vanderburgh County's application as the sole establishing member. Both Gibson and Warrick already have Pigeon Creek established as a Legal Drain and parsing the responsibilities and assessments will necessarily take further deliberations. We look forward to presenting the Request and anticipate support from the neighboring counties for the establishment of the Commission.

Respectfully yours,

Vanderburgh County Board of Commissioners


Cheryl Musgrave


Justin Elpers


Ben Shoulders

CRE/

cc:

**WRITTEN REQUEST FOR RECOGNITION OF THE PROPOSED
PIGEON WATERSHED COMMISSION**

IC §14-30.5-2-2(e)(1): "Are the purposes for which the proposed commission would be established, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, within the purposes set forth in IC 14-30.5-3-1 for which a watershed development commission may be established?"

Vanderburgh County seeks to establish the Watershed Commission in order to build upon and coalesce the extensive, yet somewhat disjointed, studies that have detailed the the issues concerning Pigeon Creek in Vanderburgh County. Initially Vanderburgh County proposes adding no assessments at the creation of the commission. Once the comprehensive study is complete, the watershed commission would then create its detailed plan to address the issues discovered in the study. The results of the study and the creation of the plan would include comments from all authorities within the watershed. Following discussion and approval of the plan, then assessments, if any, as deemed necessary would be presented to the respective fiscal bodies for review. Vanderburgh County believes this is the best and most practical path forward as the authority of the commission must be established first before imposing assessments. Vanderburgh County expects the planning phase will last at least one calendar year. That will provide ample opportunity for residents and neighboring authorities to review, participate, and assist in the process. Imposing assessments on the residents of the watershed prior to creating the commission and the formation of a concrete plan of action with input from the various stakeholders is impractical and imprudent.

The commission would rank and prioritize areas of concern following statutory factors concerning flood damage reduction and water quality. The high priority areas will be targeted first, followed by medium and low priority areas of the Pigeon Creek Watershed. Additionally, concerns identified by the commission will be used to target implementation within the project's critical areas when landowner interest outpaces available funds. The identified high priority concerns will be used for targeting purposes. The rating of each concern will be determined during cost share program development and additional items may be added to further refine how each concern area be used to target hot spots or problem areas identified within the Pigeon Creek Watershed. A rating system will be developed prior to cost of program implementation – the rating system will assign a weighted score to each potential project based on its location in a priority watershed as well as the following concerns:

- Ensuring that highly erodible soils areas are protected or covered.
- Targeting streambank erosion and buffer strip installation in areas where erosion and/or narrow buffers were identified during plan development.
- Working with partners to reduce the impacts of drainage within the Pigeon Creek Watershed.

- Implementing best management practices to maintain the natural course while mitigating any flood damage and provide the most benefit to the watershed.

IC §14-30.5-2-2(e)(2): "Do the purposes of the proposed commission, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, correspond to legitimate flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county seeking establishment of the commission, as set forth under section 1(b)(4) of this chapter?"

A tributary of the Ohio River in southwestern Indiana, Pigeon Creek drains a 323 square-mile watershed covering portions of Gibson, Warrick and Vanderburgh counties, and a small portion of Pike County. The main channel of Pigeon Creek watershed is approximately 48 miles long and starts from an area just south of Princeton in Gibson County and flows downstream to join the Ohio River in Evansville. The main channel and tributaries of Pigeon Creek in both Gibson and Warrick counties have been extensively modified by both straightening and dredging. In Vanderburgh County Pigeon Creek remains a natural stream.

Studies show that multiple interests and needs exist within different areas of the watershed. Upstream counties may desire a reduction of flood damages and an efficient drainage outlet for their modified watershed areas. Each receiving county also would like to be able to accommodate the increasing magnitude of flow it receives from sources. Vanderburgh County would like to provide an outlet for the ever-increasing flow delivered to it from out-of-county sources while reducing the flooding, erosion and logjams within Vanderburgh County.

It also desires preserving or enhancing Pigeon Creek as well as improving the sustainability of the creek as a community resource by managing flows and water quality. Efforts to achieve these multi-county goals has at times frustrated parties involved. There is also a concern that the impacts of changing weather patterns may exacerbate the current problems. It is believed that a well-thought-out plan that includes a comprehensive stream system assessment of the entire watershed and an examination of drainage and development activities occurring within the watershed can provide a road map and strategies to address these multiple county interests in an equitable and sustainable manner.

The proposed commission could provide a road map and an implementation plan for addressing problems and identifying potential vulnerabilities. Such a plan is also expected to bring affected parties together to understand each other's needs as they impact flooding and work out solutions that can reduce the flooding threats to critical facilities and major transportation systems. In addition, the report will address drainage concerns, provide strategies for managing large wood in the channel, and improve the water quality. Such a plan could demonstrate a proactive approach adopted by the drainage boards and partner agencies to increase the community benefit and reduce flood damage.

IC §14-30.5-2-2(e)(3): “Is it reasonable to expect that the establishment of a commission having powers under this article only in the county or counties from which the ordinance or ordinances were submitted under section 1(c)(1) of this chapter would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?”

Due to Vanderburgh County lacking authority over Pigeon Creek while Gibson and Warrick Counties having different funding mechanisms, the establishment of the commission is the only practical path forward to address the flood damage reduction and drainage issues known to affect Pigeon Creek. A comprehensive plan will be implemented to improve the watershed’s success. While much thought and expertise has been put into the planning process, not all scenarios can be foreseen. Oftentimes there are changes such as a shift in community attitude/behavior, changes in resource concerns, development of new information or accomplishing a goal sooner or later than expected. By implementing a comprehensive plan, the commission can adjust the watershed management plan to ensure project success.

IC §14-30.5-2-2(e)(4): “Is it reasonable to expect that the establishment of a commission that has powers under this article only in the area or areas inside the geographic boundaries of the designated watershed would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?”

Prevention of potential future issues will be made possible through the adoption and revision of the flood damage reduction and drainage plan, development of a Watershed Commission, and by monitoring the recent, significant alterations to the watershed. By preventing rather than reacting to issues, the commission will be used to implement other improvements.

Assessment and prioritization of impaired segments will help to target those areas having the greatest need for maintenance or other improvements. Identifying and utilizing the channel maintenance best management practices will help to promote sustainable channels and potentially reduce the overall funding need for channel maintenance over time.

As reflected in the attached studies, best management practices to be used by the commission will include channel modifications to increase channel stability and reduce ongoing maintenance needs; channel maintenance and wood management to decrease debris buildup, thereby decreasing localized flooding and improving safety for recreators; and support of agricultural, residential, and municipal stormwater best management practices to reduce the inputs of flow and sediment to Pigeon Creek. Coordinating improvements to several roadway

crossings may help to reduce flooding in the immediate upstream areas. The benefits realized by the recommended alternatives are significant. The improvements will be completed as funds are available. The problems are expected to worsen over time; as a result, extensive delays in implementing the recommended alternatives should be avoided.

IC §14-30.5-2-2(e)(5): "Is the territory of the proposed commission at least as large as the entirety of the same eight (8) digit U.S. Geological Survey hydrologic unit code?"

See the attached map detailing the HUC-8. Only the area within Vanderburgh County would be within the jurisdiction of the proposed watershed commission until other counties join the commission. Vanderburgh County will include all areas of the watershed for information and comments while encouraging Gibson and Warrick Counties to join for the benefit of the entire watershed.

IC §14-30.5-2-2(e)(6): "Has a regional watershed study or watershed management plan been conducted in consultation with the Indiana finance authority and the department of natural resources that assesses water use, water quality, drinking water systems, wastewater management systems, storm water management, flood control, drainage management, recreational uses, natural resources, and water infrastructure needs of the watershed of the proposed commission? If so, can the establishment of the proposed commission be expected to address the needs identified in that study or management plan?"

Despite a lack of funding in Vanderburgh County and different jurisdictions having unique funding mechanisms, extensive study and plans have been completed identifying the needs of Pigeon Creek. The formation of this watershed commission is the best opportunity to implement the needed improvements. Vanderburgh County is grateful for the opportunity to utilize this thoughtful legislation allowing the creation of a multi-county watershed commission to address the long-standing needs of Pigeon Creek. While our preparation and goals are modest, Vanderburgh County is hopeful the neighboring counties within the Highland-Pigeon Watershed will see the benefit of the Commission as the driving force to improving Pigeon Creek within Vanderburgh County.

The nature of the drainage issues is unique and complicated. The widespread flooding that occurs during and after heavy rainfall events appears to be primarily caused by the wide, flat floodplain. While the improvements already implemented have likely decreased the severity of the flooding, the overall benefit of the improvements appears to be insufficient so far. It is expected that structural stormwater solutions will be studied as a viable means to reduce the severity of the flooding along Pigeon Creek. Proper channel maintenance throughout the watershed was identified as a critical component to maximizing the flow capacity of the existing drainage network. Best management practices and proper channel sizing can provide some reduction in flooding; however, the true benefit of these

AGENDA ITEM #9

practices is expected to be a reduction in expected maintenance costs and an increase in channel stability. Adoption of a well-crafted comprehensive plan and the institution of watershed wide coordination will help to prevent the development of new or more severe stormwater management issues.

ORDINANCE NO. CO.12.23-029
AN ORDINANCE ESTABLISHING A WATERSHED DEVELOPMENT
COMMISSION FOR THE PIGEON CREEK WATERSHED

WHEREAS, House Bill 1639 was passed by the General Assembly and became Public Law 251-2023, effective July 1, 2023, when signed by Governor Holcomb following the 2023 session of the General Assembly;

WHEREAS, Section 13 of Public Law 251-2023 added a new article to Indiana Code, I.C. § 14-30.5 et. seq., titled Watershed Development Commissions;

WHEREAS, the executives of one or more counties may adopt ordinances designating their counties as members of a proposed watershed development commission;

WHEREAS, a watershed development commission may be established for certain flood damage reduction, drainage, storm water management, and other purposes;

WHEREAS, Pigeon Creek in Vanderburgh County is not a Legal Drain and Vanderburgh County lacks capacity and authority to affect major impacts to Pigeon Creek. It is impractical to establish it as a Legal Drain at this point.

WHEREAS, a watershed development commission may also have water quality purposes if its board develops a water quality improvement plan;

WHEREAS, a watershed development commission is to be governed by a board that includes a representative from the Department of Natural Resources and three members from each participating county, specifically its Surveyor, a Commissioner (or a Commissioner appointee), and a representative from the largest city in the county that is within the watershed;

WHEREAS, a watershed development commission is required to develop a flood damage reduction and drainage plan for its designated watershed;

WHEREAS, a watershed development commission is granted exclusive authority to perform drainage and flood damage reduction activities within the channel of the river that is the surface water outlet of its designated watershed or authorized to enter into an interlocal cooperation agreement with an existing local governmental authority to apportion flood damage reduction authority and financial support between the two entities;

WHEREAS, Pigeon Creek runs through Gibson County, Warrick County and Vanderburgh County, resulting in differing jurisdictions, control and issues despite each individual county facing similar problems with flood damage reduction, drainage and storm water management; and

WHEREAS, Vanderburgh County is establishing the formation of a watershed development commission to identify and tackle problems with Pigeon Creek, including flood damage reduction, drainage and water quality issues.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Vanderburgh County, Indiana hereby resolve the following:

SECTION 1: Creation of Watershed Commission

(1) The designated watershed within which the proposed Pigeon Creek Watershed Development Commission would exercise its powers is defined by:

(A) the surface water outlet Pigeon Creek, which starts in Gibson County, flows generally south through Gibson and Warrick Counties before heading generally west through Warrick and Vanderburgh Counties. Pigeon Creek joins the Ohio River in Evansville. Pigeon Creek is clearly labeled in the attached map identified as "Exhibit A;" and

(B) the geographic boundaries of the area drained by Pigeon Creek are defined by the combination of three HUC-10 watersheds – Headwaters Pigeon Creek, Big Creek-Pigeon Creek, and Pigeon Creek – totaling approximately 235,000 acres, as shown in the attached map identified as "Exhibit A."

(2) The area of the county that is inside the geographic boundaries of the designated watershed, as identified under subdivision (1)(B) is on the attached map identified as "Vand_HUC8_Parcels" consisting of 96,025.56 acres or approximately 14.5% of the Highland-Pigeon Watershed.

(3) The flood damage reduction, drainage, storm water management, or water infrastructure purposes for which the proposed commission would be established are detailed in the attached studies, and include channel modifications to increase channel stability and reduce ongoing maintenance needs; channel maintenance and wood management to decrease debris buildup, thereby decreasing localized flooding and improving safety for recreators; and support of agricultural, residential, and municipal stormwater best management practices to reduce the inputs of flow and sediment to Pigeon Creek.

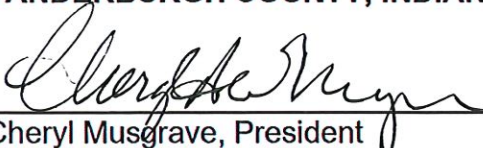
(4) The flood damage reduction, drainage, storm water management, or water infrastructure needs of Vanderburgh County that would be addressed through the county's membership in the proposed commission include flood reduction through flood storage facilities, flood damage reduction, improved stormwater infrastructure, removal of logjams, decreased stormwater flows, and increased recreational opportunities.

SECTION 2: Effective Date This Ordinance shall be in full force and effect after its passage by the Board of Commissioners of Vanderburgh County, Indiana, and following publication as provided by I.C. § 5-3-1.

First passed by the Board of Commissioners of Vanderburgh County, Indiana this 19th day of DECEMBER, 2023.

Final passage by the Board of Commissioners of Vanderburgh County, Indiana this 19th day of DECEMBER, 2023.


**THE BOARD OF COMMISSIONERS OF
VANDERBURGH COUNTY, INDIANA**



Cheryl Musgrave, President



Justin Elpers, Vice President

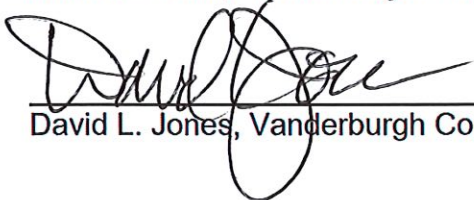


Ben Shoulders, Member

ATTEST:

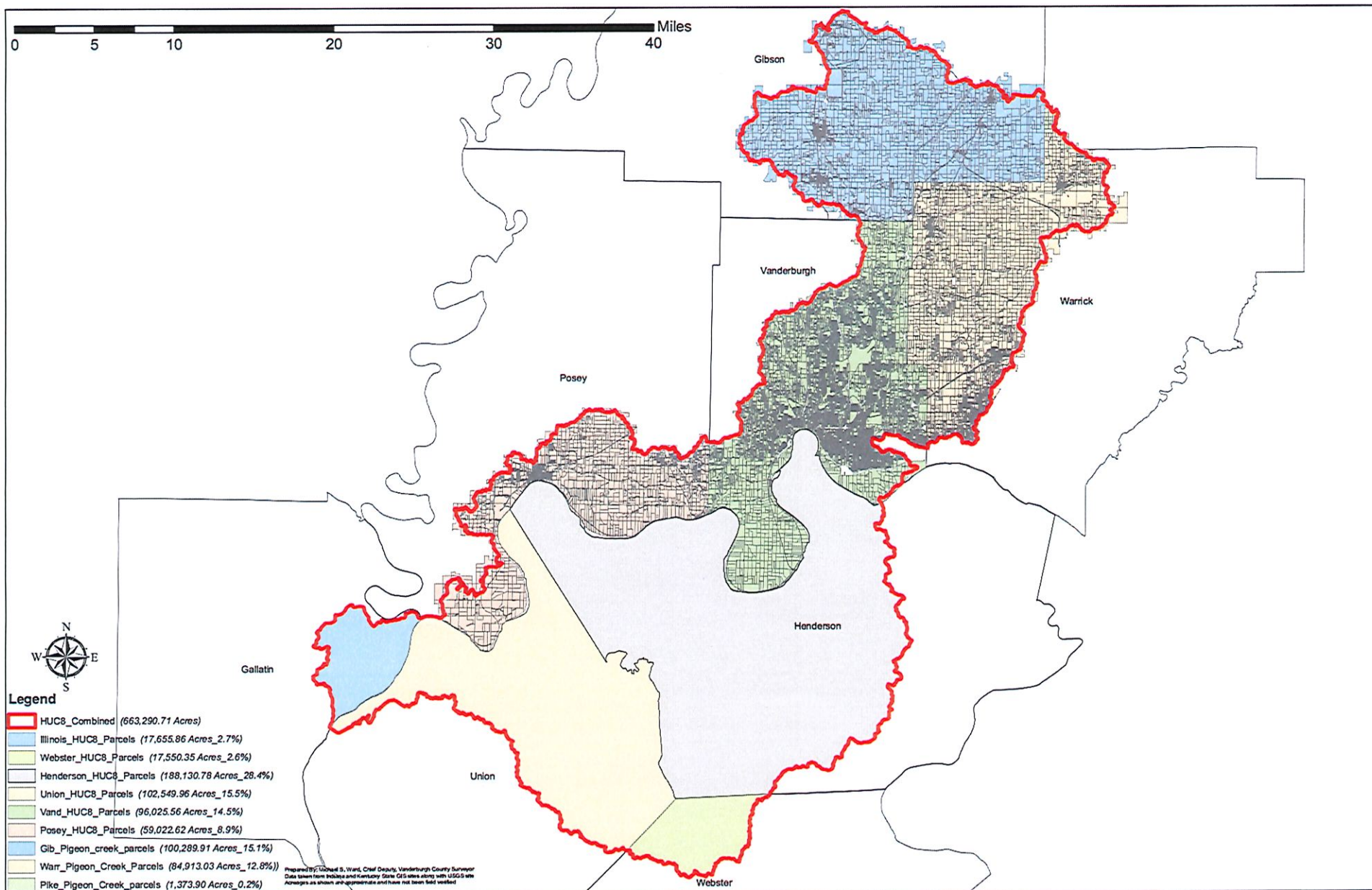


Brian A. Gerth, Vanderburgh County Auditor



David L. Jones, Vanderburgh County Attorney

Exhibit A





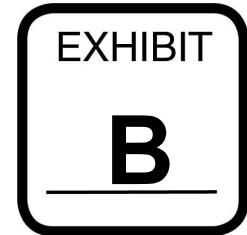
Division of Water Memorandum

Date: July 12, 2024

To: Aaron Bonar, Administrative Law Judge
Division of Hearings, Natural Resources Commission

From: David Knipe, P.E.
Director, Division of Water

RE: Establishment of the Pigeon Creek Watershed Development Commission –
Vanderburgh County



BACKGROUND

In 2023, a new statute, IC 14-30.5, was created to aid local resolutions of regional / HUC-8 sized watershed issues, through the creation of Watershed Development Commissions. No administrative rules or non-rule policy documents have been created related to this statute yet.

IC 14-30.5-2 provides direction to establish or join a Watershed Development Commission.

- The statute provides pathways to create both single county, or multi-county Watershed Development Commissions.
- After months of meetings, coordination, and discussion with adjoining stakeholder counties, Vanderburgh County is the first applicant to propose an establishment under this statute.
- Vanderburgh County, standing alone, has proposed the establishment of the Pigeon Creek Watershed Development Commission (Commission).

On December 19th, 2023, *Ordinance Establishing a Watershed Development Commission for the Pigeon Creek Watershed* (Ordinance No. CO.12.23-029) was passed by the Board of Commissioners of Vanderburgh County, Indiana.

- The order was submitted to the Natural Resources Commission on January 10, 2024 along with a written request for the Natural Resources Commission to recognize the proposed Commission.
- The proposed Commission boundaries would consist of three HUC-10 watersheds (Headwaters Pigeon Creek (0514020201), Big Creek – Pigeon Creek (0514020202), and Pigeon Creek (0514020203) that are just part of the larger HUC-8 Highland-Pigeon Watershed (HUC 05140202).

As outlined in IC 14-30.5-2-2, the Natural Resources Commission provided public notice and held a public hearing in Vanderburgh County, on May 22, 2024 concerning the proposed Commission.

- The applicant's attorney presented an overview of the application and verbal technical supporting testimony from several witnesses (with relevant professional knowledge and experience).
- Any person attending the public hearing was allowed the right to address the Natural Resources Commission and provide comments on whether the proposed Commission should be established.
- No one spoke against formation of the Commission.
- The Department of Natural Resources - Division of Water received a copy of the ordinance and written request and attended the public hearing, to prepare for this review document.

STATUTORY EXPECTATIONS

IC 14-30.5-1-3 "Designated watershed"

- IC 14-30.5-1-3 defines "Designated watershed" as the watershed: (1) within which a watershed development commission may exercise the powers conferred by this article; and (2) after which a

watershed development commission is named under IC 14-30.5-2-3.

- This proposal is to create a designated watershed for Pigeon Creek, a tributary of the Ohio River.
 - This HUC-8 contains several tributaries besides Pigeon Creek to the Ohio River and large areas of drainage areas in both Indiana and Kentucky.
 - The proposed Commission would serve just the Pigeon Creek watershed that's only part of the HUC-8 Highland-Pigeon Watershed (HUC 05140202)).
 - Through this proposal, Vanderburgh County would be the only county member of the Commission.

IC 14-30.5-1-11 Drinking Water Project Exclusion:

- IC 14-30.5-1-11 excludes any drinking water project from being a part of a Commission's purpose.
- This proposal does not anticipate any drinking water projects from being part of the Commission's purpose.

IC 14-30.5-2-0.5 Overlap prohibition:

- IC 14-30.5-2-0.5 prohibits creating a watershed development commission if its boundary would overlap the boundary of an established river basin commission.
- This proposal would clearly not create an overlap boundary with any established river basin commission.

IC 14-30.5-2-1 (a) 10% minimum requirement:

- IC 14-30.5-2-1 (a) states that the executive of a county may adopt an ordinance designating the county as a member of a proposed watershed development commission if at least ten percent (10%) of the surface of the designated watershed, as identified in the ordinance under subsection (b)(1), lies within the boundaries of the county.
- Vanderburgh County is 150 square miles (41%) of the surface of the designated watershed.

IC 14-30.5-2-2 Natural Resources Commission Decision

- In deciding whether to recognize a proposed commission, the Natural Resources Commission determines if each of the six (6) questions outlined in IC 14-30.5-2-2(e) may be answered favorably.
 - If all six (6) questions are answered favorably, the Natural Resources Commission shall issue an order recognizing the Commission and Vanderburgh County as a member of the Commission.
 - If the Natural Resources Commission does not answer all of the six (6) questions favorably, the Natural Resources Commission shall: (1) inform the executive of the county in writing of its decision; and (2) specify in the writing the reason or reasons for each unfavorable answer.
- The action of the Natural Resources Commission in declining to recognize a proposed watershed development commission for a particular watershed does not preclude the later submission of one (1) or more new ordinances and written requests for recognition of a proposed watershed development commission for the same designated watershed.

The Division of Water offers the following comments concerning the six (6) questions for establishment outlined in IC 14-30.5-2-2(e):

1) IC 14-30.5-2-2(e)(1) Are the purposes for which the proposed commission would be established within the purposes set forth in IC 14-30.5-3-1 for which a watershed development commission may be established?

This question is answered favorably.

- The purposes for which a watershed development commission may be established include flood damage reduction, drainage, storm water management, recreation, water infrastructure, and water quality (IC 14-30.5-3-1). Ordinance No. CO.12.23-029 specifically calls out that flood damage reduction, drainage, and water quality as specific purposes that

the Commission would initially address. These same purposes were addressed at the public hearing on May 22, 2024.

If the Commission is formed, it should:

- Submit a water quality improvement plan to NRC for approval in order to do water quality work and be compliant with IC 14-30.5-3-1(b).

2) IC 14-30.5-2-2(e)(2) Do the purposes of the proposed correspond to legitimate flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county seeking establishment of the commission?

This question is answered favorably but with a clear level of uncertainty.

The request outlined flood damage reduction, drainage, and water quality needs in its exhibits, testimony, and public comments at the public hearing on May 22, 2024. Testimony during the public hearing mainly focused on the need to remove log jams in the main stem of Pigeon Creek and not a comprehensive watershed focused vision.

While multiple studies have been conducted in the past of various portions of the watershed, even in the words of the applicant's "Written Request for Recognition of the Proposed Pigeon Watershed Commission", they present a:

- "somewhat disjointed" detail of the "issues concerning Pigeon Creek";
- "Once a comprehensive study is complete" (after formation) "the watershed commission would then create its detailed plan to address the issues discovered in the study"; and"
- Once a comprehensive study is complete "the Commission would rank and prioritize areas of concern following statutory factors concerning flood damage reduction and water quality."

Exhibits that discussed some needs of Vanderburgh County included:

- Pigeon Creek Corridor Flood Risk Management Plan by Christopher B Burke Engineering, May 9, 2023.
- Lower Pigeon Creek Watershed Management Plan by Arion Consultants, March 6, 2023.
- Numerous Vanderburgh County Board of Commissioners meeting minutes.

The Pigeon Creek Corridor Flood Risk Management Plan examined sixteen river miles of Pigeon Creek in Vanderburgh County to better understand flooding and channel stability. The study was mainly focused on Pigeon Creek and not the other waterways within the proposed Commission boundaries. The study found that there has been an approximate 20% increase in peak flow over the past 35 years (from 2,350 to 2,820 cfs) and that there has been a one inch increase of annual precipitation every six years in southwest Indiana since 1960. This, along with development, stream channel straightening, and riparian corridor removal upstream of Vanderburgh County, has increased flood elevations and impacts and reduced drainage capabilities over the years.

The Pigeon Creek Corridor Flood Risk Management Plan found the entire Pigeon Creek reach in Vanderburgh County to be generally stable and had a healthy wooded corridor. It was noted that flood storage should be created, a need for better floodplain connectivity, and that straightening of Pigeon Creek and loss of floodplain storage in the upper watershed (Gibson, Warrick, and part of Vanderburgh County) should be addressed.

The Lower Pigeon Creek Watershed Management Plan examined the three smaller federally designated HUC-10 watersheds of the proposed Commission boundaries. The plan identified problem areas where woody debris, streambank erosion, and floodplain disconnection had occurred in the watershed. Improving these areas could help address flood damage reduction and

drainage needs. Qualitative Habitat Evaluation Index methods were completed at nine sites throughout the watershed that assessed overall stream habitat. These assessments showed that bank erosion and flood plain quality could be improved at most sites throughout the watershed.

The Vanderburgh County Board of Commissioner Meeting Minutes throughout the years discusses concerns with woody debris and drainage in Pigeon Creek. Most of the discussion revolved around Pigeon Creek and its issues and not the other waterways within the proposed Commission boundaries. Discussions from the meetings included 1) after heavy rains it can take awhile for flood levels to recede; 2) The lack of logjam removal on Pigeon Creek in Vanderburgh County was not allowing the water to drain as fast; 3) the current management of Pigeon Creek in Gibson and Warrick counties may actually be elevating flooding issues in Vanderburgh County; 4) the lack of floodplain connectivity was not allowing for floodwaters to recede; 5) It is a wide floodplain so when it floods it brings in woody material that contributes to logjams in Pigeon Creek; and 6) Pigeon Creek channel in Vanderburgh County is overall stable.

3) IC 14-30.5-2-2(e)(3) Is it reasonable to expect that the establishment of a commission having powers under this article only in the county or counties from which the ordinance or ordinances were submitted under section 1(c)(1) of this chapter would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?

This question is answered favorably but with a clear level of uncertainty.

According to testimony at the May 22, 2024 public hearing and the numerous Vanderburgh County Board of Commissioner Meeting Minutes provided in the exhibits, it appears that the main goal of forming the Commission is to obtain funding and authority to access Pigeon Creek to complete logjam removals and channel clearing on Pigeon Creek.

- This goal could also be accomplished by making Pigeon Creek a regulated drain in Vanderburgh County but the Vanderburgh County Drainage Board thought the process to make Pigeon Creek a regulated drain was too burdensome and expensive.
- There were also previous efforts to form a river basin commission that failed to form.

If the Commission was established, it would allow the capability to clear the channel and remove logjams on Pigeon Creek in Vanderburgh County. These activities may reduce flooding and drainage issues, but to what extent is unknown (no detailed technical studies have been performed).

- It is a common misconception that stream clearing creates additional capacity for water during flood events.
- The information on the Pigeon Creek watershed presented in the exhibits, suggests that the Commission will need to develop a broader and much more comprehensive watershed wide vision, including other management activities, to sufficiently address comprehensive flooding and drainage needs in the watershed.

Further, most of the Pigeon Creek headwaters are in Warrick and Gibson counties, with that area's flood waters flowing downstream through Vanderburgh County, to the Ohio River. These headwaters areas have significant affect upon downstream streamflow conditions. Typically, favorable or poor upstream practices can cause significant beneficial or negative consequences downstream.

The request mentioned that main channel and tributaries of Pigeon Creek in both Gibson and Warrick counties have been extensively modified by both straightening and dredging, while Pigeon Creek in Vanderburgh County remains a natural stream. The Pigeon Creek Corridor Flood Risk Management Plan also notes this and that the management style of Pigeon Creek in Gibson and

Warrick counties may be increasing the flood impact downstream in Vanderburgh County. If formed, the Commission would need to be careful to not adopt management practices that may cause or exacerbate existing problems elsewhere in the watershed.

While Warrick and Gibson counties were in discussions with Vanderburgh County on forming a watershed development commission, they ultimately decided to not join Vanderburgh County at this time of the request. Warrick and Gibson County representatives were not present at the public hearing. It seemed that if the Commission was formed, it would focus on Pigeon Creek just in Vanderburgh County but would continue to coordinate efforts with Warrick and Gibson counties.

If the Commission is formed, it is recommended:

- Warrick and Gibson counties join as members at a later time; or
- The Commission enters into interlocal cooperation agreements under IC 36-1-7 with the drainage boards and any other proper government entities that currently perform water management activities in Warrick and Gibson counties.

4) IC 14-30.5-2-2(e)(4) Is it reasonable to expect that the establishment of a commission would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance?

This question is answered favorably but with a clear level of uncertainty.

Vanderburgh County would like to provide an outlet for the ever-increasing flow delivered to it from out-of-county sources while reducing the flooding, erosion, and logjams within Vanderburgh County.

The written requested noted that if the Commission was established, a comprehensive study on the watershed would be completed and the Commission would develop a plan to address the issues discovered in the study.

- It was estimated that it would take a year to complete.
- Once the plan was approved, the Commission would impose assessments to fund activities.
- It is unknown what new information would arise from the comprehensive study compared to the previous studies that have occurred in this watershed.

The written request did mention protecting highly erodible soils, targeting streambank erosion, and implementing best management practices as potential activities but no details were provided and it was not discussed in testimony. Water quality concerns were mentioned and that if formed, the Commission would address water quality in a later phase. The Lower Pigeon Creek Watershed Management Plan does discuss the water quality issues within the watershed, but it is unknown what specific issues the Commission would address.

If the Commission is formed, it should:

- Develop a flood damage reduction and drainage plan as outlined in IC 14-30.5-3-4.
- Develop a water quality improvement plan that is approved by the NRC (IC 14-30.5-3-1(b)).

5) IC 14-30.5-2-2(e)(5) Is the territory of the proposed commission at least as large as the entirety of the same eight (8) digit U.S. Geological Survey hydrologic unit code?

This question cannot be answered favorably without interpretation of the statutory intent and State statutory authority.

Since IC 14-30.5 is an Indiana state law, established Watershed Development Commissions would not have any legal authority in surrounding states. About half of the Federal HUC-8 Watersheds

throughout Indiana contain areas of land in the adjoining states of Michigan, Ohio, Kentucky, or Illinois.

There appears to be no statutory intent to intentionally exclude all HUC-8 watersheds situated around the Indiana State boundaries from potentially forming and seeking the benefits of Watershed Development Commissions.

- It would be unconstitutional for Indiana to attempt to project its statutes and authority (through Watershed Development Commissions) outside of the State boundaries (in land areas that are part of adjoining states),
- It appears, therefore, that this “at least as large as the entirety of the same eight (8) digit mandate” cannot be directly applied and must be significantly interpreted for all State boundary HUC-8 watershed proposals.
- Therefore, it would be permissible for a Watershed Development Commission to exclude areas of the HUC-8 watershed that are contained within surrounding states.

Further, for HUC-8 watersheds that cross the Indiana State boundaries, the DNR Division of Water also finds it reasonable to allow a Watershed Development Commission to form at a scale smaller than HUC-8 only if the proposed boundaries includes a drainage area that is not influenced by any other waterways within the same HUC-8.

The federally designated Highland-Pigeon HUC-8 Watershed (HUC 05140202) contains several main streams and large areas of land that drain to the Ohio River within both Indiana and Kentucky. The Highland-Pigeon has a surface area of 1,036 square miles with 527 square miles (51%) being in Indiana (51%).

The proposed Commission boundaries would consist of three HUC-10 watersheds (Headwaters Pigeon Creek (0514020201), Big Creek – Pigeon Creek (0514020202), and Pigeon Creek (0514020203) that are part of the larger HUC-8 Highland-Pigeon Watershed.

- This proposal would only cover 368 square miles of 1036 square miles (about 36%) of the entire HUC-8 watershed.
- This proposal would only cover 368 square miles of 527 square miles (about 70%) of the HUC-8 watershed contained within Indiana.
- The three HUC-10 watersheds that comprise of the proposed Commission are wholly contained within Indiana and directly drains into the Ohio River and is not influenced by any of the other four HUC-10 watershed located in the Highland-Pigeon HUC-8 Watershed. The other streams within the Highland-Pigeon HUC-8 watershed independently outlet into the Ohio River without using the Pigeon Creek system.

This fifth question can only be answered favorably, if there are two interpretations of the statute for all State boundary HUC-8 watersheds, to allow for a reasonable attempt to comply with the spirit of the “watershed focus” of the law (adapted to fit watersheds smaller than a HUC-8 within State boundaries).

- With such interpretations, the proposed Commission partially within the Highland-Pigeon HUC-8 Watershed (HUC 05140202), comprising the three HUC-10 watersheds: Headwaters Pigeon Creek (0514020201), Big Creek – Pigeon Creek (0514020202), and Pigeon Creek (0514020203) could be answered favorably.

- 6) IC 14-30.5-2-2(e)(6) Has a regional watershed study or watershed management plan been conducted in consultation with the Indiana finance authority and the department of natural resources that assesses water use, water quality, drinking water systems, wastewater management systems, storm water management, flood control, drainage management, recreational uses, natural resources, and water infrastructure needs of the watershed of the proposed commission? If so, can the establishment of the proposed commission be expected to address the needs identified in that study or management plan?**

This question is answered favorably.

- The Pigeon Creek Corridor Flood Risk Management Plan by Christopher B Burke Engineering and the Lower Pigeon Creek Watershed Management Plan by Arion Consultants were submitted as exhibits as part of the request and forwarded by the Natural Resources Commission to the Indiana Finance Authority and Indiana Department of Natural Resources for review.
 - The Department views that the Commission would be able to address the needs identified in both studies.
 - The Indiana Finance Authority responded on May 16, 2024 that it did not object to the establishment of the Commission and had no further comments.

DEPARTMENT'S OVERALL RECOMMENDED FINDINGS:

While the level of detail that is normally expected for a proposal was not provided, the Department believes that the plans that will be developed after the Commission is formed will help provide clarity to some of the issues addressed above. It is recommended by the Department that if the Commission is established:

- Develop a flood damage reduction and drainage plan as outlined in IC 14-30.5-3-4.
- Develop a water quality improvement plan that is approved by the NRC (IC 14-30.5-3-1(b)).

Over time as this Commission advances and evolves, it is hoped that the Commission will:

- Warrick and Gibson counties join as members at a later time; or
- The Commission enters into interlocal cooperation agreements under IC 36-1-7 with the drainage boards and any other proper government entities that currently perform water management activities in Warrick and Gibson counties.

As all six (6) questions can be answered favorably within a reasonable level of uncertainty, and / or with a reasonable interpretation of the statutory intent and State statutory authority, staff recommends the Natural Resources Commission issue an order recognizing the Commission and Vanderburgh County as a member of the Commission.

Should you have questions concerning the above comments, please contact Kristi Johnson, DNR Division of Water at 463-261-6195.



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

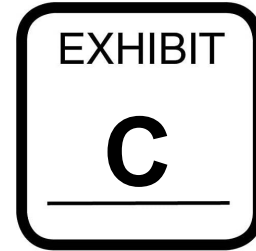
Brian C. Rockensuess
Commissioner

AGENDA ITEM #9

VIA ELECTRONIC MAIL

April 24, 2024

Aaron Bonar, ALJ
Hearing Officer
Natural Resources Commission, Division of Hearings
100 N Senate Avenue, Room N103
Indianapolis, IN 46204



Dear Mr. Bonar,

RE: Petition for the Establishment of
the Pigeon Creek Watershed
Development Commission;
Vanderburgh County Commissioners
Request (Administrative Cause No.
24-001W)

The Indiana Department of Environmental Management (“IDEM”) Office of Water Quality has received the Natural Resources Commission’s (“NRC”) request for assistance and comments concerning the Petition for the Establishment of the Pigeon Creek Watershed Development Commission dated April 16, 2024. IDEM has reviewed the petition contents as presented and has no comments.

Some Watershed Development Commission activities may require notice or a permit application to be submitted to IDEM. If you have any questions regarding IDEM involvement with a specific activity, please contact me at (317) 232-5727.

Respectfully,

Emily Faust
RSD Coordinator
Office of Water Quality

Cc: Ken Smith, DNR, Division of Water (kesmith@dnr.in.gov)



Visit on.IN.gov/survey or scan the QR code to provide feedback.

We appreciate your input!



AGENDA ITEM #9

From: [Heather Soberg](#)
To: [Bonar, Aaron W](#)
Subject: Re: Natural Resources Commission - Pigeon Creek Watershed Development Commission
Date: Thursday, May 2, 2024 13:13:46

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Dr. Bonar,

The Warrick County Board of Commissioners have stated they support Evansville in their quest to form a district to help their situation which will help ours situation.

I hope this response helps.

Heather L. Soberg
County Administrator

Warrick County Commissioners | 107 W. Locust Street, Suite 301 | Boonville, IN 47601

Phone: 812-897-6121 | Fax: 812-897- 6189



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On Wed, Apr 17, 2024 at 12:11 PM Bonar, Aaron W <ABonar@nrc.in.gov> wrote:

Hi Heather,

We are requesting the board to identify any concerns they have with the proposed district, or if they approve of the district.

Dr. Aaron W. K. Bonar (he/him/his)

Administrative Law Judge and Deputy Director

Natural Resources Commission, Division of Hearings

Indiana Government Center North

100 North Senate Avenue, Room N103

Indianapolis, IN 46204

317.234.9516

abonar@nrc.in.gov

<https://www.in.gov/nrc/>



Please consider the environment before printing this e-mail.

From: Heather Soberg <hsoberg@warrickcounty.gov>

Sent: Wednesday, April 17, 2024 11:38

To: Bonar, Aaron W <ABonar@nrc.IN.gov>

Subject: Re: Natural Resources Commission - Pigeon Creek Watershed Development Commission

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Sir,

Will you please advise specifically what is being requested of the board? Your email states a review, is that for a review of the attached documents?

Thank you,

Heather L. Soberg

County Administrator

Warrick County Commissioners | 107 W. Locust Street, Suite 301 | Boonville, IN 47601

Phone: 812-897-6121 | Fax: 812-897- 6189



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On Tue, Apr 16, 2024 at 10:57 AM 'Bonar, Aaron W' via info <info@warrickcounty.gov> wrote:

Good morning,

In response to a request received from Vanderburg County, the Natural Resources Commission is requesting your assistance in its review of the proposed Pigeon Creek Watershed Development Commission. I have attached a letter and related documentation for your consideration.

Thank You

Dr. Aaron W. K. Bonar (he/him/his)

Administrative Law Judge and Deputy Director

Natural Resources Commission, Division of Hearings

Indiana Government Center North

100 North Senate Avenue, Room N103

Indianapolis, IN 46204

317.234.9516

abonar@nrc.in.gov

<https://www.in.gov/nrc/>



Please consider the environment before printing this e-mail.



Sent solely via email

May 16, 2024

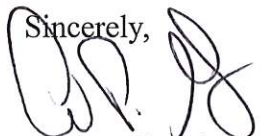
Dr. Aaron W. K. Bonar
Hearing Officer
Division of Hearings
Indiana Natural Resources Commission
100 N. Senate Ave., Room N103
Indianapolis, IN 46204-2273

**Re: Administrative Cause No. 4-001W
Petition for the Establishment of the Pigeon Creek Watershed Development
Comm'n; Vanderburgh County Commissioners' Request**

Dear Dr. Bonar:

In response to your communication of April 16, 2024, and pursuant to Indiana Code 14-30.5-2-2(e)(6), the Indiana Finance Authority (IFA) has not conducted either a regional watershed study or watershed management plan in connection with the proposed establishment of a Pigeon Creek Watershed Development Commission.

The IFA is involved with a project, the Evansville Wansford Yard Lift Station, that crosses Pigeon Creek, but the IFA does not object to the establishment of the Pigeon Creek Watershed Development Commission.

Sincerely,

Andrew P. Seiwert
General Counsel

cc: James P. McGoff, IFA, Director of Environmental Programs