
LEGAL UPDATE

Legal Services Division



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NATURAL RESOURCE COMMISSION MEETING — JULY 7, 2021

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Date and Location. The Natural Resource Commission met on July 7, 2021, at the Henry Wallace Building in Des Moines. The meeting was also accessible telephonically. The meeting was followed by a joint informational meeting with the Environmental Protection Commission, which included a field tour of Easter Lake in Des Moines.

Consent Agenda Items. In adopting the agenda, the commission consented to the approval of the following agenda items:

- A contract amendment with Triest Ag Group, Inc., to extend soil fumigation services at the State Forest Nursery operated by the Department of Natural Resources (DNR) through June 30, 2022.
- A contract with Mr. Kevin Welch for wastewater treatment services at Honey Creek State Park and Honey Creek Resort.
- A management agreement renewal with the Clay County Conservation Board for DNR to continue maintenance of the Nelson Tract of the Barringer Slough Wildlife Management Area (WMA).
- An electric line easement with Northeast Missouri Electric Power Cooperative to allow for the construction, operation, and maintenance of an electrical line extension on, under, over, through, and across an area located at the Cottonwood Pits WMA encompassing 0.78 acres.
- An electric line easement with Southern Iowa Electric Power Cooperative to allow for the construction, operation, and maintenance of an electrical line extension on, under, over, through, and across an area located at the Lake Sugema WMA encompassing 5.4 acres.

Director and Division Administrator Remarks. Director remarks and related presentations occurred during the joint informational meeting. Ms. Kayla Lyon, Director, DNR, discussed the increased use of the state's natural resources over the last two years, particularly through hunting, fishing, and use of campsites. Ms. Lyon noted that the ability to use dynamic pricing allows DNR to promote less visited locations and use targeted marketing and discounts to introduce people to the state's natural resources.

Legal staff from DNR discussed a recent decision from the Iowa Supreme Court relating to the state's water quality policies. The Court ruled that arguments based on the public trust doctrine did not give the plaintiffs standing to sue DNR and the other defendants because a declaratory order from the Court would not provide redress for the alleged harms. Further, the Court ruled that the plaintiffs' specific requests for declaratory relief would result in the Court making decisions on behalf of the Legislature; therefore, such relief raised nonjusticiable political questions. The Court remanded the case with orders to dismiss. On July 1, 2021, the plaintiffs entered a petition for rehearing and DNR legal staff is awaiting instructions from the Court about whether to submit a brief in response.

Mr. Pete Hildreth, Administrator, Conservation and Recreation Division, DNR, discussed the state's response to the August 10, 2020, derecho. According to the United States Forest Service, the derecho damaged or destroyed about 9.1 million trees in the state. The derecho caused four state parks to immediately close primarily due to fallen trees. With help from the Department of Transportation, DNR had an all-hands-on-deck week in order to clean up parks that suffered damage. Mr. Hildreth also mentioned that DNR conducted timber sales in WMAs that suffered damage.

Mr. Tim Hall, Hydrology Resources Coordinator, DNR, discussed the status of drought conditions in Iowa. The statewide average rainfall for the month of June was about two inches short of the monthly average, which is important because June is Iowa's wettest month on average. Mr. Hall noted that 2018 and 2019 were Iowa's wettest consecutive years on record but 2020 and 2021 have been very dry. Some locations in Iowa were 12 to 15 inches of rainfall short of average going back to January 1, 2020. Mr. Hall stated that some of Iowa's major rivers are in the lowest 10th percentile for streamflow and the Missouri River basin is currently storing less water than average. These factors cause concern for animal agriculture and drinking water, especially in northwest Iowa where water is sometimes susceptible to sulfates and iron, because the state is entering the time of year for highest water demand and long-term climate models do not show much relief until the end of the year.

Mr. Hildreth discussed the June field tour of the Iowa Great Lakes. Mr. Hildreth went back to West Lake Okoboji to join a water patrol boat during the Lake Affect event and noted that participants demonstrated good self-regulation. Mr. Hildreth also provided an update on the fish tank replacement project at the Iowa State Fairgrounds. As of June 30, 2021, the project was about 50 percent complete, partly because DNR had to use a German company to supply the glass because an American company that produced the necessary aquarium glass had gone out of business.

Rulemaking. The commission approved the adoption of a final rule to extend the 5-miles-per-hour zone on East Okoboji Lake in order to increase safety and reduce shoreline erosion.

Contracts. The commission approved the awarding of a contract with Ducks Unlimited, Inc., to oversee the bidding and management of a construction project at the Garlock Slough in the Iowa Great Lakes region. The project will include the construction of a renovated fish barrier to reduce the carp population and other projects that will improve habitat and water quality of the slough and downstream lakes.

Public Land Acquisition. The commission approved the acquisition of an angler access conservation easement totaling 5.07 acres on noncontiguous tracts along Bloody Run Creek in Clayton County. The easement includes two access corridors and a parking area. The easement will increase public access for fishing, particularly of trout, and allow DNR to improve fish habitat and maintain the property in its natural, scenic condition.

Construction Projects. The commission approved the following construction projects:

- A maintenance project to dredge sediment from the Village Creek access channel on the Mississippi River in Allamakee County for \$196,000.
- A project to construct a parking lot and conduct repairs of the boat ramp at Pine Lake State Park in Hardin County for \$106,284.
- A project to resurface and stabilize the interior roads of the State Forest Nursery in Story County for \$211,749.97.
- Regular maintenance repairs and derecho-related replacement and repair projects at Palisades-Kepler State Park in Linn County for \$79,910.
- A dredging project to improve water quality in Blue Lake at Lewis and Clark State Park in Monona County for \$1,747,840.
- A project to re-establish the roadway leading to the southern portion of Trumbull Lake in the Dewey's Pasture WMA in Clay County for \$71,978.50.
- A damage repair project, related to damage caused by a major flooding event in 2019, that will include infrastructure repair and sediment removal at the Rathbun and Sedan Bottoms WMAs,

which are wholly or partly located in Appanoose, Lucas, Wayne, and Monroe counties, for \$369,122.82.

Next Meeting. The next meeting will be held on August 12, 2021, in Des Moines.

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Doc ID 12243291224329