

**Minutes of the AOPA Committee of the  
Natural Resources Commission  
January 13, 2005**

Jane Ann Stautz, Committee Chair, called to order the AOPA Committee of the Natural Resources Commission at 1:05 p.m., EST, on January 13, 2005 in the Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis. Another member present was Michael Kiley. The Committee Chair observed a quorum.

**Approval of Minutes for Meeting Held on October 12, 2004.**

The Committee discussed and approved by acclamation the minutes for the meeting held on October 12, 2004.

**Consideration of Oral Argument with Respect to Objections by Tiller to Findings of Fact and Conclusions of Law with Nonfinal Order in Tiller v. DNR; Administrative Cause Number 03-016P.**

Tom Tiller was present on his own behalf, and Ihor N. Boyko was attorney for the Department of Natural Resources. The Chair invited Tiller to present his oral argument.

Tom Tiller reviewed the specific items contained in his "Objections to Findings of Fact and Conclusions of Law with Nonfinal Order" filed on October 19, 2004. He said the DNR's regulatory approach on Brookville Lake was unreasonable and lacked appropriate managerial consistency. Uniquely, both a boating prohibition and a "waterfowl resting area" were described for Brookville Lake, yet duck hunting was allowed at the discretion of the property manager. He said birdwatchers were denied access to the closed areas, but hunting was allowed. He said the concept of a "wildfowl resting area" was inconsistent with hunting. Tiller used aerials to help depict the site in question. He urged that all access to the area should be prohibited during periods of closure.

Ihor Boyko pointed out to the Committee that 312 IAC 5-10-2 was the governing rule section. This section provided a general closure for watercraft, from October 1 through March 1, but it specifically authorized the DNR to issue a license for entry during this period. He said Tiller was opposed to duck hunting at the site, but the agency was acting properly in allowing for hunting on a very limited basis. Boyko said the DNR took care to assure that the hunting opportunity would not harm wildlife populations. He indicated the ALJ ordered the DNR to establish discernable standards for the licensure process, and his client had no objection to this order. Boyko said the DNR was currently developing a nonrule policy document to provide those standards.

Michael Kiley pointed out to Tiller that the ALJ's nonfinal order had determined the current process lacked ascertainable standards. The ALJ "stayed" the effectiveness of the order until April 1, 2005 to allow the DNR sufficient time to develop those standards, but there would be no further licensure if standards were not developed. In effect, the ALJ

had agreed with Tiller that the current process did not provide for managerial consistency.

Kiley asked Boyko whether Tiller would have an opportunity to provide input with respect to the new standards. Boyko indicated Tiller could comment, but Boyko wanted to make clear that a prohibition on hunting was not planned. Tiller said he wished to prohibit access to the restricted area between October 1 and March 1, rather than to develop a process with standards.

Kiley moved to approve the findings of fact and conclusions of law and to make the ALJ's nonfinal order a final order of the Commission. Jane Stautz seconded the motion. The motion was approved by acclamation.

### **Consideration of Motion to Disqualify Committee Members from Hearing Objections in *Gerber v. DNR*; Administrative Cause Number 01-159L.**

The Chair opened discussion concerning the "Motion to Disqualify Panel Members" filed by Steven Gerber on October 6, 2004. She observed that, with the resignation of Lori Kaplan as Commissioner of IDEM, the motion was moot as to Kaplan.

Michael Kiley indicated he had read the motion and was unconvinced there was good cause for his disqualification. Comments during a previous NRC proceeding, in which Gerber was the subject of another disciplinary action, were responsive to the particulars of the former proceeding. They did not reflect bias against Gerber, and Kiley stated he was not biased against Gerber. He declined to disqualify himself from the AOPA Committee in the instant proceeding.

Stephen Lucas, Director of the Division of Hearings, asked whether to schedule oral argument to consider the merits of Gerber's "objections". Both Jane Stautz and Michael Kiley asked that Gerber's "objections" be scheduled for oral argument during the next meeting of the AOPA Committee.

### **Adjournment**

At approximately 1:45 p.m., EST, the meeting was adjourned.