

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

MICHAEL MCDERMOTT,)	
Petitioner,)	Administrative Cause
)	Number: 22-070W
vs.)	
)	
JAMES BUCKLEY,)	Riparian Dispute
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NONFINAL ORDER

Procedural Background and Jurisdiction

1. On December 23, 2022, Michael McDermott (hereinafter McDermott) filed correspondence (hereinafter Petition) with the Natural Resources Commission (hereinafter Commission) alleging that James Buckley (hereinafter Buckley), placed a new dock into Koontz Lake that angled toward McDermott’s dock and interfered with McDermott’s ability to fully utilize his riparian zone. See Petition.
2. McDermott seeks to have Buckley remove or reconfigure his new dock in such a way that it does not interfere with McDermott’s ability to fully use his riparian area. Id.
3. By filing his Petition, McDermott initiated a proceeding governed by Indiana Code 4-21.5-3, sometimes referred to as the Administrative Orders and Procedures Act (AOPA) and the administrative rules adopted by the Commission at 312 IAC 3-1 to assist with the implementation of AOPA. See IC 4-21.5-3-1, et seq.
4. Administrative Law Judge (ALJ) Aaron Bonar was appointed under IC 14-10-2-2 to conduct this proceeding and was assigned this case on December 29, 2022.
5. A telephonic prehearing conference was set for January 27, 2023. Following notice to the parties, Buckley failed to appear for the telephonic conference. After an additional prehearing conference held on February 27, 2023, in which Buckley was unprepared to participate, an additional telephonic conference was set for March 27, 2023.
6. During the March 27, 2023 telephonic conference, the parties agreed to set a hearing date of June 26, 2023. On May 30, 2023, Buckley requested a continuance as he would be out of town for work on June 26, 2023. The continuance was granted.

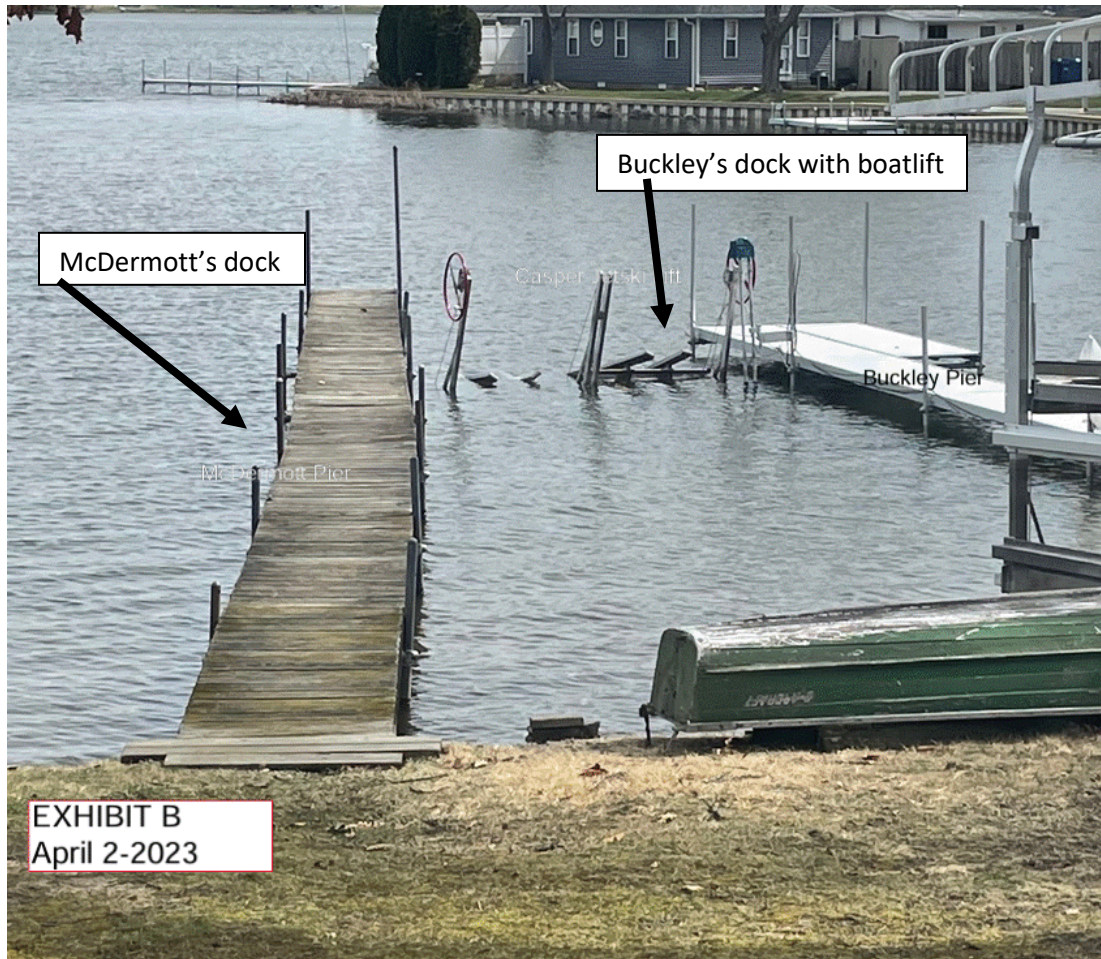
7. At a telephonic conference on June 29, 2023, the parties agreed to set a hearing date of August 11, 2023. On July 26, 2023, McDermott requested a continuance given a conflict with McDermott's non-attorney representative's schedule. The continuance was granted.
8. During a telephonic conference on August 11, 2023, the parties agreed to set a new hearing date of November 3, 2023.
9. The administrative hearing took place on November 3, 2023. At the hearing, McDermott; non-attorney representative for Petitioner, Michael J. McDermott; Buckley; and non-attorney representative for Respondent, Nick Casper, appeared in person at the Commission Hearing Room at the Indiana Government Center in Indianapolis, Indiana.
10. The following witnesses provided testimony at the administrative hearing: Michael McDermott, Mal Rafter, and Dan Petrow.
11. McDermott's Exhibits A-V and Buckley's Exhibits 1-7 were admitted by stipulation into the record at the administrative hearing.¹

Findings of Fact

12. McDermott owns property in Starke County, Indiana commonly referred to as 7801 Tippecanoe Drive, Walkerton, IN 46574. See testimony of Michael McDermott.
13. Buckley owns property in Starke County, Indiana commonly referred to as 7793 Tippecanoe Drive, Walkerton, IN 46574. See testimony of James Buckley.
14. McDermott does not own lakefront property but has access to Koontz Lake through an easement abutting Koontz Lake. The easement abuts Buckley's northern property line. See testimony of McDermott.
15. McDermott has maintained a private dock on the easement property for at least 20 years. McDermott's private dock is approximately 60 feet long and three (3) feet wide. See Testimony of McDermott.
16. McDermott also maintains a dock at a rental property north of McDermott's property, but that property is owned by McDermott's sister and held in trust by members of McDermott's family. The dock is to be used by renters of the property per a rental agreement. See Testimony of McDermott.

¹ McDermott later objected to Buckley's Exhibits 4 and 5-7 as they were sketches prepared by Buckley for the hearing without the involvement of McDermott or a professional surveyor. The ALJ deemed the exhibits admitted given McDermott's previous stipulation but noted the objection.

17. Until November 2022, Buckley also maintained a dock into Koontz Lake that ran parallel to McDermott's private dock. Buckley's dock was shorter than McDermott's dock. Both docks approximately followed the landward property lines of the McDermott and Buckley properties as they entered Koontz Lake. See testimony of McDermott and
18. The docks were typically between 20 and 25 feet away from each other to abide by the Natural Resources Commission's Information Bulletin #56 (IB56). See testimony of McDermott and Rafter; see McDermott's Exhibits C, D, G, H, and J; and see generally Information Bulletin #56, *Riparian Zones within Public Freshwater Lakes and Navigable Rivers* (Third Amendment), DIN 20220209-IR-312220025NRA.dock
19. In November 2022, Buckley placed a new, longer dock in Koontz Lake that was angled more toward McDermott's dock. The new dock was between five (5) and six (6) feet north of Buckley's previous dock location. The new dock is approximately 60 feet long and three (3) feet wide with an additional three (3) foot extension at the lakeward end of the dock. Buckley also installed a boatlift on the northern edge of his dock. See testimony of McDermott, testimony of Rafter, and McDermott's Exhibit A.
20. In the Spring of 2023, McDermott placed his dock into Lake Koontz in the same location he had previously placed his dock. Buckley's new dock and boatlift impaired McDermott's ability to access his watercraft and use his riparian area. There was only approximately 52 inches of space between Buckley's boatlift and McDermott's dock. See testimony of McDermott; McDermott's Exhibits B (excerpt below), T, and V; and Buckley's Exhibits 3.1 and 3.2.



21. In July 2023, McDermott and Buckley discussed a resolution to the dispute wherein both parties would move their respective docks approximately five (5) feet toward the center of their respective properties to create open, navigable space between the docks. See testimony of McDermott and Petrow.
22. However, despite this agreement and despite McDermott removing his dock to abide by the agreement, Buckley did not move his dock. The docks are configured the same way as shown in McDermott's Exhibit B. McDermott's ability to access and use his watercraft is still impaired by Buckley's dock. See testimony of McDermott.

Conclusions of Law

23. Koontz Lake is a Public Freshwater Lake located primarily in Starke County, Indiana. Information Bulletin # 61 Listing of Public Freshwater Lakes (Eighth Amendment), DIN 2021020-IR-312210447NRA (IB61).
24. IC 14-26-2-5, also known as the Lake Preservation Act, provides that the State "has full power and control of all the public freshwater lakes in Indiana ... [and] hold and controls

all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.” See IC 14-26-2-5(d)(1-2).

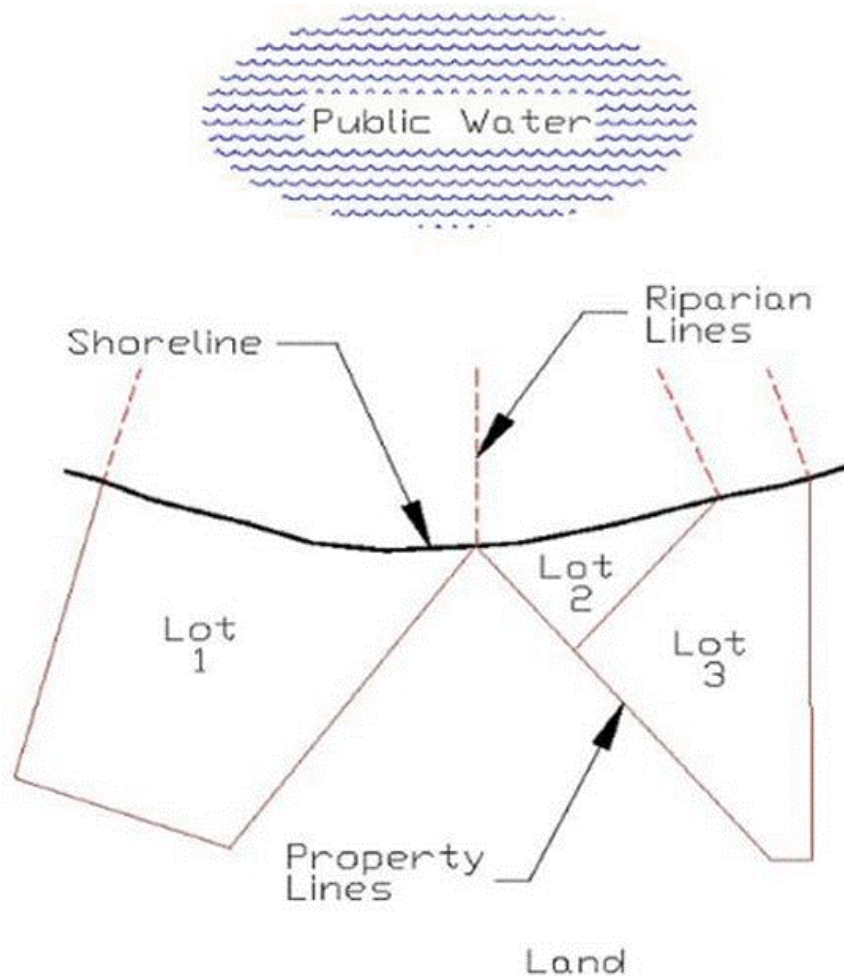
25. The Commission has jurisdiction over public freshwater lakes and has the power to make administrative rules to implement relevant sections of the Indiana Code. See IC 14-10-2, 14-15-7-3, 14-26-2-23(e)(3)², and 4-22-2.
26. A “riparian owner” is “the owner of land, or the owner of an interest in land sufficient to establish the same legal standing as the owner of land, bound by a lake.” 312 IAC 11-2-19.
27. In general, the owner of property that abuts a lake possesses certain rights associated with ownership of that property. *Bass v. Salyer*, 923 N.E.2d 961, 971 (Ind. Ct. App. 2010). Those rights include “(1) the right of access to navigable water; (2) the right to build a pier out to the line of navigability; (3) the right to accretions; and (4) the right to a reasonable use of the water for general purposes . . .” *Parkison v. McKue*, 831 N.E.2d 118, 128 (Ind. Ct. App. 2005).
28. It is not disputed that McDermott and Buckley have acquired riparian rights along Koontz Lake given their easements and/or properties abutting Koontz Lake. Accordingly, they each may be permitted to extend a qualifying temporary structure lakeward of the shoreline of Koontz Lake. 312 IAC 11-3-1(b).
29. 312 IAC 11-3-1 grants a general license to place a temporary structure, including a pier or dock, in or on a lake provided, as relevant to this case, that the structure does not infringe on the access of an adjacent landowner to the public freshwater lake and/or does not unduly restrict navigation. *Id.*
30. The Commission is required to consider the guidance provided in IB56 when asked to determine parties’ riparian boundaries. 312 IAC 11-1-4. IB56 does not have the effect of law; however, it is widely followed to provide guidance for determining riparian boundaries. *England v. Ball & Arend*, 15 CADDNAR 77, 79 (2019).
31. In this matter, McDermott’s multiple exhibits show that McDermott’s and Buckley’s docks, as well as surrounding docks on other properties, ran approximately parallel to each other as they extended lakeward into Koontz Lake from at least Spring 2005 to November 2022.
32. Additionally, the same evidence shows that the shoreline is somewhat irregular, creating a curve as the shoreline continues southward. This creates a similar situation to IB56’s third principle, which provides:

Where the shore approximates a straight line, and where the onshore boundaries approach the shore at obtuse or acute angles, the boundaries of riparian zones are generally determined by extending a straight line at a

² I.C. § 14-26-2-23(e)(3) was repealed by the Indiana legislature, effective July 1, 2023. However, as this petition was filed on December 23, 2022, the Commission retained jurisdiction over this matter.

perpendicular to the shore. If the boundaries of two owners intersect at the shore, or in proximity to but landward of the shore, the boundaries of the riparian zones may be formed by a perpendicular to the shore from the point of intersection of the onshore boundaries. Application of the third principle is most compelling where land owners in the vicinity have historically used a perpendicular line to divide their riparian zones, but the principle should not be applied where a result is to deprive a riparian owner of reasonable access to public waters.

See IB56 at pages 3-5 and illustration from IB56 below.




33. During the cross examination of McDermott, Buckley referenced that his dock and Dan Petrow's dock were perpendicular to the shoreline "as per DNR regulations." Buckley was referring to IB56, a Commission document. However, IB56's third principle applies only to how a riparian line and resulting riparian zones should be determined. Within those zones, temporary structures may be arranged however one likes if other riparian owners have reasonable access to public waters and if open, navigable zones are established between the structures. Id.

34. Buckley provided no evidence at the administrative hearing as to why his new dock needed to be placed in a manner different from its placement from 2005 and 2022.
35. While there was a discussion during Dan Petrow's testimony related to how placing Buckley's new dock at the same angle as his old dock may interfere with Petrow's dock and riparian area, that discussion bears no weight on the dispute between McDermott and Buckley. Any current or potential dispute between Petrow and Buckley is not under consideration in this case.
36. Further, given the photographic evidence, it is apparent that Buckley's new dock is closer to McDermott's dock and that Buckley's boatlift is substantially closer to McDermott's dock compared to prior dock arrangements. It is also obvious that Buckley's moving of his dock led to the current dispute.
37. Buckley is ordered to move his new dock to make it consistent with the dock placement prior to November 2022.
38. Both parties referenced IB56's recommendation that 20 feet of clear navigational space be established between temporary structures. As discussed above, IB56 does not have the force of law, but the Commission does reference it and consider it in its decision making.
39. Per McDermott's testimony, there is a clear history of both McDermott and Buckley maintaining their docks in such a way as to maintain at least 20 feet of clear space between their respective docks.
40. Both parties are ordered to maintain at least ten (10) feet of open, navigable space on their respective sides of the riparian line. Both parties must adjust their docks and/or boatlifts to comply with this order as necessary.
41. Buckley focused heavily on McDermott temporarily moving his dock for repair work as "evidence" that McDermott's dock was not in the same position for nearly 20 years. Evidence that McDermott removed his dock for repairs on occasion is not sufficient to overcome the overwhelming evidence that the dock was in the same position for over 20 years.
42. Additionally, the drawings and sketches of the dock arrangements Buckley placed into evidence carry no weight. The sketches were prepared by Buckley's non-attorney representative, who is not a surveyor, without input from Buckley. See Buckley's Exhibits 4 and 5-7. No foundational testimony as to the validity of the sketches was provided at the hearing beyond Nick Casper's assertions that he measured the relevant areas.

NONFINAL ORDER

1. The riparian zone boundary between McDermott and Buckley is to be determined by application of the third principle of IB56.
2. Buckley is ordered to move his dock so it aligns with how the dock was previously placed between 2005 and November 2022.
3. Both parties are ordered to maintain at least ten (10) feet of open, navigable space on their respective sides of the riparian line dividing their properties. Both parties must adjust and/or modify their docks as necessary to comply with this order.

Dated: February 2, 2024



Aaron W. K. Bonar, Administrative Law Judge
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DISTRIBUTION

The foregoing is distributed to the parties as follows on February 2, 2024.

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A copy of the foregoing will also be distributed to the following in accordance with IC 4-21.5-3 or IC 5-14-3. *The parties need not serve pleadings, motions or other filings upon these persons.*

DNR Legal

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Subject: McDermott v. Buckley (22-070W) Notice and NFO
Date: Friday, February 2, 2024 11:01:49 AM
Attachments: [McDermott v. Buckley \(22-070W\) Notice NFO 2024-02-02.pdf](#)
[McDermott v. Buckley \(22-070W\) NFO 2024-02-02.pdf](#)

The attached documents have been entered into the record for the referenced proceeding.

Thank You,

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BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:
MICHAEL MCDERMOTT,
Petitioner,

)
) Administrative Cause
) Number: 22-070W

vs.

)
)
) Riparian Rights Dispute
)

JAMES BUCKLEY,
Respondent.

**RESPONDENT, JAMES BUCKLEY’S, OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW WITH NON-FINAL ORDER**

Respondent, James Buckley (“Buckley”), by counsel, pursuant to Indiana Code § 4–21.5–3–29 and 312 IAC 3-1-12, hereby asserts to the AOPA Committee of the Natural Resources Commission the following objections to the findings and conclusions of the non-final order issued in this proceeding on February 2, 2024:

1. Buckley objects to **finding/conclusion number 32** because such finding/conclusion is inherently contradictory and misapplies applicable law and legal principle, insofar as it both finds the shoreline at issue to be “irregular, creating a curve as the shoreline continues southward” and also applies the third principle of Natural Resources Commission Information Bulletin #56 (“Bulletin #56”), which is dependent upon the shoreline in question approximating a straight line.

2. Buckley objects to **finding/conclusion number 35** because it improperly gives “no weight” to the testimony of Dan Petrow related to the placement of Buckley’s new pier. Finding/conclusion number 35 states that although Petrow testified that Buckley located his new pier at a different angle than Buckley’s prior pier because if Buckley had not done so it would interfere with Petrow’s pier and riparian area, such testimony “bears no weight” since no dispute

between Petrow and Buckley was at issue in these proceedings. However, the purpose of Petrow's testimony was not to address any dispute between he and Buckley, but to demonstrate the reason for Buckley's location of his pier – i.e., so that it did not cause interference with Petrow's riparian rights, thus justifying the placement of Buckley's pier in relation to the Buckley-McDermott riparian areas, given the irregular shoreline.

3. Buckley objects to **finding/conclusion number 37** because, for the reasons outlined elsewhere in these objections, there is no basis to conclude Buckley should be required to move his new pier to make it consistent with the location of his pier prior to November 2022. Moreover, there was no evidence to establish the location of Buckley's pier prior to November of 2022. As such, the order is not specific enough to be enforceable.

4. Buckley objects to **finding/conclusion number 39** because the conclusion that there has historically been “at least 20 feet of clear space” between the respective piers of McDermott and Buckley does not account for boat lifts that the overwhelming evidence demonstrates were placed between piers in the relevant riparian areas for many years, thus reducing the overall clear space/navigational buffer, all of which is relevant to the ultimate determination of this case.

5. Buckley objects to **finding/conclusion number 40** because it requires the parties to maintain at least 10 feet of open, navigable space “on their respective sides of *the riparian line*.” (Emphasis supplied.) However, no determination of any riparian line between the Buckley and McDermott properties was ever established. As such, this finding/conclusion/order is not enforceable.

6. Buckley objects to **finding/conclusion number 42** because it improperly gives “no weight” to the drawings and sketches of the riparian areas and pier placements of the parties and

the surrounding properties. Among other things, finding/conclusion number 42 states: “No foundational testimony as to the validity of the sketches was provided at the hearing beyond Nick Casper’s assertions that he measured the relevant areas.” (Casper is a neighboring property owner.) The subject drawings and sketches were admitted into evidence by stipulation and, thus, do not require foundational testimony for their proper admission.

7. Buckley objects to **paragraph 1 of the non-final order** because it improperly applies the third principle of Bulletin #56. The third principle depends upon the configuration of the shoreline as approximately straight, whereas the subject shoreline was determined in finding/conclusion 31 to be “irregular” and “creating a curve.”

8. Buckley objects to **paragraph 2 of the non-final order** because neither the prior placement of Buckley’s pier, nor the location of any riparian boundary between Buckley and McDermott was established in this proceeding. As such, the order is unenforceable.

9. Buckley objects to **paragraph 3 of the non-final order** because the location of any riparian boundary between Buckley and McDermott was not established in this proceeding. As such, the order is unenforceable.

WHEREFORE, Respondent, James Buckley, by counsel, pursuant to Indiana Code § 4–21.5–3–29 and 312 IAC 3-1-12, objects to the findings and conclusion of the above referenced nonfinal order and requests that AOPA Committee of the Natural Resources Commission set this matter for oral argument, that it modify and/or dissolve the nonfinal order consistent with the objections stated herein, and that it grant any and all other appropriate relief.

Respectfully submitted,

CLARK QUINN MOSES SCOTT & GRAHN, LLP

/s/ William W. Gooden

William W. Gooden #19358-49

/s/ Kristin A. McIlwain

Kristin A'Lee McIlwain #34116-49

CERTIFICATE OF SERVICE

I certify that on February 19, 2024, the foregoing document was electronically filed with the Indiana Natural Resources Commission at NRCAOPA@nrc.in.gov and served upon the following person(s) via e-mail:

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