

**AOPA COMMITTEE
OF THE
NATURAL RESOURCES COMMISSION**

March 7, 2013 Meeting Minutes

MEMBERS PRESENT

Jane Ann Stautz, Chair
Doug Grant
R.T. Green
Robert Wright
Jennifer Jansen

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Stephen Lucas

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Cameron Clark	Executive Office
Eric Wyndham	Legal
Alysson Olinger	Division of Water

GUESTS PRESENT

Sam Parkison	Lloyd Bickel
Karen Bickel	Michael Ashley
Jim Williams	Tom Niezer
Jeff Johnston	Jason Kuchmay
Karen Ybarra	Steve Ybarra
David Jennings	Jeff Spaw
Holly Spaw	Tom Hare
Regina Hare	

Call to order and introductions

The Chair, Jane Ann Stautz, called the meeting to order at 1:10 p.m., EST on March 7, 2013 in the Gates Room of The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of all five members, the Chair observed a quorum.

The Chair welcomed Jennifer Jansen as the newest member of the AOPA Committee. She reported Jansen would serve the AOPA Committee as the proxy of Michael Cline, the Commissioner of the Indiana Department of Transportation.

Consideration and approval of minutes for meeting held on December 7, 2012

Doug Grant moved to approve the minutes of the meeting held on December 7, 2012 as presented. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Deliberation regarding “Findings of Fact and Conclusions of Law with Nonfinal Order along with Order Denying Petitioners’ Motion for Stay of Effectiveness” in the Matters of:

- A. *Skilbred, et al. v. Spaw, et al.*, Administrative Cause No. 11-160W;**
- B. *Skilbred, et al. v. Lorntz, et al.*, Administrative Cause No. 11-161W;**
- C. *Skilbred, et al. v. Macklin, et al.*, Administrative Cause No. 11-162W; and**
- D. *Skilbred, et al. v. Ward, et al.*, Administrative Cause No. 12-014W**

The Chair introduced the sole item on the agenda and noted the item involved four individual proceedings. Upon the agreement of the parties, oral argument was presented on each of the proceedings simultaneously on December 7, 2012, and at the conclusion of the presentations the parties were tasked with filing supplemental briefs. The Chair reported the committee members each received the materials provided in advance of the December 7 meeting, and the minutes of the December 7 meeting provided background with respect to the discussion that occurred. She added the members also received copies of the parties’ supplemental briefs. She thanked the parties for their thorough efforts, including the additional briefs. The Chair said that consistent with the briefing order and as reiterated recently to the parties, no additional presentations would be received from the parties. She then opened the meeting for deliberations by the committee members.

R.T. Green inquired as to the possibility of responding to the request by the Department of Natural Resources to address easements and riparian rights issues in subdivisions in a general way. Could the AOPA Committee enter a broad based determination to establish a “one size fits all solution” for these types of disputes?

The Chair responded she believed the committee was unable to accommodate the Department’s request. Jurisdiction was limited to matters placed in controversy for orders pertaining to particular persons. She noted that the issue presented in each of the four proceedings was the validity of individual permits and how those permits affected the parties to the proceedings.

The Chair suggested a broader disposition might be achieved if a person sought a quasi-declaratory judgment. She asked Stephen Lucas, Director of the Commission’s Division of Hearings, to outline the use of quasi-declaratory judgment.

Lucas responded that quasi-declaratory judgment was a remedy accorded by Commission rule at 312 IAC 3-1. He said he could not recall the specific section offhand.¹ A person may identify a particular set of facts and issues to the DNR Director and indicate the relief sought. The Director has 45 days to act upon the request or seek additional information, or the request is deemed denied and the person may seek administrative review to the Commission. If an affected person is dissatisfied with the DNR Director’s decision, the person may seek administrative review under AOPA. Former DNR Directors sometimes elected not to issue a decision and instead

¹ Quasi-declaratory judgment is considered at 312 IAC 3-1-15.

referred the matter directly to the Commission for disposition. Either way, an administrative law judge would be appointed, and a decision rendered. In most circumstances, the ALJ decision was nonfinal and subject to review by the AOPA Committee. In a few circumstances “such as under SMCRA” for surface coal mining, the ALJ decision would be subject to direct judicial review by a court. Just as with other matters if acted upon by the AOPA Committee, quasi-declaratory judgments were also subject to judicial review.

Green questioned whether there was concern that the nonfinal orders reach beyond the jurisdictional authority of the Natural Resources Commission to a determination of real property rights or whether the determination regarding the placement of piers could be construed as a “taking”.

The Chair responded the focus of the nonfinal orders is for the placement of piers within public freshwater lakes. The Commission has responsibility for construction activities within public freshwater lakes. In order to place a pier at a particular location in the lake, a person must have riparian rights or rights of a riparian owner conferred by an easement. The issue is one the Commission has dealt with on numerous past occasions. In this instance, the Chair further noted that the nonfinal orders leave the fee ownership of the land in dispute so the nonfinal orders could not be construed as a “taking”.

Green queried as to the possibility of allowing the parties to offer summaries of their supplemental briefs. The Chair responded that the AOPA Committee Order to authorize briefing notified the parties additional presentations would not be accepted, and this meeting was for the committee to complete deliberations. She expressed concerns that to now allow presentations without advance notice to all parties would be unfair.

The Chair solicited input from other members.

Robert Wright indicated he was not present for the oral arguments at the December 2012 meeting. He had thought subjects other than the *Skilbred* proceedings would be considered, and he came with the intention of participating in those. Because of his lack of prior participation, he said he would likely abstain when a vote was taken.

Jennifer Jansen indicated that similarly to Wright that she was not present for oral arguments in December. Jansen said she was new and was interested in hearing the deliberations of the committee members, but she currently had no input or questions.

Doug Grant said he had no questions.

Green said he came to the meeting with the hope a broad directive might be offered to the Department for addressing disputes along Big Long Lake. He understood there would be disappointment with not issuing an inclusive decision, and some might believe the more courageous approach would be to try and answer questions for all similarly situated piers. But he offered his agreement the AOPA Committee’s jurisdictional limits are for particular properties and to the persons who are parties to the proceedings.

Green moved to affirm the administrative law judge's nonfinal orders, as modified during the December meeting, as the final orders of the Commission. Grant seconded the motion.

The Chair called the question. The motion carried with four affirmative votes. Wright abstained.

Adjournment

The meeting adjourned at approximately 2:05 p.m., EST.