

**AOPA COMMITTEE  
OF THE  
NATURAL RESOURCES COMMISSION  
April 29, 2024, Meeting Minutes**

**AOPA COMMITTEE MEMBERS PRESENT**

Jane Ann Stautz, Chair  
Jennifer Jansen

**NRC, DIVISION OF HEARINGS STAFF PRESENT**

Elizabeth Gamboa  
Aaron Bonar  
Scott Allen

**GUESTS PRESENT**

Michael J McDermott	Mike Mohlman
Michael McDermott	Nadine Mohlman
William Gooden	Donald Bobay
Mark H. Bains	Maureen Bobay
James Buckley	

**Call to Order**

Jane Ann Stautz, Chair, called the meeting to order at approximately 1:03 p.m., ET, at the Division of Hearings Hearing Room, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana. With the presence of two members, the Chair observed a quorum. Bart Herriman was not in attendance due to a potential conflict of interest.

**Consideration and approval of minutes for the meeting held on January 23, 2024**

Jansen made a motion to approve the minutes of the January 23, 2024, AOPA meeting. The Chair seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the Matter of *Crosby v. Mohlman & Bobay*; Administrative Cause No. 21-038W**

The Chair recognized William Gooden, counsel for the Respondent and Counter-Petitioner, Michael Mohlman (Mohlman), and Respondents, Donald and Maureen Bobay (Bobay).

Gooden presented oral arguments, which is summarized as follows:

The Respondents filed for a clarification of the Findings of Fact and Conclusions of Law with Nonfinal Order (Nonfinal Order) or, in the alternative, filed an objection to the Nonfinal Order. The chief objection is that, based on the shoreline configuration and the way the property boundaries intersect, principle two of Information Bulletin # 56 (IB56) would not apply. Principle four of IB56 would apply because the shoreline does not approximate a straight line.

The primary issue is the riparian boundary line between Mohlman and the Crosbys. A reasonable portion of the shoreline would be maintained if Mohlman and the Bobays were to maintain the *status quo* leaving the piers and lifts configured as they were at the end of the 2023 season. A reasonable apportionment could be achieved if the Crosbys maintained a buffer of at least ten feet between their piers, watercraft, and lifts from the farthest south point of any of the Mohlman items. Mohlman's request was not intended to place the burden of maintaining a clear buffer on the Crosbys but applying principle four there should be reasonable accommodation and division of the overall riparian zone.

Gooden presented to the AOPA members a demonstrative exhibit. The exhibit was an excerpt of a survey that had been placed into evidence at the administrative hearing; however, it contained additional markings that were not on the exhibit when it was placed into evidence. Bains did not object to the demonstrative exhibit being provided to the committee members but did not consent to its admissibility.

The Chair noted the demonstrative exhibit was not part of the official record.

Gooden showed the lots on the survey map and explained that he drew a red line extending into the water perpendicular to the Bobay shoreline. Gooden continued with oral arguments, summarized as follows:

A specific riparian line is not necessary if there is a ten-foot buffer zone, a line on the Mohlman property, and Mohlman cannot place items to the south of where they are currently located. In addition, Bobay cannot place any items closer than ten feet to the Mohlman property. This creates a minimum ten-foot navigation zone, but the ten feet could be divided along the green line on the map creating an approximate riparian boundary.

There was no evidence presented at the hearing that the Mohlman's lift or pier location caused any interference for the Crosbys. Crosby's testimony was that they had reasonable access with eighteen feet between the Crosby's boat lift and Mohlman's boat lift. The evidence suggested that Crosby intends to relocate the lift on the north side of his pier to the south side, which is opposite of Mohlman, increasing the buffer. Mohlman's position is that the Crosbys can move what they want if they keep their buffer at ten feet and Mohlman will keep the watercraft, pier, and lift where they have historically been placed.

Finding 55 of the Nonfinal Order improperly refers to the purple line on the diagram on "Petitioners Exhibit C" as perpendicular to the Mohlman property and it should have said perpendicular to Crosby property.

The Chair recognized Mark Bains, counsel for the Petitioner and Counter-Respondents, Charles D. and Jill Crosby and the Charles D. Crosby Living Trust (Crosby)

Bains noted a lack of clarity about the perpendicular line in Finding 102 of the Nonfinal Order and where the line should be drawn from may have been misrepresented. The Chair noted Bains's comment and the potential need for clarification.

Bains presented oral argument, which is summarized as follows:

The Crosbys purchased their property in 2013 and had no issues until Mohlman moved in in 2019. Mohlman lengthened and widened his pier and added a boat lift on the Crosby side of the Mohlman pier. Crosby believes principle two of IB56 applies, Mohlman believes principle four applies, and the Administrative Law Judge (ALJ) said principle three applies.

There is no indication that the diagrams in IB56 are drawn to scale or meant to represent a certain length of shoreline as Gary Kent assumed in his determination of the shoreline. Crosby objects to Findings 88 and 89 of the Nonfinal Order. Kent made assumptions in his testimony that are outside of what is contained in IB56. The principle two diagram does not show the property line has to be perfectly straight and Petitioners Exhibit D shows the shoreline at issue is straighter than depicted in principle two.

The ALJ found historical usage compelling, but it was evident at the administrative hearing that the historical usage is conflicting, a mess, with a history of different historical usages. The modifications to Mohlman's historical pier are why the Petition was filed. The Koher testimony showed there was no historical information on the length and width of the pier and there were a lot of different configurations over the years. The historical usage has been inconsistent and rapidly changing.

Crosbys object to Finding 96 of the Nonfinal Order, "Application of the third principle is most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones." Principle three should only be applied where the onshore boundaries approach the shore at obtuse or acute angles and there was no evidence of that in the Nonfinal Order or the administrative hearing. In Petitioners Exhibit D the platted dimensions of the Mohlman lot are a 50-foot by 50-foot rectangle, approximately a 90-degree angle, and therefore principle two should apply.

Crosbys object to Finding 97 and Finding 102 of the Nonfinal Order and argue that principle three is not applicable. Looking at Petitioners Exhibit D, it is not possible to run a perpendicular line from the point of intersection of the onshore boundaries when the intersection of the boundaries meets at an angle. It is unclear what the starting point of the onshore boundary line should be.

There has never been a boat lift on the south side of the Mohlman pier and historical usage is consistent with principle two. Reasonable application of principle two is consistent with Kent's testimony and where he drew the riparian boundaries. Since the administrative hearing, Mohlman has ignored the ALJ's Nonfinal Order and improperly placed his boatlift in the same spot that caused the issue. Crosby's request language in an order that would allow parties to recover attorney fees for enforcement of the order.

Bains presented a picture not previously submitted not a part of the administrative record.

The Chair recognized ALJ Gamboa to offer clarification on Finding 102 of the Nonfinal Order.

ALJ Gamboa said Finding 102 is indicated in principle three that states, "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." ALJ Gamboa said from the evidence at the administrative hearing that the seawall did not necessarily represent the boundary lines of the properties and there was a point of intersection.

The Chair asked if there was a way to clarify Finding 102. ALJ Gamboa said she could clarify Finding 102 by saying it is the onshore boundaries of the parties' respective properties.

The Chair asked if there was a survey done or presented at the administrative hearing. ALJ Gamboa replied there was not a survey offered at the administrative hearing. The Chair noted the difficulty in deciding cases where there is not a survey.

ALJ Gamboa noted some typographical errors that would be corrected. Those corrections include: a missing period in Finding 23; delete "from" in the first sentence of Finding 36; a missing period in Finding 55; Finding 55 should say perpendicular to Crosby's onshore boundary; delete extra "the" in Finding 63, delete "angel" and insert "angle" in Finding 91; and delete "her" and insert "here" in Finding 94.

The Chair said the ten-foot buffer for safety is good, but the challenge is knowing from what point to draw the perpendicular line. The information presented shows that it makes a difference where the starting point of the line is located.

ALJ Gamboa noted that the parties' presented documents that were not part of the evidence submitted during the administrative hearing and because it is not part of the administrative record may not be considered. The Chair agreed the only documents that could be considered by the AOPA Committee were those two documents presented that were already in evidence and part of the administrative record.

The Chair said the record lacks specific points or coordinates to reference. The Chair noted that parties often complete a survey or offer competing surveys into evidence to show the onshore boundaries. The Nonfinal Order does not reflect GPS coordinates or boundary plat work to determine a riparian boundary to give more specificity on the placement of piers.

Gooden stated Mohlman's and Bobays' position is the ALJ's Findings were mostly correct other than misinterpreting their request that the buffer zone be allocated to the Crosbys. Gooden said Finding 94 references the historical placement of the pier configuration until the boat lift was added by Mohlman. Gooden noted Finding 95 references Petitioners Exhibit C where the piers appear to be placed perpendicular to the shoreline. Gooden assumed that meant from the seawall on the Mohlman property based on the picture and survey.

The Chair said the issue is that assumptions cannot be made, and the starting point would need to be determined.

ALJ Gamboa said the picture shows the general location but does not necessarily show where the riparian division or line would be located.

Gooden said the issue became locating a riparian line instead of keeping a buffer zone in place that affords both parties reasonable access to the lake.

ALJ Gamboa noted the issue came with evidence presented that Crosby intends to change the pier configuration. ALJ Gamboa said there is an assumption by the parties that the seawall represents the intersection of the party's property line, and the intersection is landward of the seawall. There was a lack of evidence that the seawall followed the party's property line.

The Chair said the preference is for there to be specificity on the riparian line to avoid future conflicts.

Bains stated Crosby believes the riparian line would be determined by extending the onshore property line into the water. Bains said Petitioners Exhibit C shows where Kent provided three options with one line extending from the property line into the water: a perpendicular line from the Mohlman property line and a perpendicular line from the Crosby property line. Bains said the yellow line in Petitioners Exhibit C splits the difference.

Gooden said the order could say Mohlman would not place piers, lifts, and watercrafts further south than they were in 2023 and Crosby would not place piers, lifts, and watercrafts any closer than ten feet to the closest point. He noted the solution does not draw a specific riparian line but might give some clarity.

The Chair said the AOPA Committee could request measurements for clarity, continuity, and point of reference, but to have that documented would require an agreement between the parties.

Gooden said a boundary retracement survey that was admitted into evidence shows the location of the Mohlman pier and believes the survey provides an objectively identifiable location.

ALJ Gamboa clarified that the survey was part of Walter David's testimony and admitted into evidence at the administrative hearing, but the survey with the red and green marks presented to the AOPA Committee was not presented at the hearing. The survey itself is the same but without the red and green marks.

The Chair asked if the Walter David Survey depicts the placement of the pier at the end of 2023. Gooden agreed the survey is representative of the placement of the pier in 2023.

Jansen moved to approve the Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *Crosby v. Mohlman & Bobay*, with amendments. Jansen noted amendments to clarify Finding 102 to reference the Rowland Retracement Survey and the typographical corrections previously identified. The Chair seconded the motion.

The Chair called for a vote to accept the Findings of Fact and Conclusions of Law with Nonfinal Order, with amendments, in the matter of *Crosby v. Mohlman & Bobay*. On a voice vote, the motion carried.

### **Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the Matter of *McDermott v. Buckley*; Administrative Cause No. 22-070W**

The Chair recognized ALJ Bonar.

ALJ Bonar noted a correction in Finding 32 of the Nonfinal Order to delete “irregular” and insert “regular” shoreline to be consistent with principle three.

Gooden asked if the clarification in Finding 32 would indicate the shoreline approximates a straight line. ALJ Bonar responded that the finding would be corrected to show that, except for a slight curve, the overall shoreline is approximately a straight line.

Michael J. McDermott (M.J. McDermott) asked if the word “somewhat” was also going to be deleted before the word “irregular.”

ALJ Bonar said Finding 32 would be re-worded to say the shoreline is regular with a slight curve as the shoreline continues southward.

The Chair recognized William Gooden, counsel for the Respondent, James Buckley (Buckley).

Gooden noted changes to Finding 32 of the Nonfinal Order impact Finding 1 and Finding 7.

Gooden presented oral argument, which is summarized as follows:

Buckley objects to Finding 35 because it improperly gives no weight to the testimony of Petrow who owns property next to Buckley since there was no dispute between Petrow and Buckley. Petrow testified that the extension of the Buckley pier as historically configured would interfere with Petrow’s riparian area. Buckley changed the pier configuration, at least in part, to prevent Buckley’s pier modifications from interfering with Petrow’s pier.

Buckley objects to Finding 37 because there was no evidence establishing the location of the Buckley pier before 2020. Buckley was required to place the new pier to make it

consistent with the location of his pier before November 2022 and there is no point of reference to make the determination.

Buckley objects to Finding 39 because the conclusion was that there has historically been “at least 20 feet of clear space” between the respective piers. The evidence presented at the administrative hearing demonstrated that boat lifts had greatly reduced the navigational buffer for many years and had not been accounted for

Buckley raised an objection to Finding 40 because it requires the parties to maintain ten feet of navigable space on their respective sides of the riparian line. No riparian line was established, so this is unenforceable.

Buckley also objects to Finding 2, which orders Buckley to move his dock to where it was previously placed. There is no evidence of reference points to where the dock was previously located, and no riparian boundary was established.

In Finding 33, the ALJ determined that Buckley’s and Petrow’s docks were perpendicular to the shoreline, which would be consistent with principle three. Within those zones, temporary structures may be arranged, however one likes if it does not interfere with other riparian owners. The objection is a riparian line was not established and, even if it was established, there is no point of reference to determine if Buckley’s dock configuration interferes with other riparian owners.

The Chair recognized M.J. McDermott, Non-Attorney Representative (NAR) for the Petitioner, Michael McDermott (McDermott)

M.J. McDermott presented oral arguments, summarized as follows:

M.J. McDermott noted that Buckley filed no objections to Non-final Order Finding 33. It is not proper for counsel to raise new objections when written objections were filed and the NAR for McDermott has not had an opportunity to review the new objection for oral arguments.

In Finding 35, the weight given to Petrow’s testimony about why Buckley moved his pier was not relevant to the issue. McDermott did not argue that Buckley moved his pier without justification. Rather, McDermott argued only that Buckley moved his pier, which then interfered with McDermott’s pier use. Buckley could have joined Petrow as a party but chose not to.

In Finding 42, the ALJ correctly determined the drawings and sketches should carry no weight and were improper. The sketches and drawings are a threshold matter as they were prepared by Buckley’s NAR at the time and not by a witness or by Buckley. The sketches and drawings were offered as evidence by stipulation, but no one ever said who prepared the exhibits until the administrative hearing. There was a lack of foundation, and the sketches and drawings were misrepresented during the discovery. McDermott

intended to stipulate to the foundation of the exhibits to streamline the administrative hearing.

Photographic evidence going back two decades was admitted into evidence showing the placement of McDermott's pier. Pictures going as far back as 2007 show Buckley's pier. The objection to Finding 2 therefore lacks merit.

The precise location of the riparian boundary between the parties is not important. McDermott is not requesting to identify the riparian boundary but to have Buckley put his pier back the way it was prior to November 2022.

The Chair asked if there was evidence specifying where the parties' piers were located between 2005 and November of 2022

ALJ Bonar said there were no surveys introduced at the administrative hearing but one of the parties had a marker to show where the pier would go in at the beginning of the season. M.J. McDermott added the pier marker was for Buckley's pier.

M.J. McDermott said Buckley did not move his pier but instead changed the direction the pier went into the water. The request is Buckley put the pier back where it was, perpendicular to the shore, and maintain a 20-foot buffer zone.

The Chair said she would like more historical clarification on how the piers have been aligned with the shoreline. The Chair said the Nonfinal Order says both parties are ordered to maintain ten feet of open navigable space.

Jansen asked if it was possible to maintain ten feet of open space. M.J. McDermott said prior to November 2022 there was approximately 25 feet of open, navigable space between the piers. M.J. McDermott added that did not account for the shore stations at the end of the pier, but navigability was not an issue before November 2022.

Gooden said there may have been 25 feet of space between the piers but that does not include any boat lifts.

The Chair said ten feet of space is needed for safe navigability.

Gooden said they are not objecting to Finding 33 but he was using Finding 33 to illustrate Buckley's overall objection to the lack of a determination of the riparian boundary. Gooden stated they would withdraw the objection to Finding 42 and did not realize the ALJ noted the evidence was disputed after being admitted by stipulation. Gooden said the Nonfinal Order was clear that Buckley needed to move the pier back to where it was previously located, which is not known. Both parties were ordered to maintain ten feet of clear space on their sides of the riparian line. Gooden stated it is unclear what that riparian line without a reference point meaning the order cannot be complied with as written. Gooden noted the matter may need to be remanded for further proceedings.

The Chair asked if there was a plat or survey admitted at the administrative hearing. ALJ Bonar responded “no” and added he did not include an order on the riparian line because he was under the impression the parties had agreed to where the riparian line was, and a determination of the riparian line was not requested by the parties.

M.J. McDermott said there was no issue with where the riparian line was, and it was the vector or direction of the pier that was at issue.

The Chair noted that for future reference, having the riparian boundary line in the record, possibly by stipulation or agreement, would be helpful to determine a point of reference.

Gooden said there was no agreement between the parties on where the riparian line should be drawn.

M.J. McDermott asked for clarification that the remand was for the limited purpose of determining where the riparian line would be drawn. The Chair confirmed the matter was being remanded only for the purpose of determining the riparian line.

Jansen moved to remand the Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *McDermott v. Buckley* for further proceedings to determine the location of the riparian zone boundary. Jansen noted Finding 32 should be amended to say, “additionally the same evidence shows the shoreline is regular with a slight curve as the shoreline continues southward.” The Chair seconded the motion.

The Chair called for a vote to remand Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *McDermott v. Buckley* and to amend Finding 32. On a voice vote, the motion carried.

The Chair said procedurally the parties could agree on a surveyor to determine the riparian boundary and the matter could be resolved.

ALJ Bonar said unless the parties want further proceedings, a mutual agreement on a survey would make sense. A survey could then be incorporated in the Nonfinal Order. If there is a discrepancy in the survey, an administrative hearing would be needed to determine the riparian boundary.

### **Adjournment**

The meeting was adjourned at approximately 2:40 p.m. ET.