

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

**IN THE MATTER OF:**

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NONFINAL ORDER OF  
DISMISSAL**

**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 so 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.<sup>1</sup>
12. On February 2, 2024, ALJ Bonar issued Findings of Fact and Conclusions of Law with Nonfinal Order. Respondent filed his Objections to Findings of Fact and Conclusions of Law with Nonfinal Order on February 19, 2024.
13. On March 4, 2024, ALJ Bonar issued a Notice of Oral Argument on Objections, which set Respondent's objections to be heard on March 18, 2024 in front of the Commission's AOPA Committee. Due to a conflict, the Oral Argument on Objections was delayed and took place on April 29, 2024.
14. At the April 29, 2024 AOPA Meeting, the AOPA Committee remanded this matter to ALJ Bonar for the sole purpose of determining a riparian line separating the two parties' riparian zones.
15. A telephonic conference was held as scheduled on May 29, 2024. An administrative hearing was set for October 23, 2024 for the remanded issue.
16. The administrative hearing took place on October 23, 2024. At the hearing, McDermott; non-attorney representative for Petitioner, Michael J. McDermott; Buckley; and

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<sup>1</sup> 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.

Respondent's counsel William Gooden and Kristin McIlwain appeared virtually through the Microsoft Teams platform.

17. The following witnesses provided testimony at the remanded administrative hearing: Michael McDermott and James Buckley.
18. McDermott's Exhibit A and Buckley's Exhibits 1-8<sup>2</sup> were admitted by stipulation into the record at the administrative hearing. For simplicity, these exhibits will be referred to in this order as Remand Exhibits.

### **Findings of Fact – November 3, 2023 Administrative Hearing**

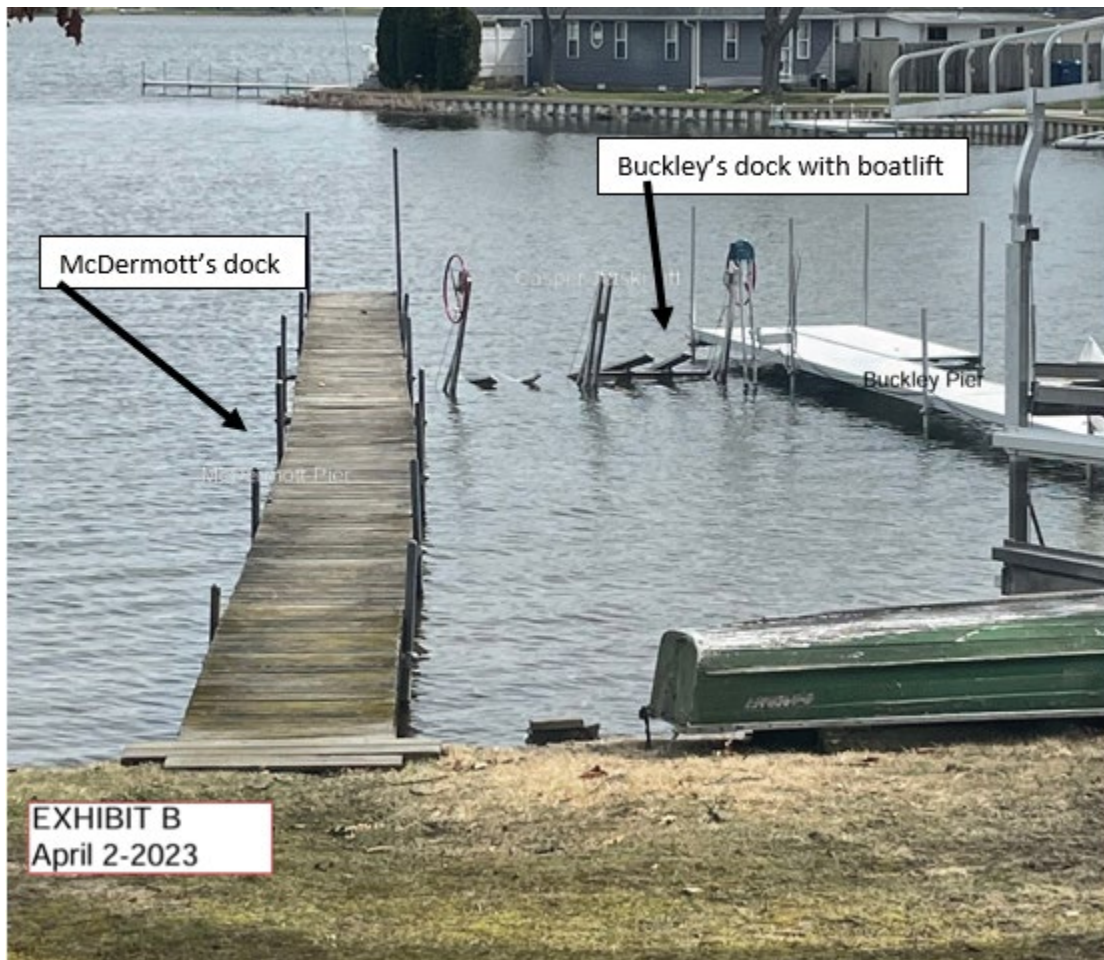
19. McDermott owns property in Starke County, Indiana commonly referred to as 7801 Tippecanoe Drive, Walkerton, IN 46574. See testimony of Michael McDermott (McDermott testimony).
20. Buckley owns property in Starke County, Indiana commonly referred to as 7793 Tippecanoe Drive, Walkerton, IN 46574. See testimony of James Buckley (Buckley testimony).
21. McDermott does not own lakefront property but claims access to Koontz Lake through an easement abutting Koontz Lake. The alleged easement abuts Buckley's northern property line. See McDermott testimony.
22. McDermott has maintained a private dock on the alleged easement for at least 20 years. McDermott's private dock is approximately 60 feet long and three (3) feet wide. See McDermott testimony.
23. 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 McDermott testimony.
24. Until November 2022, Buckley also maintained a dock on Buckley's alleged property 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. See McDermott testimony.
25. The docks were typically placed between 20 and 25 feet away from each other to abide by the Natural Resources Commission's Information Bulletin #56 (IB56). See McDermott testimony and testimony of Mal Rafter (Rafter testimony); see McDermott's Exhibits C,

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<sup>2</sup> Buckley's Remand Exhibit 8 is identical to McDermott's Remand Exhibit A.

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

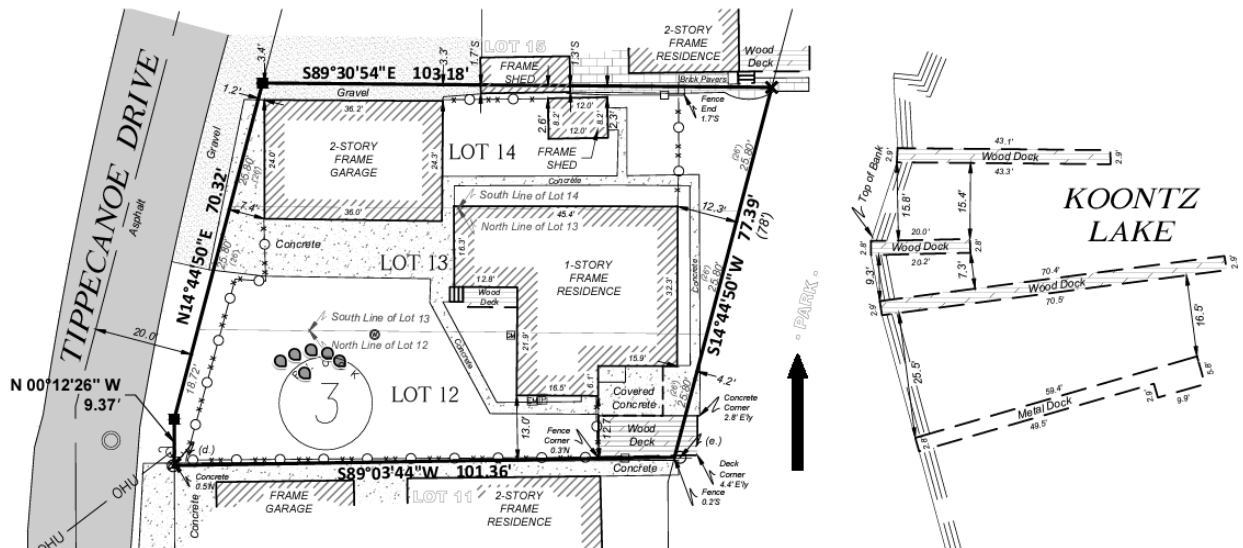
26. In November 2022, Buckley placed a new, longer dock in Koontz Lake that was angled more toward McDermott's dock. The new dock was between five (5) and six (6) feet north of Buckley's previous dock location. The new dock is approximately 60 feet long and three (3) feet wide with an additional three (3) foot extension at the lakeward end of the dock. Buckley also installed a boatlift on the northern edge of his dock. See McDermott testimony, Rafter testimony, and McDermott's Exhibit A.
27. 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 what he claimed as his riparian area. There was only approximately 52 inches of space between Buckley's boatlift and McDermott's dock. See McDermott testimony; McDermott's Exhibits B (excerpt below), T, and V; and Buckley's Exhibits 3.1 and 3.2.



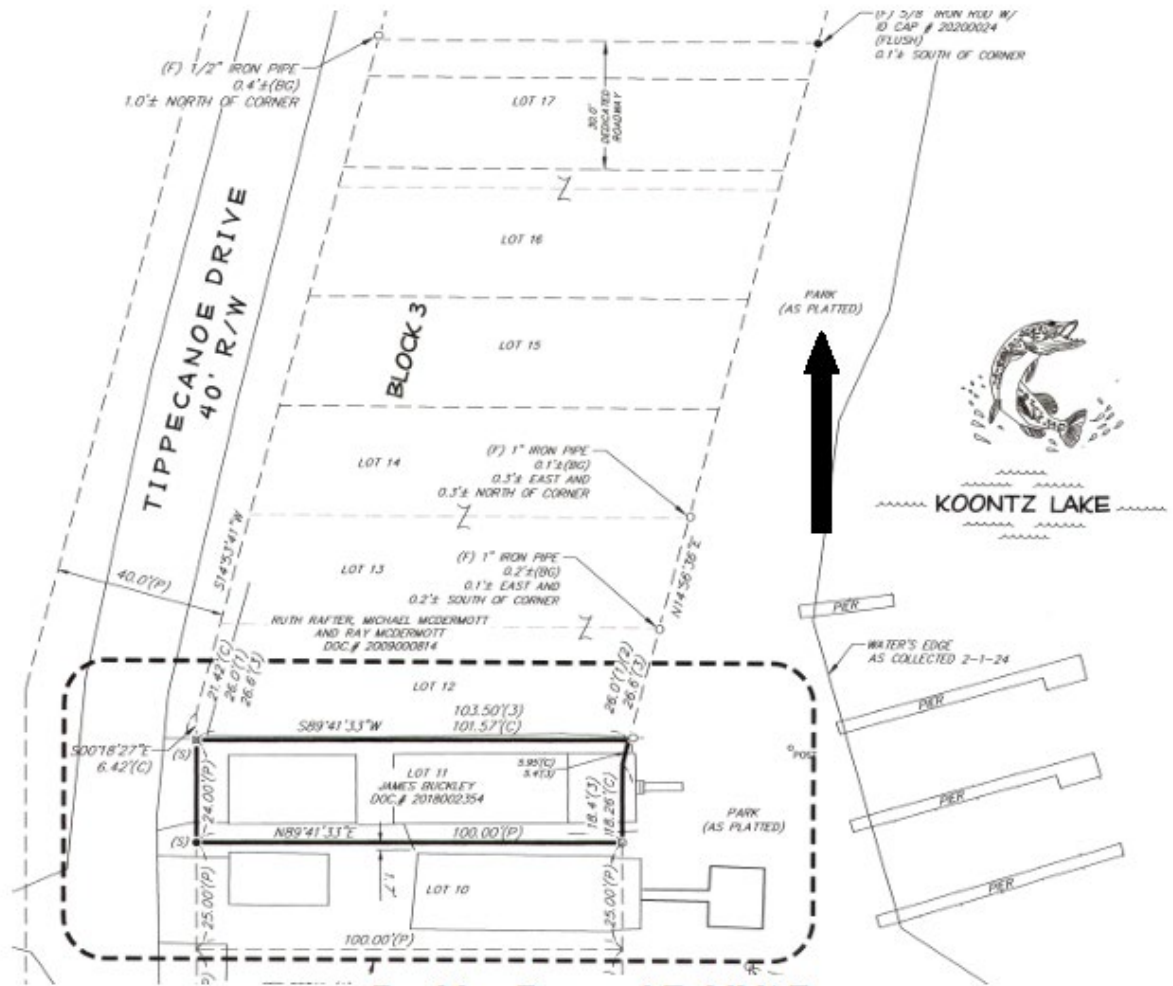
28. In July 2023, McDermott and Buckley discussed a resolution to the dispute wherein both parties would move their respective docks approximately five (5) feet toward the center of their respective alleged properties to create open, navigable space between the docks. See McDermott testimony and testimony of Dan Petrow.
29. 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 McDermott testimony.

**Findings of Fact – October 23, 2024 Administrative Hearing**

30. At the October 23, 2024 administrative hearing, both parties submitted surveys into the record as requested by the ALJ. Both parties acknowledged that the parties' docks had not been moved since the previous administrative hearing. See McDermott's Remand Exhibit A and Buckley's Remand Exhibit 7, McDermott testimony, and Buckley testimony.
31. Buckley's Remand Exhibit 7 shows a section of land between the parties' properties and Lake Koontz labeled as "Park (As Platted)." McDermott's Remand Exhibit A also labels this land as "Park." Id (excerpts below).



**McDermott Remand Exhibit A**



**Buckley Remand Exhibit 7**

32. Buckley stated that the land labeled “park” (parkland) in both surveys is owned by the State of Indiana, citing GIS records that were not introduced or admitted into evidence at the hearing. See totality of the record.
33. Buckley further argued that the ALJ could not draw any riparian lines from the parkland as one cannot draw private riparian zones from publicly owned property, which would effectively grant private control over public property. *Id.*
34. Regardless, Buckley requested that the ALJ find that the docks in question should remain in their current positions, effectively finding in favor of Buckley, as ordering the docks to be moved to their previous positions would impair Buckley’s riparian rights and the enjoyment thereof. *Id.*

35. McDermott did not introduce any exhibits discussing the status of the parkland other than the survey that identified the property as parkland. He argued that the docks should be returned to the positions they were in before November 2022 regardless of the ability to determine a riparian line between the parties' properties. *Id.*

### **Conclusions of Law**

36. 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).
37. 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).
38. 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)<sup>3</sup>, and 4-22-2.
39. 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.
40. 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).
41. At the November 3, 2023 administrative hearing, it was not disputed that McDermott and Buckley have acquired riparian rights along Koontz Lake given their alleged easements and/or properties abutting Koontz Lake. As riparian owners, therefore, each party would normally be permitted to extend a qualifying temporary structure lakeward of the shoreline of Koontz Lake. 312 IAC 11-3-1(b).
42. However, if Buckley’s argument raised at the October 23, 2024 administrative hearing that the parkland between the parties’ properties and the waters of Koontz Lake are indeed state-owned, or at least publicly-owned, is true, neither party would have riparian rights associated with the property as neither party would own property abutting the waters of Koontz Lake.

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<sup>3</sup> IC 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.



43. Despite the indication on the survey that the property from which the parties are now claiming riparian rights is parkland, McDermott disputed Buckley's assertion that this property was public property but did not provide any evidence as to the current ownership status of the parkland.
44. The Commission cannot ignore the evidence that parkland could be publicly owned and is not owned by either party. The remanded administrative hearing effectively raised a landward property dispute as to the ownership of the parkland.
45. The Commission may consider the landward property rights of the parties to a dispute involving use of the parties' respective riparian rights.
46. However, this consideration stops short of establishing substantive landward property rights, such as establishing ownership of landward property, in favor of merely evaluating the established landward rights as it relates to the parties' exercise of the riparian rights associated with such ownership.
47. The Commission must exercise its restraint in its consideration of landward property rights. See *Kranz v. Meyers Subdivision Prop. Owners Ass'n*, 969 N.E.2d 1068, 1075 (Ind. Ct. App. 2012)(citing *Howell v. Indiana-American Water Co.*, 669 N.E.2d 1272, 1275 (Ind. Ct. App., 1996)); *Bowman v. Walls*, 14 CADDNAR 85 (2016)(citing *Kranz*, 969 N.E.2d 1068); and *Teska v. DNR*, 16 CADDNAR 28 (2023).
48. As discussed above, riparian rights stem from one's ownership of property abutting the lake. If neither party owns property abutting Koontz Lake, as the existence of the parkland would suggest, then issuing an order affirming the current dock configuration as requested by Buckley would effectively quiet title to the parkland to McDermott and Buckley.
49. The Commission does not have the authority or jurisdictional power to grant such title to any party. Effectively, this new landward dispute takes this matter outside of the Commission's jurisdiction.
50. As a result of the Indiana General Assembly repealing IC 14-26-2-23(e)(3), the Commission no longer has jurisdiction over riparian disputes, which must now be heard in a state court of appropriate jurisdiction. The State courts also have the authority to resolve landward property disputes through a quiet title action.
51. While the ALJ could issue a stay in this matter, order the parties to resolve the landward property dispute in the Indiana court system, and then return to the Commission to resolve the underlying riparian dispute, doing so would result in a longer delay in resolving this case. The judiciary system could both resolve the landward property dispute and the riparian dispute at the heart of this matter in the same action.
52. Thus, in the interests of judicial economy, this matter will be dismissed.



**NONFINAL ORDER**

1. The Findings of Fact and Conclusions of Law issued on February 2, 2024 are **VACATED** as the Commission cannot resolve the landward property dispute as raised at the October 23, 2024 administrative hearing.
2. In the interests of judicial economy, this matter is **DISMISSED**.

Dated: January 3, 2025



Aaron W. K. Bonar, Administrative Law Judge  
Natural Resources Commission  
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**DISTRIBUTION**

The foregoing is distributed to the parties as follows on January 3, 2025.

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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

Donna Ridner, DNR Division of Water

By: Scott Allen, Legal Analyst, Natural Resources Commission

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

**IN THE MATTER OF:**

**MICHAEL MCDERMOTT,**

**Petitioner,**

**vs.**

**JIM BUCKLEY,**

**Respondent.**

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**Administrative Cause**

**Number: 22-070W**

**Riparian – Dock Dispute**

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**PETITIONER’S OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW  
WITH NON-FINAL ORDER**

Petitioner, Michael McDermott, by non-attorney representative Michael James McDermott, hereby respectfully submits to the Natural Resources Commission AOPA Committee the following objections to the findings of fact and conclusions of law included in the Non-Final Order issued on January 3, 2025:

- 1) Petitioner objects to finding/conclusion No. 21 because it is factually incorrect and no testimony or evidence in the record supported such a finding. Both Petitioner’s and Respondent’s surveys, which were entered into the record without objection after the case was remanded, establish Petitioner’s property abuts Respondent’s northern property line. There is no easement abutting Respondent’s northern property line.
- 2) Petitioner objects to finding/conclusion No. 32 because it is factually incorrect and misapplies applicable law. Respondent may have testified that the “park” land was owned by the State but non-attorney representative McDermott specifically requested that the administrative law judge

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<sup>1</sup> Petitioner Michael McDermott and non-attorney representative Michael James McDermott have similar names but are not the same individual.

(ALJ) take judicial notice of the park ownership, which would obviate the need for any property records to be introduced or admitted into evidence at the post-remand hearing.

- 3) Petitioner objects to finding/conclusion No. 35 because it is factually incorrect and misapplies applicable law. This finding ignores that non-attorney representative specifically requested that the ALJ take judicial notice of the park ownership, which would obviate the need for any property records to be introduced or admitted into evidence at the hearing. Further, this finding fails to account for the “safety” argument that non-attorney representative McDermott made numerous times at the post-remand hearing, specifically, that Information Bulletin #56 mandates a certain amount of space between docks not only to determine riparian boundaries but also “*to assist with safe navigation*, as well as to preserve the public trust...” (emphasis supplied)
- 4) Petitioner objects to finding/conclusion No. 42 because it is factually incorrect and misapplies applicable law. Respondent may have testified that neither Petitioner nor Respondent property lines extend all the way to Koontz Lake. However, this fact was already in the record. In fact, the second sentence of Petitioner’s original *pro se* Complaint against Respondent expressly informed, “*We are in the part of the lake that we don’t own up to the water*, there is an easement and anyone that lives in the Frost Simpson subdivision has access to the water.” (Petitioner’s Complaint, at detailed description of the dispute; emphasis supplied). Further, the NRC was aware of this fact prior to the post-remand hearing. In the February 2, 2024, *Findings of Fact and Conclusions of Law with Non-Final Order*, Finding of Fact No. 14 stated “McDermott does not own lakefront property...” It should be noted that the February 2, 2024 Non-Final Order was vacated, but Respondent did not object to Finding of Fact No. 14 and including that fact—even in vacated order—establishes the NRC was aware that Petitioner and Respondent were not riparian owners prior to the post-remand hearing on October 23, 2024. Finally,

Respondent never argued at the post-remand hearing that “neither party would have riparian rights” but simply argued that because of the park land it was impossible to establish a riparian zone.

- 5) Petitioner objects to finding/conclusion No. 43 because it is factually incorrect and misapplies applicable law. Non-attorney representative McDermott specifically requested that the ALJ take judicial notice of the park ownership, which would obviate the need for any property records to be introduced or admitted into evidence at the post-remand hearing. Further, non-attorney representative McDermott did not take a position disputing the park land was public property, in fact Petitioner conceded as much in his original Complaint.
- 6) Petitioner objects to finding/conclusion No. 44 because it is factually incorrect and misapplies applicable law. Non-attorney representative McDermott specifically requested that the ALJ take judicial notice of the park ownership, which would obviate the need for any property records to be introduced or admitted into evidence at the post-remand hearing. Further, Petitioner expressly informed the NRC in his original Complaint that no one in his part of the lake owned property all the way to the water. Further, neither Petitioner nor Respondent disputed ownership of the “park” land as found on each of the parties’ surveys. Both Petitioner and Respondent conceded—if only through their respective surveys—they do not own property to the lakefront.
- 7) Petitioner objects to finding/conclusion No. 46 because it is factually incorrect and misapplies applicable law. For reasons discussed above, Petitioner never requested the NRC establish ownership of landward property.
- 8) Petitioner objects to finding/conclusion No. 48 because it is factually incorrect and misapplies applicable law. Further, it seems to contradict finding/conclusion 41 which states “At the November 3, 2023 administrative hearing, it was not disputed that McDermott and Buckley

have acquired riparian rights along Koontz Lake given their alleged easements and/or properties abutting Koontz Lake. As riparian owners, therefore, each party would normally be permitted to extend a qualifying temporary structure lakeward of the shoreline of Koontz Lake.” Additionally, as discussed above, Petitioner never requested the NRC establish ownership of landward property.

- 9) Petitioner objects to finding/conclusion No. 51 because it misapplies applicable law and ignores that fact that preserving the status quo permits a significant safe navigation issue to remain in place indefinitely, specifically, the fact that Respondent’s new dock (and boatlift) is approximately 52 inches from McDermott’s dock.

WHEREFORE Petitioner objects to the findings and conclusions identified above from the Non-Final Order, requests oral argument in this matter, and requests that the NRC modify the Non-Final Order consistent with these objections or, alternatively, grant any other appropriate relief.

s/Michael J. McDermott  
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Non-Attorney Representative for Petitioner  
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Cellular: 773-213-9069

Certificate of Service

I certify that on January 17, 2025, the foregoing was electronically filed with the Natural Resources Commission AOPA Committee at [NRCAOPA@nrc.in.gov](mailto:NRCAOPA@nrc.in.gov) and served upon the following individuals by email:

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