

BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA

IN THE MATTER OF:

BLAKE DEUSER and )  
OLD OAKS OUTFITTERS, ) ADMINISTRATIVE CAUSE NO.  
Petitioner, ) 22-066D  
)

And

BRENT MCMILLAN, )  
Petitioner, ) ADMINISTRATIVE CAUSE NO.  
) 22-071D  
)

And

ZACH HOOVER, )  
Petitioner, ) ADMINISTRATIVE CAUSE NO.  
And ) 22-072D  
)

GUNNER JONES, )  
Petitioner, ) ADMINISTRATIVE CAUSE NO.  
) 22-73D  
)

v. ) [Hunting Guide Licenses]  
)

DEPARTMENT OF NATURAL RESOURCES, )  
Respondent. )

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT  
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND NONFINAL ORDER

**Procedural Background and Jurisdiction**

1. On November 29, 2022, Blake Deuser and Old Oaks Outfitters (collectively referred to as “Deuser”) filed a Petition for Appeal with the Natural Resources Commission (hereinafter “Commission”) alleging that Department of Natural Resources (hereinafter “Department”), improperly suspended Deuser’s Hunting Guide License. See Petition.

2. On December 13, 2022 Brent McMillian (hereinafter “McMillan”), Zach Hoover (hereinafter “Hoover”), and Gunner Jones (hereinafter “Jones”) each filed correspondence with the Commission appealing the Department’s decision to suspend his Indiana Hunting Guide License. Deuser, Old Oaks Outfitters, McMillan, Hoover, and Jones will be referred to collectively as “Petitioners” where appropriate.
3. By filing their petitions, Petitioners initiated proceedings 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) Elizabeth Gamboa was appointed under IC 14-10-2-2 to conduct this proceeding and was assigned to preside over this matter on December 13, 2022.
5. A telephonic prehearing conference was held as scheduled for McMillan, Hoover, and Jones on March 9, 2023. They were represented at the hearing by William Joseph Jenner. The question arose as to whether all matters should be consolidated under one cause number. Petitioners agreed to the consolidate the cases, but the Department objected. By agreement of the parties, the matters were consolidated for prehearing matters. A consolidated additional prehearing conference was scheduled for all Petitioners on March 28, 2023.
6. The March 28, 2023 prehearing conference was vacated by agreement of the parties to allow the parties time to discuss settlement options. The parties were ordered to file status reports no later than April 24, 2023 if the case was not otherwise dismissed. Additional status reports were ordered to be filed by August 4, 2023, and October 5, 2023. The parties requested the matter be set for a hearing in their October 5, 2023 status reports.
7. A case management order was established at a telephonic status conference held on October 31, 2023. The case management order set deadlines for filing dispositive motions and responses thereto and for the exchange and filing of proposed exhibits. A final telephonic status conference was scheduled for January 23, 2024 and a factfinding hearing was scheduled for January 31, 2024.
8. The Department filed a Motion for Summary Judgment and related materials on December 14, 2023 and Petitioners filed a Response to Respondent’s Motion for Summary Judgment

with related materials on January 11, 2024. The previously established case management order was vacated, and a telephonic status conference scheduled for February 13, 2024, if needed.

9. The Department filed Respondent's Reply in Support of Motion for Summary Judgment on January 31, 2024.

### **Summary Judgment Standard**

10. A party may move for summary judgment at any time after a proceeding is assigned to administrative law judge. I.C. § 4-21.5-3-23.
11. Except with respect to service of process, governed by I.C. § 4-21.5-3-1, and the final disposition of an administrative proceeding, governed by I.C. § 4-21.5-3- 28 and 29, Trial Rule 56 of the Indiana Rules of Trial Procedure controls the consideration of a motion for summary judgment. I.C. § 4-21.5-3-23.
12. The ALJ will consider a summary judgment "as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure." I.C. § 4-21.5-3-23. Summary judgment shall be granted "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial rule 56(c); *Frendeway & Bartuska v. Brase*, 15 CADDNAR 121, 122 (2020).
13. The party moving for summary judgment bears the burden of establishing the party is entitled to summary judgment regardless of whether the party would have the burden of proof in an evidentiary hearing. *Mueller-Brown v. Caracci*, 13 CADDNAR 156, 157 (2013).
14. The burden of establishing there is no material factual issues is on the party moving for summary judgment. *Morris v. Crain*, 969 N.E.2d 119, 123 (Ind. Ct. App. 2012). Once the movant has met this burden, the opposing party must present sufficient evidence to show the existence of a genuine triable issue. *Id.*
15. "A party opposing the motion shall designate . . . each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto." Ind. Trial Rule 56(C).

16. Summary judgment shall be granted “if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Id.
17. Affidavits supporting or opposing a motion for summary judgment “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Trial Rule 56(E).

**Undisputed Material Facts**

18. Linnea Petercheff is the Permits Supervisor in the Department’s Division of Fish and Wildlife. In this position she reviews hunting guide license applications and approves, denies, and/or suspends licenses under Ind. Code § 14-22-15.5. See Affidavit of Linnea Petercheff (Petercheff affidavit).
19. Petercheff issued letters on November 22 and 23, 2022 notifying the Petitioners that their hunting guide licenses were being suspended. The associated permit numbers for the Petitioners are as follows: Deuser/Old Oaks Outfitters, permit no. 389; McMillan, permit no. 391; Hoover, permit no. 394; and Jones, permit no. 393. See Id. and Exhibit 1-C to Petercheff Affidavit and Petitioners’ Exhibit A-3.
20. According to the letters sent to the Petitioners, the hunting guide licenses were suspended for failure to submit monthly reports as required by the Department. The letters state that Deuser, McMillan, and Hoover had not submitted the required reports from May, 2022 through October, 2022 and Jones had not sent the required reports from August, 2022 through October, 2022. See Exhibit 1-C to Petercheff affidavit.
21. The suspensions expired November 21, 2023 for Hoover and Jones and November 22, 2023 for Deuser and McMillan. See Petercheff affidavit.
22. Deuser was responsible for filing harvest reports on his behalf as well as on behalf of the other Petitioners because they were his employees. Deuser included copies of reports dated July 1, 2022, August 1, 2022, and September 2, 2022, for the months of June, July, August, September, and October, 2022. See Affidavit of Blake Deuser and Exhibit A-1 through A-5.

23. The June, July, and August 2022 reports are for license number 389; however, all Petitioners are listed under the line for the name of the license holder. The report for September lists license numbers 391, 394, 392, 393 and 389. All Petitioners are listed as license holders on the September report. The October report lists license number 391, 392, 393 and 394 and does not include any names under the “license holder” blank.
24. Petercheff received an annual hunting guide license application from Deuser and McMillan in April 2023. Petercheff did not receive applications from Hoover and Jones. See Id.
25. Deuser and McMillan were issued hunting guide licenses effective from November 23, 2023 to March 31, 2024 on November 22, 2023. See Id. and Exhibit 1-A.

**Summary of the Parties’ Arguments on Summary Judgment**

26. The Department argues that these matters should be dismissed as moot because the Petitioners’ hunting guide licenses suspensions have expired. See Respondent’s Memorandum in Support to Motion for Summary Judgment.
27. The Department further argues that Petitioners lack standing to pursue administrative appeal of the suspension as they are no longer aggrieved or adversely affected. See Id.
28. Petitioners argue that questions of fact remain as to whether the Department properly suspended the Petitioners’ hunting guide licenses because Deuser testified in his affidavit that he filed the reports. Petitioners further argue that they “maintain a legal cognizable interest in the outcome in determining if the suspension was valid” because of the potential for criminal charges. The Petitioners pointed out that at least one Petitioner is facing criminal charges for violating Ind. Code § 14-22-38-6 for providing hunting guide services without a license.
29. The Petitioners further argue questions of fact remain as to whether the licenses were properly suspended because Deuser testified in his affidavit that he filed the reports.

**Conclusions of Law**

30. “An individual may not provide hunting guide services without a hunting guide license issued by” the Department. I.C. § 14-22-15.5-2.

31. The Department may suspend or revoke a hunting guide license if the holder of the license does not keep the records or make the reports required under I.C. § 14-22-15.5-5.
32. An individual who fails to make monthly reports under I.C. § 14-22-15.5-8 “shall have the individual’s hunting guide license suspended by the director for one (1) year.” I.C. § 14-22-15.5-8.
33. Acting as a hunting guide without a hunting guide license is a Class B infraction. I.C. § 14-22-15.5-7.
34. An issue is moot if it “is no longer ‘live’ or if the parties ‘lack a legally cognizable interest in the outcome.’” *Laverty & Citizen Coalition of Beverly Shores v. Town of Beverly Shores & DNR*, 9 CADDNAR 24 (2001), quoting *Bartholomew County Hospital v. Ryan*, 440 N.E.2d 754, 757 (Ind. Ct. App. 1982).
35. A general application of the mootness doctrine in this case would preclude a determination by the Commission of any of the substantive issues raised here. *Ogden Dunes v. DNR, Beverly Shores and NIPSCO*, 4 CADDNAR 31, 32 (1987).
36. The Commission has recognized a public interest exception to a general application of the mootness doctrine. *Id.* Under this exception, the Commission may make a determination of substantive issues if the following conditions are met: 1) the issue involves a question of great public importance 2) which is likely to recur 3) in a context which will continue to evade review.” *Id.*, quoting *Ridenour v. Furness*, 504 N.E.2d 336, 342 (Ind. Ct. App. 1987).
37. The protection of Indiana’s natural resources and one’s ability to conduct business as a hunting guide are both issues of public importance. It is likely the Department will continue to issue hunting guide licenses and, if necessary, issue suspensions of those licenses under Indiana law. The right to appeal the Department’s suspension of the hunting guide licenses is still subject to administrative appeal under I.C. § 4-21.5-3. Thus, the final requirement of the public interest exception has not been met.
38. Petitioners argue that this matter is not moot because Petitioners have a legal cognizable interest in the outcome of this case due to the potential for criminal charges. Petitioners

point to the fact that at least one Petitioner, Deuser, is facing criminal charges pursuant to I.C. § 14-22-38-6.<sup>1</sup>

39. Petitioners have presented no evidentiary material to show Deuser is facing criminal charges because he performed hunting guide services while his license was suspended.<sup>2</sup>

40. Even if Petitioners had met the burden of coming forward with evidence to support this argument, the Commission has no authority over criminal proceedings.

41. Further, providing hunting guide services is an infraction under Indiana law. I.C. § 14-22-15.5-7.

42. Two of the Petitioners, Deuser and McMillian applied for, and were granted, hunting guide licenses. There is no evidence Hoover and Jones would not be granted a license based on the suspension if they applied for them. Thus, there is no additional relief that can be granted by the Commission.

43. Petitioners have not shown a legally cognizable interest in the outcome of this matter. These matters are therefore moot, and these cases should be dismissed.

**Non-Final Order**

44. This matter is hereby dismissed with prejudice.

Dated: February 9, 2024



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Elizabeth Gamboa, Chief Administrative Law Judge  
Natural Resources Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103

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<sup>1</sup> Petitioners argue that Deuser is facing criminal charges under I.C. § 14-22-38-6 for acting as a hunting guide without a license. Under this statute, it is unlawful to provide guide services to take, acquire, receive, transport, or possess wild animals that are protected by law. This statute does not apply to the infraction of providing hunting guide services without a license.

<sup>2</sup> The burden is on Petitioners to designate each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto.” Ind. Trial Rule 56(C). The argument of counsel that Deuser is facing criminal charges, and the nature of those charges are not sufficient to raise an issue of fact.

Indianapolis, Indiana 46204-2200  
(317) 232-4699

**DISTRIBUTION**

The foregoing is distributed to the parties as follows on February 9, 2024.

William Joseph Jenner  
Jenner Pattison & Sharpe  
Counsel for Petitioners  
By email at [jjenner@wjennerlaw.net](mailto:jjenner@wjennerlaw.net)

Rebecca McCain,  
Counsel for Department of Natural Resources  
By email at [rmcclain@dnr.in.gov](mailto:rmcclain@dnr.in.gov)  
[dnrlegal@dnr.in.gov](mailto:dnrlegal@dnr.in.gov)

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.*

Linnea Petercheff, DNR Division of Fish and Wildlife

By: Scott Allen, Legal Analyst, Natural Resources Commission



**Allen, Scott**

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**From:** NRCAOPA  
**Sent:** Friday, February 9, 2024 12:31 PM  
**To:** 'Joe Jenner'; McClain, Rebecca L; DNR Legal  
**Cc:** Petercheff, Linnea  
**Subject:** Dueser et al v. DNR (22-066D, 071D, 072D, 73D)OSJ.pdf  
**Attachments:** Dueser et al v. DNR (22-066D, 071D, 072D, 73D)OSJ.pdf; Deuser et al v. DNR (22-066D, 071D, 072D, 73D)NFONotice.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

An Order vacating the upcoming TSC will be sent in separate email.

The Document(s) attached have been entered into the record for the referenced proceeding.

Thank you,

Natural Resources Commission – Division of Hearings Indiana Government Center North  
100 North Senate Avenue – Room N103  
Indianapolis, IN 46204  
Phone: (317) 232-4699  
Email: [nrcaopa@nrc.IN.gov](mailto:nrcaopa@nrc.IN.gov)  
<https://www.in.gov/nrc/>  
SA

BEFORE THE  
 NATURAL RESOURCES COMMISSION  
 OF THE  
 STATE OF INDIANA

IN THE MATTER OF:

BLAKE DEUSER,	)	ADMINISTRATIVE CASE
OLD OAKS OUTFITTERS,	)	NUMBER: 22-066D
Petitioner,	)	
	)	
And	)	
BRENT McMILLAN,	)	ADMINISTRATIVE CASE
Petitioner,	)	NUMBER 22-071D
	)	
And	)	
ZACH HOOVER and	)	ADMINISTRATIVE CASE
Petitioner,	)	
	)	NUMBER 22-072D
	)	
And	)	
GUNNER JONES,	)	ADMINISTRATIVE CASE
Petitioner,	)	NUMBER 22-073D
	)	
VS	)	
	)	
DEPARTMENT OF NATURAL RESOURCES,	)	[Hunting Guide Licenses]
Respondent.	)	

**OBJECTION TO ORDER GRANTING RESPONDENT’S  
 MOTION FOR SUMMARY JUDGMENT**

Petitioners, Blake Deuser and Old Oaks Outfitters, Brent McMillan, Zach Hoover, and Gunner Jones (“Petitioners”), by counsel, file their objection to the Order Granting Respondent’s Motion for Summary Judgment and state as follows:

1. On February 9, 2024, ALJ Elizabeth Gamboa, ordered that the Petitioners’ Appeal should be dismissed with prejudice by granting the request for Summary Judgment from the Respondent.
2. The ALJ found that “the Petitioners have not shown a legally cognizable interest in the outcome of this matter and therefore the matters are moot.” (ALJ Order dated 2/9/2024).
3. The ALJ misstates the law in providing only that a person “providing hunting guide services is an infraction under Indiana law. (I.C. 14-22-15.5-7).
4. Petitioner, Blake Deuser has been charged with a level 5 Felony under IC 14-22-38-6(h)(2) for allegedly providing hunting guide services without a license.

5. The ALJ fails to properly address the argument that if Petitioner, Blake Deuser's, license was improperly suspended by the Department of Natural Resources, then he would not be facing these criminal charges of a level 5 Felony.
6. To determine that Petitioners have no legally cognizable interest in the outcome of this appeal is an unreasonable application.
7. The entire purpose of this appeal is to determine if the Department of Natural Resources properly suspended the Petitioners' Licenses.
8. The ALJ further fails to address the argument that this appeal is a statutory right granted to the Petitioners.
9. In the case of Board of Comm'rs of Morgan County v. Wagoner, 699 N.E. 2d 1196, 1199 (Ind. Ct. App. 1998), a zoning board member was removed from his position, and he appealed his removal. During the Appeal, the zoning board was eliminated, therefore, there was no ability to grant relief to the removed board member. However, the Court concluded, "that the sound public policy required us to review Wagoner's case because he had pursued the proper legal procedures and would be denied a statutory right to appeal."
10. Here, the Petitioners pursued the only legal procedure that they were afforded to challenge the Department of Natural Resources' ability to suspend their guide hunting license. To deny that right of appeal by granting summary judgment is improper.
11. The ALJ failed to properly apply the facts and create a logical bridge to determine that the Petitioners have no legal cognizable interest in the outcome of this appeal.

Respectfully submitted,

JENNER, PATTISON & SHARPE

By: /s/ William Joseph Jenner  
William Joseph Jenner

William Joseph Jenner #26853-49  
Attorney for Petitioners  
Jenner, Pattison & Sharpe  
508 E. Main St.  
Madison, IN 47250  
812-265-5132  
[jjenner@wjennerlaw.net](mailto:jjenner@wjennerlaw.net)

**DISTRIBUTION**

The foregoing is distributed to the following on February 23, 2024.

Rebecca McCain  
Counsel for Department of Natural Resources  
By email at [rmcclain@dnr.in.gov](mailto:rmcclain@dnr.in.gov) and  
[dnrlegal@dnr.in.gov](mailto:dnrlegal@dnr.in.gov)

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.*

Linnea Petercheff, DNR Division of fish and Wildlife

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

**IN THE MATTER OF:**

<b>BLAKE DEUSER, and</b>	)	<b>ADMINISTRATIVE CASE</b>
<b>OLD OAKS OUTFITTERS,</b>	)	<b>NUMBER: 22-066D</b>
<b>Petitioner,</b>	)	
	)	

**And**

<b>BRENT MCMILLAN,</b>	)	<b>ADMINISTRATIVE CASE</b>
<b>Petitioner,</b>	)	<b>NUMBER: 22-071D</b>
	)	

**And**

<b>ZACH HOOVER and</b>	)	<b>ADMINISTRATIVE CASE</b>
<b>Petitioner,</b>	)	<b>NUMBER: 22-072D</b>
	)	

**And**

<b>GUNNER JONES,</b>	)	<b>ADMINISTRATIVE CASE</b>
<b>Petitioner,</b>	)	<b>NUMBER: 22-073D</b>
	)	

**vs.**

<b>DEPARTMENT OF NATURAL RESOURCES,</b>	)	<b>[Hunting Guide Licenses]</b>
<b>Respondent.</b>	)	

**RESPONDENT’S BRIEF IN SUPPORT OF  
ORDER GRANTING SUMMARY JUDGMENT**

Respondent, Indiana Department of Natural Resources (“DNR”), by counsel, respectfully submits this brief in support of Chief Administrative Law Judge Gamboa’s Order granting DNR’s motion for summary judgment because these cases are moot. DNR requests the AOPA Committee uphold the Non-Final Order granting summary judgment because as a matter of law the cases are moot and this tribunal has no jurisdiction over the criminal case.

**ARGUMENT**

At minimum, the summary judgment orders for McMillian, Hoover, and Jones should all be upheld because Petitioners' AOPA Committee appeal brief makes no argument regarding these appeals. Therefore, the ALJ's Order should be upheld for McMillan, Hoover, and Jones.

As for the appeal filed by Deuser, the arguments focus solely on Petitioner's criminal charges. *See* Cause No. 39D01-2304-F5-000510, in which Deuser is the only named Defendant. In the criminal case, the State of Indiana would have to meet its burden of proof beyond a reasonable doubt. Ind. Code § 35-41-4-1(a). Simply, the standard to appeal the suspension in the administrative appeal is wholly unrelated to Petitioner Deuser's arguments in his criminal case. Merely because Petitioner Deuser could argue that his license was improperly suspended during administrative review would not be dispositive in the pending criminal matter.

The public interest exception cannot act to usurp the criminal courts of subject matter jurisdiction over criminal charges. It would be an obstruction of justice to argue the underlying criminal case during administrative review of an agency action. The Administrative Orders and Procedures Act contradicts several legal standards of criminal law including allowing hearsay evidence and a lower burden of proof. Ind. Code §§ 4-21.5-3-26, -27. For these reasons alone, the public interest exception does not support allowing administrative review of the suspensions when the charges in criminal court are pending. Therefore, justice requires Petitioner Deuser to make his arguments before the criminal court and a jury of his peers.

Even if Petitioners were able to show the suspensions were improper at an administrative hearing, these appeals are still moot because the suspensions have expired and there is no further relief available. Indiana case law is directly on point with the facts here, which Petitioners do not refute in their brief. *Town of Long Beach, et al. v. DNR, et al.*, 15 CADDNAR 101 (2020). In

*Town of Long Beach*, the ALJ held that once a permit has been issued then there would be no need for further hearing or evidence on a previous denial, or in this case suspension. Here, there is no need for an appeal of suspensions that have expired and where licenses have been re-issued or could be obtained. Any future suspensions would be subject to administrative review again under an entirely different set of facts. Therefore, there is no remaining legally cognizable interest in the administrative review proceeding and the cases are moot.

### CONCLUSION

For all of these reasons, the ALJ's Order should be upheld. The criminal case should be argued in criminal court according to its rules of evidence and standards of proof. The hunting guide license suspensions have expired making these administrative review cases moot and there is no public policy exception when any future suspensions would have an opportunity for appeal. DNR requests the AOPA Committee uphold the ALJ's Order and leave the criminal charges for the criminal court.

Respectfully submitted:

*/s/ Rebecca McClain*

Rebecca McClain, Atty. No. 34111-49  
Attorney for Department of Natural Resources  
Indiana Department of Natural Resources  
402 W. Washington Street Room W 261  
Indianapolis, IN 46204  
(317) 232-4137  
rmclain@dnr.in.gov

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply was served by e-mail on April 2, 2024, on the following:

William Joseph Jenner  
jjenner@wjennerlaw.net

/s/ Rebecca McClain  
Rebecca McClain, Atty. No. 34111-49  
Attorney for Department of Natural Resources  
Indiana Department of Natural Resources  
402 W. Washington Street Room W 261  
Indianapolis, IN 46204  
(317) 232-4137  
rmclain@dnr.in.gov