

Lake Koshkonong residents approve continued court fight

By [Neil Johnson](#) | August 10, 2013

FORT ATKINSON—The next act of the decade-long legal drama over water levels at Lake Koshkonong is set to start playing out in circuit court later this month, a lake district attorney said Saturday at the lake district's annual meeting.

A majority of about 95 Rock Koshkonong Lake District residents voted Saturday to approve a \$45 annual fee that will include up to \$40,000 in the lake district's 2014 budget to continue a court fight against the Wisconsin Department of Natural Resources for the right to use the Indianford Dam to raise water levels of Lake Koshkonong 7.2 inches in the summer.

The move came after Lake District residents attending the meeting at Fort Atkinson High School decided to reject a \$40,000 proposal for the lake district to conduct a forensic analysis of its last several budgets.

Voters approved the spending, but instead asked for it to be shifted to legal costs for a case over water levels on the lake which the state Supreme Court ruled on in July, but remanded back to Rock County Circuit Court for further review.

It's unclear how much the lake district could ultimately spend in legal costs for the ongoing court fight. It has already spent around \$500,000 on court costs—a fee paid through annual lake district homeowner fees, Lake District Chairman Brian Christianson has said.

Madison lawyer Bill O'Connor said Rock County Circuit Court will get files in a few weeks from the case over whether the lake district can use the Indianford Dam to hold back 7.2 inches of water to improve boating conditions in summer low-water months.

The lake is a shallow impoundment of the Rock River, and has a history of flooding in the spring and getting extremely low in the summer and fall months.

The state Supreme Court sent the case back to circuit court for further legal proceedings after it ruled July 18 that the Wisconsin Department of Natural Resources overreached its authority in setting water level mandate on Lake Koshkonong. The ruling also indicated the DNR hadn't properly considered the effect of water levels on residential and business properties around the lake.

Lake District officials, who have for years been pushing for higher water levels on the lake, have called the ruling "epic" because it signals that the DNR can no longer unilaterally issue maximum and minimum water levels on state impounded lakes.

The Supreme Court ruling did not address whether the DNR should grant or deny the Lake District's 2002 request to use the Indianford dam to hold back water in summer months.

O'Connor said parties in the case still have about two weeks left to contest parts of the Supreme Court's ruling, but he's "doubtful" any party would contest it.

O'Connor said he has not been in touch with DNR lawyers over the case. He said he would not issue public comment on how he thought a lower court decision on the water level issue could play out in lower courts.

"I'm not going to answer," O'Connor told The Gazette Saturday. "There has been no communication between the opposing parties.

O'Connor did say that he has had "congratulatory" comments from other impounded lake districts in the state over the ruling.

O'Connor and lake district officials suggest the ruling offers hope and legal leverage for lower courts to question or even halt DNR rulings on impounded lake water level mandates that don't take into account impact or that "overreach" by setting water levels based on the impact on adjacent wetland properties, according to the Supreme Court ruling.

Yet it remains to be seen whether the DNR has any appetite, even after the Supreme Court ruling, to relax its mandate for maximum and minimum water levels on Lake Koshkonong.

Wetland groups and the DNR have argued for years that higher water along the lake would increase erosion of thin shoreline areas and threaten wildlife and ecosystems in adjacent wetlands owned by hunt clubs and private trusts.

The Supreme Court ruling stated that the DNR, in setting water levels mandates, relied improperly on the state's Public Trust Doctrine, which serves to protect navigable waterways in the state.

The ruling stated that the DNR was heavy handed in applying the Public Trust Doctrine to water levels.

Lake District Resident Carol Harrington, an Illinois resident who owns a property in Glen Oaks Beach along Lake Koshkonong told Lake District board officials at Saturday's meeting she respected the district for sticking to its guns in the legal fight.

She said that other lake districts in the state owe a debt of gratitude to Rock Koshkonong Lake District. She said those other districts ultimately could reap the benefit of the ruling in terms of local control over their own water levels.

“Every lake level property owner in the state should have kicked in (money)” for the legal fight, she said.

Other lake district residents, including Buck Sweeney, a lawyer who represented a wildlife group opposing higher water levels in the Supreme court, told The Gazette last month he believes that the Supreme Court's ruling did not go far enough legally to force the DNR to backpedal on its water level mandates for Lake Koshkonong.

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