

OUR VIEWS

High-court victory for lake district resolves nothing

Tuesday's 4-3 ruling by the Wisconsin Supreme Court is indeed a victory for the Rock-Koshkonong Lake District and those who want higher water on the lake.

It buoys the hopes of those who want 7 more inches of summertime water so more residents can use their docks and boats and visitors can make cash registers ring at area businesses.

The court ruled that the Wisconsin Department of Natural Resources was wrong to use the state constitution's public trust doctrine to protect private non-navigable wetlands above the ordinary high-water mark that are next to navigable waters. Koshkonong, a 10,500-acre Rock River impoundment backed up by the Indianford Dam, is Wisconsin's sixth-largest inland lake. Average depth is just 7 feet, and its 27 miles of shoreline include more than 12 miles of wetlands.

Yet the ruling was like a rogue wave slamming over the bow for proponents and opponents hoping the high court would end this dispute, which has raged for more than two decades—far longer than the court case that began in 2005.

In a statement, the district hailed this week's decision as "epic" and a "victory" for lake districts statewide. Yet it really resolved nothing.

The Supreme Court ruled that the DNR was wrong to ignore the economic impact of its water limits.

"The DNR's exclusion of most economic evidence was inconsistent with its acceptance of competing economic evidence that helped sustain its water level decision," Justice David Prosser wrote for the majority.

The high court sent the case back to Rock County Court with orders that previously excluded testimony be considered. That's vague and doesn't mean that the DNR will change its decision when it does consider this testimony.

In fact, Charles "Buck" Sweeney, an attorney for two organizations hoping to protect wetlands, told The Associated Press that he expects the lower court to uphold the DNR's original decision. He also expects the case to drag on for years.

Brian Christianson, lake district chairman, told The Gazette this week that he never expected the high court to give the district the water levels it wanted. "It wasn't the role of the court," he said.

Yet in a February 2012 Gazette story about the high court's decision to take up the case, Christianson said, "we feel good about our chances, but we feel equally good that the road ends here."

Christianson can spin it any way he wants today, but the end of the road might be quite distant. Barring a change of heart by the DNR, the opposing parties will sink more money into arguments back here in Rock County Court.

Those who hoped Tuesday's ruling would settle things no doubt were frustrated by the prospects of more expensive legal wrangling that pits neighbor against neighbor.

The district likely will ask residents at its annual meeting next month for permission to continue the battle. With about \$500,000 already invested, and given Tuesday's hopeful ruling, it would make no sense to stop now.

We only hope that, once the court arguments finally do end, all parties can still set sail in harmony on other projects to improve the lake.

