

# Lake district members approve DNR plan

By Kim McDarison  
Special to Reporter

A first step towards ending a 13-year legal battle, revolving around raising the summer maximum water level in Lake Koshkonong, found favor as Rock Koshkonong Lake District (RKLD) constituents voted to accept a proposal made by the Wisconsin Department of Natural Resources (DNR) during their annual meeting held Saturday.

The proposal still needs to be presented to area wetlands owners and their associated groups, DNR Secretary Cathy Stepp said, adding a meeting is scheduled for that purpose in Madison on Aug. 18.

Some 200 RKLD residents filled the auditorium at Fort Atkinson High School and participated in the voting process. District taxpayers were given yellow cards used to identify them at the time of the vote. Attending area residents living outside of the district were given red "visitor" cards, and could not participate in voting. A recommendation to the board to accept the DNR proposal passed by an overwhelming show of yellow cards.

## The proposal

Prior to the vote, RKLD legal counsel Bill O'Connor outlined a proposal, which had earlier (July 1) been presented to the board. Actual documents were designated by DNR as confidential, and could not be immediately shared, he said, adding: "We have already disclosed, with DNR's consent, what the proposal says," adding: "The critical documents will follow."

O'Connor noted that the DNR proposal came with multiple sections, with provisions including the following: the lake district would be required to make a plan outlining how water discharge would be handled at the Indianford Dam; in the spring of 2017, the DNR would conduct evaluations of wetlands surrounding Lake Koshkonong; once evaluations were completed, the DNR would allow the summer maximum water level in the lake to be increased by three inches; in the spring of 2019, the DNR would reevaluate the wetlands, if no dramatic injuries had occurred, the summer maximum water level would be allowed to rise by another two inches, for a total of five inches over the two-year period. The maximum water level would stay at its new level as long as there were no dramatic injuries to the wetlands, which would undergo evaluation every two years. If dramatic injuries occurred, the DNR would suspend the program.

The plan further outlined a collaborative approach whereby the DNR and RKLD would work together to form a lake management plan, which would identify alternative methods that might be used to deepen the lake. Alternative methods might include armoring shorelines with riprap and surgical dredging.

The proposal also changed the dates for when the new summer

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maximum level would be in effect: July 15 to Sept. 28. Those dates were picked, DNR Water Division Administrator Russ Rasmussen said, after consideration was given to the spawning behavior of carp. "They spawn between mid-May to mid-June. We didn't want to raise the water level and make more opportunity for spawning for carp. We want to be proactive and limit their spawning. So we decided on mid-June instead of Memorial Day," he said.

## That damn dam

Rasmussen pointed to history and litigation concerning the Indianford Dam.

He said: "I would say litigation goes back well over 100 years. Every 10 or 15 years there is a (dispute) with this resource usually involving water levels. There's got to be a better model. Think of all the money spent over the last century in legal fees, and time spent treading water and not making any progress in improving the resource. Let's get out of this litigation cycle. We are trying to find a mechanism where people are talking together and collaborating together. Let's put our resources into improving our resource rather than arguing with each other."

Rasmussen said a detailed plan about how the dam would operate and be inspected would offer protection to the district as the dam owners. Raising the water level slowly would also help protect interests: "Rather than go through this all at once, let's do it in steps. If nothing horrible happens after three inches, then we can go to five."

"This is a dynamic system. It's going to change so that's why we think about this comprehensive plan that just doesn't look at raising the water level. Strategic dredging might be an option. We aren't reinventing the wheel. In 2012, there was a comprehensive lake management plan. Let's start there and adjust it as necessary," Rasmussen said.

Stapp addressed the constituents, saying, "It's unique for me to be here, but I think we are really on the precipice of a golden moment here. We can keep mak-

ing (attorneys) Art (Harrington) and Bill (O'Connor) very wealthy men, but wouldn't you rather put those dollars into the resource?"

"I've been feeling like I'm stepping in between the Hatfields and the McCoys. I think this is the best idea to have us move forward. There are lots of dam disagreements," she said, noting that dams bring about passionate issues, "but you guys are poised to be a beacon."

## Q & A

A question and answer segment, which lasted an hour and a half, with many residents voicing frustration over decision-making and processes which had taken place over the course of the litigation, followed.

Said a resident: "Trust the government? I'm not quite there yet, and the devils are in the details. I have questions about the initial study, is it going to be used as part of the game, as a creedal to say we are not going a step farther than this?" In the past, she said, DNR definitions of wetlands had not been easy to understand: "Wetlands are like porn; you know it when you see it. How do we avoid the gaming of this; will there be objective standards so we all know what 'dramatic injury' is? Or will it only be in the eye of the beholder?"

Rasmussen: "It will be used as a baseline. We have no preconceived notions. I know the DNR is not the most trusted department, but the idea here is that this is a comprehensive self-plan; you won't need to trust us; you can trust yourselves." He added that the DNR uses specific criteria to define wetlands, based upon soil type, moisture and plants.

Stapp: "This is also a sticking point for the other side. What does 'severe adverse' mean? I'm going to rely on our experts in the field. We are asking you to help walk with us as we take these steps in definitions."

A resident asked: "Why stop at 5? Why not just keep stepping up to seven inches?"

Rasmussen: "The idea is to get a greater depth in the lake. I don't think raising the water level is the only way to get more depth." He

advocated modest increases, coupled with a comprehensive plan.

Another asked: "So five inches is the cap and we can't go any higher? Ever?"

Rasmussen responded by saying that the five inches were not necessarily a permanent cap. "Things change, situations change, that's the point. We are also responsible for the habitat so we are trying to balance those different interests and put a plan in place so the interests start to talk to each other," he said.

Another resident said: "It's been 13 years; we deserve the 7.2 inches."

Stapp reminded residents of frustrations brought by wetland advocates and hunting groups. "If we go to the other side and say we're going to do the 7 inches, we're done," she said reminding those in attendance that it would be better to compromise. "If we raise the water a little bit and nothing happens, then we can say, look, the sky didn't fall, and raise the level some more. We are trying to create a win-win-win: a win for the district, a win for the resource and a win for the wetlands," she said.

Some residents praised the work done by the board and DNR officials, noting some sense of relief that a compromise was offered and litigation could end.

Said a resident: "This is a step forward. Thirteen years is enough. Let's move forward instead of sitting here for another 13 years."

Another resident agreed: "We have spent way too much time on it. I would like to see an objective definition for 'severe adverse conditions' and is there a date for the rules? And how do we get that information?"

Rasmussen: "I can't give you an exact date. First, we want to get through this step."

Another resident: "A solution might be to dredge the lake and build a small wall around the wetlands, and maybe have a small dam."

More questions followed, with a resident asking about timetables, and whether the dam was capable of precision and accuracy while regulating water flows.

Rob Montgomery of Montgomery Associates Resource Solutions, LLC, talked about the dam, its function and gates, noting that the dam was a capable tool.

Said a resident: "It's a beautiful body of water and there's never an end to the fighting. With all this money spent (on attorneys) we could have done all this dredging already."

"We're all sick of lawyers," another said.

#### History of litigation

Attorney Arthur Harrington, representing the Rock River Koshkonong Association and Lake Koshkonong Recreational Association, gave a brief history of litigation which led to the DNR proposal. Litigation began in 2003 with a petition asking the DNR to raise the allowable summer maximum water level by 7.2 inches. In 2005, he said, the DNR held a public hearing, after which time a decision was made to reject the petition. "We contested the decision," Harrington said, adding that in 2006, there was a series of hearings, lasting over two months. Still, he said, the DNR decided against raising the summer level. During those hearings, testimony was introduced about economic impacts, but it was decided that such testimony was not relevant.

More litigation followed: the case was brought to Rock County Circuit Court where a judge agreed that the economic impact data was not relevant, so the district went to the Court of Appeals. That court, too, agreed with the DNR, Harrington said. In 2013, the case was brought before the state Supreme Court, which has the discretion to decide appeals. The Supreme Court decided it was an error that the court did not hear the economic development argument, ultimately sending the case back to the DNR.

In other business, upon majority vote approval from attending constituents, the board:

- approved a 2015 audit as performed by Mitch Cagney, CPA with Janesville-based Summit Accounting Group. Cagney described his work as more of a compilation than a traditional audit because it used numbers



Department of Natural Resources secretary Cathy Stepp fields questions from Rock Koshkonong Lake District constituents in advance of their vote to accept a DNR summer maximum water level proposal. Lake District board members, two attorneys and DNR representative Russ Rasmussen are seated on stage. The meeting was held at the Fort Atkinson High School on Saturday.

Photo by Kim McDarison

supplied by the district. He noted that the district did not need a traditional audit "due to lack of transactions," and the size of its budget.

- outlined and approved the 2016-2017 budget of \$257,000 which included a \$38,000 deficit. The budget showed an anticipated transfer of funds, from the Lake Restoration Fund to the General Fund, in the amount \$38,000 to cover the anticipated shortfall. Numbers are as follows: Total anticipated revenues are \$181,000, with total anticipated expenditures running at \$219,000. The budget also shows positive estimated year end balances in each of the district's three funds: General Fund, with an estimated 2016 year end balance of \$10,000; Lake Restoration Fund, with an estimated balance of \$106,000, and the Indianford Dam Fund, with an estimated balance of \$675,000.

- approved a five dollar increase to the district's "approved special charge," raising it from a \$40 annual charge to each parcel within the district to \$45. RKLD Chairman Brian Christianson said the money would go towards future projects and new initiatives that might accompany the DNR agreement. "We want to make

sure we have our experts walking those wetlands side-by-side with DNR," he said. There are some 4,000 parcels within the district, Christianson said.

- elected two incumbents to the board, with each serving another three-year term. Joan Huedepohl, Edgerton, and Ray Lunder, Milton, both appeared as nominees on the agenda. Newcomers, Doug Shearer offered himself in nomination from the floor. When final votes were tallied, Huedepohl received 93, Lunder received 97, and Shearer, 15. A single vote was cast for a write-in candidate.

In a regular board meeting held after the annual meeting, the board:

- elected officers, reinstalling all former officers to another year: Christianson, chairman; Ray Lunder, treasurer; and Steve Proud, secretary.

- welcomed new member Rock County Board of Supervisors appointee Alan Sweeney.

- approved a motion to accept, on the recommendation of its constituents, the DNR proposed compromise as presented by the DNR secretary, staff and RKLD legal counsel.