

# Lake level case goes to Supreme Court

The Wisconsin Supreme Court has accepted a case about the state Department of Natural Resources orders about water levels on Lake Koshkonong, according to Brian Christianson, chairman of the Rock-Koshkonong Lake District.

The majority of about 150 property owners who attended last summer's annual meeting of the lake district, a small percentage of the roughly 4,000 property owners and renters eligible to vote, approved a budget that included monies for the continued legal battle about lake water levels. Officials of the lake district have been fighting the DNR orders about lake levels for several years.

In a press release issued Feb. 27, Christianson referred to the Supreme Court decision to take the case as "the final stop" in a "long-standing legal dispute" of statewide significance.

Christianson and other lake district officials claim that the DNR orders keep the lake at "artificially low levels" during summer months. By increasing water levels – or so the

lake district officials argue – navigation, fishing and wetland restoration on Koshkonong would be enhanced.

Flooding of Rock River and Lake Koshkonong during the summer of 2008 caused extensive damage for property owners in Dane, Rock and Jefferson counties. Property values and tourism dollars are at stake, however, if the DNR doesn't back down from rules about closing gates at the

Indianford Dam to "stem the draining of the lake," Christianson noted.

"We simply want an amended order that stabilizes lake levels and eliminates the DNR mandated winter drawdown," Christianson said. "Government can be a bully sometimes. Individual property owners usually give up fighting with the

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DNR because the legal fees are too high. Our homeowners within the RKLD voted to finish what we started."

In July 2011, judges on Wisconsin's Court of Appeals ruled against the Rock-Koshkonong Lake District on this issue, determining that the DNR was not required as a matter of state law to "consider the potential economic effects on residential property values, business income and tax revenue from proposed water levels."

Nor, the judges ruled then, did the DNR "exceed the scope of its authority when it considered the effect (of setting water levels ... or wetland water quality standards."

In the text of its ruling affirming the 1991 DNR water order the lake district has been fighting since the rule's inception, the Court of Appeals noted that property owners who have installed riprap along their shorelines would likely suffer economic hardship if the riprap was "overtopped" by increased lake and river water levels. The riprap would be the ordinary high water level over time, the court noted.

The district has also proposed eliminating the winter drawdown of

Lake Koshkonong, which the DNR has suggested will reduce shoreline erosion and damage to riprap structures.

Roughly 4,000 acres of wetland surround Lake Koshkonong, which was a marshy widening of Rock River between Fort Atkinson and Newville until the 1880s implementation of an effective Indianford Dam created a very shallow lake with a maximum depth of about seven feet. Hundreds of feet from the shoreline, Koshkonong has a depth of only about two feet. The average depth of the lake is about five feet.

Modifications made at the Indianford Dam in 1917 marginally increased the size and depth of the lake, but the dam fell into disrepair in the 1960s and it wasn't until 2002 that the dam was again able to effectively regulate lake water levels.

The lake district purchased the dam from Rock County in 2004.