

# Public, private interests collide in Koshkonong case

By STACY VOGEL

Wednesday, Feb. 20, 2008

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JANESVILLE — Bruce Harrison believes the low water level on Lake Koshkonong has diminished the beauty and value of his property.

Linn Duesterbeck believes it's in the public's best interest to keep the water level low to preserve the lake's wetlands.

Whose interest carries more weight?

That was the question debated in a Rock County Court hearing Tuesday, the latest step in the Rock Koshkonong Lake District's quest to raise the lake level 7 inches and eliminate winter drawdowns.

The lake district and the Wisconsin Department of Natural Resources argued how best to weigh public and private interests around the lake and debated the definition of public rights Tuesday.

William O'Connor, attorney for the lake district, argued that a hearing examiner ignored property owners' rights in December 2006 when he upheld the DNR's 2005 denial to raise the lake level.

Property owners have been fighting since 2003 to raise the water level.

Harrison was so concerned about the water level at his summer home that he drove from his permanent home in Chicago to watch Tuesday's proceedings.

"It's affected the beauty of the shoreline because, as the water retreats, it leaves a muddy mess," he said. "It's also affected my ability to use my watercraft.

"I'm sure it has affected my property value."

Duesterbeck, a board member of the Lake Koshkonong Wetland Association, disagrees. One has only to see the booming tourism industry and active boating community around the lake to see that property values and recreational opportunities have not been destroyed, he said.

Raising the water levels would be a disaster for the wetlands, Duesterbeck said.

“It’s a tremendous resource for fish and bird habitats,” he said. “We’ve had a continued loss of wetlands in the last 100 years since the dam was put in.”

O’Connor argued that the DNR put too much weight on wetland interests, placing them in the broad category of “public rights” even though most of the wetlands around the lake are privately owned.

But Joanne Kloppenburg, attorney for the DNR, replied the department always has included wetlands in its definition of public rights.

“The impacts on wetlands are just one set of many environmental protection factors to be balanced with each other and balanced with the protection of safety, property and public health,” she said.

Meanwhile, the hearing administrator wasn’t allowed to consider testimony about the lake level’s effect on private property values in his decision because statute instructs the department to look at the physical impact on property, not the economic impact, Kloppenburg said.

O’Connor and the lake district disagree, and they’re asking Judge Daniel T. Dillon to overturn the decision and remand the case to another hearing.

Dillon did not say when he expects to announce a decision.

## **KOSHKONONG WATER HISTORY**

1982: Wisconsin Department of Natural Resources establishes water levels and operating procedures for the Indianford Dam. Court battles between the DNR and advocates of higher lake levels go on throughout the 1980s.

1991: The two sides agree to summer levels and winter drawdowns, but the lake’s level isn’t regulated because the Indianford Dam is in disrepair.

1999: The Rock Koshkonong Lake District is created “to protect, preserve and improve the natural resources of Lake Koshkonong and the Rock River.” It’s the largest lake district in the state.

Winter 2002-03: The dam’s wicket gates are repaired. Residents complain the winter drawdown of the lake is more drastic than in past years, causing low water levels and damage to exposed shoreline.

April 2003: Lake district asks the DNR to raise the lake’s level 7.2 inches in the summer and eliminate winter drawdowns.

December 2004: The lake district takes over ownership of the Indianford Dam from Rock County.

April 2005: DNR denies request to raise the lake level. The lake district appeals to the state Division of Hearings and Appeals.

December 2006: Administrative Law Judge William S. Coleman sustains the DNR's decision. The lake district appeals the decision to circuit court.

Tuesday: Judge Daniel T. Dillon hears oral arguments. He does not say when he expects to announce a decision.

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**Published at:** <http://www.GazetteXtra.com/news/2008/feb/20/public-private-interests-collide-koshkonong-case/>