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NOTICE OF CIRCUMSTANCES OF CLAIM AND CLAIM

TO: Rock County Board of Supervisors
c/o Lori Stotler, County Clerk
Rock County Courthouse
51 South Main Street
Janesville, Wisconsin 53545

This is a Notice of Claim against the Rock County Board of Supervisors pursuant to Wis. Stat. § 893.80.

Claimants Rock-Koshkonong Lake District, the Lake Koshkonong Recreation Association, Inc., Brian K. Christianson, Lawrence Schauder, Jerry Richardson and John Kinnett (collectively the "Claimants") are aggrieved by the County's adoption and enforcement of that certain ordinance designated "BOATING AND SAFETY LAWS AND SLOW-NO-WAKE RESTRICTION" (the "Ordinance") and codified as Section 25.01, et seq. of the Rock County Code. A copy of the Ordinance is attached hereto as EXHIBIT A. The names and addresses of Claimants are set forth in the attached EXHIBIT B.

This Claim arose out of the following circumstances:

1. On or about April 14, 1994, the County Board of Supervisors adopted the Ordinance, which provides in pertinent part:

25.05 CONTROLLED AREA.

No personal [sic] shall operate a boat faster than Slow-No-Wake in the affected area on the navigable waters in Rock County.

25.06 POSTING REQUIREMENTS.

The Sheriff, at the written request of the Town Chairman, City Manager, or Mayor, may declare a specific section of the navigable water in their [sic] Village, town or City as hazardous and require a Slow-No-Wake speed limit. The Sheriff shall place and maintain regulatory notices of the Slow-No-Wake restriction at all public access points within the jurisdiction of the County of Rock.

2. On or about March 12, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Fulton and the Town of Milton have requested that the Rock County Sheriff’s Office post a ‘Slow No Wake’ sign on the portion of the Rock River that runs through their towns until further notice due to the high water.

This posting will remain in effect until it is requested to be stopped by the Town Chairpersons.”

3. On or about March 19, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Janesville has requested that the Rock County Sheriff’s Office post a ‘Slow No Wake’ sign on the portion of the Rock River at the landing on North River Road just north of Highway 14 until further notice due to the high water.

This posting will remain in effect until it is requested to be stopped by the Town Chairperson.”

4. On or about March 22, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The City of Janesville has requested that the Rock County Sheriff’s Office post ‘Slow No Wake’ signs within the corporate limits of the City of Janesville until further notice due to the high water.

This posting will remain in effect until it is requested to be stopped by the City Manager of Janesville.”

5. On or about June 10, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The City of Beloit has requested that the Rock County Sheriff’s Office enforce a Slow, No Wake area on the portion of the Rock River between the Henry Avenue Bridge to the Portland Avenue Bridge from 6 a.m. to midnight on Sunday, July 4, **and** from 6 a.m. on Thursday, July 8 to midnight on Sunday July 11.

This request is due to the inordinately heavy boat traffic that will patronize this section of the Rock River during the 4th of July and Riverfest. However, the boat races slated to run during Riverfest will be exempt from the Slow, No Wake restriction. The Slow, No Wake restriction will go back into effect immediately after the boat races.”

6. On or about June 28, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Rock requested the Rock County Sheriff’s Office post, enforce the Slow-No-Wake provision on the Rock River.”

7. On or about June 29, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Beloit requested the Rock County Sheriff’s Office post, enforce the Slow-No-Wake provision on the Rock River.”

8. On or about June 29, 2010, Rock County Sheriff Robert D. Spoden issued an Amended News Release stating:

“The Town of Beloit requested the Rock County Sheriff’s Office post, enforce the Slow-No-Wake provision on the Rock River **from Preservation Park north.**”

9. On or about June 29, 2010, Rock County Sheriff Robert D. Spoden issued an Amended News Release stating:

“The Town of Beloit requested the Rock County Sheriff’s Office post, enforce the Slow-No-Wake provision on the Rock River through the entire Town of Beloit. Any questions reference this Slow-No-Wake provision should be directed to the Town of Beloit Town Hall at 608-264-2980.”

10. On or about July 2, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Beloit requested the Rock County Sheriff’s Office post, enforce the Slow-No-Wake provision on the Rock River **from Preservation Park north and lift the Slow-No-Wake restriction south of Preservation Park.**

This will begin at 8 a.m. on Saturday, July 3, 2010. All questions regarding the Slow-No-Wake provision should be directed to the Town of Beloit Town Hall at 608-364-2980.”

11. On or about July 13, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Rock and the Town of Beloit have requested the Rock County Sheriff’s Office remove the posting of a Slow-No-Wake restriction on the portion of the Rock River that runs through their townships.”

12. On or about July 22, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Fulton and the Town of Milton have requested that the Rock County Sheriff’s Office post a ‘Slow No Wake’ sign on the portion of the Rock River that runs through their towns starting on July 22, 2010, until further notice due to the high water.

This posting will remain in effect until it is requested to be stopped by the Town Chairpersons.

Also as a reminder, there is still a Slow No Wake in effective indefinitely on Clear Lake in the Town of Milton.”

13. On or about August 5, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The City of Beloit has requested that the Rock County Sheriff’s Office post ‘Slow No Wake’ signs on the portion of the Rock River that runs through their area in Rock County due to the high water.

This posting will remain in effect until it is requested to be stopped by the City Administrator.”

14. On or about August 13, 2010, Rock County Sheriff Robert D. Spoden issued a News Release stating:

“The Town of Beloit requested the Rock County Sheriff’s Office enforce the Slow-No-Wake provision on the Rock River **from Preservation Park north and lift the Slow-No-Wake restriction south of Preservation Park.**

This will begin at 8 a.m. on Saturday, August 14, 2010. All questions regarding the Slow-No-Wake provision should be directed to the Town of Beloit Town Hall at 608-364-2980.”

15. On information and belief, Rock County Sheriff Robert D. Spoden and his predecessors in that office have issued similar News Releases and posted and enforced slow-no-wake boat speeds in reaches of the Rock River and all or parts of other navigable water bodies within the County in previous years in response to requests from individual elected or unelected officers of Rock County cities and towns.

16. The Rock-Koshkonong Lake District is a public inland lake district established pursuant to Chapter 33 of the Wisconsin Statutes whose mission is “to protect, preserve and improve the natural resources of Lake Koshkonong and the Rock River for an equal balance of wildlife, habitat and recreation.” The District represents the interests of more than 4400 resident electors and owners of property located on and near the Rock River and Lake Koshkonong within its boundaries and countless recreational boaters subject to regulations on the use and operation of watercraft adopted and enforced by Rock County.
17. The Lake Koshkonong Recreation Association, Inc., is a nonstock, nonprofit corporation organized pursuant to Chapter 181 of the Wisconsin Statutes for the purpose of advancing the recreational use of Lake Koshkonong and associated reaches of the Rock River in Rock, Jefferson and Dane Counties.
18. Brian K. Christianson is a citizen of the State of Wisconsin, a resident elector of the Rock County Town of Fulton, an owner of real property located at 374 E. Samuelsen Drive, Edgerton, WI 53534, the duly elected Chairman of the Rock-Koshkonong Lake District and an owner of boat registered with the State of Wisconsin that he regularly operates on portions of the Rock River within Rock County subject to slow-no-wake boat speeds unlawfully imposed pursuant to the Ordinance.
19. John Kinnett is a citizen of the State of Wisconsin, a resident elector of the Rock County City of Edgerton, an owner of the Anchor Inn, a waterfront restaurant and bar offering boat rentals to the public, located on the Rock River at 709 E. Hwy 59, Edgerton, WI 53534 and an owner of boats registered with the State of Wisconsin that he regularly operates on portions of the Rock River within Rock County and subject to slow-no-wake boat speeds unlawfully imposed pursuant to the Ordinance.
20. Jerry Richardson is a citizen of the State of Wisconsin, a resident elector of the Rock County Town of Fulton, an owner of Harbor Recreation, a watercraft sales and service business located on the Rock River at 807 Harbor Road, Milton, Wisconsin, and an owner of boats registered with the State of Wisconsin that he regularly operates on portions of the Rock River within Rock County and subject to slow-no-wake boat speeds unlawfully imposed pursuant to the Ordinance.
21. Lawrence Schauder is citizen of the State of Wisconsin, a resident elector of the Rock County Town of Fulton, an owner of real property located at 352 E. Samuelsen Drive, Edgerton, WI 53534 and an owner of boat registered with the State of Wisconsin that he regularly operates on portions of the Rock River within Rock County and subject to slow-no-wake speeds unlawfully imposed pursuant to the Ordinance.
22. The District, the Association and the individual claimants have an interest in public use of the navigable waters of Rock County, including the right of residents and visitors to operate boats and other watercraft on navigable waters of the State under Article X, Section 1 of the Wisconsin Constitution, which declares that such waterways “shall be common highways and forever free. . . .”

23. The Claimants recognize the authority of the State of Wisconsin to set reasonable and necessary restrictions on the use and operation of watercraft on the navigable waters of Rock County in the interest of public health, safety and welfare, including those restrictions established in Subchapter V of Chapter 30 of the Wisconsin Statutes and in local boating ordinances lawfully adopted pursuant to Section 30.77 of the Wisconsin Statutes.
24. The Ordinance impermissibly delegates the authority of the Rock County Board of Supervisors under Section 30.77(3)(c) of the Wisconsin Statutes to enact and enforce regulations on the use and operation of boats on the Rock River and other streams within the County to the Mayor, City Manager or Town Board Chair within their respective cities and towns, in a manner contrary to the exclusive procedure for such municipalities to enact and enforce regulations on the use and operation of boats under state law, which requires that such regulations be enacted in the form of ordinances and establishes specific, mandatory procedures for the consideration and adoption of such ordinances, including public notice, hearing and (in some cases) advisory review by the Wisconsin Department of Natural Resources as provided under Sections 30.77(3)(ac),(aw) and (cm) of the Wisconsin Statutes.
25. The Ordinance exceeds the authority of the Rock County Board of Supervisors to enact and enforce boating ordinances because Wisconsin counties do not have exclusive authority to regulate boating on inland lakes (including Clear Lake in the Town of Beloit), and because the authority of cities, villages and towns to enact such regulations on inland lakes requires that the governing bodies of such municipalities conform with mandatory statutory requirements, including provisions for public notice and hearing, consideration of the characteristics of the affected water body, the extent of boating traffic and other factors and to prior advisory review authority of the Wisconsin Department of Natural Resources under Sections 30.77(3)(ac),(aw), (cm) and (d).
26. The adoption and enforcement of the Ordinance is unlawful because it purports to empower individual elected and unelected municipal officials to impose slow-no-wake speeds based on those officials' personal view, preference or opinion, without governing standards or due process of law.
27. As a result of the scheme established under the Ordinance, the public's right of navigation on the Rock River and other water bodies in the County is arbitrarily and capriciously subject to suspension in violation of Article IX, Section 1 of the Wisconsin Constitution.
28. Because the Ordinance is an unlawful restriction on the public's right to operate watercraft on the navigable waters of the State under Section 30.77 of the Wisconsin Statutes, its enforcement constitutes a public nuisance under Section 30.294 of the Statutes that may be prohibited by injunction or abated by a legal action brought by any person, including the Claimants.

WHEREFORE, Claimants hereby demand that the Rock County Board of Supervisors rescind and nullify the Rock County BOATING AND SAFETY LAWS AND SLOW-NO-WAKE RESTRICTION, Sections 25.01 through 25.09.

This Notice of Claim is made within 120 days of the actions of the Rock County Sheriff posting and enforcing slow-no-wake boat speed limits on portions of the navigable waters of the county as required by Statute.

Dated this _____ day of August, 2010.

WHEELER, VAN SICKLE & ANDERSON, S.C.

ATTORNEYS FOR CLAIMANTS

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Rock County Courthouse
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EXHIBIT B
CLAIMANT NAMES AND ADDRESSES

Rock-Koshkonong Lake District
c/o Ed Sandner, Secretary
W8541 White Crow Road
Fort Atkinson, WI 53538

Rock River Recreation Association, Inc.
c/o Gerald L. Richardson
807 Harbor Rd
Milton , WI 53563

Brian K. Christianson
374 E. Samuelsen Dr.
Edgerton, WI 53534

John Kinnett
77 Wileman Dr.
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Gerald L. Richardson
807 Harbor Rd
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