

Koshkonong residents divided over next step in court battle

By STACY VOGEL

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JANESVILLE — The Rock Koshkonong Lake District has an important decision to make, and district residents aren't making it any easier.

Since the district learned Monday of Rock County Judge Daniel Dillon's decision to uphold the Wisconsin Department of Natural Resources in its refusal to raise the lake level, district officials have heard from many of the district's 7,000 residents, Chairman Brian Christianson said.

About one-third want the district to appeal the decision, and another one-third want the district to give up the case and focus on other projects to improve the lake, Christianson said. The remaining one-third is undecided, he said.

"It's going to be a challenge for the board to decide where to go," he said.

The judge's decision is the latest step in a battle that has been raging for 25 years between the DNR and advocates of higher water levels.

The latest fight started in 2003, when the lake district asked the DNR to raise the lake's level 7.2 inches in summer and eliminate winter drawdowns. The DNR denied the request, and an administrative law judge upheld the DNR's decision in 2006.

William O'Connor, attorney for the lake district, argued in Rock County Court that the DNR placed too much weight on wetland interests and disregarded the interest of property owners, violating state statute that requires the DNR to weigh all interests.

In the 2006 case, Administrative Law Judge William Coleman rejected evidence from the lake district about the economic impact on property owners caused by lower water levels, something Dillon questioned during oral arguments in circuit court.

"It seems to me if you own property on the water, and the water's no longer there, doesn't that affect your property?" he asked.

But Dillon wrote in his decision that, while he might have interpreted the statutes and weighed the evidence differently, the administrative law judge's interpretation also is valid.

“While not referring to specific dollar losses in tax revenues, property loss or other impacts caused by lower water levels in the summer, (the administrative law decision) does consider impact from loss of use of lake property,” he wrote.

“This court, in applying great weight deference, must sustain the agency’s reasonable statutory interpretation, even if the court believes that another interpretation is equally reasonable, or even more reasonable, than that of the DNR.”

That reasoning seems to leave the door open for appeal, Christianson said.

The lake district spent between \$400,000 and \$500,000 on the administrative law review, he said. O’Connor handled the circuit court case pro bono because the administrative review cost more than expected.

But an appeal wouldn’t cost much because there are no oral arguments at the appellate court, Christianson said. Costs would be mostly for photocopying information and arguments the lake district and O’Connor already have.

“There is a school of thought from about a third of our constituents that we’ve got such a significant amount of time and money invested in this that we really ought to push this through to a point where we have no further options,” Christianson said.

That would involve taking the case to appellate court and, if necessary, the Wisconsin Supreme Court.

The district has 30 days to decide if it wants to appeal the decision.

STORYLINE

The issue: The Rock Koshkonong Lake District has been fighting since 2003 to raise the lake’s level 7.2 inches in the summer and eliminate winter drawdowns. The Department of Natural Resources denied the request in 2005, and the state Division of Hearings and Appeals upheld the decision in 2006.

The district appealed that decision to Rock County Court in December 2006.

What’s new: Judge Daniel T. Dillon upheld the DNR’s decision in a ruling dated Friday.

What’s next: The district has 30 days to appeal the decision to the state appellate court.

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