

High court declines to consider lake level hike

By Kevin Murphy
Special to the Union

MADISON - The Wisconsin Supreme Court on Thursday declined to hear a challenge by property owners to the Department of Natural Resources' refusal to raise the level of Lake Koshkonong.

The suit filed in 2006 by the Rock-Koshkonong Lake District, and two affiliated associations, now returns to the District 4 Court of Appeals which had the case for 18 months before asking the state's high court to directly decide it.

The District 4 court had wanted the state Supreme Court to determine if the DNR should factor in economic impacts on property values, business income and municipal revenues when deciding lake level requests. The lake district associations recognize that a deeper Lake Koshkonong would provide more recreational value to property owners and revenue to businesses associated with outdoor recreation.

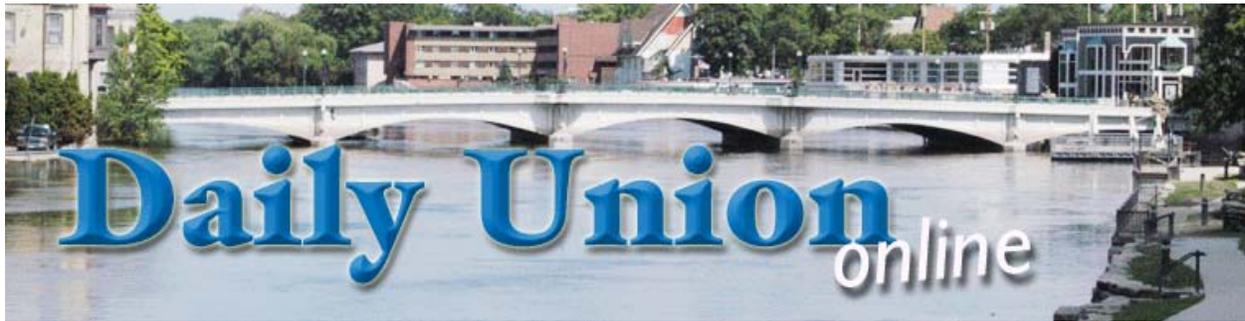
However, the DNR sees its role in setting water level orders as assessing impacts of shoreline erosion, flooding, and damage to plant and wildlife habitat, and not the economic consequences of such decisions. That position has prevailed before an administrative law judge and Rock County Circuit Judge Daniel Dillon who both have upheld the DNR's refusal to increase the water level at the Indianford dam by 7.2 inches.

Recognizing the statewide importance of the case, the District 4 court asked the high court in July for guidance since neither case law nor statutes provide a clear answer to what factors the DNR should consider in its water level orders. However, without comment the state Supreme Court returned the case to District 4 to decide it.

William O'Connor, attorney for the Rock-Koshkonong Lake District, did not see the court's action Thursday as a defeat but a delay in an already lengthy case.

"We've been waiting for a decision ... this slowed it down a bit ... Now the appeals court has to write its opinion because the Supreme Court won't take (the case) early," O'Connor said in a telephone interview Thursday.

Although both sides agree the case has statewide impact, Lake Koshkonong is unlike other bodies of water in the state, said O'Connor. The 10,500-acre impoundment has an average depth of six feet and is more like "a wide spot" in the Rock River, than a lake, he said.



The higher water level order requested by the lake associations only would have an effect in late summer months when water levels generally fall, he said. The additional 7.2 inches of water would allow for easier navigation then but it only would increase the depth of the river at the dam if there is enough water present, he noted.

"When there's lots of rain in the area, the water will be above the water order level regardless of what the DNR wants ... The DNR can't order nature around," O'Connor said.

Brian Christianson, president of the 7,500-member lake district, said the district board feels confident of prevailing at the appellate level, but it is isn't successful there, has been authorized by the membership to petition the supreme court to decide the case.

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