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STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

Petition of Brian Christianson, Gerald Richardson, the Lake Koshkonong Recreation Association, the Rock-Koshkonong Lake District and the Rock River – Koshkonong Association for a Contested Case Hearing Pursuant to Section 227.42 of the Wisconsin Statutes on the Proposed Amended Lake Koshkonong – Indianford Dam Water Level Order Proposed by the Rock-Koshkonong Lake District dated April 2003.

To the Department of Natural Resources:

The undersigned hereby request a hearing to be held as a contested case under s. 227.42, Stats.

The agency action or inaction which is the basis for the request for a hearing is:

The agency action or inaction which is the basis for the request for a hearing is the Department of Natural Resource's (the "Department") consideration and anticipated order in response to the April 2003 Petition of the Rock-Koshkonong Lake District to amend the Lake Koshkonong – Indianford Dam water level. The petitioners request that the contested case hearing on a proposed water level order be held before the Department issues any order in response to the Rock-Koshkonong Lake District's Petition.

The substantial interest injured or threatened with injury by agency action or inaction is:

1. As to Petitioner Rock-Koshkonong Lake District ("RKLD"), the Petitioner has a proprietary interest in the Lake Koshkonong – Indianford Dam water level as the owner and operator of the Indianford Dam. The RKLD has a governmental interest in the Lake Koshkonong – Indianford Dam water level as: (a) the body corporate established pursuant to s. 33.26(3), Wis. Stats., to carrying out a program of lake protection and rehabilitation pursuant to s. 33.21 et. seq., Wis. Stats., within its boundaries, including Lake Koshkonong and reaches of the Rock River above the Indianford Dam, (b) the unit of Wisconsin government expressly authorized to implement the Lake Koshkonong Comprehensive Project pursuant to s. 30.2025, Wis. Stats., and (c) the representative of residents and the owners of the approximately 4400 separate parcels of land within its boundaries, including riparian lands directly affected by such water levels.

2. As to Petitioner Rock River – Koshkonong Association (“RRKA”), the Petitioner has a substantial interest in the Lake Koshkonong –Indianford Dam water level as a representative of numerous riparian owners located on Lake Koshkonong as well as multiple business owners whose businesses are related to activities in and around Lake Koshkonong and the Rock River. The RRKA has as one of its primary organizational purposes, the maintenance and improvement of habitat and natural resources in and around Lake Koshkonong and the Rock River by, among other things, encouraging changes to such bodies of water that will increase their usefulness and safety for recreational purposes. The RRKA consists of approximately 325 to 350 members, including riparian owners and business owners directly affected by water levels.
3. As to Petitioner Lake Koshkonong Recreation Association (“LKRA”), the Petitioner has a substantial interest in the Lake Koshkonong –Indianford Dam water level as a representative of business owners and individuals that use and rely on Lake Koshkonong and the Rock River for business, recreation and tourism. The LKRA has as one of its primary organizational purposes, the maintenance and improvement of Lake Koshkonong and the Rock River as a recreational body of water. The LKRA promotes local tourism related to Lake Koshkonong and the Rock River and supports efforts to improve opportunities for recreational fishing and boating. The LKRA consists of approximately thirty-eight members, including business owners and riparian owners directly affected by water levels.
4. As to Petitioner Brian Christianson, the Petitioner is an adult resident of the Town of Fulton, Rock County, Wisconsin whose address is 374 E. Samuelsen Drive, Edgerton, Wisconsin and the owner of riparian property on the Rock River above the Indianford Dam within the Rock-Koshkonong Lake District in the Town of Fulton, Rock County, Wisconsin. Petitioner Christianson is the Chair of RKLD and a recreational user of the Rock River and Lake Koshkonong.
5. As to Petitioner Gerald Richardson, the Petitioner is an adult resident of the Town of Milton, Rock County, Wisconsin whose address is 807 Harbor Road Milton, Wisconsin and the owner of riparian property on the Rock River above the Indianford dam. Petitioner Richardson is the Treasurer for both the RKLD and the LKRA and serves on the board of the RRKA. Petitioner Richardson is also the owner and operator of Harbor Recreation, Inc., a full service marina and marine dealership located at the same address. In addition to marine sales and service, Harbor Recreation, Inc. operates and maintains a boat ramp and approximately sixty boat slips on the Rock River. As a riparian owner and as the owner and operator of a business directly affected by water levels, Petitioner Richardson has a substantial interest in the Lake Koshkonong – Indianford Dam water level.

The basis for a finding that there is no evidence of legislative intent that the interest is not to be protected is:

There is no evidence of legislative intent that the Petitioners' governmental, proprietary, economic and recreational interests are not to be protected. The law of Wisconsin strongly supports the conclusion that the Legislature of the state supports the rights of property owners and recreational users of navigable water bodies to protect their interests. See, e.g., Gillen v. City of Neenah, 219 Wis.2d 806 (1998).

The right of riparian owners to a contested case hearing on a proposed change in the water level order affecting Indianford Dam *before* any order is issued by the Department under s. 31.02, Wis. Stats., was expressly recognized by the Wisconsin Court of Appeals in Shearer v. DNR, 151 Wis.2d 153, (1989). In Shearer, the court reversed the Department's denial of a contested case hearing under substantially identical circumstances involving a Department order establishing water levels for Lake Koshkonong, stating, "[s]ection 227.42, Stats., is designed to provide a hearing before the agency charged with making a decision within its area of expertise so that persons whose interests may be threatened with injury by the agency's proposed action can be heard on the question *before the action is taken.*" 151 Wis. 2d at 163 (emphasis added).

The injury of the person requesting the hearing is different in kind or degree from injury to the general public caused by the agency action or inaction because:

The Petitioners include the owner and operator of the Lake Koshkonong - Indianford Dam, owners of businesses and riparian property affected by the Lake Koshkonong - Indianford Dam water level and governmental and nonprofit organizations with specific organizational purposes and powers related to the management of Lake Koshkonong and the reaches of the Rock River above the Indianford Dam.

There is a dispute of material fact, and the disputed facts are:

There are numerous disputes of material facts related to the anticipated impacts of modifications to the current water level order on navigation, property values, economic interests, water quality, fish and game habitat and other environmental interests. This dispute is ripe for review now, as is evidenced by the material differences in findings of the Department's environmental assessment ("EA") and the RKLD's environmental impact report ("EIR"), regarding the anticipated impacts of the proposed water level order modifications.

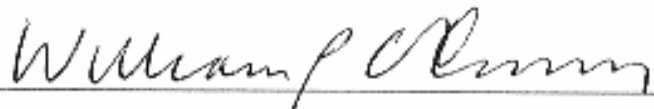
PETITIONER LAKE KOSHKONONG RECREATION
c/o Gerald Richardson, Treasurer+
807 Harbor Road
Milton, WI 53563

BY ITS COUNSEL
GODFREY & KAHN, S.C.
780 N. Water Street
Milwaukee, WI 53202-3590
(414)273-3500

By:  _____

PETITIONER BRIAN CHRISTIANSON

BY ITS COUNSEL
WHEELER, VAN SICKLE & ANDERSON, S.C.
25 W. Main Street, Suite 801
Madison, WI 53703-7277
(608)255-7277

By:  _____

PETITIONER GERALD RICHARDSON

BY ITS COUNSEL
GODFREY & KAHN, S.C.
780 N. Water Street
Milwaukee, WI 53202-3590
(414)273-3500

By:  _____

The statute or administrative rule other than s. 227.42, Stats., if any, which accords a right to a hearing is:

No statute or administrative rule other than s. 227.42, Stats., accords the Petitioners a right to a hearing.

Dated this ___ day of February, 2005.

PETITIONER ROCK-KOSHKONONG LAKE DISTRICT
c/o Brian Christianson, Chairman
374 E. Samuelsen Drive
Edgerton, WI 53534

BY ITS COUNSEL
WHEELER, VAN SICKLE & ANDERSON, S.C.
25 W. Main Street, Suite 801
Madison, WI 53703-7277
(608)255-7277

By: William P. Anderson

PETITIONER ROCK RIVER - KOSHKONONG ASSOCIATION, INC.
c/o Frank Micale, President
W7889 High Ridge Road
Fort Atkinson, WI 53538

BY ITS COUNSEL
GODFREY & KAHN, S.C.
780 N. Water Street
Milwaukee, WI 53202-3590
(414)273-3500

By: John C. Godfrey