

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In re: Findings of Fact, Conclusions of Law and Proposed Order dated April 3, 2005, Denying Petition for Change in Water Level Order, Lake Koshkonong-Indianford Dam on the Rock River, Rock County

Docket-3-SC-2003-28-3100R
Dam Water Levels

PETITION FOR CONTESTED CASE HEARING

To the Department of Natural Resources:

Petitioner Rock-Koshkonong Lake District, by its attorneys Wheeler, Van Sickle & Anderson, S.C., hereby requests a hearing to be held as a contested case under s. 227.42, Stats. and Wis. Admin. Code s. HA 1.

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

The agency action which is the basis for the request for a hearing is the Department of Natural Resource's (the "Department") issuance of Findings of Fact, Conclusions of Law and proposed Order dated April 15, 2005 in the above-numbered docket, denying the April 2003 Petition of the Rock-Koshkonong Lake District to amend the Lake Koshkonong – Indianford Dam water level.

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

Petitioner Rock-Koshkonong Lake District ("RKLD") 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 Wis. Stat. s. 33.26(3) to carrying out a program of lake protection and rehabilitation pursuant to s. Wis. Stats. ss. 33.21 *et. seq.* 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 Wis. Stat. s. 30.2025; 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.

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 Petitioner's governmental and proprietary interests are not to be protected.

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 Petitioner is the owner and operator of the Lake Koshkonong - Indianford Dam. The District's operation of the Dam is directly regulated by the Department's water level order as modified by the proposed Order.

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 RKLK's environmental impact report ("EIR"), regarding the anticipated impacts of the proposed water level order modifications.

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 16th day of May, 2005.

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. O'Brien