



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Review of the Water Level
Decision for Lake Koshkonong and the Indianford
Dam on the Rock River in Rock County,
Wisconsin

Case No. 3-SC-2003-28-3100LR

PREHEARING CONFERENCE REPORT
AND
SCHEDULING ORDER

On October 25, 2005, a prehearing conference was held in Fort Atkinson, Wisconsin, conducted by Administrative Law Judge William S. Coleman, Jr., of the Division of Hearings and Appeals. This report is filed pursuant to Wis. Stat. § 227.44(4)(b).

The PARTIES to this proceeding are certified on a preliminary basis as follows:

Rock-Koshkonong Lake District, Petitioner, by

Attorney William P. O'Connor
Attorney Mary Beth Peranteau
Wheeler, Van Sickle & Anderson
25 W. Main Street, Suite 801
Madison, Wisconsin 53703-3398

Rock River—Koshkonong Association, Inc., Petitioner;
Lake Koshkonong Recreation Association, Inc., Petitioner, both by

Attorney Arthur J. Harrington
Godfrey & Kahn
780 N. Water Street
Milwaukee, Wisconsin 53202-3590

Wisconsin Department of Natural Resources, Respondent, by

Attorney Michael J. Cain
P.O. Box 7921
Madison, Wisconsin 53707-7921

Lake Koshkonong Wetland Association;
Thiebeau Hunt Club, both by

Attorney Charles V. Sweeney
Axley Brynelson
P.O. Box 1767
Madison, Wisconsin 53701-1767

Jefferson County Farm Drainage Board, by

Attorney Andrew R. Griggs
136 Hospital Drive
Watertown, Wisconsin 53098

Rock County, by

Attorney Thomas A. Schroeder
Rock County Corporation Counsel
41 S. Main Street
Janesville, Wisconsin 53545

Linn Duesterbeck

Victor Falk, III

Allen Haight, all by

Attorney Michael E. Grubb
Brennan, Steil & Basting
P.O. Box 1148
Janesville, Wisconsin 53547

Joseph T. Fisher

N217 Pottawatomie Trail

Milton, Wisconsin 53563

Green Rock Audubon Society, by

Victor Illichmann, Treasurer
15515 W. Elmer Road
Evansville, Wisconsin 53536

Carcajou Shooting Club, by

Jeff Murley, Vice President
N2890 Mode Lane
Fort Atkinson, Wisconsin 53538

The following schedule is ordered:

1. Rock County is provisionally identified as a party. Its status as party shall be vacated unless corporation counsel advises the Division of Hearings and Appeals by December 9, 2005 that the county has duly determined to participate as a party in this matter.

Unless and until such provisional party status is vacated, Rock County shall be deemed a party to this proceeding with respect to the requirements of this scheduling order.

2. After the prehearing conference in this matter, corporation counsel for Jefferson County informed the Division of Hearings and Appeals that Jefferson County would not be participating in this matter as a party. Similarly, Penelope and Gary Shackelford informed the Division of Hearings and Appeals they wished not to participate in this matter as parties.

3. The DNR has the burden of proof in this matter pursuant to Wis. Admin. Code § NR 2.13(3).

4. Service of all papers and pleadings will be done according to Wis. Admin. Code § NR 2.04, which provides that service is complete upon mailing. The addresses reflected for the Parties above shall be used for service by mailing.

5. The contested case hearing will commence at **10:15 a.m. on Tuesday, March 28, 2006** in the Library Room of the Jefferson Public Library and City Hall, 321 S. Main Street, Jefferson, Wisconsin. Preliminary matters as specified in Wis. Admin. Code § NR 2.13(1) and (2) shall be addressed first. Then, a witness for the DNR will be sworn to provide general testimony respecting the DNR's decision to provide factual context for the hearing. (The cross-examination of this witness may be reserved until later in the contested case hearing.) Following this DNR witness, members of the public who have not been certified as parties may participate by providing sworn testimony or statements pursuant to Wis. Admin. Code § NR 2.13(1). The hearing will conclude on that day no later than 7:30 p.m.

6. The opportunity for public participation by non-parties shall continue at the same location (Jefferson Public Library and City Hall) at **10:15 a.m. on Wednesday, March 29, 2006**, and will conclude on that day no later than 7:30 p.m.

7. The contested case hearing will continue at the same location (Jefferson Public Library and City Hall) at **10:15 a.m. on Thursday, March 30, 2006**, for the purpose of receiving evidence by and on behalf of those certified parties who intend not to appear for all or part of the contested case hearing in Madison (scheduled for April 3-5 and 10-14, 2006, as described below). At the present time, only Mr. Fisher and the parties who Attorney Grubb represents are identified to present evidence at this time, though others among the certified parties may be identified later. The presentation of this evidence by these specified parties shall conclude on that day no later than 7:30 p.m. (NOTE: The presentation of this evidence may commence earlier than the specified time, if the public participation component of the contested case hearing is completed before the end of the hearing day on March 29, 2005.)

8. If there is not sufficient time (a) on March 28 & 29, 2006 to complete the public participation portion of the contested case hearing, or (b) on March 30, 2006 for the receipt of evidence from parties described in the preceding paragraph, then the contested case hearing *may* continue on **March 31, 2006 at 9:30 a.m. at a different location** -- the Rogers Room of the Dwight Foster Public Library, 102 E. Milwaukee Avenue, Fort Atkinson, Wisconsin -- to

be concluded no later than 4:00 p.m. that day. [NOTE: Please note that the contested case hearing will continue on March 31, 2006 at this location *only if* there is not enough time to complete specified portions of the contested case hearing during the three previous days of hearing.]

9. The contested case hearing will continue for the presentation of evidence by those parties who had not presented evidence during the preceding week, beginning at **9:30 a.m. on April 3, 2006** at the offices of the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, Wisconsin. The hearing will continue at the same location until complete on the following days: **April 4-5, 2006, and April 10-14, 2006.** (It is anticipated, however, that the hearing will likely be completed without the need to employ all these identified hearing dates.)

10. The DNR and all parties other than the petitioners shall serve their respective lists that identify their respective potential expert witnesses and the subject matter of each witness's testimony no later than November 4, 2005.

11. The petitioners shall file their respective lists identifying their respective potential expert witnesses and the subject matter of each witness's testimony no later than November 28, 2005.

12. The DNR and all parties other than the petitioners shall serve the prefiled testimony of their expert witnesses, and related exhibits, no later than December 23, 2005.

13. The petitioners shall serve the prefiled testimony of their respective expert witnesses, and related exhibits, no later than February 6, 2006.

14. Exhibit numbers for premarked exhibits shall be according the following numbering protocol:

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|--|---------|
| Department of Natural Resources | 1-99 |
| Rock-Koshkonong Lake District | 100-199 |
| Rock River—Koshkonong Association, Inc., and Lake Koshkonong Recreation Association, Inc. | 200-299 |
| Lake Koshkonong Wetland Association, and Thiebeau Hunt Club | 300-399 |
| Linn Duesterbeck; Victor Falk, III; Allen Haight; & Joseph T. Fisher; | 400-499 |
| Green Rock Audubon Society | 500-599 |
| Carcajou Shooting Club | 600-699 |
| Jefferson County Farm Drainage Board | 700-799 |
| Rock County | 800-899 |

15. All parties other than the petitioners shall serve their respective lists identifying any “non-expert” witnesses and the subject matter of each witness’s testimony no later than November 28, 2005.

16. The petitioners shall serve their respective lists identifying any “non-expert” witnesses and the subject matter of each witness’s testimony no later than December 9, 2005.

17. Pursuant to Wis. Admin. Code § NR 2.11(2), prehearing discovery as would be permitted by Wis. Stat. Chap. 804 is permitted, except for preservation of testimony by deposition, which is not permitted except as the parties may agree or the Division of Hearings and Appeals may allow upon motion. Discovery shall be complete no later than March 10, 2006.

18. Any motion respecting the characterization of this contested case hearing as a “class 1” hearing as defined in Wis. Stat. § 227.01(3) should be filed no later than November 8, 2005, and any response to any such motion should be filed no later than November 15, 2005.

19. Any dispositive prehearing motions shall be filed no later than March 3, 2006. Responses to any such motions shall be served within ten days of service, but such time for filing a response may be extended or shortened for good cause.

20. The matter of filing of any post-hearing briefs shall be determined at a later time.

Dated at Milwaukee, Wisconsin on November 4, 2005.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Milwaukee, Wisconsin 53203-1685
Telephone: (414) 227-4781
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By: _____
William S. Coleman, Jr.
Administrative Law Judge