

ROCK-KOSHKONONG LAKE DISTRICT,  
ROCK RIVER-KOSHKONONG  
ASSOCIATION, INC., and LAKE  
KOSHKONONG RECREATIONAL  
ASSOCIATION, INC.,

Petitioners,

Case No.: 06 CV 1846

Case Code: 30607

v.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES,

Respondent.

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**MOTION TO INTERVENE OF LAKE KOSHKONONG WETLAND ASSOCIATION,  
INC., AND THIEBEAU HUNTING CLUB**

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Lake Koshkonong Wetland Association, Inc., and Thiebeau Hunting Club, by their attorneys, Axley Brynelson, LLP, by Charles V. Sweeney and Mitchell R. Olson, move this Court for an Order permitting their intervention in the above-captioned action pursuant to Wis. Stats. §§ 227.53(1)(d), 803.09(1).

AS GROUNDS for this motion, these moving parties state as follows:

1) The Petitioners have filed this action for judicial review of an administrative decision pursuant to Wis. Stats. §227.52.

2) The subject of this action is the operating order governing the Indianford Dam, which order determines water levels for Lake Koshkonong, a navigable waterbody located on the Rock River in Rock, Jefferson, and Dane counties in the State of Wisconsin.

3) On April 21, 2003, Petitioner, Rock-Koshkonong Lake District [RKLD], petitioned the Respondent, Wisconsin Department of Natural Resources [WDNR], to amend the existing operating order governing the Indianford Dam, which order was issued April 25, 1991.

4) On April 25, 2005, WDNR issued a proposed operating order for the Indianford Dam, pursuant to Wis. Stats. §31.02, which proposed order rejected the petition of RKLD.

5) On May 16, 2005, the Petitioners filed a joint petition for a contested case hearing pursuant to Wis. Stats. §227.42, with respect to the April 15, 2005 operating order.

6) On September 15, 2005, WDNR requested a contested case hearing before the Division of Hearings and Appeals, which assigned the matter to ALJ William S. Coleman, Jr. The matter was assigned case number 3-SC-2003-28-3100LR.

7) The movants/intervenors, Lake Koshkonong Wetland Association, Inc., and Thiebeau Hunting Club, by their attorney, Charles V. Sweeney, were certified as parties to the contested case hearing pursuant to Wis. Stats. §227.47(1), and Wis. Admin. Code NR §2.155(3).

8) The proposed intervenor, Lake Koshkonong Wetland Association, Inc. [LKWA], is a Wisconsin non-stock corporation, with its principal place of business at 2 East Mifflin Street, Madison, WI 53701. LKWA is non-stock charitable organization dedicated to the promotion of the ecological health of the Lake Koshkonong Watershed, expressly including the wetlands, water quality, and wildlife supported by said Watershed.

9) The proposed intervenor, Thiebeau Hunting Club [THC], is a Wisconsin Corporation, with its principal place of business at 812 Blaine Street, Edgerton, WI 53534. THC does business as a hunting club and is the owner of substantial real property fronting on Lake Koshkonong. Said property relies on the water levels of Lake Koshkonong to support the ecological health of the extensive and high quality wetlands existing on said property.

10) The movants/intervenors, LKWA and THC, appeared at and participated as parties in the contested case hearing held before the Division of Hearings and Appeals on March 29-30, April 3-5, and April 10-14, 2006.

11) The movants/intervenors, LKWA and THC, filed a Closing Brief-in-Chief and Reply Brief subsequent to the contested case hearing. The movants/intervenors, LKWA and THC, argued in favor of the WDNR's April 15, 2005 operating order.

12) On December 1, 2006, ALJ Coleman filed his Findings of Fact, Conclusions of Law and Order in Case No. 3-SC-2003-28-3100LR. Said Decision affirmed the WDNR's April 15, 2005 Order in full, and rejected RKLD's petition to amend the operating order.

13) On December 29, 2006, the Petitioners, RKLD, RRKA, and LKRA, filed this Petition for Judicial Review of ALJ Coleman's December 1, 2006, Decision. Said Petition for Judicial Review did not join LKWA and THC as parties.

14) Pursuant to Wis. Stats. §227.53(1)(d), "the agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review."

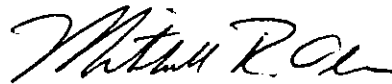
15) The movants/intervenors, LKWA and THC, claim an interest relating to the transaction and issues presented in the Petition for Review, and movants/intervenors are so situated that disposition of this action may impair or impede movants/intervenors, ability to protect that interest.

16) Attached hereto as "Exhibit A" is a proposed Pleading setting forth the movants/intervenors, LKWA and THC, claims as an intervening respondent.

WHEREFORE, the movants/intervenors, LKWA and THC, respectfully request that this Court grant an Order permitting their intervention in this action, and for leave to immediately file a pleading consistent with Exhibit A, attached hereto.

Dated this 5<sup>th</sup> day of January, 2007.

AXLEY BRYNELSON, LLP



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STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES,

Respondent.

LAKE KOSHKONONG WETLAND ASSOCIATION, INC.,  
2 East Mifflin Street  
Madison, WI 53701,

and

THIEBEAU HUNTING CLUB  
812 Blaine Street  
Edgerton, WI 53534,

Intervening Respondents.

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**INTERVENING RESPONDENTS', LAKE KOSHKONONG WETLAND  
ASSOCIATION, INC., AND THIEBEAU HUNTING CLUB, NOTICE OF  
APPEARANCE AND RESPONSE TO PETITION FOR REVIEW**

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NOW COME the intervening respondents, Lake Koshkonong Wetland Association, Inc., and Thiebeau Hunting Club, by their attorneys, Axley Brynelson, LLP, by Charles V. Sweeney and Mitchell R. Olson, and as and for a Notice of Appearance and Response to the Petition for Review, pursuant to Wis. Stats. 227.53(2), state as follows:

1) The intervenor, Lake Koshkonong Wetland Association, Inc. [LKWA], is a Wisconsin non-stock corporation, with its principal place of business at 2 East Mifflin Street, Madison, WI 53701. LKWA is non-stock charitable organization dedicated to the promotion of the ecological health of the Lake Koshkonong Watershed, expressly including the wetlands, water quality, and wildlife supported by said Watershed.

2) The intervenor, Thiebeau Hunting Club [THC], is a Wisconsin Corporation, with its principal place of business at 812 Blaine Street, Edgerton, WI 53534. THC does business as a hunting club and is the owner of substantial real property fronting on Lake Koshkonong. Said property relies on the water levels of Lake Koshkonong to support the ecological health of the extensive and high quality wetlands existing on said property.

3) On or about December 1, 2006, ALJ William S. Coleman, Jr., filed his Findings of Fact, Conclusions of Law and Order in Case No. 3-SC-2003-28-3100LR. The subject Petition for Review seeks judicial review of said Decision pursuant to Wis. Stats. §227.52.

4) On or about January \*\*, 2007, these intervening respondents filed a Motion for Intervention, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference.

5) This Court granted said motion of intervention on January \*\*, 2007.

6) These intervening respondents submit this Notice of Appearance and Response to the Petition for Review, pursuant to Wis. Stats. §227.53(2).

7) These intervening respondents admit the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Petition for Review.

8) These intervening respondents admit the first sentence of paragraph 13 of the Petition for Review, but deny the balance of said paragraph.

9) These intervening respondents admit the first and second sentences of paragraph 14 of the Petition for Review, but deny the balance of said paragraph.

10) These intervening respondents admit the first, second and third sentences of paragraph 15 of the Petition for Review, but deny the balance of said paragraph.

11) These intervening respondents deny the allegations in paragraphs 16, 17, 18, and 19 of the Petition for Review.

12) These intervening respondents affirmatively allege that the Findings of Fact, Conclusions of Law and Order in Case No. 3-SC-2003-28-3100LR, should be affirmed, upholding the WDNR's Order of April 15, 2005.

WHEREFORE, the intervening respondents, LKWA and THC, respectfully request that this Court award the following relief:

A) Affirm the December 1, 2006 Decision of ALJ Coleman in Case No. 3-SC-2003-28-3100LR, in its entirety, thereby affirming the WDNR Order of April 15, 2005;

B) For their costs and attorneys fees, as allowed by law; and

C) For such other and further relief as the Court deems just and equitable.

Dated this \_\_\_\_\_ day of January, 2007.

AXLEY BRYNELSON, LLP

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**ORDER GRANTING INTERVENTION**

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BASED ON the Motion for Intervention filed by Lake Koshkonong Wetland Association, Inc., and Thiebeau Hunting Club, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Lake Koshkonong Wetland Association, Inc., and Thiebeau Hunting Club, are authorized to intervene in this action as respondents, in support of the ALJ's December 1, 2006 Decision, and shall file their Notice of Appearance forthwith.

Dated this \_\_\_\_\_ day of January, 2007.

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Honorable Daniel T. Dillon  
Rock County Circuit Court Judge