

WHEELER, VAN SICKLE
& ANDERSON, S.C.

GODFREY & KAHN S.C.

May 7, 2015

Attorney General Brad Schimel
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Re: DNR Water Level Determination for Lake Koshkonong
DNR Docket No. 3-SC-2003-3100LR
Rock-Koshkonong Lake District v. DNR, 2013 WI 74

Dear Attorney General Schimel:

We are writing on behalf of the Rock-Koshkonong Lake District (“RKLD”), the Lake Koshkonong Recreation Association and the Rock River-Koshkonong Association. In a July 2013 decision, the Wisconsin Supreme Court determined that DNR improperly denied the Lake District’s 2003 petition to amend the operating order for the Indianford Dam. The combined effect of the Department’s denial and repairs that increased the dam’s capacity to pass water downstream was to lower the level of the lake that had prevailed for several decades, chiefly during the summer boating season. (Much of the time, the lake level is above ordered limits as a result of uncontrollable floods and other natural forces.)

The lowered water level has significantly depressed property values around Lake Koshkonong, Wisconsin’s third largest inland lake. A recent economic analysis completed by Dr. Russell Kashian of the University of Wisconsin-Whitewater Fiscal and Economic Research Center estimated property loss resulting from the lowered water level (and uncertainty over water level policy) at some \$70 million. This loss of property value has reduced local tax revenues by more than \$1 million annually, according to projections included in Dr. Kashian’s report. Although they have not been as carefully analyzed, the detrimental economic impacts of the lowered water levels extend to business activity (especially in the recreation and hospitality sectors) associated with this important water resource.

The economic consequences of the reduced water levels were systematically ignored in DNR’s water level order based on a narrow interpretation of the governing statute, Section 31.02(1).

WHEELER, VAN SICKLE & ANDERSON, S.C. ◦ 25 W. Main Street, Suite 801 ◦ Madison, WI 53703-3398

GODFREY & KAHN, S.C. ◦ 780 N. Water Street ◦ Milwaukee, WI 53202-3590

Attorney General Brad Schimel
Wisconsin Department of Justice
May 7, 2015
Page 2

The Supreme Court's decision clearly held that DNR's decision to exclude consideration of economic impacts was an error of law and remanded the matter to the agency to reconsider its determination consistent with its opinion.

The matter was formally remanded to the Department by the Rock County Circuit Court in February 2014. Despite the specific 120-day timetable for water level decisions codified in Section NR 300.04(4)(b), the Department has made no real progress in correcting its error and issuing an appropriate water level order in the nearly 14 months following remand.

We are enclosing a copy of our letter to DNR Secretary Cathy Stepp, in which the District and the Associations urge the Department to promptly grant the District's 2003 petition to modify the water level order. Also enclosed is a memorandum of law detailing the Supreme Court's mandate on remand.

This situation is obviously provoking outrage among the residents and taxpayers of the Rock-Koshkonong Lake District (which owns the Indianford Dam) who have invested significant resources in its restoration and operation, and desire nothing more than to maintain the status quo water levels that prevailed on the lake from the 1960s through 2002, when the dam's discharge gates were repaired.

Based on its actions since the District first sought to conform the water level order with the revised discharge capacity of the dam, the District has lost confidence in DNR's willingness to faithfully apply the law consistent with the Supreme Court's decision. For that reason, we ask that you consider intervening in the resolution of the District's claims using the authority of the Attorney General under Section 165.25(6). We believe that section provides sufficient authority for your office to enter into a settlement agreement with the District governing operation of the dam.

We would appreciate an opportunity to meet with you to discuss the District's concerns and a responsible resolution of this long simmering water level dispute.

Very truly yours,

WHEELER, VAN SICKLE
& ANDERSON, S.C.
Attorneys for Rock-Koshkonong Lake District



William P. O'Connor

GODFREY & KAHN, S.C.
*Attorneys for Lake Koshkonong
Recreational Association, Inc. and
Rock River-Koshkonong Association, Inc.*



Arthur J. Harrington

Enclosures

Cc: Governor Scott Walker
DNR Secretary Cathy Stepp