

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

R E C E I V E D
MAY 12 2008
GODFREY & KAHN S.C.

MEMORANDUM DECISION

Petitioners

vs.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL
RESOURCES

Case No. 06 CV 1846

Respondent.

LAKE KOSHKONONG WETLAND
ASSOCIATION, INC. and
THIEBEAU HUNTING CLUB

Intervening Respondents.

This is a judicial review of an administrative agency decision under Wis. Stat. §227.

THE PARTIES

PETITIONERS

1. Rock-Koshkonong Lake District (RKLD) is a Wisconsin public inland lake protection and rehabilitation district created by the Rock County Board of Supervisors pursuant to Wis. Stats. §§33.24 and 33.37 (1). RKLD is the owner of the Indianford Dam.
2. Rock River-Koshkonong Association, Inc. (RRKA) is an association of riparian owners and owners of businesses related to activities in and around Lake Koshkonong and the Rock River.
3. Lake Koshkonong Recreational Association (LKRA) is an association of businesses and individuals who use and rely on Lake Koshkonong and the Rock River for business, recreation and tourism.

RESPONDENT: DNR

4. The Wisconsin Department of Natural Resources.

INTERVENING RESPONDENTS:

5. Lake Koshkonong Wetland Association, Inc (LKWA) is an organization dedicated to the promotion of the ecological health of the Lake Koshkonong Watershed.
6. Thiebeau Hunting Club (THC) is a Wisconsin corporation doing business as a hunting club. It owns property on Lake on Lake Koshkonong.

SUMMARY OF LEGAL PROCEEDINGS

7. Lake Koshkonong is a navigable water body located on the Rock River in Rock, Jefferson and Dane counties in the State of Wisconsin, upstream of the Indianford Dam. The dam is subject to a DNR operating order pursuant to Wis. Stat. ch. 31.
8. On April 21, 2003, RKLD petitioned DNR to amend the operating order for the dam issued on April 25, 1991, to raise the summer (May-October) water level controlled by the dam from a maximum of 776.33 feet mean sea level (“MSL”) to 777.0 ft. MSL, and to eliminate the winter drawdown (November-April).
9. On April 15, 2005, DNR issued a proposed operating order for the Indianford Dam pursuant to Wis. Stat. §31.02 maintaining the summer maximum at 776.33 ft MSL, and modifying the winter drawdown from a minimum of 775.00 ft MSL to 775.50 ft MSL.
10. On May 16, 2005, Petitioners filed for a contested case hearing pursuant to Wis. Stat. §227.42 on the April 15, 2005 operating order. A hearing was held before the Division of Hearings and Appeals on March 29-30 and April 3-5, and 10-14, 2006. Petitioners each introduced evidence and filed briefs.
11. On December 1, 2006, Administrative Law Judge William S. Coleman, Jr. issued Findings of Fact, Conclusions of Law and an Order (the “Decision”), denying the petition for a change in the operation order and affirming the DNR’s April 15, 2005 order in its entirety.
12. The Findings of Fact, Conclusions of Law and Order is an administrative decision under Wis. Stat. §227.52, subject to judicial review.

ISSUES

13. Chapter 31.02 of the Wisconsin Statutes reads:

