



Lake Koshkonong level to Supreme Court

By Kevin Murphy
Special to the Union

MADISON - After years of legal wrangling over raising the water level of Lake Koshkonong, a state appeals court on Thursday asked the Wisconsin Supreme Court to decide the issue.

The Rock-Koshkonong Lake District's request to raise the lake level 7.2 inches at the Indianford Dam was denied by the state Department of Natural Resources, a decision that largely had been upheld before an administrative law judge and Rock County Circuit Judge Daniel Dillon.

The district appealed Dillon's decision to the District 4 Court of Appeals, which after 18 months decided Thursday that the high court should directly hear the case since it involved issues of statewide importance.

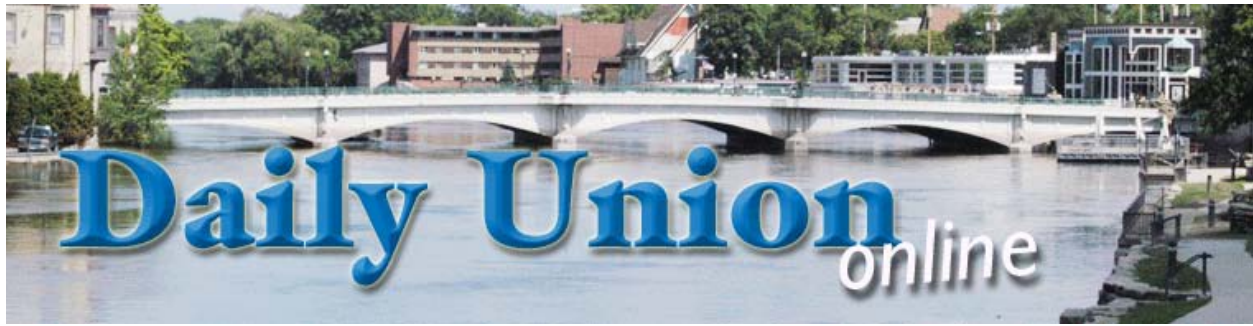
"After 18 months, I'm a little disappointed the court didn't do something other than just pass the buck," said Frank Micale, president of Rock River-Koshkonong Association Inc., a party to the suit.

The District 4 court wants the state Supreme Court to determine whether the DNR should factor in economic impacts on property values, business income and municipal revenues when deciding lake level requests. That's the district's position, which sees a deeper Lake Koshkonong providing more recreational value to property owners and revenue to businesses associated with outdoor recreation.

The district claims that a state law enacted in 1915 has recognized the need to protect property values and economic benefits from manmade lakes. Court decisions dating to 1897 acknowledge the need to consider economic interests of lakeshore property owners.

The DNR has interpreted its role as protecting property owners from flooding and other physical impacts of water level decisions, but not the loss of appreciation or other economic factors. The DNR points out that in other statutes, the Legislature specifically has instructed the agency to consider economic values when asked to alter streams or in setting air pollution standards, but not in the statute involved in this case.

Expanding the "reach of (the statute) to economic implications of these impacts, such as whether a marina nearby may sell more or fewer boats for use in the lake, has no logical stopping point," the state asserted.



The District 4 appeals court is asking the Supreme Court for guidance since neither case law nor statutes provide a clear answer. It notes that the DNR needs to consider economic benefits when issuing environmental impact statements but not lake level decisions.

"There are literally hundreds of fully or partially impounded bodies of water in Wisconsin, including many of the largest lakes in the state, subject to water level regulation under this section. We believe that resolving whether the DNR must consider the economic effects of water levels on impounded lakes is of great public importance, and the Supreme Court is the appropriate forum to decide the issue," according to the District 4's certification.

There is no time limit for the high court to decide whether to take the case or return it to the District 4 court, said Mary Beth Peranteau, an attorney for the district.

Brian Christianson, president of the 7,500-member lake district, said the organization has spent \$500,000 on legal and engineering expenses seeking approval to raise the lake level. He had not read the certification Thursday afternoon and thus declined immediate comment on it.

Micale said raising the water level seven inches at the Indianford Dam would not impact the river level, but it would greatly aid navigation on the 10,500-acre lake, which has an average depth of six feet.

"There are some places on the lake that have 300 feet of pier, and at this time of year, are lucky to have 18 inches of water," Micale said.

Micale added that hydrological studies have shown that even with the current flood conditions, there is room for the higher requested lake level without negatively impacting flood-prone properties.

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