

ROCK-KOSHKONONG LAKE DISTRICT
c/o Brian Christianson, Chairman
374 E. Samuelsen Drive
Edgerton, WI 53534

ROCK RIVER-KOSHKONONG ASSOCIATION, INC.
a Wisconsin nonstock corporation
W7889 High Ridge Road
Fort Atkinson, WI 53538

and

LAKE KOSHKONONG RECREATIONAL ASSOCIATION, INC.
a Wisconsin nonstock corporation
807 Harbor Road
Milton, WI 53563,

Petitioners,

Case No. _____

vs.

Code: 30607
Administrative Agency Review

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Madison, Wisconsin 53707-7921,

Respondent.

PETITION FOR REVIEW

Petitioners Rock-Koshkonong Lake District (“RKLD”), by its attorneys, Wheeler, Van Sickle & Anderson, S.C., and Petitioners Rock River-Koshkonong Association, Inc. (“RRKA”) and Lake Koshkonong Recreational Association, Inc. (“LKRA”), by their attorneys, Godfrey & Kahn, S.C., hereby petition for judicial review of the Findings of Fact, Conclusions of Law and Order of Respondent Wisconsin Department of Natural Resources (“WDNR”) in Case No. 3-SC-2003-28-3100LR. Petitioners allege as follows:

PARTIES

1. 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), and is a resident of Rock County with its principal address at 374 E. Samuelson Drive, Edgerton, Wisconsin 53534. RKLD is comprised of approximately 4400 parcels of property located in parts of Dane, Rock and Jefferson counties in the State of Wisconsin, and is the owner of the Indianford Dam, located in Rock County, Wisconsin.

2. RRKA is a Wisconsin non-stock corporation and a resident of Jefferson County, with its principal office address at W7889 High Ridge Road, Fort Atkinson, Wisconsin 53538.

3. LKRA is a Wisconsin non-stock corporation and a resident of Rock County, with its principal office address at 807 Harbor Road, Milton, Wisconsin 53563.

4. WDNR is an agency of the State of Wisconsin, as that term is defined by sec. 227.01(1), Wis. Stats., and as that term is used throughout Chapter 227, Wis. Stats., whose principal office is located at 101 S. Webster Street, Madison, Wisconsin 53707-7921.

VENUE

5. Pursuant to Wis. Stat. § 227.53(1)(a)3., Rock County Circuit Court is the proper venue for this action based on two of the Petitioners' residence in Rock County.

6. Pursuant to Wis. Stat. § 227.53(1)(a)3., Rock County Circuit Court is the proper venue for this action based on the location of the Indianford Dam, which is the property affected by the determination under review.

BACKGROUND

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 WDNR operating order pursuant to Wis. Stat. ch. 31.

8. On April 21, 2003, RKLD petitioned WDNR to amend the then-current operating order for the Indianford Dam issued on April 25, 1991, to raise the summer (May-October) water levels 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, WDNR issued a proposed operating order for the Indianford Dam pursuant to Wis. Stat. § 31.02 that denied RKLD’s petition, re-established the summer maximum at 776.33 ft. MSL, and modified the winter drawdown from a minimum of 775.00 ft. MSL to 775.50 ft. MSL.

10. On May 16, 2005, RKLD, RRKA and LKRA filed a joint petition for a contested case hearing pursuant to Wis. Stat. § 227.42 on the April 15, 2005 operating order and denial of the District’s request for amendment. A contested case hearing was held before the Division of Hearings and Appeals on March 29-30 and April 3-5 and 10-14, 2006. RKLD, RRKA and LKWA were certified as parties, and each introduced evidence and filed briefs in the contested case proceedings.

11. On December 1, 2006, Administrative Law Judge William S. Coleman, Jr. issued his Findings of Fact, Conclusions of Law (the “Decision”) in Case No. 3-SC-2003-28-3100LR, denying RKLD’s petition for a change in the operating order and affirming the WDNR’s April 15, 2005 order in its entirety. A true and correct copy of said Decision is annexed hereto as Exhibit A.

12. The Findings of Fact, Conclusions of Law, and Order is an administrative decision under Wis. Stat. § 227.52, subject to judicial review.

STATEMENT OF CLAIMS

13. Petitioner RKLD is a special purpose governmental unit organized and existing for the purpose of protecting and rehabilitating Lake Koshkonong, and is the owner of the Indianford Dam. The Decision affects the substantial interests of RKLD in that it requires the Dam to be operated to maintain water levels in a manner that is detrimental to navigation, safety and property interests of members of the Lake District.

14. Petitioner RRKA is an association of approximately 325 to 350 members, including riparian owners located on Lake Koshkonong and business owners whose businesses are related to activities in and around Lake Koshkonong and the Rock River. RRKA has a substantial interest in the Lake Koshkonong–Indianford Dam water level and has as one of its primary organizational purposes the maintenance and improvement of habitat and natural resources in and around Lake Koshkonong and the Rock River by, among other things, encouraging changes to such bodies of water that will increase their usefulness and safety for recreational purposes. RRKA is aggrieved by the Decision requiring that Lake Koshkonong water levels be maintained in a manner that is detrimental to the commercial, recreational and navigational interests of members of the Association.

15. Petitioner LKRA is an association of approximately 38 members, including business owners and individuals that use and rely on Lake Koshkonong and the Rock River for business, recreation and tourism. The LKRA has as one of its primary organizational purposes the maintenance and improvement of Lake Koshkonong and the Rock River as a recreational body of water. The LKRA promotes local tourism related to Lake Koshkonong and the Rock River and supports efforts to improve opportunities for recreational fishing and boating. LKRA is aggrieved by the Decision requiring that Lake Koshkonong water levels be maintained in a

manner that is detrimental to the commercial, recreational and navigational interests of members of the Association.

16. The Decision erroneously interpreted a provision of law in finding that Chapter NR 103 of the Wisconsin Administrative Code applies to dam operating orders under Wis. Stat. Ch. 31.

17. The Decision erroneously interpreted a provision of law in finding that WDNR need not consider impacts on residential property values, business income and public revenues in establishing water levels under Wis. Stat. § 31.02.

18. The Decision's finding that WDNR need not consider the economic impacts of the Dam operating order is inconsistent with prior agency practice.

19. The Decision rejected hydrologic and hydraulic modeling evidence submitted by Petitioners concerning the effect of RKLD's requested amendment to the Dam operating order on grounds that are not supported by substantial evidence in the record.

WHEREFORE, Petitioners respectfully requests that the Court:

A. Reverse those portions of the December 1, 2006 Decision holding that Wis. Admin. Code Ch. NR 103 is applicable to the establishment of water level orders under Wis. Stat. § 31.02.

B. Reverse those portions of the Decision holding that impacts of the Dam operating order on residential property values, business income and public revenues need not be considered by the agency in establishing a water level order under Wis. Stat. § 31.02.

C. Grant RKLD's April 21, 2003 petition to amend the operating order for the Indianford Dam; or in the alternative, remand the case for further proceedings consistent with the Court's decision on review.

D. For such other and further relief as the Court deems appropriate.

Dated this 29th day of December, 2006.

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