



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Review of the Water Level
Decision for Lake Koshkonong and the Indianford
Dam on the Rock River in Rock County,
Wisconsin

Case No. 3-SC-2003-28-3100LR

**ORDER ON MOTION FOR DESIGNATION OF MATTER AS A “CLASS 3”
CONTESTED CASE HEARING, and
SUPPLEMENTAL SCHEDULING ORDER**

Motion for Designation as Class 3 Hearing

By motion dated November 8, 2005, counsel for the Petitioners sought an order that this matter be designated a “class 3” contested case hearing, as defined in Wis. Stat. § 227.01(3)(c). Counsel for the DNR responded by filing a memorandum dated November 14, 2005.

The Petitioners’ motion is denied. This matter shall remain designated a “class 1” hearing as defined in Wis. Stat. § 227.01(3)(a). The denial of the motion is not intended and shall not be deemed a determination respecting the governing standard or standards of review applicable to this proceeding.

Supplemental Scheduling Order

By letter dated November 22, 2005, counsel for Rock-Koshkonong Lake District requested that a prehearing conference be held “for the purpose of clarifying the scope of the hearing.” Counsel for the DNR, counsel for Lake Koshkonong Wetlands Association and Thiebeau Hunt Club, and counsel for Rock-River Koshkonong Association, Inc. and Lake Koshkonong Recreation Association, Inc., responded to this request by separate email messages on November 23, 2005.

The DNR has the burden of proof in this matter. At the prehearing conference held on October 25, 2005, counsel for the DNR indicated that the DNR considered the scope of the hearing to be defined by the DNR’s decision dated April 15, 2005. Matters addressed in the DNR’s decision of April 15, 2005, on which the Petitioners were granted a contested case hearing, would be presumptively relevant in a contested case hearing on that decision. As the party with the burden of proof, the DNR is charged with defining the issues for hearing and in

presenting evidence to meet its burden. Given this broad scope of the DNR's decision of April 15, 2005, twelve days were identified for the conduct of the contested case hearing, even though all the direct testimony of expert witnesses in the matter will be prefiled (thereby likely shortening the length of the hearing).

In view of the submissions already presented respecting these matters, the undersigned is not convinced that allowing for additional briefing, oral argument, or a prehearing conference would likely result in a change to the existing schedule or otherwise significantly aid in the disposition of the matter. Accordingly, no further briefing, oral argument, or prehearing conference will be scheduled at this time.

All parties other than the Petitioners will be serving prefiled expert testimony no later than December 23, 2005. If the Petitioners perceive certain of this prefiled testimony to be irrelevant or otherwise inappropriate, the Petitioners may file a motion to strike such testimony. Any such motion to strike should be filed no later than December 30, 2005, though a request for a short extension would likely be favorably considered. Responses to any such motion to strike should be filed no later than three business days after the filing of any such motion to strike, though requests for a short extension would also likely be favorably considered.

Dated at Milwaukee, Wisconsin on November 23, 2005.

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Administrative Law Judge

c:

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