

WHEELER, VAN SICKLE & ANDERSON, S.C.
a Wisconsin Service Corporation

ATTORNEYS AT LAW

SUITE 801

25 WEST MAIN STREET

MADISON, WISCONSIN 53703-3398

TELEPHONE (608) 255-7277

FACSIMILE (608) 255-6006

EMAIL: wheeler@wheelerlaw.com

OF COUNSEL

CHARLES S. VAN SICKLE
NORMAN C. ANDERSON

NILES BERMAN
JEFFREY L. LANDSMAN
THOMAS J. ZAREMBA*
STUART G. MONDSCHIEIN+
COURT COMMISSIONER
WILLIAM PRAY O'CONNOR
DENIS R. VOGEL**
RHEA A. MYERS
JANET L. KELLY
MARY BETH PERANTEAU
JOSHUA A. GILDEA

* ALSO ADMITTED IN MICHIGAN

**ALSO ADMITTED IN MINNESOTA

+ Certified Civil Trial Advocate, National Board of Trial Advocacy

FLOYD E. WHEELER
(1905 - 1995)

November 14, 2005

VIA EMAIL TO William.Coleman@doa.state.wi.us
AND 1ST CLASS MAIL

William S. Coleman, Jr.
Administrative Law Judge
Division of Hearings and Appeals
819 North 6th St., Room 92
Milwaukee, WI 53203-1685

Re: *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

Dear Judge Coleman:

I am writing on behalf of the Rock-Koshkonong Lake District to object to the November 4, 2005 expert witness list submitted by the Department of Natural Resources and to request that the Scheduling Order in this matter be amended to extend the petitioners' deadline for filing their respective expert witness lists.

Under paragraphs 10 and 11 of the Scheduling Order, the parties have been directed to submit "lists identifying their potential expert witnesses and the subject matter of each witness's testimony." The list submitted by Attorney Sweeney on behalf of the Lake Koshkonong Wetland Association and the Thiebeau Hunt Club appropriately listed the names of seven individuals and summarized the testimony of each. Although the summary of the anticipated testimony supplied is fairly general, it is at least minimally sufficient to permit the petitioners to determine their needs for expert witnesses.

By contrast, the list submitted by DNR provides no meaningful indication of the subject matter of the department's proposed witnesses. Further, the department's list includes witnesses whose identified subject matter is not relevant to this proceeding. For example, witnesses Mike Halstead, Susan Josheff and Dale Simon are respectively listed as experts on the subjects of "Chapter 30 and 31 Regulation Issues", "Engineering, Chapter 31" and "Chapter 30 and 31 issues, OHWM." Presumably these "Chapter" references are to chapters of the Wisconsin Statutes and "OHWM" to the ordinary high water mark.

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This contested case hearing addresses a proposed order of the DNR under Section 31.02, Wis. Stats. Chapter 30 has no bearing on any issue involved in the contested case hearing. In any event, the interpretation and application of statutory provisions is a matter of law to be resolved by the ALJ based on arguments of the parties. The testimony of Messrs. Halsted and Simon (listed on the department's website as a Water Regulation and Zoning Specialists) and Ms. Josheff (listed as a Water Regulations and Zoning Engineer) has no place in the ALJ's determination on the legal issues presented in this proceeding.

The District objects more generally to the department's failure to clearly state the subject matter of its expert witnesses. For example, Cathy Bleser is listed as a witness on "Endangered Resources." Ted Pyrek is listed as a witness on "Forestry Issues." These subject areas disclosed by the department provide no indication of the actual testimony these expert witnesses will address. The purpose of exchanging lists of expert witnesses and the subject matter is to permit the parties to prepare for hearing on the subjects actually in dispute. But subject matters identified in the department's list are so vague and ambiguous that they provide little value to the District and the other parties who are required to determine their needs for subject matters experts.

Without a pre-hearing process that permits the parties to narrow the factual issues in dispute, there is a considerable risk that the contested case hearing will require the full 11 days scheduled. All of the parties will be exposed to unnecessary expense and burden unless they disclose the actual subject areas their experts will address.

For these reasons, the District requests that you direct the department to submit (at a date you deem appropriate) a revised list that identifies its witnesses and describes the subject matters each will address with sufficient specificity to permit the other parties to understand the subjects their experts will need to address. In addition, the District requests that the Scheduling Order be amended to permit the petitioners at least 21 days to submit their expert witness list following the date the department submits its revised list.

Thank you for your consideration of the District's request.

Very truly yours,

WHEELER, VAN SICKLE & ANDERSON, S.C.



William P. O'Connor

MBP/lac
Enclosures
cc: Service List (via email)