

ROCK KOSHKONONG LAKE DISTRICT

P. O. Box 68
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www.RKLD.org

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The Official Publication of the Rock Koshkonong Lake District

July, 2006

RKLD

Elected Board of Commissioners

BRIAN CHRISTIANSON

Elected/Chairman
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Edgerton, WI 53534
(608) 884-9444
bkc@cpgmidwest.com
Term expires August, 2006

RAY LUNDER

Elected/Treasurer
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Milton, WI 53563
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Term expires August, 2007

MARTY WALSH

Elected/Secretary
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Term expires August, 2007

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Elected
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Term expires August, 2008

JEFF FOLK

Elected
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Term expires August, 2008

MARY MAWHINNEY

Appointed/Rock County
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ARNIE LUND

Appointed/Fulton Township
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PROGRESS REPORT

The Bills Are In

Cost of Contested Case Hearing totals \$550,000

Every year since the annual meeting of 2002, when a motion was passed to request the DNR raise water levels on Lake Koshkonong, RKLD electors have voted to move forward with funding research and legal expenses required to fulfill that goal. Property owners have repeatedly expressed their commitment to improving Lake Koshkonong habitat and recreation. Likewise, the RKLD has been completely transparent with providing the results of our research to the DNR, as well as to interested parties and the general public via our website (RKLD.org).

All data, all photos, all field notes and all expert testimony have been funded through our annual special charge and presented either at our annual meeting, the annual newsletter, or posted on our website. Today, the RKLD is the largest repository of scientific data collected on Lake Koshkonong and our stretch of the Rock River.

District residents should be prepared for a long and costly battle. It may take years and many more district dollars before a resolution is reached.
~ 2004 Annual Newsletter

We are now graduating from a research collection phase to a legal data presentation phase. The interpretation of Wisconsin state statutes concerning the Public Trust Doctrine and our goals for managing Lake Koshkonong need to be presented by attorneys with great experience in this area of law.
~ 2005 Annual Newsletter

The Contested Case Hearing (CCH) process was the first opportunity for the RKLD to present our data in a quasi-legal setting. Past newsletters have detailed how the DNR ignored or cherry-picked portions of our research to reject a nominal water level increase in their operating orders. Fortunately, through the years, we invested what we needed into research which compelled the Secretary of the DNR to grant the RKLD our hearing request.

The RKLD Board of Commissioners does not take lightly spending public tax dollars, however, through the past several years property owners have spoken clearly regarding Lake Koshkonong; invest in research to determine the behavioral characteristics of Lake Koshkonong and then execute what the science tells us.

It is the execution phase that has proven to be the most costly to our property owners.

Last year, the Board estimated the cost of the CCH could require an increase in the special charge to \$100 per parcel. The difficulty in budgeting for the CCH last year

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Chairman's Report

www.RKLD.org

This Was a Massive Undertaking

Brian Christianson

As we assemble for our eighth annual meeting, I look back with some amazement to what we have accomplished. RKLD started in 1999; property owners organized themselves and not only formed a lake district under WI State Statutes Chapter 33, but also agreed to tax themselves. Then, when the DNR removed dams at Fulton and Rockdale, the threat to Indianford jumped closer to reality.

When dam owner Rock County announced they no longer wished to be in the "dam business," and Jefferson County refused to consider joint ownership with Rock, the last government entity

remaining to save the Indianford Dam was the Rock-Koshkonong Lake District. The RKLD negotiated a fair deal with Jefferson and Rock counties and accepted ownership of the dam, as well as \$600,000 cash and \$450,000 worth of repairs to protect future generations of RKLD residents from catastrophic damage to the dam.

The DNR-mandated operating orders that control water levels on Lake Koshkonong were also revisited during this period. The RKLD funded a team of biology, geology and hydrology experts to research the basis of the current operating orders, established in 1992. Researchers concluded that water levels could be raised without impacting the Ordinary

High Water Mark (OWHM) and without detrimental effects on the ecosystem.

Back in 1981, a request to raise the water levels was made to the DNR and subsequently, litigation was initiated from adjacent hunt clubs. A negotiated settlement was reached in 1992 and today we live under those very same operating orders

The RKLD understood from the start that our effort to change the water level order for Lake Koshkonong would be opposed by DNR, wetland owners, and hunt clubs. For that reason, RKLD left nothing to chance.

Every DNR objection was thoroughly researched; every claim by wetlands owners was investigated; and every public concern was documented in our expansive Environmental Impact Report.

During this research and data collection phase, it became apparent that DNR and its allies planned a full-scale assault on the RKLD's water level proposal. As we approached the 2005 Annual Meeting, the RKLD petition for a Contested Case Hearing was finally granted by the DNR Secretary and we graduated from a research effort to a legal effort. For the first time, RKLD research would be scrutinized by a judge.

The RKLD's budget for the expenses involved in the CCH was based on facts known in the summer of 2005, after the District's petition was filed.

Soon after the hearing was assigned to Judge Coleman, it became clear that the cost estimates were too low. The first major development came at the

preliminary hearing before Judge Coleman in October 2005, when the Judge ordered the Parties to prepare and submit detailed written testimony for each expert witness who would testify in the hearing. Under the Judge's order, DNR was required to disclose its expert witnesses first. In November 2005, DNR reported that ten of its most senior staff scientists and engineers would testify in opposition to the RKLD's proposal. The wetland owners and hunt clubs submitted another list of expert witnesses.

In December 2005, DNR filed two large ring binders of testimony, including hundreds of pages of testimony, research reports and other documents. The DNR also provided the RKLD with literally thousands of pages of documents from DNR's actions related to the Koshkonong water level order in recent years. The DNR devoted an enormous amount of staff resources to this contest, reflecting its view that the Koshkonong case would set a critical statewide precedent for water level proceedings.

The RKLD was required to respond to more than 20 expert witnesses in favor of DNR's position and to prepare testimony and exhibits for the 8 expert witnesses supporting the RKLD. The use of the pre-filed testimony was intended to reduce the time required for the Contested Case Hearing. But the expert phase of the proceedings, with

supplemental direct and cross-examination of the witnesses consumed eight full days of trial time from early morning until 6 or 7 o'clock each night. Additional work was required to prepare our experts based on DNR's supplemental testimony and exhibits. In the end, many hundreds of pages of pre-filed testimony, hours of transcripts, and over 500 numbered exhibits were entered into the record in this case.

This case raises complex questions concerning the DNR's regulatory authority, public rights in navigable waters, and riparian rights. Some of the major issues are "matters of first impression," for which there is little or no legal precedent to guide the hearing examiner. It is critical that the attorneys do a careful job of pulling together the evidence and producing a thoughtful, persuasive argument for the RKLD's position.

This was a massive undertaking. Once our efforts to negotiate a compromise with the DNR and LKWA were rebuffed by suggestion of a summer drawdown, RKLD set our sights and resources towards doing everything required to win a positive decision from the Contested Case Hearing.

Finally, it bears mentioning again that RKLD is not just proposing an operating order change. RKLD is working hard to protect and restore the valuable

shoreline, wetland, and flood-plain forest habitat because RKLD is committed to protecting and enhancing the wetlands that provide critical habitat for birds and other wildlife. RKLD has a management plan that protects the environment and is in balance with all the user groups of Lake Koshkonong. ❖

Continued from page 1; The Bills Are In

originated with the fact that while RKLD had been granted our hearing request on June 3rd, we did not know the duration of the hearing or the rules of engagement when we met for the annual meeting on July 30th. At the discretion of the hearing examiner, the hearing could be scheduled for 3 days or 3 weeks. And unlike a county circuit court trial, an administrative hearing is not required to follow the traditional rules of common court proceedings.

Yet, state statutes require the Lake District present a budget to fund all anticipated expenses.

The outcome from the 2005 annual meeting was the special charge increased just \$5.00, with the understanding that the RKLD would incur undeterminable obligations and present the final cost of the CCH at the 2006 annual meeting. ❖



\$100.00 per Parcel

Explaining the Budget

2006 annual meeting to ratify special charge

Some electors may be upset to see the proposed special charge is increasing again for the 2007 budget year. It is true that since the special charge was reduced from \$35 to \$25 for the 2003 budget year, the special charge has increased each year since. However, these increases are coming to an end.

Past annual meetings have presented an educated estimate of how much is needed to fund both the daily operations of the Lake District, as well as answer the electors' mandate to pursue legal relief from harmful and unsupported DNR operating orders.

The 2006 Annual Meeting will

present a budget that includes actual costs incurred this calendar year; obligations that the RKLD committed to when we chose to request a nominal increase in water levels that led to our winning our right to a Contested Case Hearing.

When the CCH finally began nearly eight months after the 2005 meeting on March 28, 2006, our team of attorneys and technical experts were required to respond to testimony not just from DNR staff, but also to testimony from the Lake Koshkonong Wetlands Association (LKWA) and other parties recruited to support the DNR, such as the Jefferson County Farm Drainage Board, Thiebeau and

Carcajou Hunt Clubs, the WI Wetlands Association, among others.

The RKLD Board of Commissioners charged our team of legal and technical experts to aggressively pursue every claim originating from opposing Parties. The need to respond to every baseless claim of environmental damage, combined with the duration of the hearing, are contributing factors that require RKLD to ratify a one-time increase to \$100.00 per parcel.

We look forward to returning the special charge to \$25.00 per parcel once the recreational and ecological beauty of Lake Koshkonong is protected for everyone. ❖

History of the RKLD Special Assessment — Per Parcel
 1999 ~ \$25.00
 2000 ~ \$25.00
 2001 ~ \$25.00
 2002 ~ \$35.00
 2003 ~ \$25.00
 2004 ~ \$45.00
 2005 ~ \$50.00
 2006 ~ \$100.00

BUDGET SUMMARY, PROPOSED TOTAL BUDGET ROCK-KOSHKONONG LAKE DISTRICT 2006 BUDGET

CATEGORY	2005 ACTUAL	1-2Q 2006 ACTUAL	3-4Q 2006 ESTIMATED	2007 PROPOSED
REVENUES				
(a) Taxes -	-	-	-	-
(b) Special Assessments				
Special Charges 2006*	\$180,872	\$200,775	\$15,325	\$400,000
Special Charges 2005**		33,600		
Total Revenues	\$180,872	\$234,435	\$15,325	\$400,000

* A special charge shall be imposed in the amount of \$100 (The approved special charge for 2006 was \$50) on each separately billed, non-exempt parcel within the District, except that a single special charge shall be imposed on parcels within the District which are zoned and used for agricultural purposes and held in common ownership.

** Delinquent special charge from 2005, collected in 2006

EXPENDITURES / APPROPRIATIONS

I. CAPITAL COSTS	-	-	-	-
II. COST OF OPERATIONS				
a) General Government				
Office Supplies	\$ 4,585	\$ 8,187	\$ 500	\$ 3,190
Rent/Utilities	1,315	596	500	640
Wages	-	-	-	-
Insurance	3,109	3199	-	3,500
Printing	6,922	2,959	2,400	3,060
Professional Fees				
Accounting	250	-	600	600
Consulting	16,485	8,995	-	2,000
Legal	19,333	23,590	-	9,000
Public Information	2,115	276	5,000	5,000
Indianford Maintenance	30,119	20,111	30,000	30,000
Water Level Proceedings	78,760	153,680	321,500	342,000
DNR Grant				
Other	95	69	-	680
Dues/Fees	489	168	-	330
Total General Government	\$163,577	\$221,830	\$360,500	\$400,000
b) Public Safety				
g) Debt Servicing				
h) Other Financing Uses				
TOTAL EXPENDITURES	\$163,577	\$221,830	\$360,500	\$400,000

	Fund Balance 6/6/2006	Fund Transfer	Revenues	Expenditures	Fund Balance 12/31/2006
All Governmental and Proprietary Funds Combined					
Indianford Dam Fund (Nonlapsible)	\$160,000	-	-	\$49,238	\$110,762
Interest	5,625	-	\$3,000	-	8,625
Jeff county payments	-	-	10,000	-	10,000
Rock County payments	-	-	50,000	-	50,000
Total	\$165,625	-	\$63,000	\$49,238	\$179,387

ROCK-KOSHKONONG LAKE DISTRICT NOTICE AND AGENDA
for the 2006 Annual Meeting

Please take notice that the 2006 Annual Meeting of the electors and property owners of the Rock-Koshkonong Lake District will be held pursuant to Section 33.30 of the Wisconsin Statutes at the

Fort Atkinson High School
926 Lexington Street
Fort Atkinson, WI.

9:00 a.m.
Saturday, July 22, 2006

to consider the following matters.

AGENDA

1. Call to order
2. Minutes of the 2005 Annual Meeting
3. Annual Audit Report of 2005 (Audit Committee)
4. Chairman's Report (Brian Christianson, RKLD)
5. Economic Impact Report – Water Level Proceedings (Art Harrington, Godfrey & Kahn)
6. Operational Report – Water Level Proceedings (Bill O'Connor, Wheeler Van Sickle & Anderson S.C.)
7. Presentation of the Proposed 2007 Annual Budget
8. Consideration and Vote on the Proposed 2007 Annual Budget
9. Election of (1) Commissioner to Serve Term expiring in 2009
 - a. Nominees: Brian Christianson
 - b. Nominations may also be made from the floor
 - c. Brief statements from nominees
 - d. Balloting
10. Adjourn

* The Board shall meet immediately following the annual meeting to elect a chairperson, secretary and treasurer.
 ~ Brian Christianson, Chairman, Rock-Koshkonong Lake District



RKLD Milestones

We Have Accomplished Much, With More to Do

st

The first annual meeting of the Board of Commissioners met at the Craig High School Auditorium. The electors increased the board from 3 to 5 elected commissioners, and enacted a flat fee per parcel owner over a tax levy based on equalized assessed value.

DECEMBER 28, 1999

RKLD launched ACOE Project 206 effort. Six key locations were identified for federal funding for breakwaters; Crescent Bay, White Crow Bay, Pike Bay, Gilberts Bay, Hights Bay, and Lautz Bay.

AUGUST 12, 2000

The second annual meeting, also held at Craig High School, discussed the removal of the Rockdale Dam and the future of the Indianford Dam.

JULY 28, 2001

The third annual meeting was moved to the Fort Atkinson High School Auditorium where the RKLD has met every year since. A resolution was adopted to accept ownership of the Indianford Dam and annual payments from Jefferson and Rock counties.

OCTOBER, 2001

Joint DNR/RKLD Ordinary High Water Mark (OHWM) study.

JULY 27, 2002

The fourth annual meeting began to address the water levels on Lake Koshkonong. Hydrological research had concluded the water levels could be increased on the lake without impacting the Ordinary High Water Mark (OHWM). An update on the transfer of ownership of the Indianford Dam to the RKLD indicated repairs needed to be made before RKLD would accept ownership. Title transfer is expected in January 2003.

FEBRUARY 26, 2003

A Facilitated Technical Session, hosted by UW-Rock Extension and held at the DNR Service Center, Janesville, identifies agreements and disagreements between RKLD and DNR.

APRIL 22, 2003

A formal request to change the DNR operating orders was submitted to the DNR.

MAY 6, 2003

Attorney Buck Sweeney responds to RKLD attorney regarding a negotiated settlement;

"We also believe that the only way that a wetland group will support any raising of levels will be in conjunction with a summer drawdown."

2003

Lake Koshkonong Wetlands Association formed.

RKLD Milestones *(Continued)*

JULY 26, 2003

The fifth annual meeting announced the RKLD had secured nine wetland restoration and protection grants. A one year extension was approved for extend the contract to accept ownership of the Indianford Dam.

DECEMBER 2003

The RKLD submits the Environmental Impact Report (EIR) to the DNR.

JULY 24, 2004

The sixth annual meeting announced the retirement of RKLD Founding Father, Jim Folk,

DECEMBER 15, 2004

The RKLD takes formal ownership of the Indianford Dam. An open house is held that evening inside the powerhouse with constituents, neighbors and county VIPs.

DECEMBER 24, 2004

DNR releases draft of their Environmental Assessment and asks for public comment.

JANUARY 19, 2005

DNR hosts a public hearing in Fort Atkinson.

MARCH 18, 2005

DNR staff reject RKLD's petition for a Contested Case Hearing.

APRIL 15, 2005

The WI DNR released their Environmental Assessment (EA) that rejected higher summer water levels, and slightly limited the drawdown level of the winter orders.

JUNE 3, 2005

The RKLD's petition for a Contested Case Hearing was granted by the Secretary of the DNR.

JULY 30, 2005

The seventh annual meeting announced that the RKLD was granted their petition for a Contested Case Hearing. The hearing will be presided by a hearing examiner and pre-hearing conference of all Parties will determine the schedule and number of days required to present RKLD data.

OCTOBER 25, 2005

A pre-heating conference was held in Fort Atkinson, Wisconsin, conducted by Administrative Law Judge William S. Coleman, Jr., of the Division of Hearings and Appeals.

FEB-MARCH, 2005

RKLD attorneys meet with DNR attorneys to discuss negotiating a compromise. DNR informs RKLD that a summer drawdown would need to be part of a negotiated settlement.

MARCH 28, 2006

The Contested Case Hearing begins.

