

**Wisconsin Wetlands Association**  
**Testimony for the Contested Case Hearing Regarding the**  
**Water-Level Order Change Request of the Rock-Koshkonong Lake District**  
*Presented March 28<sup>th</sup>, 2005*  
*by Erin L. O'Brien*

My name is Erin O'Brien and I am employed as a Wetland Policy and Conservation Specialist for the Wisconsin Wetlands Association. The Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. We are a 501(c)(3) non-profit organization. I am here to testify on behalf of my organization and our 1,000 members. Because of our science-based roots and the educational and training services we provide to the wetland professional community, the vast majority of our members are wetland professionals including wetland ecologists, botanists, hydrologists, soils scientists and wildlife biologists.

As you may know, pre-settlement, the state of Wisconsin was home to an estimated 10 million acres of wetlands. Today, after decades of draining for agricultural uses, filling for roads and homes, and other impacts, it is estimated that just over half of our original wetlands, some 5.3 million acres, remain. And many of these wetlands are severely degraded. Development encroachment, increased polluted runoff, wave action, disturbances to hydroperiod and the invasion of exotic plants are just a few of the causes.

Much of the Wisconsin Wetlands Association's wetland conservation work focuses on tracking legislative activities related to wetland regulations to ensure that our laws protect Wisconsin's wetland resources. Oversight of federal, state and local implementation of those regulations to ensure wetland protections are adequately implemented and enforced is also one of our top priorities. As the only state-wide organization dedicated to the protection and preservation of the state's remaining wetlands, we are also frequently contacted by citizens concerned about the

impacts of natural resource management actions or development proposals on local wetlands. Though we routinely provide advice and information to help local wetland advocates understand wetland rules and regulations, and the opportunities available to them to influence local-decision making, it is rare for us to make an individual appearance on a local issue.

In order for us to take direct action on a local wetland issue, for example by testifying at a hearing or providing organizing assistance in opposition to a proposed action, the wetland threat must meet one or more of several criteria. Either the project, if allowed to proceed, will impact a unique wetland type or a substantial number of wetland acres, or the outcome of the decision under consideration will set a precedent for how wetlands across the state are managed, regulated or protected. The case before us today meets all of these criteria.

The Wisconsin Wetlands Association supports the Department of Natural Resources' decision to deny the Rock-Koshkonong Lake Districts' (RKLD) request to amend Order 3-SD-82-809 to eliminate the winter drawdown and revise the year-round minimum, maximum and target lake levels for Lake Koshkonong. Our primary objection to RKLD's request is related to the direct wetland impacts of the proposed action. However, we also have serious concerns about the precedent that would be set in terms of DNR's authority to manage public trust resources for their long-term preservation and the use and enjoyment of all user groups if this case were decided in favor of RKLD.

To arrive at our position, we reviewed relevant sections of numerous documents pertaining to this case including the *Environmental Impact Report* prepared by the Rock-Koshkonong Lake District, the *Environmental Assessment* prepared by the DNR and the *Lake Koshkonong Water Levels and Growth Rate of Trees in Bordering Floodplain Forests* report prepared by Natural Resources Consulting, Inc. DNR's conclusions are consistent with our understanding of the negative impacts of stabilizing wetland hydroperiod at a higher level of inundation. DNR's decision to deny the RKLD request is also consistent with NR 1.95(4), the Natural Resource Board's statement of policy regarding wetland preservation, protection, restoration and management, which states, "It is in the public interest that department decisions which lead to alteration of or

effects on wetlands under its jurisdiction or control are based on the intent to preserve, protect, restore and manage them for the maintenance or enhancement of their values.”

If contemplated through a narrow lens, the fate of 12.4 miles of wetland shoreline and, conservatively, between 3,000-4,000 acres of adjacent wetlands are at stake today. The fate of some regionally rare wetland ecosystem types and habitat for numerous endangered plants and birds are also held in the balance of this decision. The expected impacts to these resources alone are substantial enough to warrant a decision that RKLD’s request is not in the best interest of the resource or the concerned public on whose behalf the resource is to be managed under the Public Trust Doctrine. But the implications of this decision are substantially more far-reaching.

Wisconsin is home to an estimated 15,000 lakes. According to the DNR, some 13% of these, or just under 2,000, are impoundment lakes. Using the 24k hydrolayer, DNR also estimates that reservoir and flowage lakes encompass an estimated 4,594 miles of shoreline. Beyond impoundment lakes, we also must consider management of all the dams that don’t have developed, recreational use impoundments behind their gates. According to state data, there are 3,800 total dams in the state. Only 600 of these dams are owned or operated by the state or federal government or exempt from regulations. The remaining 3,200 are owned and operated by a municipality, a private citizen, a lake or drainage district or a public utility. Potentially thousands of these entities must secure DNR approval to change dam management regimes. Regardless of the size or uses of the impoundment behind these dams, changes in dam management regimes will impact upstream and downstream aquatic resources, including adjacent wetlands. Though some of Wisconsin’s wetlands are isolated, the vast majority (more than 4 million acres) exist at the interface between land and water at the edges of lakes, rivers, and streams. This is why wetland protection is central to this debate and why we object to RKLD’s request. The risks and benefits under debate at this hearing could be debated in many, many other communities and, in some cases, already are.

In support of our mission, Wisconsin Wetlands Association regularly reviews documents such as the ones produced for this case and we do not hesitate to formally object when we believe the science is deficient or the review requirements not met. In this case, however, we believe the agency has exercised due diligence in their review of this decision and that deference should be

given to their best professional judgment. A decision against them today would not only have disastrous consequences for the Lake Koshkonong wetlands and other rare habitats that would be flooded and destroyed along Lake Koshkonong; it would undermine DNR's authority to make similar determinations in favor of protecting the state's natural resources and balancing the interests of a diverse group of users.

Under the Public Trust Doctrine, the DNR is obligated to manage our natural resources for their long-term health and the benefits and enjoyment of ALL users. The RKLD proposal seeks to elevate the rights and interests of large motorized boat users, ice-fishermen, and lake-front business and home owners above paddlers, summer anglers, duck-hunters, birdwatchers, quiet water enthusiasts, and others. The ability to launch a boat directly from one's own backyard is a privilege, not a right, and providing that privilege is certainly not justification to raise the level of an entire impoundment when routine maintenance at public boat launches could easily address current and future access concerns. Maintaining the current lake levels will ensure the resource remains intact for the continued use and enjoyment of all, including recreational boaters and ice-fishermen. Though science can be a useful tool to inform solutions to problems created due to human intervention and impacts on natural processes, there is no science to justify preferential management of an ecosystem to benefit one user group. Perhaps this explains why, despite statements such as "extensive literature reviews showed" and "studies indicate", there were only six peer-reviewed references cited in the main body of the *Environmental Impact Report* prepared by the Rock-Koshkonong Lake District. In contrast, WDNR's *Environmental Assessment* and the conclusions therein, were supported by four pages of such citations.

The Wisconsin Wetlands Association's members care about these wetlands and others facing similar threats. I'd like to provide a few supporting examples of our interests in the fate of these wetlands.

- On Sunday August 28<sup>th</sup>, 2005, in partnership with the Lake Koshkonong Wetlands Association, we hosted a pontoon boat tour of the Lake Koshkonong wetlands. It was one of the most popular trips we hosted all year. The interest was so high we had to add extra boats and still had turn people away. 30 members and wetland enthusiasts toured the wetlands that day.

- On December 12<sup>th</sup> 2005, WWA hosted a lecture in Madison to hear a presentation about wetland restoration activities in Cherokee Marsh and how the artificially high lake levels, lack of occasional draw downs and the routine maintenance of lake levels above the target maximum, was breaking off and sending acres of floating-mat wetlands downstream. 20 people came out on a bitter cold night, in the height of the hectic holiday season to hear the lecture and participate in the ensuing discussion.
- On February 3rd, 2006, that lecture was repeated, along with a presentation by Natural Resources Consulting Inc about their Lake Koshkonong water level and floodplain forest studies at the Wisconsin Wetlands Association's 11<sup>th</sup> Annual Science Forum. Some 100 wetland professionals attended this session to better understand how lake level management was impacting the state's wetland resources. I should also note that we heard no objections or accusations on the validity of the methodologies or findings from the professional audience that day.

In our summer 2005 newsletter, Wisconsin Wetlands Association Executive Director Becky Abel used her column to call attention to the phenomenon of “wetland death by alteration.” She noted that despite stringent state-wide rules that minimize opportunities to destroy wetlands by filling them, there are innumerable other activities that degrade and essentially destroy wetland resources in the state. Though we regulate to avoid and minimize the placement of fill in wetlands, to prohibit development in the shoreland wetland zone, to protect water quality and quantity through oversight of the discharge of waste and storm water into wetlands, and in many other ways, some may argue that the case before us today falls in a regulatory grey area.

While we may not have a specific state statute that says “though shall not kill wetland habitat by drowning due to raised lake-levels,” the NRB's policy statement on wetlands in NR 1.95(4) and the cumulative intent of the collection of wetland protection laws we do have on the books are both very clear. Granting permission for RKLD to raise water levels and subsequently destroy extensive acres of adjacent wetland habitat would set a defacto policy that the impacts of dam management on up and down-stream adjacent wetlands do not fall under the jurisdiction of the Department of Natural Resources. The consequences of such a decision would be catastrophic for the future of the Wisconsin's wetlands. We urge this court to avoid setting that precedent by upholding the DNR's decision to deny RKLD's lake level change request.

*Questions about this testimony should be directed to Erin O'Brien, Wisconsin wetlands Association, 608-250-9971 / erin@wiscwetlands.org.*