

FINDING OF FACT

1. The Yahara River chain of impoundments includes Lake Mendota, the upstream-most in the chain controlled by the Tenney Lock and Dam, Lakes Monona and Waubesa held by the Waubesa Dam (also called Babcock Dam), Lake Kegonsa held by the Kegonsa Dam (also known as the Lafollette Dam) and the Stoughton Millpond, the downstream-most, held by the Stoughton Dam.
2. The Yahara River is a navigable stream.
3. The Kegonsa Lock and Dam is located in NE1/4, SW1/4, Section 20, Town 6 North, Range 11 East, Dane County.
4. The Kegonsa Dam is owned and operated by Dane County.
5. Department of Natural Resources issued order 3-WR-1116, dated October 5, 1972, with corrected elevation reference marks dated April 11, 1979, regulating Kegonsa Dam's summer water levels.
6. The Lake Mendota, Monona, Waubesa and Kegonsa impoundments have developed shorelines. Much of the development is residential.
7. The Yahara River Basin has experienced significant flooding in recent years primarily due to more frequent large rainfall events. Significant flood events occurred in 1993, 1996, 2000, 2004, 2007 and 2008. All but the 1996 flood had Presidential Disaster declarations.
8. The 2008 flooding in Dane County resulted in more than \$78 million in damages.
9. The Kegonsa Dam submerges and does not control lake levels during high flow events.
10. The Yahara River chain of impoundments does not efficiently pass flood flows for several reasons.
 - a. The Yahara River through this area has very little slope to help drain the floodwater. The river drops about 3.5 feet in about 21 miles, from downstream of the Lake Mendota - Tenney Dam to the Stoughton Dam during normal flows. At the peak of the June 2008 flood, the slope was about 5.5 feet in about 21 miles.
 - b. The Yahara River through this area has flow constrictions other than dams. Three of the constrictions are the railroad bridges located between Lakes Monona and Waubesa at Upper Mud Lake, upstream of Lake Kegonsa Dam and upstream of the Stoughton Dam, Dane County dredged under the railroad bridge at Upper Mud Lake in 2005 and the railroad bridge at Lake Kegonsa in 1999. During the 2008 flood, the difference between Lakes Monona and Waubesa was about 10 inches, most of which is at the railroad bridge

at Upper Mud Lake. Dane County is working towards increasing the capacity at this railroad crossing. Another constriction is caused by the large amounts of vegetation that grows in the channel between Lakes Waubesa and Kegonsa. Dane County regularly removes vegetation during flood flow conditions to increase the flow in the river.

11. In June, July and August, 2008, Dane County operated the Kegonsa Dam to maximize the outflow from the upstream impoundments. Dane County allowed Lake Kegonsa to lower 0.14 feet (less than 2 inches) below the minimum water level set in to order 3-WR-1116 on August 27, 2008 to increase flow from the Waubesa Dam. Further analysis showed that when Dane County operated the Kegonsa Dam to return Lake Kegonsa to its minimum level specified in order 3-WR-1116, volume of water decreased from Lake Waubesa.

12. Temporarily drawing down the Kegonsa impoundment below its summer minimum levels will temporarily:

- a. Increase the flow from the impoundments in the systems and decrease the time that the impoundments have high water levels.
- b. Reduce water access from boat landings and other public areas to the impounded water for trailered boats.
- c. Reduce boat access from riparian shore stations and piers.
- d. Reduce the impounded area that can be navigated by reducing the available depth to float water craft.
- e. Reduce the water area available for fish habit.

13. Lake Kegonsa has a surface area of about 3200 acres. Five percent of Lake Kegonsa is less than 3 feet so the decrease in lake area temporarily lost to fish habitat and navigation would be significantly less than 5%.

14. Temporary drawing down of the Kegonsa impoundment is not expected to affect wildlife, riparian wetlands, water quality or natural scenic beauty.

- a. Wildlife will still have access to the water.
- b. The temporary draw down will be done during times of heavy runoff and will not last long enough to drain adjacent wetlands.
- c. During the impoundment draw down, increased water flow will pass through the impoundment areas, which generally has better water quality than impounded water.
- d. The temporary draw down may expose narrow, unvegetated areas between the lower water's edge and the normally higher water's edge. Fluctuating water levels and the resulting exposure of lake or river bed is a natural sight along most waterways.

15. Temporary flood levels on the impoundments cause:

- a. erosion of the shoreline;
- b. flooding of structures and open space;
- c. Dane County to enact "slow, no wake" boating rules on the Yahara chain of impoundments during times of flooding;
- d. decreased water quality due to the nutrients and other pollutants that are washed into the waterways;

16. Some of the public's interest in Lake Kegonsa may be temporarily negatively affected if the impoundment is lowered. Some of the public's interest on Lakes Mendota, Monona and Waubesa are temporarily negatively affected when the impoundments are flooding.

17. Meetings to discuss the temporary drawdown of Kegonsa during floods were held with Friends of Lake Kegonsa Society on January 24, 2009 and Dane County staff on January 26, 2009.

18. It has been determined that a temporary water level order will not require an environmental assessment.

CONCLUSION OF LAW

1. The department has authority under Section 31.02 (1), Wis. Stats. to regulate and control the levels and flow of water in the interest of public rights in navigable waters or to promote safety and protect life, health and property and may establish maximum and minimum water levels held by a dam.

2. The Department has complied with the requirements of Section 1.11, Wis. Stats., Wisconsin's Environmental Policy Act.

ORDER

THE DEPARTMENT ORDERS:

Kegonsa Lock and Dam water level order docket 3-WR-1116 dated October 5, 1972, with corrected elevation reference marks dated April 11, 1979, is amended as follows:

1. When Lake Mendota, Monona or Waubesa is at or more than 0.5 feet above its summer maximum specified in the dams' water level orders for seven consecutive days and the Waubesa Dam has been fully open for seven consecutive days, or at the direction of the Lower Rock River Basin Leader, Kegonsa Dam shall be operated to draw down to the summer minimum level. Draw down shall not exceed more than 6-inches per day.
2. When Lake Mendota, Monona, Waubesa or Kegonsa is at or more than 1-foot above its summer maximum specified in the dams' water level orders for three consecutive days and the Waubesa Dam has been fully open for three consecutive days, or at the direction of the Lower Rock River Basin Leader, the Kegonsa Dam shall be operated to draw down the impoundment to the maximum possible. Draw down shall not exceed more than 6-inches per day.
3. Unless directed by the Lower Rock River Basin Leader, the Kegonsa Dam will remain open until each impoundment is at or below its summer maximum level.
4. Refilling of the impoundments or closing dams will occur from downstream to upstream. Each dam operator will be notified by the Department's Lower Rock River Basin Leader or

designee that the dam can be closed down to pass at least 25% of the flow from the next upstream dam. The Stoughton Dam operator will be notified first.

5. This amendment will terminate on December 31, 2010 unless revised water level orders are issued prior to that date.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

A request for a contested case hearing must follow the service requirements found in s. NR 2.03 and the form prescribed in s. NR 2.05(5), Wis. Admin. Code, and must include the following information:

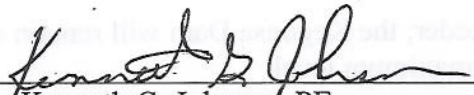
1. A description of the Department's action or inaction which is the basis for the request;
2. The substantial interest of the petitioner which is injured in fact or threatened with injury by the Department's action or inaction;
3. Evidence of a lack of legislative intent that this interest is not to be protected;
4. An explanation of how the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department's action or inaction;
5. That there is a dispute of material fact, and what the disputed facts are;
6. The statute or administrative rule other than s. 227.42, Wis. Stats., which accords a right to a hearing.

This determination is final and judicially reviewable. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By 
Kenneth G. Johnson, PE
South Central Region Water Leader

Date: April 2, 2009