

Dam Sequence No 00962



Formal Action



Year:

1928



Chapters 475 + 479 of the Laws of 1927

authorized the conservation commission to purchase Horicon marsh lands and to construct and maintain dams that would restore water levels in the marsh to the levels present prior to the private drainage of the marsh

WP-317

granted a permit to construct dams which restored normal water levels in Horicon Marsh

WP-430

(9-1-31) authorized Horicon Dam to hold MAX level of 75.3, provided all flooded lands were owned by the state

(3-8-32) set aside above order and submitted the matter to the Attorney General's office for investigation

(10-1-32) authorized the raising of water levels as an emergency fire fighting method.

(11-2-32) set aside the above fire order

(10-10-34) Attorney General's office decided that because the dredging which had reduced the water levels of the marsh had been illegal, the state was within its rights to restore the water levels within the Horicon Marsh without being responsible for riparian damages; authorized Horicon Dam to hold MAX level of 75.3'

2-WP-620

(6-2-45) dismissed the application that levels be reduced below 74.00' until all lands flooded had been purchased by the state

approved the application ^{that} the Conservation Commission operate the Horicon Dam so that the village of Hustisford receives the natural flow of the Rock River

IWP-1718 In response to complaint by Lake Sinissippi property owners, PSC requested that the WCD operate dam with a minimum flow release of 1.5 cfs. The WCD agreed to conform to this request

BEFORE THE
RAILROAD COMMISSION OF WISCONSIN

IN THE MATTER OF THE APPLICATION OF
WILLIAM MAUTHE, E.M. DAHLBERG,
EUGENE WENGERT, O.C. LEMKE, A.W. ICKS,
and FRANK L. GILBERT, CONSTITUTING
THE CONSERVATION COMMISSION OF
WISCONSIN, FOR A DETERMINATION OF
NATURAL LEVELS OF ROCK RIVER IN
HORICON MARSH, DODGE COUNTY, AND
FOR A PERMIT FOR CONSTRUCTION,
OPERATION, AND MAINTENANCE OF A DAM
OR DAMS ACROSS ROCK RIVER IN OR NEAR
CITY OF HORICON FOR THE PURPOSE OF
CONTROLLING WATERS OF ROCK RIVER IN
SAID HORICON MARSH FOR APPROVAL OF
PLANS FOR SUCH DAM OR DAMS.

WP-317

On April 27, 1928, the petitioners above named, constituting the Conservation Commission of Wisconsin, filed with the Railroad Commission an application which, among other things, alleges that under the provisions of Section 20.20, Paragraph 24a, Wisconsin Statutes 1927, there was appropriated to the petitioners, as such Conservation Commission, a sum of money for the purpose of constructing and maintaining a dam or dams across the Rock River in Dodge County, for the purpose of restoring the waters of the Rock River in the Horicon Marsh to the natural levels which existed prior to the private drainage of the same, and for the purpose of maintaining such normal levels. The prayer of the petition is that the Railroad Commission under its authority fix and determine the normal elevations of the waters of the said marsh and to authorize the construction, operation, and maintenance of a dam or dams across the waters of the Rock River to accomplish the purposes set forth in section 20.20, statutes.

With the application there was filed a map as provided by Section 31.05 showing the lands that may be affected by the construction, operation, and maintenance of said proposed dam or dams and by any flowage that may be caused thereby and approximately the outline of such flowage which map indicated the ownership of each tract of land within the flowage.

Upon receipt of the application, the Commission under date of April 27, 1928, fixed a time, namely May 31, 1928, at 11 o'clock A.M., and the place at the city hall in the city of Horicon, Wisconsin, for a public hearing thereon; that due notice of such time and place for hearing was given to the petitioners, and that the petitioners caused a notice of such time and place to be published once in each week for three successive weeks before such hearing in the newspapers, namely, the Reporter-Commonwealth, a newspaper designated by the Commission and published at the City of Fond du Lac, Fond du Lac County, and in the Horicon Reporter, a newspaper designated by the Commission and published at the city of Horicon, Dodge County, in which said counties are situated all lands within the State of Wisconsin that will be affected by the dam or dams proposed to be erected; that not less than twenty days prior to such hearing the petitioners mailed to each and every person interested in any lands in Wisconsin that will be affected by any permits or orders which might be granted upon such petition and whose post office address could by due diligence be ascertained a notice of the time and place set for such hearing, which notice was accompanied by a general statement of the nature of the application and was forwarded to each such person by registered mail in a sealed and postpaid envelope properly addressed, all in conformity with the order of the Commission, and that due proof of such publication and notice was filed with the Commission at the time of the hearing in said matter.

At the said appointed time and place, Commissioner Adolph Kanneberg, representing the Railroad Commission of Wisconsin, called the matter for trial, and the following persons appeared: T. L. McIntosh, Deputy Attorney General of Wisconsin, for petitioners; L. S. Keeley, Attorney, and Thompson, Myers & Helm, Attorneys, and Ralph W. Jackman, of Counsel, appeared for the respondents J. O. Frish, August F. Schultz, John Rothenberger, J. T. Messer,

Alois Waas, Henry Elbis, Ed. Schwantes, August Brecker, Mrs. George Peachey, Elizabeth Boyle, Louis Seering, Philip Sohre, Herbert Sohre, Arthur Pieper, Ed. Johnson, John Hennig, Ed. Kindschuh, William Vanderkin, R. F. Korsledt, L. C. Gritzmacher, Art Stoltz, Sig. Rehwinkel, Peter Brechtel, August Mielke, Mary Wolf, Ed. Snyder, William Ewald, Frank Ewald, L. A. Binte, D. J. Connors, William Neitsel, John O'Donovan, Edwin Lehner, Frank Adelmeyer, Albert Adelmeyer, Harry Hoard, Herman Schellpfeffer, Dan Graff, Emil Roll.

That the respondents above named by their said attorneys thereupon filed an answer to the petition, which alleges, among other things, that the statute under which the petitioners purport to act is unconstitutional and void; that the Conservation Commission has no lawful authority to proceed under such statute and that moreover the Railroad Commission has no jurisdiction to entertain the proceedings.

Messrs. Richmond, Jackman, Wilkie & Toebaas, by Mr. R. W. Jackman appeared specially for Mr. J. W. Fowler, for the sole purpose of objecting to the jurisdiction of the Commission in the proceedings, which objections were overruled.

Thompson, Myers and Helm, by Mr. Peter Myers, appeared for G. A. McWilliams and W. Clarke Morris, for the sole purpose of objecting to the jurisdiction of the Commission, in the proceedings, which objection was overruled.

L. S. Keeley, Attorney, Mayville, appeared as he stated, for a group of about eighty farmers, for the sole purpose of objecting to the jurisdiction of the Commission, which objection was also overruled.

Numerous other persons appeared at said hearing, namely: Senator George W. Blanchard of Edgerton appeared personally in his own behalf; Seth E. Gordon, Conservation Director, Izaak Walton League of America, on behalf of the National organization;

C. A. Markham, Attorney, Beaver Dam, as a friend of the court and on behalf of the Beaver Dam Chapter of Izaak Walton League in favor of the petition; Senator W. H. Markham, Attorney, for the city of Horicon, and for the Izaak Walton League, in favor of the petition; W. C. O'Connell, Fox Lake, for Henry Garbisch and Louisa Garbisch; George A. Hartman for the Hustisford Light, Power and Manufacturing Company.

After the appearances were entered the Commission proceeded with the hearing on said day and on various adjournments thereof and proceeded to take the evidence offered by the petitioners and other persons in support of the application, and also took the evidence offered by the respondents and other persons in opposition thereto, and every person who appeared was given an opportunity to be heard.

The testimony was taken in shorthand and reduced to writing and all of the testimony and proofs and the rulings thereon, and the pleadings and all papers and files, and a record of the various proceedings taken are on file in the office of the Commission.

NOW THEREFORE, UPON THE APPLICATION AND UPON THE ANSWER OF THE RESPONDENTS AND AFTER HEARING ALL OF THE EVIDENCE, AND UPON THE RECORD, FILES AND PROCEEDINGS, THE COMMISSION FINDS AS FOLLOWS:

I. That the Horicon Marsh is located in townships 11, 12, 13 and 14 north of ranges 15 and 16 east in the counties of Fond du Lac and Dodge, the far greater portion of the marsh being located in townships 12 and 13 north of ranges 15 and 16 in Dodge County. The main body of the marsh is about thirteen miles long from north to south and of a varying width of about one to four miles from east to west. The marsh is traversed by the waters of the Rock River. The west branch of the river enters the marsh at the northwestern border and flows in a

general southerly direction to a point about two miles from the southern boundary where it is joined by the east branch of the river, which branch enters the marsh at the eastern boundary about four miles north of the city of Horicon. From the junction of the east and west branches, the river continues in a general southerly direction to the outlet of the marsh in the city of Horicon in Section 6, township 11 north of range 16 east. Both of said branches of the Rock River, as well as the main river within the boundary of the Horicon marsh, are navigable.

2. The original government survey of the lands of the marsh was made during the years 1836 and 1837, most of the work being performed during the winter months. The surveyors had apparently great difficulty in placing suitable marks at the section corners, since the field notes contain frequent notations to the effect that there are no trees near the corners and that the land is too wet to build earth mounds to mark the corners. Other notations in the field notes give the depth of water and the nature of the land at various places, and especially along the township and range lines. At the time of the survey the marsh had not been disturbed by man but was still in its natural state. Copies of the original maps and field notes are in evidence.

3. The first changes in the natural levels of the water in the marsh occurred in about the year 1843 when a dam was constructed across the Rock River at the outlet of the marsh in the city of Horicon at the present site of the Barstow Street bridge. This dam held a head of water of about eight or ten feet and was maintained until the year 1868 when it was removed.

After the destruction of the above mentioned dam and except for small hunters' dams, which were constructed after the year 1868 at various places, the marsh resumed substantially its former natural condition until about the year 1908 when

drainage operations were begun. The hunters' dams above referred to will be hereinafter described.

The drainage work consisted of one main ditch or channel starting at a point near the northern end of the marsh and extending south through the marsh in practically a straight line and through the city of Horicon and of numerous straight lateral or side ditches leading from the main ditch to the east and west borders of the marsh. The work of dredging was begun at the northern end of the marsh and proceeded gradually to the southern boundary, ending in the city of Horicon. The work was started about the year 1908 and was completed about 1914. The last major work performed was the lowering of the bed or control of the Rock River in the City of Horicon. The effect of the drainage operations was to lower the normal elevations of the water on the marsh.

The most effective of the hunters' dams was the Diana dam. It was built in 1892 and was removed by the drainage operations. It was located in the northeast quarter of Section 25 in township 12 north of range 15 east directly downstream from the junction of the east and west forks of the Rock River. It was constructed of wood sheet piling and an earth fill and was equipped with flashboards by which the head of water could be somewhat regulated. The dam appears to have been used to improve navigation for some distance upstream during dry periods, particularly during the fall hunting seasons. The flashboards were ordinarily placed in the dam during the late summer or early fall months and again removed after the close of the fall hunting season. The dam held a head of water varying from nothing to one or two feet during the hunting seasons of dry years.

Several other dams of a more temporary or makeshift construction existed for short times, one on the west branch

of the Rock River at the outlet of Long Lake or Strook's pond near the north line of Section 31, township 13 north of range 16 east, and another was located near the outlet of Four Mile Pond on the east branch in the northwest quarter of Section 30, township 12 north range 16 east. Apparently neither of these dams held any appreciable head of water for any great length of time.

4. During the summer and fall of 1905 while studying the possibilities of draining the marsh, the local drainage commissioners made and recorded many soil tests in the outside portions of the marsh and made frequent notations of the elevation of the water with respect to the surface of the soil at the test pits. The field notes describing the location of the test pits and the data pertaining thereto are in evidence.

5. During the months of February and March of 1907, a survey of the marsh and of the Rock River in the marsh and of the river below the marsh as far downstream as the Hustisford dam was made under the direction of Professor L.S. Smith. Certain portions of the survey work were continued for some time thereafter. This survey work consists of lines of levels north of Horicon following in general the range lines between ranges 15 and 16 east, along which it was proposed to locate the main drainage ditch, together with other lines of levels east and west of the range line and following in general the section lines where it was proposed to locate the lateral drainage ditches. In addition to the foregoing, river surveys were made of the Rock River from the points where the east and west branches enter the marsh down to the dam at Hustisford. The level lines were run on the ice and show the elevations of the ice at 100 foot intervals and also show the elevations of the soil beneath the ice at such points, the latter elevations being determined

by soundings through the ice.

The river surveys show the meanderings or courses of the stream, the outline and size of the lakes or such bodies of open water as were practically free from grass and weed growth above the water surface, and also show the elevations of the water surface at many different points. The maps, profiles, and field notes of this survey are in evidence.

6. During the years 1927 and 1928, a survey of the marsh was made by Mr. O. G. Holway under the direction of the State Chief Engineer for such use as might be made thereof in determining at what elevations the waters of the marsh were normally in the various areas of the marsh prior to the drainage operations. Mr. Holway's survey was tied in with Professor Smith's survey and it was found that the Holway datum is 53.47 feet higher than the Smith datum.

The Holway survey determined three contour lines of one foot difference in elevation around the main portion of the marsh. The contour lines are at elevations 75, 76, and 77 Holway datum. In addition to running the contours, Mr. Holway includes in his survey other data bearing upon the normal elevations of the water in the marsh prior to drainage. The most convenient reference point or bench mark from which to obtain the Holway datum is bench mark No. 3 described as follows:

Bench mark No. 3 is a chisel mark in the top edge of the concrete walk at the northwest corner of E. E. Snyder's boat house, near the Lake Street bridge in the city of Horicon. Bench mark is 1.6 feet from the corner of the boat house. Elevation 77.51.

For convenience all elevations are referred to the Holway datum. Thus elevation 20.00 on Professor Smith's datum will be referred to as elevation 73.47, which is the Holway datum.

7. Other maps more approximate in their details and general accuracy were received in evidence. One of such maps was drawn by Mr. P. F. Stone in 1891. This map is especially useful in that it shows the general location of many of the bodies of open water referred to in the testimony. The bodies of open water most frequently referred to in the testimony with their approximate locations are the following:

On the East Branch of the Rock River:

1. Stoney Bay in the N.W. $\frac{1}{4}$ section 30, township 12 north, range 16 east.
2. Four Mile Pond in section 19, township 12 north, range 16 east.
3. Maltzen's Bay in sections 17 and 18, township 12 north, range 16 east.

On the West Branch of the Rock River:

1. Mieske's Bay in section 24, township 12 north, range 15 east.
2. Big Lake in section 12, township 12 north, range 15 east; and in sections 6 and 7, township 12 north, range 16 east.
3. Long Lake or Strook's Pond in sections 18, 19 and 30, township 13 north, range 16 east; and in sections 12, 13, 24, and 25, township 13 north, range 15 east.
4. Old River Channel or Rice Lake joining the West Branch in section 6, township 12 north, range 16 east, and extending to the northwest through section 1, township 12 north, range 15 east; and sections 36, 25, 26, 23, and 14, township 13 north, range 15 east.

The latter two bodies of water are not shown on Stone's map, but can be located on Professor L. S. Smith's map.

Other physical features frequently mentioned in the testimony are Four Mile Island in the east one-half of Section 19, in township 12 north of range 16 east, and Steamboat Island in

the northeast quarter of the southeast quarter of Section 13, township 12 north of range 15 east.

8. The surface of the water in the Rock River in the city of Horicon at the present time is controlled during periods of ordinary stream flow to a large extent by the level of water maintained at the Hustisford dam in the village of Hustisford several miles downstream. This apparently was also the situation at the time of the Smith survey in 1907. Gauge readings which were taken by L. S. Smith during the first few months of the year 1907 before the ice broke up in the spring thaw show that the level of the Rock River at the Lake Street bridge in Horicon varied from 73.01 to 74.19. The elevation 74.19 was obtained on March 16, 1907, at which time the water was rising due to the spring thaw. The water rose considerably higher after March 16. It also appears that the elevation of the water above the Hustisford dam at the time of the Smith survey was somewhat below the elevation of the top of the flashboards on the dam.

During the first few months of 1928, and before the ice broke up in the spring, the level of the Rock River at the Lake Street bridge varied from 73.70 to 75.87, the latter elevation occurring on March 19, 1928. At ordinary stages of flow a change in the elevation of the headwater at the Hustisford dam of 1.0 feet will cause a corresponding change in the elevation of the Rock River in the city of Horicon of about 0.8 feet.

A somewhat higher elevation of headwater was maintained at the Hustisford dam during the early months of 1928 than during the corresponding months of 1907, thereby causing the elevation of the Rock River in the city of Horicon to be correspondingly higher during the early months of 1928.

Comparisons of the amount of fall in the Rock River

from the Lake Street Bridge in Horicon to the Hustisford dam as found in 1907 before drainage and in 1928 after drainage indicate that the total amount of fall in the surface of the water between these two points during ordinary stream flow and normal elevation of the water in the Hustisford pond has not changed materially by the drainage operations, the total change amounting to only a few tenths of a foot. As long as the elevation of the water in the Hustisford pond is maintained at approximately 73.0 or above, the level of the Rock River in the city of Horicon will not fall below the ordinary level maintained prior to drainage.

The Hustisford dam may, however, be legally drawn down under certain circumstances as much as 1.5 feet below the permanent timber crest of the dam or to approximately elevation 70.3 under a ruling of the Railroad Commission. (See Volume 24 Wisconsin Railroad Commission Reports, page 262) Under certain conditions above referred to the elevation of water in the Rock River in the city of Horicon may be drawn considerably below the ordinary level which existed prior to the drainage operations, inasmuch as the present high section in the river bed in or below the city of Horicon is about 1.5 feet lower than the high section in the river bed in Horicon prior to the drainage operations. Before drainage, the high section of the river bed in Horicon was about 70.5 at a point between the Barstow Street bridge and the Chicago, Milwaukee & St. Paul Railway Company's bridge, while at the present time the high section is at about 69.0 feet at a point near the southern limits of the city of Horicon where the drainage operations ended. Before the drainage operations, the low water level in the city of Horicon and the lower end of the marsh was controlled by the high point in the river bed of 70.5 described above.

9. The Smith survey of 1907 shows the elevations of the top of the ice at various points on the river and other open water in the marsh as follows:

Below junction of East and West Branches of Rock River:

- I. On south line of section 25, township 12 north, range 15 east75.3
2. Downstream side of Diana dam in the north-east one-fourth of section 25, township 12 north, range 15 east75.4
3. Upstream side of Diana dam75.5

On West Branch of Rock River above junction with East Branch:

- I. On south line of section 24, township 12 north, range 15 east, below Mieske's Bay..75.6
2. On south line of section 13, township 12 north, range 15 east75.7
3. On south line of section 12, township 12 north, range 15 east, near outlet of Big Lake76.5
4. On south line of section 6, township 12 north, range 16 east, near upstream end of Big Lake77.0
5. On south line of section 31, township 13 north, range 16 east77.1
6. On south line of section 30, township 13 north, range 16 east, near the outlet of Long Lake or Strook's pond77.3
7. On south line of section 12, township 13, north, range 15 east, near upstream end of Long Lake.....77.3
8. On south line of section 2, township 13 north, range 15 east, near Chester.....77.7

On Old Channel of West Branch:

1. On south line of section 36, township 13 north, range 15 east.....77.0
2. On south line of section 25, township 13 north, range 15 east.....77.1
3. On south line of section 23, township 13 north, range 15 east.....77.7
4. On south line of section 14, township 13 north, range 15 east78.6

On East Branch of Rook River:

1. On south line of section 19,
township 12 north, range 16 east
near outlet of Four Mile Pond75.5
2. On south line of section 18, town-
ship 12 north, range 16 east, near
outlet of Malzahn's Bay75.6
3. On south one-fourth line of section
17, township 12 north, range 16 east,
near upstream end of Malzahn's Bay....76.0

10. The above elevations show that at the time of the Smith survey no appreciable head was being carried at any of the hunters' dams herein described. There was only about 0.1 feet difference in the elevation of the water above and below the Diana dam. There was practically no difference in the elevation of the water above and below the dam near the outlet of Four Mile Pond. Again, since there was only 0.2 feet fall between Long Lake and the south line of section 31, township 13 north, range 15 east, a distance of about one mile, there could not have been any appreciable head carried by any dam near the outlet of Long Lake.

Inasmuch as it appears that the water in the Hustisford mill pond was below the elevation of the top of the flashboards of the Hustisford dam, the stream flow was probably rather low in the Rook River at the time of the Smith survey.

By comparing the depths of water found at the time of the original survey in 1836 and 1837 at various points on the range line between ranges 15 and 16 east and on the township line between townships 12 and 13 north with the depths of water found at the time of the Smith survey in 1907 at the same points, it is found that in practically all cases in which comparisons could be made the surface of the water was higher at the time of the original survey than it was at the time of the Smith survey. The surface of the ground may have changed somewhat at certain

points during the period of seventy years which elapsed between the two surveys, yet the inference may fairly be drawn, that since the elevations of water at the time of the original survey, as evidenced by the soundings, were higher in most instances than the elevations found by the Smith survey, the elevations of the waters in the marsh as a whole were higher at the time of the original survey than they were at the time of the Smith survey.

The depths of water found by the drainage commissioners in the summer and fall of 1905 were also compared with the elevations found by the Smith survey in the same general localities. The elevations of water recorded by the drainage commissioners could be determined approximately by reference to the contours of the Holway survey, and it was found that in general the two groups of elevations corresponded quite closely.

Evidence was received which tends to show that certain ice pushes or ramparts of earth, formed on Four Mile Island, were formed with a water elevation in the neighborhood of 77.0 feet. Elevations of the lower edge of the timber growth and of the shore line caused by wave action on Four Mile and Steamboat Islands add weight to such evidence. There is a narrow point of land at the northern end of Four Mile Island called the "Skirmish Line", the surface of which varies between elevations 75.7 and 76.0. This point of land was often covered by a considerable depth of water during the fall hunting season.

Several witnesses in these proceedings had set stakes at Steamboat Island and Four Mile Island at points which they testified was the ordinary height of the water during the fall hunting seasons prior to drainage. The elevations of the stakes varied from 75.5 to 75.9 on Steamboat Island, and the

stake set at Four Mile Island was at 76.36 feet. The Smith survey shows the elevation of the ice at Four Mile Island to be about 75.5 and at Steamboat Island to be about 75.6.

About 800 feet downstream from the site of the Diana dam there is a small island with a well marked shore line, at about elevation 76.0, which was apparently caused by the action of the water over long periods of time. The Smith survey shows the elevation at this point at about 75.4.

Other credible evidence concerning the normal depths of water in the various bodies of open water in the marsh is in substantial accord with the elevations found by the Smith survey.

11. And, therefore, the Commission more particularly finds that the normal elevations of the waters of the Horicon marsh north of the south line of section 25, township 12 north of range 15 east, during ordinary stream flow and unaffected by the drainage ditches and the lowering of the bed of the Rock River below the marsh by the drainage operations, or in other words, as would obtain were it not for the drainage operations, are the elevations set forth in paragraph numbered 9 herein for the various parts of the marsh.

That due to the great differences in the height of the water in different parts of the marsh said normal water elevations in such different portions of the marsh north of the south line of section twenty-five (25), township twelve (12) north, range fifteen (15) east, cannot be restored by the construction of a single dam at the outlet of the marsh, since such a dam carrying a head of water which would restore the normal elevation of the water at the upper end of the marsh would flood lands in the lower marsh to a greater than normal depth.

Normal conditions may be restored by filling in the drainage ditches and causing the water again to flow through the old river channels as it did prior to the ditching. This, how-

ever, may be impracticable because of the expense involved and because the old river bed may have changed considerably through growth of vegetation, which again might require some dredging to restore former conditions in the river beds.

The restoration of the normal levels of the various portions of the marsh north of the south line of section 25, township 12 north of range 15 east, can best be accomplished by the construction and maintenance of a series of dams across the main drainage ditch and by a modification of the earth spoil banks on the sides of the main and lateral drainage ditches.

Dams properly designed to restore during periods of ordinary stream flow the levels of water as found in paragraph numbered 9 will not cause flood waters to rise higher in the marsh than elevations which would have resulted by corresponding floods prior to drainage.

The normal level of the Rock River and the Horicon marsh south of the south line of section 25, township 12 north of range 15 east will be maintained by the operation of the Hustisford dam, provided the headwater elevation is not less than 73.0 feet. To provide against unusually low stages in the Rock River and in Horicon marsh south of the aforementioned line, a suitable barrier may be erected in the Rock River at the city of Horicon to the elevation of 70.5 feet. Such barrier will maintain a level of water not lower nor higher than the elevation maintained by the high section in the bed of the Rock River in the city of Horicon prior to the drainage operations. Such a barrier may consist of either a submerged dam or an earth and rock fill in the bed of the stream.

NOW THEREFORE, upon the evidence and the records, files and proceedings herein, the applicants, Wm Mauthe, E. M. Dahlberg,

Eugene Wengert, O. C. Lemke, A. W. Icks, and Frank L. Gilbert, constituting the Conservation Commission of Wisconsin, (or the successor of either of them) are hereby granted permission to construct, maintain, and operate across the waters of the Rook River at any locations which they may select, all dams and other works necessary or convenient for the purpose of restoring and of maintaining the normal elevations of the Horicon marsh as found herein; that before proceeding with the work of construction plans of such dams and other works including locations shall be submitted to the Railroad Commission for its approval.

AND THE RAILROAD COMMISSION DOES HEREBY FIND that the construction, operation, and maintenance of such proposed dams and other works will not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property.

AND HEREBY THERE DOES ISSUE AND IS GRANTED to the applicants, Wm Mauthe, E. M. Dahlberg, Eugene Wengert, O. C. Lemke, A. W. Icks, and Frank L. Gilbert, constituting the Conservation Commission of Wisconsin, the permits provided for by subsection (3) of section 31.06 of the statutes.

Dated at Madison, Wisconsin, this 20th day of December, 1928.

RAILROAD COMMISSION OF WISCONSIN

Adolph Kanneberg

Wm Mauthe

AK-GPS-gh

Commissioners

Dam Sequence No 962



Formal Action



Year: 1932



March 1937

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

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In the matter of the application of William Mauthe, E. M. Dahlberg, Haskell Noyes, O. C. Lemke, A. W. Icks, and L. M. Hobbins, constituting the Conservation Commission of Wisconsin, for a permit to raise or enlarge an existing dam in the Rock River at Horicon, Dodge County, Wisconsin

WP-430

Pursuant to the authority vested in the Conservation Commission by Chapters 475 and 479 of the Laws of 1927 which provide for the restoration of the water levels in the Horicon Marsh and in the Rock River above the City of Horicon to the natural levels which existed prior to the digging of certain ditches in the Horicon Marsh, the Conservation Commission during the year 1930 caused to be erected across the Rock River in the City of Horicon a dam equipped with two tainter gates and two stop log gates. The dam is capable of raising the waters of the Rock River to an elevation of approximately 76 feet, Railroad Commission datum, by the closing of said gates. The tainter gates are 30 feet wide and the stop log gates are 15 feet wide, and the four gates reach across practically the entire width of the river.

The dam is so constructed that the concrete gate sills have an elevation of 68.0 feet, and stop logs may be installed to elevation 70.5 feet, which is the elevation of the natural barrier which existed in the Rock River in the City of Horicon prior to the dredging operations.

The dam was constructed pursuant to an order of the Railroad Commission dated the 20th day of September, 1928. In that order the Railroad Commission finds and determines the normal elevations of the waters in the Rock River and in the marsh at different points unaffected by the drainage ditches, or, in other words, as they were prior to the drainage operations.

Roughly speaking, the marsh is about 16 miles long from north to south and 2 to 4 miles broad. A main ditch was constructed from the northern limits of the marsh in a southerly direction to the City of Horicon. Many lateral ditches connect with the main ditch on both the east and west sides of the main ditch.

The Railroad Commission further finds in said order that due to the great differences in the normal height of the water in different parts of the marsh prior to drainage and the changes in the runoff due to the drainage ditches, the said normal water elevations in such different portions of the marsh cannot be restored by the construction of a single dam at the outlet, since a dam carrying a head of water which would restore the normal elevation at the upper end of the marsh would flood lands in the lower end of the marsh to a greater depth than they were flooded prior to drainage.

The Commission further finds in said order that the normal elevations of the marsh can be restored by filling in the drainage ditches and causing the waters again to flow through the old river channels as they did prior to the ditching. It, however, finds that this may be impracticable because of the expense involved, and because the old river bed may have changed considerably through the growth of vegetation, and probably would require some dredging to restore former conditions in the river bed. That the restoration of the normal levels in the

various portions of the marsh can be accomplished to a reasonable degree by the construction and maintenance of a series of dams across the main drainage ditch, and by a modification of the earth spoil banks on the sides of the main and lateral drainage ditches.

In said order the Commission further finds that the high point in the Rock River in the City of Horicon prior to the drainage operations was at elevation 70.5 feet, Railroad Commission datum, and that the high point after the drainage operations was one and one-half feet lower or at elevation 69 feet.

It further finds that by the restoration of the bed of the Rock River in the City of Horicon to elevation 70.5 feet, the normal elevations of the waters in the Rock River in the City of Horicon and upstream for some distance will be restored as they existed prior to the drainage operations.

The Commission further finds in said order that to provide against unusually low stages of water in the Rock River in the City of Horicon and the lower end of the Horicon Marsh, a suitable barrier may be erected in the Rock River in the City of Horicon at elevation 70.5 feet. That such barrier will maintain a level of water not lower nor higher than the elevation maintained by the high section in the bed of the Rock River in the City of Horicon prior to the drainage operations. That such a barrier may consist of either a submerged dam or an earth and rock fill in the bed of the stream.

The said order further authorizes the applicants to maintain and operate across the waters of the Rock River at any locations which they may select, a dam or dams and other works necessary or convenient for the purpose of restoring and maintaining the normal elevations of the Horicon Marsh as found in said order. It is, however, provided in said order that

before the work of construction of any such dams is begun, the plans for the same, including locations, are to be submitted to the Commission for its approval.

On May 28, 1931 the applicants filed an application requesting permission to raise and enlarge the Horicon Dam from the authorized elevation of 70.5 feet to an elevation which will maintain a maximum pond level of 75.3 feet, Railroad Commission datum. The application states that the dam is being used for the purpose of controlling and regulating the flood waters of the Rock River, and to maintain the natural levels of the waters of the Horicon Marsh. It further states that the applicants propose to maintain fish and game refuges in the Horicon Marsh pursuant to authority given by Chapter 23, Statutes.

A public hearing was held thereon on June 25, 1931 after due notice of hearing as directed by the Commission. The appearances were: L. S. Keely and B. J. Husting, Attorneys, Mayville, appearing for Horicon Marsh Farm Land Protective Association; George A. Hartman appearing for the Hustisford Light & Power Company and the Juneau Sporting Club; Thompson, Myers & Helm, Attorneys, Racine, represented by Peter J. Myers, appearing for answering land owners and the Title Insurance and Trust Company of Los Angeles, California, the latter firm also appearing specially for G. A. McWilliams, a non-resident of the state; the City of Horicon was represented by Senator William H. Markham and Mr. Louis Radke; the Chicago, Milwaukee, St Paul & Pacific Railroad Company appeared by Mr. Charles Lapham, and Mr. William Mauthe, O. C. Lemke and Mr. Matt Patterson appeared on behalf of the applicants.

Considerable testimony was offered both on behalf of the applicants and by persons appearing in opposition to the application. Mr. Matt Patterson, on behalf of the applicants, testified that the authorized elevation of the crest of the dam

at 70.5 feet does not permit the Conservation Commission to carry out the mandate of the legislature, and that, therefore, it desired authority to maintain the pond elevation at 75.3 feet. It also appeared from the testimony that the applicants did not intend to raise the waters above the dam above their normal levels until the right to do so had been acquired from the private owners of the lands to be flowed.

On September 1, 1931 the Public Service Commission made its findings on the facts required by Chapter 31, Statutes, and granted authority to the applicants to raise and enlarge its said dam so as to maintain a maximum pond elevation of 75.3 feet, Public Service Commission datum.

On September 19, 1931, Mr. Frank Adelmeyer and many other persons, represented by B. J. Husting and L. S. Keeley and Thompson, Myers and Helm, filed an application for a rehearing upon the following grounds:

1. That the findings made by the Commission are not supported by the evidence;
2. That the dam in question is not a lawful structure erected under lawful authority;
3. That the Public Service Commission of Wisconsin is without jurisdiction to hear the application and is without authority to make any further determinations concerning the water levels in the Rock River and on Horicon Marsh;
4. That the Public Service Commission of Wisconsin cannot grant any right or power to the Conservation Commission to raise or maintain the water levels of the Rock River at Horicon and on the Horicon Marsh above the elevation of 70.5 feet, which elevation has been found by the Railroad Commission of Wisconsin to have been the natural level prior to the private drainage of the same;
5. That the order entered is unlawful for the reason that the Legislature of the State of Wisconsin, by Chapter 475

and Chapter 479 of the Laws of 1927, has limited the height to which the Conservation Commission is authorized to raise the waters of the Rock River on the Horicon Marsh to the "natural level prior to the private drainage of the same";

6. That the conclusions and permit granted by the Public Utilities Commission in said order are contrary to law and void.

The motion for a rehearing was granted by the Public Service Commission on September 24, 1931, and the matter was set for hearing on the 9th day of October, 1931. At that time the following appearances were entered: Present, Commissioner McDonald and Examiner Kanneberg. Appearances, L. S. Keeley and B. J. Hustling, Attorneys, Mayville, appearing for the Horicon Marsh Farm Land Protective Association; Thompson, Myers & Helm, by Mr. Peter J. Myers, appeared for answering land owners; the City of Horicon and Izaak Walton League by Louis Radke; Wisconsin Federation of Women's Clubs by Mrs. Minnie La Budde, Milwaukee; Chicago, Milwaukee, St. Paul & Pacific Railroad Company by Charles Lapham, Engineer; and the Conservation Commission by Mr. Matt Patterson and Mr. Arthur D. Krohne.

It developed at the hearing that the applicants had caused the two tainter gates to be closed, and had ordered stop logs to be placed in the stop log gates whereby the waters of the Rock River were raised above the normal elevations which would have been maintained with the dam at the authorized elevation of 70.5 feet.

The Commission deems it desirable that authority to raise and enlarge said dam be withheld until the right to flow

private lands has been obtained by the applicants.

IT IS THEREFORE ORDERED that the order of the Public Service Commission of Wisconsin dated September 1, 1931, authorizing the applicants to maintain a maximum pond elevation of 75.3 feet, Public Service Commission datum, at the Horicon Dam be and the same is hereby set aside, without prejudice to file a new application to raise and enlarge said dam at any time after the applicants have obtained the right to flow all lands which will be flowed by means of the pond elevation which applicants may request to have authorized.

Dated at Madison, Wisconsin, this 6th day of March, 1932.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Theo. Kronshage, Jr.

Chairman

A. R. McDonald

Commissioner

David E. Lillenthal

Commissioner

Attest:

Wm. M. Dinneen

Secretary

Oct 1, 1932

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the matter of the application of the Conservation Commission for authority to close the gates at its dam in the Rock River in the city of Horicon as an emergency fire fighting measure. WP-430

On September 1, 1931, the Public Service Commission issued to the Conservation Commission a permit for authority to maintain a maximum pond elevation at the dam across the Rock River in the city of Horicon of 75.3 feet, Public Service Commission datum and on the 8th day of March, 1932, the Public Service Commission, by order set aside said order of September 1, 1931, without prejudice to file a new application to raise and enlarge said dam at any time after the applicant had obtained the right to flow all lands which will be flowed by means of the pond elevation, which applicant may request to have authorized.

It now sufficiently appears that an emergency has arisen and the Conservation Commission has requested authority to close the gates at its said dam in the Rock River in the city of Horicon in order to assist in fighting extensive fires now burning in the peat bogs of Horicon Marsh. The Conservation Commission hopes thereby to raise the water in the marsh sufficiently to extinguish the fires by flooding, but that if this proves impossible due to the extremely low stream flow in the Rock River, it is hoping that a sufficient amount of water may be accumulated in the drainage ditches to supply pumps and other fire fighting apparatus with water. It is the opinion of the Public Service Commission that public rights will be best served by allowing the dam to be closed in an attempt to extinguish the marsh fires, the dam to remain closed until this purpose has

been accomplished, or until a further order is made by the
commission.

IT IS THEREFORE ORDERED that the Conservation
Commission be and it is hereby authorized to close the gates
at the Horicon Dam and to raise the level of the water in the
Horicon marsh as an emergency fire fighting measure.

IT IS FURTHER ORDERED that as soon as the emergency
has passed, that the water in the marsh be gradually lowered
so as to avoid damage downstream.

Jurisdiction is retained by the Public Service
Commission to make such further order in the premises as may
be necessary.

Dated at Madison, Wisconsin, this first day of
October, 1932.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Theo. Krenshage, Jr.,
Chairman

A. R. McDonald, Commissioner

David E. Lilienthal, Commissioner

Attest:

Wm. M. Dinneen, Secretary

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN
- - - - -

IN THE MATTER OF THE APPLICATION OF THE
CONSERVATION COMMISSION FOR AUTHORITY TO
CLOSE THE GATES AT ITS DAM IN THE ROCK
RIVER IN THE CITY OF HORICON AS AN
EMERGENCY FIRE FIGHTING MEASURE
- - - - -

WP-430

Representations were made to this Commission by the Conservation Commission to the effect that fires were raging in the Horicon Marsh territory, and the Conservation Commission asked for permission to close the gates at its dam in the Rock River at Horicon to raise the water in the Rock River to help extinguish the fires. This Commission had serious doubts as to whether closing the gates at Horicon would help to any worth while extent in fighting the fires, but basing our action on the representations of the Conservation Commission the Public Service Commission on October 1, 1932, issued an emergency order authorizing the Conservation Commission to close the gates in the dam in the City of Horicon. The order provided that as soon as the emergency had passed the gates were again to be opened and the waters in the Rock River were to be restored to their normal levels. The Commission retained jurisdiction to make such further order in the premises as might be necessary.

On October 19, 1932, Frank Adelmeyer and numerous other persons filed a petition requesting that said emergency order be vacated for various reasons stated therein, which are not now necessary to be cited. A public hearing upon such petition was ordered and held at the City of Madison on October 31, 1932, at 10 o'clock in the forenoon, and the following appearances were entered:

Conservation Commission, by Haskell Noyes, Chairman,
Paul Kelleter, Director, and Herbert H. Naujoks,
Assistant Attorney General;

Chicago, Milwaukee, St. Paul & Pacific Railroad Company
by Charles Lapham;

Thompson, Myers & Helm, Attorneys, by Peter J. Myers,
and E. J. Husting, Attorney, on behalf of the
petitioners;

W. H. Markham, Mayor of the City of Horicon;

Louis Radke, on behalf of the Isaak Walton League;

L. G. Clark, Chairman of the Town of Williamstown; and

Walter Possin, Chairman of the Town of Chester.

From the testimony it appears that the fires in the
Horicon Marsh are under control and are not, due to recent rains,
spreading into unburned areas; that the fires, in fact, have
practically burned themselves out and that the emergency which
caused the signing of the order of October 1, 1932, no longer
exists.

IT IS THEREFORE ORDERED that the order of October 1,
1932, be and the same is hereby vacated and set aside.

Dated at Madison, Wisconsin, this 2nd day of November,
1932.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Theo. Kronshage Jr.
Chairman

A. R. McDonald
Commissioner

David E. Lilienthal
Commissioner

Attest:

Wm. M. Dinneen
Secretary

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

IN THE MATTER OF THE INVESTIGATION BY
THE PUBLIC SERVICE COMMISSION OF WIS-
CONSIN OF AN ALLEGED OBSTRUCTION IN THE
ROCK RIVER IN THE CITY OF HORICON BY THE
MAINTENANCE OF A DAM ACROSS SAID RIVER

WB-430

The Public Service Commission made an investigation of an alleged obstruction in the Rock River at the City of Horicon, upon a complaint filed by Thompson, Myers & Helm, attorneys, representing numerous land owners in the Horicon Marsh whose rights are alleged to be adversely affected by the maintenance of the obstruction. For the purpose of informing itself of the facts the Commission on November 30, 1932, requested its Water Power Engineer to make an investigation of the alleged obstruction and report the facts. Now, therefore, on the report of its Water Power Engineer, which is on file herein and upon all of the records, files and proceedings pertaining to any proceedings had with reference to the Horicon Marsh, the Public Service Commission hereby makes its findings of fact and recommendations thereon:

On December 20, 1928, the Railroad Commission of Wisconsin issued an order under Section 31.06 on application of the Conservation Commission whereby the Conservation Commission was authorized to construct a submerged dam or barrier across the Rock River in the City of Horicon with a crest at a maximum elevation of 70.5 feet, when referred to the datum of the Railroad Commission bench mark 7190, being a square out in east end of concrete walk over the gates of the dam, elevation 84.07 feet. The purpose of the dam or barrier is to restore the bed of the Rock River in the City of Horicon to its former normal elevation, said bed having been deepened by dredging and which said deepening

has been declared unlawful by the courts.

Pursuant to such order, the Conservation Commission did construct a dam across the Rock River in the City of Horicon with gate sections and stop log sections capable of being used as a submerged dam or barrier with a crest at elevation 70.5 feet, Public Service Commission datum. The dam, however, is so constructed that by the closing of the gates and the stoplog sections it is also capable of holding a higher pond level in the Rock River.

On May 28, 1931, the Conservation Commission applied under Section 31.13 for permission to raise and enlarge its dam and to maintain a head of water at a maximum pond elevation of 75.3 feet, Public Service Commission datum. At the hearing on said application the applicant stated that it did not propose to raise the level of water in the Rock River above its normal elevation until it had secured the necessary flowage rights; that upon such representations the Public Service Commission made its finding that said dam raised and enlarged in accordance with the application will not materially obstruct existing navigation or violate other public rights and will not endanger life, health or property. Thereupon the Public Service Commission on the first day of September, 1931, issued a permit authorizing the applicant to maintain a pond elevation as requested; that notwithstanding the representations made at the hearing on the last application named, the applicant did close the gates of the dam above the elevation 70.5 and before having acquired any flowage rights whatsoever; that upon an application duly made by numerous owners of land which would be flooded above normal by maintaining a crest at the dam above elevation 70.5, the Public Service Commission did on the 8th day of March, 1932, set aside the order of September 1, 1931, in the following words:

IT IS THEREFORE ORDERED that the order of the Public Service Commission dated September 1, 1931, authorizing the applicants to maintain a maximum pond elevation of 75.3 feet, Public Service Commission datum, at the Horicon dam be and the same is hereby set aside without prejudice to file a new application to raise and enlarge said dam at any time after the applicants have obtained the right to flow all lands which will be flowed by means of the pond elevation which applicants may request to be authorized."

On October 1, 1932, the Public Service Commission on the representations of the Conservation Commission that an emergency existed in this, that extensive fires were burning in the peat bogs of the Horicon Marsh, did on the first day of October, 1932, authorize the Conservation Commission to close the gates at the Horicon dam to raise the level of water in the Horicon Marsh as an emergency fire fighting measure. The order also provided that as soon as the emergency has passed that the gates in the dam be opened; that on the 19th day of October, 1932, numerous land owners in the Horicon Marsh represented to the Public Service Commission that the emergency had passed, whereupon, after a public hearing, the Commission on the 2nd day of November, 1932, vacated the order of October 1, 1932; that notwithstanding said order the Conservation Commission has failed and refused to open the gates in its said dam down to elevation 70.5, which is the authorized elevation, but that on the contrary the gate section and the stop log sections are closed, the crest of which is at elevation 73.5, or about three feet higher than authorized by the order of the Commission; that maintaining the gates at said elevation is an illegal obstruction and in violation of Section 31.23, Statutes.

IT IS THEREFORE ORDERED that these findings be reported to the Governor of the State, to the end that he may cause the Attorney General, or some other person duly authorized, to

institute proceedings to abate the nuisance or to take such
other action as he may deem advisable.

Dated at Madison, Wisconsin, this 7th day of
December, 1932.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Theo. Kronshage Jr.
Chairman

A. R. McDonald
Commissioner

Attest:

Wm. M. Dinneen
Secretary

Dam Sequence No

962



Formal Action



Year:

1934



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the matter of the application of
Ralph M. Immell, R. B. Goodman, Louis
M. Hobbins, Nelson Le Clair, James
A. Corcoran, and T. J. Koerner, Con-
stituting the Conservation Commission
of Wisconsin, for a permit to raise
and enlarge an existing dam in the
Rock River at Horicon, Dodge County,
Wisconsin

WP-430

The application of Ralph M. Immell, R. B. Goodman, Louis
M. Hobbins, Nelson Le Clair, James A. Corcoran, and T. J. Koerner,
constituting the Conservation Commission of Wisconsin, for author-
ity to operate the dam in the Rock River in the City of Horicon so
as to raise and maintain a headwater elevation in the Rock River
above said dam and in Horicon Marsh of not exceeding 75.3 feet,
Public Service Commission datum, at a point where the Rock River
crosses the south line of Section 25, Township 12 North of Range
15 East, came on to be heard on the 6th day of October, 1934, at
the offices of the Public Service Commission in the City of Madison.

The appearances were:

For the applicant,
Col. A. H. Smith; and
Mary Eschweiler, Law Fellow, Attorney General's
Department.

For the respondent,
Ralph W. Jackman appeared specially on his own
behalf as a land owner; and
Peter J. Meyers appeared specially on behalf
of land owners.

W. P. Aberg appeared on behalf of the Izaak Walton
League.

The applicant, in order to carry out the mandate of the
legislature to restore the public waters of the Rock River on
Horicon Marsh to the natural levels existing prior to the private
drainage of the same, requests authority to so operate its dam

across the Rock River in the City of Horicon as to maintain a headwater elevation of not exceeding the maximum elevation of 75.3 feet, when referred to Public Service Commission bench mark No. 7190, at a point upstream from the dam, namely where the Rock River crosses the south line of Section 25, Township 12 North, of Range 15 East.

Bench mark No. 7190 consists of a square cut in the east end of concrete walk over the gates of the dam. Elevation 84.07 feet.

From the evidence and from the files in former proceedings had before the Commission in relation to the restoration of the water of the Rock River by the applicant, pursuant to Chapters 475 and 479 of the Laws of 1927, it appears that in order to maintain an elevation not exceeding 75.3 feet in the Rock River at the point above mentioned by the operation of the dam in the City of Horicon, it will be necessary to flow certain lands between the dam and said point, namely where the Rock River crosses the south line of said Section 25, to an elevation higher than the normal elevations of the waters of the Rock River. The evidence in this proceeding shows and the Commission finds that the applicant has heretofore acquired the right to flow all lands which will be flowed above their normal elevations when the maximum elevation of water in the Rock River at a point where it crosses the south boundary of said Section 25 is at or below elevation 75.3 feet, Public Service Commission datum.

IT IS THEREFORE ORDERED that the applicant be and it is hereby authorized to operate the dam in the Rock River in the City of Horicon, and to raise the level of water in the Rock River above said dam to any elevation not exceeding, however, a maximum elevation of 75.3 feet, Public Service Commission datum,

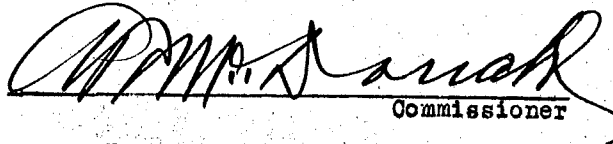
at the point where the Rock River crosses the south line of Section 25, Township 12 North of Range 15 East.

Jurisdiction is retained by the Public Service Commission to make such further order in the premises as may be necessary.

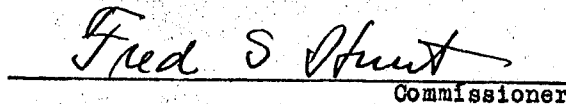
Dated at Madison, Wisconsin, this 10th day of October, 1934.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Chairman

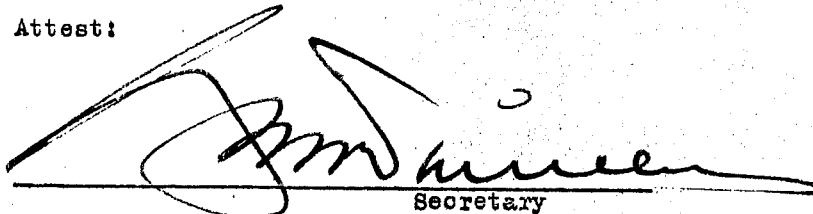


Commissioner



Commissioner

Attest:



Secretary

Dam Sequence No 962



Formal Action



Year: 1945



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of the Petition of the
Horicon Chapter of the Izaak Walton
League for an Order Raising the Mini-
mum Level of the Hustisford Pond as
Heretofore Fixed by the Commission; and
Petition of the Village of Hustisford
Requesting an Order Requiring the
Conservation Commission to Operate the
Horicon Dam in the Rock River so as to
Allow the Natural Flow of Water Over
the Dam

2-WP-620

DECISION AND ORDER

On August 23, 1944 the Horicon Chapter of the Izaak Walton League filed with the Public Service Commission of Wisconsin a petition requesting an order raising the minimum pond level of the Hustisford pond from the established level of 97.00 feet, Public Service Commission datum, to a point not lower than 2 inches below the crest of the spillway in the Hustisford dam. The average crest of the spillway is at 98.78 feet.

The Village of Hustisford, on October 10, 1944, filed a petition with the Public Service Commission of Wisconsin which alleges that it is the owner of the Hustisford dam and water power; that it is entitled to the natural flow of the Rock River for use in its power plant, and that it is being deprived of such natural flow of the stream by the unlawful operation of the Horicon dam by the Conservation Commission of Wisconsin. The prayer of this petitioner is that the Commission issue an order requiring the Conservation Commission to operate the Horicon dam in accordance with law and so as to permit at all times the natural flow of the Rock River to go through or over its dam.

A joint hearing on said petitions was held at Hustisford on November 14, 1944 and on an adjournment thereof on November 18, 1944 before Examiner Adolph Kanneberg.

Appearances:

Izaak Walton League by

Louis Radke
Horicon
(also appearing on his own behalf
as a landowner)

Village of Hustisford
Hustisford Utility by

Husting & Pike, attorneys
Mayville by
B. J. Husting

Farmers Below the Dam in the Towns
of Hustisford, Ixonia, and Lebanon by

T. L. Allen
John Thiel, attorneys
Mayville

Nicholas Gunderson
Ixonia

Lake Sinnissippi Association and
Cottage Owners on the Lake by

Howard J. Petran
Milwaukee

Mrs. Ray Clark
Mayville

Louis C. Pautsch
Juneau

Henry Arndt
Horicon

Wisconsin Conservation Department by

William J. P. Aberg
Col. A. H. Smith
Madison

Of the Commission Staff:

W. A. Muegge
Engineering department

Opinion

By the tacit consent of the parties who appeared at the hearing, it was agreed that anyone adversely affected by the operation of the Horicon or Hustisford dams could present any pertinent evidence and obtain such relief as he may be entitled to and which the Public Service Commission of Wisconsin has power to grant.

The Conservation Commission requests permission to maintain a temporary headwater elevation above the Horicon dam at 74.00 feet until the time when it has acquired all of the lands in the southerly or State area of the marsh which would be flooded by a higher headwater elevation. The complainants who appeared and desire relief fall into several groups as follows:

1. The Village of Hustisford and the Hustisford Electric Utility maintain that the utility is not receiving the natural flow of the Rock River through or over the Horicon dam;
2. Farmers along the Rock River below the Hustisford dam complain that the flow which comes into the Horicon Marsh, particularly in the spring, is held up and later discharged in greater volume than would have been the case had it been allowed to flow from the marsh without interruption by the operation of the dam. They further assert that if the floods were not interrupted they would come earlier and recede sooner before the planting season and thereby cause less damage.
3. Farmers on the Horicon Marsh complain that the water was raised on their lands in the marsh before the lands are acquired by purchase or before flowage rights have been secured.
4. Farmers and landowners on the Hustisford pond are not in agreement as to water levels to be maintained in the Hustisford pond. Some of them desire a higher level to create more muskrat areas while others object to a higher level than that fixed by the Commission and would prefer a lower level to improve their agricultural lands.

5. Cottage owners on the Hustisford pond represented by Howard J. Petran, secretary of the Lake Sinnissippi Association, generally desire a higher maximum level than has been maintained for the pond because the pond or Lake Sinnissippi is a shallow body of water.
6. The Horicon Chapter of the Izaak Walton League requests a higher minimum level for Lake Sinnissippi than has been established by the Commission.

Concerning the Horicon and Hustisford Ponds and the
Dams at Their Outlets

All elevations mentioned herein refer to Public Service Commission datum.

It appears from the records of the Public Service Commission that commencing about 1910 a system of ditches was constructed in the Horicon Marsh, Dodge County, for the purpose of lowering the waters in the Horicon Marsh and thereby creating more agricultural lands; that the backwater from the Hustisford dam in the Rock River, located about 10 miles below the Horicon Marsh, extended into the lower reaches of the Horicon Marsh and prevented the successful draining of the marsh; that the Hustisford Dam was authorized by the Territorial Legislature, Session Laws of 1845, page 99.

The Horicon Marsh from north to south is approximately 14 miles long. It is from 2 to 4 miles wide. The marsh surface at its northerly end is about 4 feet higher than the marsh surface at the southerly end. The west branch of the Rock River enters the marsh at its northwesterly end some 12 miles north of the south end of the marsh. The east branch of the Rock River enters the marsh from the east about 4 miles north of the south boundary of the marsh. Originally the two branches of the river carried their waters in narrow meandering courses through the marsh in such manner that the water surface of the Rock River and in the marsh was held and maintained at different elevations in the various areas of the marsh. After

the drainage ditches were constructed and operated, the flow of the river came more rapidly through the marsh and materially lowered the normal water levels in it. The result of the ditching was that the former water levels in the marsh could not be restored by the operation of a single dam in the Rock River at the lower end of the marsh. To reasonably restore the former conditions would require the filling up of the drainage ditches or the construction of numerous dams in various parts of the marsh.

In 1927 there was appropriated to the Conservation Commission under section 20.20, subsection (24)(a), Statutes of 1927, a sum of money for the purpose of constructing a dam or dams in the Rock River in Dodge County to restore the waters of the Rock River in the Horicon Marsh to the natural levels which existed prior to the private drainage of the same and for the purpose of maintaining such normal levels. Thereafter, as a step in the accomplishment of the foregoing purpose, the Conservation Commission acquired a site in the Rock River in the city of Horicon for the purpose of constructing a dam to restore the water levels in the lower end of the Horicon Marsh. It was the opinion of the Conservation Commission that it might raise the water levels in the Horicon Marsh to the elevations which obtained before the ditches were constructed without acquiring title to or flowage rights in the lands to be flowed.

On December 20, 1928, on application of the Conservation Commission under section 31.05, Statutes, in WP-317 (32 W.R.C.R.1), the Public Service Commission found what the normal water levels were in various areas of the Rock River and in the marsh and granted to the Conservation Commission a permit to construct, operate, and maintain, across the waters of the Rock River at any locations it might select, all dams and other

works necessary or convenient for the purpose of restoring and maintaining the normal elevations of the Horicon Marsh as found by the Public Service Commission. The Commission also authorized the Conservation Commission to construct in the Rock River in the city of Horicon a suitable barrier or dam at elevation 70.5 feet which the Commission found would maintain the Rock River and the lower portion of the Horicon Marsh at the elevation which normally obtained in that area before the construction of the drainage ditches.

The dam in the Rock River in the city of Horicon was constructed in 1930. On March 25, 1931 the Conservation Commission (WP-430, 1 P.S.C.W. 599) applied to the Public Service Commission for a permit to raise the headwater elevation above the Horicon dam from the authorized elevation of 70.5 feet to elevation 75.3 feet, the Conservation Commission alleging that it did not intend to raise the water above the dam above normal until the right to do so had been acquired from the owners of the land to be flooded. A permit on the application was granted September 1, 1931. On rehearing, the Public Service Commission by order dated March 8, 1932 set aside the permit on the ground that the Conservation Commission had flooded lands above normal without first having obtained the consent of the owners of the land.

On October 10, 1934 the Public Service Commission authorized the Conservation Commission in WP-430, 3 P.S.C.W. 377, to maintain a maximum headwater elevation of 75.3 feet at a point where the Rock River crosses the south line of section 25, town of Burnett, it appearing from the evidence that the Conservation Commission had acquired all of the lands in the marsh lying between said line and the Horicon dam which would be flooded at that elevation.

In State v. Adelmeyer, et al, 221 Wis. 246 (April 28, 1936), it was held, in effect, that the elevations in the marsh which existed before the drainage operations and found to be normal by the Public Service Commission, ceased to be the normal elevations, but that on the contrary the lower elevations, namely, those which existed in the Horicon Marsh after the drainage, became the normal water elevations in the Rock River and in the marsh, and that the Conservation Commission may not lawfully raise the waters in the marsh to their former elevations until it had acquired title to the lands, or the right to flow the same, from their owners.

Concerning the Jurisdiction of the Public Service Commission to Restrain a Permittee from Raising the Headwater Elevation to the Head Authorized by the Permit

In New Lisbon v. Harebo, 224 Wis. 66, the court held that the Public Service Commission may not refuse to grant a permit merely because the necessary flowage rights had not been acquired by the applicant. The court said, "The statute itself grants a permit upon a finding by the commission that the construction, operation, or maintenance of the proposed dam will not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property."

The Commission, in granting a permit to the Conservation Commission on December 20, 1928 in WP-317, made a finding of what the normal water elevations in the Rock River and in the marsh were prior to the drainage at about 18 locations in the marsh and authorized the Conservation Commission to construct a dam or dams for the purpose of restoring the waters in the Rock River and in the marsh to those elevations and made the following

finding, "That the construction, operation and maintenance of such proposed dams and other works (to maintain the elevations of the Rock River and the marsh at the elevations found to be normal) will not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property."

There are two groups of persons who are affected by the construction and operation of a dam in navigable water, namely, the general public who have the right of navigation, fishing, and other rights in navigable waters; and the private persons whose lands will be affected by the construction and operation of the dam.

Under the New Lisbon case, the Public Service Commission is required to protect the rights of the public in navigable water and deny a permit if it cannot make the finding required by the statute before a permit issues under the statute. It may not, however, refuse a permit because private rights will be affected, for example, because flowage rights have not been acquired on lands that will be flowed, since a private person has his remedy by bringing an action in the courts if he is unable to agree upon the compensation to be paid to him by the permittee. It follows that the Public Service Commission may not now enjoin the Conservation Commission from raising the water level to the authorized head and thereby flooding lands which it has not yet acquired. However, it should be pointed out that under the decision of the supreme court in the Adelmeyer case cited, the Conservation Commission may not flood the lands of others until the right to flood the same has been acquired.

Findings

From the evidence received at the hearing, the Public

Service Commission finds:

1. That no map was offered in evidence showing any contour lines in the Horicon Marsh below elevation 75.00 feet.

2. That the Conservation Commission has not acquired all tracts of land in the State area in the Horicon Marsh which lie below the 75-foot contour.

3. That there are certain tracts of land in the Federal area in the Horicon Marsh below contour 75.00 feet which have not yet been acquired by the federal government.

4. That it is not possible to determine definitely from the evidence, particularly because there is no 74-foot contour, whether and how much land which has not yet been acquired will be flooded by holding the headwater elevation at the dam at 74.00 feet.

5. That the Conservation Commission, on several occasions, so operated the Horicon dam that less than the natural flow of water was released through the dam at times when the hydroelectric plant of the Village of Hustisford could have used such natural flow for the production of power.

6. That the Conservation Commission stored water in the Horicon Marsh and released the same at a later date and in volumes greater than would have flowed down the river if the waters had not been impounded behind the dam, and that such detention and release caused damage to farm lands below the Hustisford dam.

7. That the Village of Hustisford, on a yearly average basis, could probably obtain more hydroelectric power if it limited the drawdown in the pond to a point 6 inches below the average crest of the spillway, and that the Village of Hustisford has agreed that the minimum pond level be raised to 6 inches below the average crest of the spillway, or to elevation 98.28 feet.

Conclusions of Law

The Commission finds as conclusions of law:

1. That the Public Service Commission is without jurisdiction to entertain the application of the owners of land in the Horicon Marsh for an order requiring the Conservation Commission to keep the gates open in the Horicon dam until all lands have been acquired which will be flooded by the proposed headwater elevation of 74.00 feet at the dam.

2. That the Village of Hustisford is entitled to receive the natural flow of the Rock River at the Horicon dam for use in its hydroelectric plant at all times when it is not wasting water through the dam.

3. That the owners of land below the Hustisford dam adversely affected by floodwaters in the Rock River are entitled during the planting, growing, and harvesting seasons to have the flow over the Horicon dam limited in volume to the natural runoff from the Horicon pond at the dam so far as this may be accomplished by the careful operation of the gates in the dam. The volume of water which may be discharged may be properly measured by releasing through the dam only such quantities of water as will not cause any lowering of the pond elevation at the dam until the pond has passed its maximum elevation. Subsequently, the accumulated water should be gradually released until the pond has again reached its normal stage.

4. That the Conservation Commission, whenever it has acquired the right to store water in the Horicon Marsh, may as between it and the Village of Hustisford use surplus water for such purpose, that is, water which would otherwise be wasted over the Hustisford dam.

Order

IT IS THEREFORE ORDERED:

1. That the application of the owners of land in the Horicon Marsh for an order requiring the Conservation Commission to keep the gates open in the Horicon dam until all lands which will be flooded by a headwater elevation, at the dam, of 74.00 feet have been acquired be and the same is hereby dismissed.

2. That the Conservation Commission operate the Horicon dam in such manner as will protect the rights of the Village of Hustisford and the rights of landowners below the Hustisford dam, referred to in the conclusions of law numbered 2 and 3.

3. That the minimum level heretofore established by the Public Service Commission for the Hustisford pond is hereby rescinded and a new minimum pond level is established for said pond at 6 inches below the average crest of the spillway, or at elevation 98.28 feet.

4. That the Commission retain jurisdiction of these proceedings for a period of 2 years from the date hereof for the purpose of making such further or other orders as may be necessary or pertinent.

Dated at Madison, Wisconsin this 2nd day of

June 1945.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Raymond H. Walker
Commissioner

W. H. Whitney
Commissioner

Commissioner

Dam Sequence No 962



Formal Action



Year: 1952



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation on Commission's Motion
of the Operation of the Horicon and
Hustisford Dams and of the Need for
Establishment of a Maximum Level for
Lake Sinissippi

2-WP-888

FINDINGS AND ORDER

The Commission has had complaints during the last several years of damage to croplands located in the Lower Rock River Valley below the Hustisford dam, allegedly caused by the operation of the Hustisford dam.

Hearing: February 19, 1952 at Hustisford before Examiner Helmar A. Lewis.

Appearances:

Lake Sinissippi Advancement Association, Inc., by

L. A. Buckley, attorney
Hartford

Hustisford Utility by

Frank Rohrschneider, superintendent
Hustisford

Town of Lebanon by

Elmer Moldenhauer, chairman
Watertown

Dodge County Alliance consisting of 23 clubs
in Dodge County by

John E. J. Mueller, president
Watertown

Conservation Commission of Wisconsin by

Manuel L. Armijo, Attorney General's Office
Madison

Wayne Truax
J. R. Smith

Of the Commission Staff:

W. H. Cartwright, engineering department

Adjourned hearing: February 26, 1952 at Madison
before Examiner Helmar A. Lewis.

Appearances:

Complainant:

Nicholas Gunderson
Madison

Lake Sinissippi Advancement Association, Inc., by

L. A. Buckley, attorney
Hartford

Howard Petran, secretary
William Henning, member of board of directors

O. W. Voss
Village president
Hustisford

Conservation Department by

J. R. Smith

Of the Commission Staff:

W. H. Cartwright
W. A. Muegge
Engineering department

Findings of Evidentiary Fact

THE COMMISSION FINDS the essential evidentiary facts herein to be the following:

1. Nicholas Gunderson owns land along the Rock River in sections 11 and 14, town of Ixonia, Jefferson County, and has complained for several years that the operation of the dams in the Rock River above his property has caused injury to his farm and to the farms of others.

2. Hustisford dam owned by the village of Hustisford (as an electric utility) was reconstructed in 1939 so as to have an 85-foot spillway section with crest at elevation 98.8 feet and two 30-foot radial gates with sill elevation at 91.5 feet. The Commission established the minimum level to be maintained by the Hustisford dam at elevation 98.28 feet in

docket 2-WP-620 dated June 2, 1945. The replaced dam had a spillway section $152\frac{1}{2}$ feet long with the average crest elevation at 97.37 feet and carried flashboards to an average elevation of 98.81 feet.

3. The dam in place before 1939 was operated for flood flows by the removal of the flashboards and floodwaters were passed as they occurred. The Commission records indicate that high water levels in Lake Sinissippi caused by this operation reached elevation 99.3 feet.

4. Elevations in the foregoing are referred to Public Service Commission datum for the Hustisford dam as recorded by Public Service Commission bench mark No. 457-D described as a square cut in top of right abutment wall of spillway. It is located 6.0 feet from upstream end. Elevation 102.89 feet.

5. The Horicon dam above Hustisford is owned and operated by the Wisconsin Conservation Department with authority to raise the water behind the dam to a maximum elevation of 75.3 feet in docket WP-430 dated October 10, 1934. Elevations are referred to Public Service Commission datum for the Horicon dam as recorded by Public Service Commission bench mark No. 719-C described as a square cut in east end of concrete walk over gates of dam. Elevation 84.07 feet.

6. The Horicon dam has been operated in recent years with gates opened in February, before the spring breakup, to lower the water on the marsh and to permit the Hustisford dam to assume control of the levels maintained in both Lake Sinissippi and the Horicon Marsh.

7. The United States Wildlife Service constructed a dam in 1951 in the Rock River across the Upper Horicon Marsh to hold a pool at elevation 77.0 feet. The proposed

operation is to lower the pool to 76.0 feet before winter freezeup and to hold that level through the winter. Elevations are referred to Horicon datum.

8. In March and April of 1951 the Horicon dam was open and the Hustisford dam was in control. In this period the water levels in Horicon were raised more than 1 foot so that the Horicon level on April 15 was at elevation 76.52 feet, which is 1.22 feet above its prescribed maximum level. This was caused because the gates of the Hustisford dam were not opened to pass flood flow as it occurred.

9. The Rock River below Hustisford to Watertown has but little slope, and has a wide valley, being three-quarters of a mile in width in places. Several large streams enter the Rock River including Wildcat Creek, the Rubicon and Ashippun Rivers, all above the Gunderson property. The river valley is crossed by highways at several places where the roadways are on fills and act as check dams.

10. Gunderson has 117 acres of land in sections 11 and 14 in the town of Ixonia, being east of and adjacent to the river. The United States Geological Survey quadrangle shows that the east one-third of his property is high and that the remaining two-thirds is in marshlands. Aerial photographs taken in 1937 show the cultivated high ground to be about 41 acres. There is also shown 15 acres of cultivated low ground located in the flood plain. Gunderson states that 82 acres are now being cultivated, of which 40 acres are in the flood plain.

11. The Wisconsin Conservation Department, the village of Hustisford, and the Lake Kinnissippi Advancement Association indicate that they desire to cooperate to assure passage of flood flows in a manner designed to protect croplands downstream, provided their primary interests are not

Opinion

Since its reconstruction in 1939 the Hustisford dam has not been operated to secure the same conditions of flow of floodwaters as had been effected by the replaced spillway-type dam; that in not passing floodwaters as they occurred, ponding was caused in the pools above the dam which prolonged the period of runoff; that the improvement of highways across the river valley below the Hustisford dam has created retardation dams which hold excess waters in the valley for a longer period of time than was formerly the case; that farmers in the river valley below Hustisford have extended their operations into the river valley on lands which have generally been flowed in the past. It appears that the following procedure would minimize the damage to said farm lands:

1. Amend the minimum level now established at Hustisford to permit Lake Sinissippi to be lowered an additional 6 inches to elevation 97.78 feet (Hustisford datum), the lowering to be accomplished gradually beginning February 15 and continuing until the end of the spring flood period of each year, which operation with the cooperation of the Wisconsin Conservation Department will result in the lowering of the Horicon pool as far as possible without substantial injury to conservation interests and will further result in the passing of considerable water before the spring breakup occurs;

2. Establish a maximum level at Hustisford which will require the operation of the radial gates to dispose of floodwaters as they occur to accomplish conditions similar to those existing before 1939 and

thus speed the flow through the valley;

3. Investigate the obstruction used by highways below the Hustisford dam and require sufficient openings in said roadways to pass flood flows substantially as they occur; and

4. Retain jurisdiction in the matter to permit amendment of the order if future operation shows that changes are necessary and desirable.

Findings of Ultimate Fact

THE COMMISSION THEREFORE FINDS:

1. That the minimum level of Lake Sinissippi should be amended to allow lowering to elevation 97.78 feet beginning February 15 and continuing until the end of the spring flood period of each year, such lowering to be accomplished gradually.

2. That the maximum level of Lake Sinissippi should be established at elevation 99.5 feet, said elevation not to be exceeded except when the discharge capacity of the two radial gates and the spillway of the Hustisford dam is inadequate to pass the flood flow.

Proper operation is to open the floodgates of the Hustisford dam in the early spring to gradually lower the water level of Lake Sinissippi to or near its minimum level as authorized and then to operate the gates of said dam to pass the spring runoff as it occurs without raising the water level substantially until near the end of the runoff period when it is necessary to raise the lake to or above the level of the spillway crest. After that time the spillway can control ordinary flow. At all other times the spillway should control the levels of the lake, except

when it appears that the maximum level will be exceeded because of excess flow. At such times the gates should be opened sufficiently to pass the excess flow until it subsides and the spillway is again adequate to control the flow without exceeding said maximum level.

3. That the interest of public rights in the Rock River, the promotion of safety, and the protection of life, health and property require that the minimum and maximum levels as stated in the foregoing findings be established; that both said minimum and maximum levels are reasonable.

Conclusion of Law

THE COMMISSION CONCLUDES:

That it has authority under section 31.02(1), Statutes, to establish minimum and maximum levels for Lake Sinissippi, held by the Hustisford dam.

Order

THE COMMISSION THEREFORE ORDERS:

1. That the minimum level for Lake Sinissippi be and it is hereby established at elevation 97.78 feet, Public Service Commission datum for Hustisford, for the period beginning February 15 and continuing to the end of the spring flood period of each year.

2. That the maximum level for Lake Sinissippi be and it is hereby established at elevation 99.5 feet, Public Service Commission datum for Hustisford, insofar as it can be attained by the proper operation of the floodgates in the Hustisford dam.

3. That jurisdiction be retained to make further

order with or without public hearing.

Dated at Madison, Wisconsin, this 14th day of
March 1952.

By the Commission.

Edward T. Kaveny
Secretary

Dam Sequence No 962



Formal Action



Year: 1985



ORDER NUMBER 3-SD-84-901

FACT FINDING

NAME OF DAM Horicon	DATE OF INSPECTION 7/23/84
DNR FIELD FILE NUMBER 14.18	NAME OF OWNER State of Wisconsin-Dept. of Natural Resources
NAME OF STREAM Rock River	NAME OF AGENT Thomas Nigus
IMPOUNDMENT	STREET OR ROUTE 1210 N. Palmatory
COUNTY Dodge	CITY, STATE, ZIP CODE Horicon, WI 53032
	TELEPHONE NUMBER (INCLUDE AREA CODE) (414)485-4434

INSPECTION PARTY

OWNER/AGENT Thomas Nigus	DNR INSPECTOR Harland Steinhorst, John Gozdziwski
INTERESTED CITIZENS/GROUPS None	FERC None

NAVIGATION AND DAM FACTS

1. IN VICINITY OF DAM	
A. UPSTREAM boating, fishing, canoeing	B. DOWNSTREAM boating, fishing canoeing
2. APPARENT EXISTING USE	
A. UPSTREAM Boating, fishing, hunting, canoeing, snowmobiling	B. DOWNSTREAM Boating, fishing, hunting, canoeing, snowmobiling
	C. PORTAGE Current portage involves pulling craft through stop-log spillway.

3. HAZARDS (USE APPROPRIATE ITEMS UNDER D 1-11 OR OTHERS.)

A. UPSTREAM 3,4	D. 1. DANGEROUS CURRENTS 2. POTENTIAL FOR HIGH WAVE ENERGY 3. GATED SPILLWAYS 4. OPEN SPILLWAYS 5. STEEP SLOPES 6. UNFENCED DROPOFFS 7. ELECTRICAL TRANSMISSION GEAR 8. DANGEROUS TAKEOUT CONDITIONS 9. POWER HOUSE INTAKE/OUTLET 10. AUTOMATIC GATES 11. BARBED WIRE HAZARDS
B. DOWNSTREAM 1, electrical fish barrier (proposed)	
C. PORTAGE Unmarked	

SIGNS, DEVICES AND PORTAGE FACILITIES

1. EXISTING	
A. SIGNS AND LOCATIONS Four diamond shaped "DAM" signs on walkway over dam; 2 facing upstream and 2 facing downstream. Rectangular "Dangerous Currents" sign on upstream center pier support of dam and on downstream center pier support of railroad trestle.	
B. DEVICES AND LOCATIONS (INCL. LIGHTS, HORNS, SIRENS, ETC.) None	RECEIVED SEP 6 1984
C. PORTAGE FEATURES AND LOCATIONS None	

CONCLUSIONS OF LAW

The Department has authority pursuant to ss. 31.02 and 31.18, Wis. Stats., and NR 330, Wis. Admin. Code, to require dam owners to install and maintain signs and devices necessary to provide adequate warning and safety for boaters and to prescribe portage requirements for appropriate dams. The order contained hereinafter is necessary and proper in accordance with the foregoing findings of fact to provide adequate warning and safety pursuant to ss. 31.02 and 31.18, Wis. Stats., and NR 330, Wis. Admin. Code.

ORDER

2. REQUIRED (IF EXISTING FEATURES ARE ADEQUATE, WRITE "SAME") Bring existing "DAM" signs up to code, locations remain the same. Bring existing "Dangerous Currents" signs up to code; diamond-shaped sign needed). location remain the same. Place diamond "High Voltage in Water" on cables upstream and downstream of dam. Place rectangular "TAKE OUT" and diamond "DAM AHEAD" at upstream west bank boat landing. Place rectangular "TAKE OUT" downstream on east bank in Kiwanis Park.

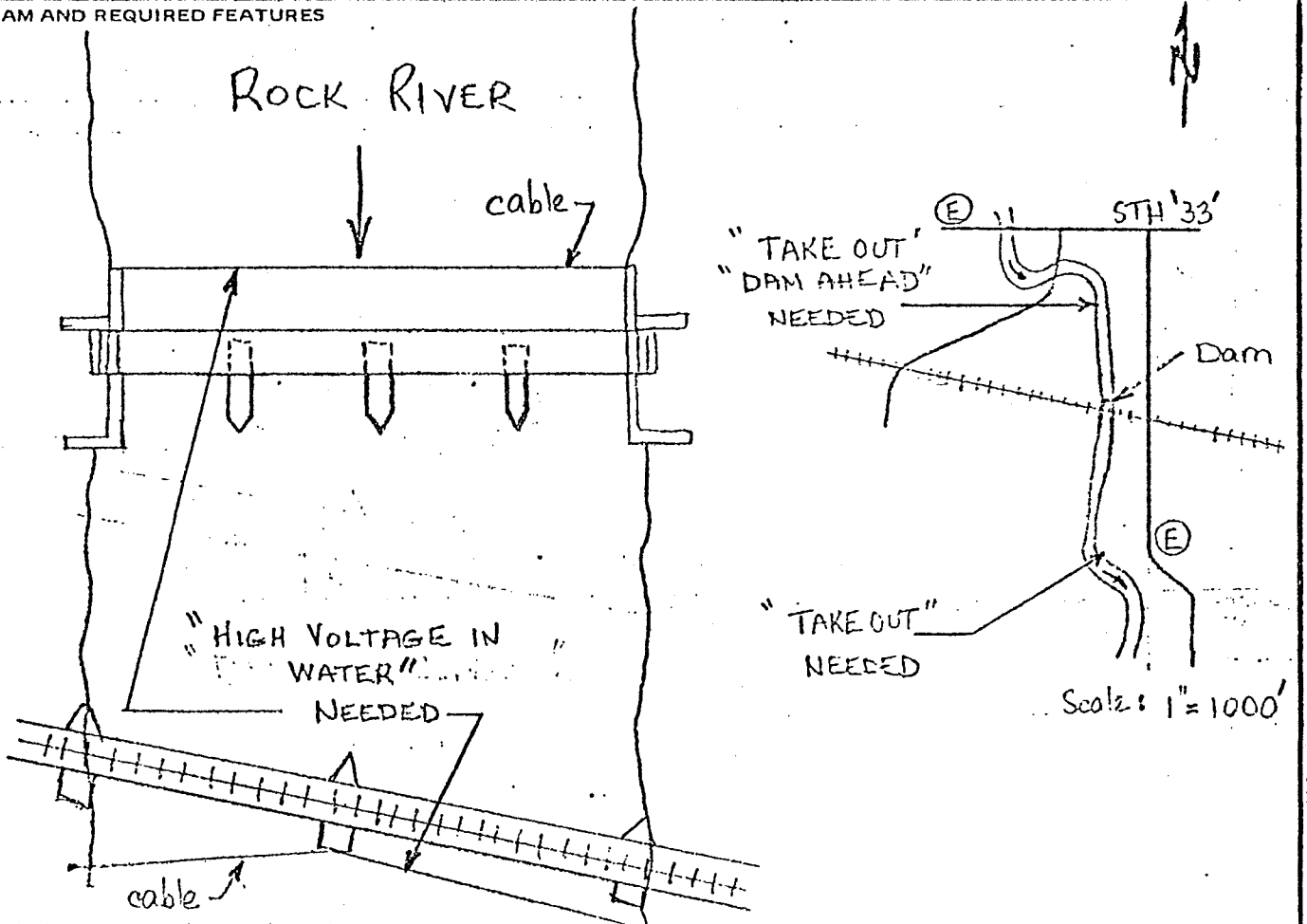
C. PORTAGE FEATURES AND LOCATIONS

Adequate

INSTALLATION COMPLETION DATE

12/1/84

SKETCH OF DAM AND REQUIRED FEATURES



State of Wisconsin
Department of Natural Resources
For the Secretary

By Floyd J. Stuebel

Date 8/30/84

Inspected By
Signature

John Gordinowski/COH

Date 8/30/84

Signs, devices and portage features for the Horicon Dam

Dams were inspected and found

to conform with Wis. Administrative Code NR 330.04 and 330.05 on: May 21, 1985

INSPECTED BY - SIGNATURE

John Gordinowski

DATE

5/28/85

Dam Sequence No 962



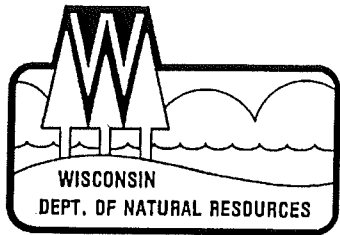
Formal Action



Year: 1994



→ Sue Josheff - SD



WISCONSIN
DEPT. OF NATURAL RESOURCES

George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Southern District Headquarters
3911 Fish Hatchery Road
Fitchburg, Wisconsin 53711
TELEPHONE 608-275-3266
TELEFAX 608-275-3338

*rescinded & revised
for navigable*

March 29, 1994

IN REPLY REFER TO: 3-SD-1994-2024; 14.00

RECEIVED

MAR 29 1994

US Fish & Wildlife Service, Horicon NWR
W4279 Headquarters Road
Mayville WI 53050

Dept. of Natural Resources
R. D. ...

SUBJECT: Approval of Plans for Dam Construction, Horicon National
Wildlife Refuge, Dodge County

The Department has reviewed your plans to construct a dam within the Horicon National Wildlife Refuge and is issuing this final decision.

FINDINGS OF FACT

The Department of Natural Resources has examined the plans prepared by David Thompson, P.E. and dated March 3, 1994 for the large dam to be constructed on in Sections 20 and 29, Township 13 North, Range 16, Dodge County.

The plans are adequate for a dam with the following characteristics:

- Maximum Pool Elevation - 862 feet
- Normal Pool Elevation - 859 feet
- Total Spillway Capacity - 81 cfs
- Total Flood Discharge Frequency - >1000 year
- 6828 feet long earthen embankment with a 48 inch riser with 36 inch inlet and outlet pipes and permanent pump system

NOTE: Elevations are referenced to the benchmark described on page 2 of 10 with elevation of 898.142

The Department has determined that the dam, owned by the United States government, is a large dam on a non-navigable stream and that the requirements within NR 333 are not applicable.

The review has been conducted in accordance with Chapter 31, Wisconsin Statutes. The Department has determined that the project complies with Section 1.11, Wisconsin Statutes, and Chapters NR 103, and NR 150 Wisconsin Administrative Code.



CONCLUSIONS OF LAW

The Department has authority under Sections 31.12 and 31.33, Wisconsin Statutes and administrative rules stated above, to issue plan approval for this project.

APPROVAL

The plans are approved in accordance with Section 31.12, Wisconsin Statutes, and the dam shall be constructed in accordance with the approved plans and with the conditions listed.

1. The approved plans are not transferable. One copy of the approved plans are enclosed. Please submit two additional copy of the plans for our file.
2. The core trench will be filled with compacted clay soil and the core will extend to elevation 859.0 msl. The remaining embankment material will be mineral soils compacted to at least 95% of maximum density for its full depth.
3. You shall notify Water Management Specialist Andy Nelson not less than 5 days before starting construction and again not more than 5 days after the project is complete. The pre-addressed cards provided can be used to notify Andy Nelson or he can be called at 414-387-7878.
4. You are required to file a statement with us within 10 days after completion of construction, stating that the construction was completed in accordance with the plans and specifications that we approved.
5. This approval expires on July 1, 1995 if the project is not completed before then. No construction may begin or continue after this date unless a new approval or an extension is granted in writing by the Department.
6. This approval does not authorize any work other than what you specifically describe in the application and plans, and as limited by conditions of this permit. No changes in the project or plans may be made without prior written approval of the Department.
7. You are responsible for obtaining any permit or approval required by municipal, town or county zoning ordinances or by the U.S. Army Corps of Engineers before starting the project.
8. You shall allow free and unlimited access to the project site at any time to any Department employee who is investigating the project's construction, operation or maintenance.
9. The Department may change or revoke this approval if the project obstructs navigation or becomes detrimental to the public interest.

10. A copy of this approval shall be kept at the project site at all times until the project has been completed.
11. Acceptance of this approval and beginning the project means that you have read, understand and agree to follow all conditions of this approval.
12. Removal of vegetative cover and the amount of exposed earth shall be kept to the minimum possible consistent with good construction practice. Exposed areas shall be sodded or seeded and mulched as soon as possible to develop vegetative cover.
13. You are not allowed to do construction during periods of high stream flow or heavy precipitation.
14. You must not remove vegetative cover until immediately before starting excavation.

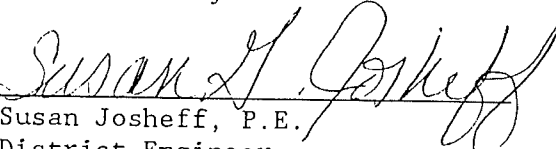
NOTICE OF APPEAL RIGHTS

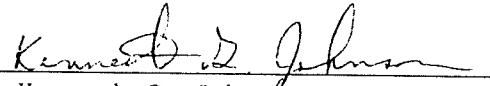
If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to Section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This notice is provided pursuant to Section 227.48(2), Wisconsin Statutes.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

by 
Susan Josheff, P.E.
District Engineer
Water Regulation & Zoning Program

by 
Kenneth G. Johnson, P.E.
Assistant Section Chief
Bureau of Water Regulation and
Zoning

Enc. - approved plans, 2 postcards

Date Mailed March 29, 1994

cc: Andy Nelson - Horicon Area
Fred Lueck - Dodge County Zoning Administrator

Dam Sequence No 00962



Formal Action



Year:

2017



DATE: March 8, 2017

FILE REF: Field File # 14.18

TO: Paul Samerdyke, Wildlife Biologist (via email)

FROM: Rob Davis, P.E.

SUBJECT: Emergency Action Plan Approval for Horicon Dam, Dodge County

Thank you for working with Mia Van Horn to complete and submit the Emergency Action Plan for the Horicon Dam. I have reviewed the plan and am hereby approving it with this memo. Thank you for the effort to get it completed.

Please remember to review the plan at least annually to be sure that the information in the plan is kept up to date.

If you have any questions, please feel free to contact me.

Again, thank you for completing these plans.

cc: Bill Sturtevant, P.E. - WT/3
Mia Van Horn - DNR (via email)

DATE: July 12, 2017

FILE REF: Field File # 14.18

TO: Paul Samerdyke, Wildlife Biologist (via email)

FROM: Rob Davis, P.E.

SUBJECT: Inspection, Operation, and Maintenance Plan (IOM) Approval for Horicon Dam, Dodge County, FF # 14.18

Thank you for working with Mia Van Horn to complete and submit the Inspection, Operation, and Maintenance Plan (IOM) for the Horicon Dam. I have reviewed the plan and am hereby approving it with this memo. Thank you for the effort to get it completed.

Please remember to review the plan at least annually to be sure that the information in the plan is kept up to date.

If you have any questions, please feel free to contact me.

Again, thank you for completing the IOM for the Horicon Dam.

cc: Bill Sturtevant, P.E. - WT/3
Mia Van Horn - DNR (via email)