

August 26, 2017

To: Terry Wright, President Pioneer Lake Association

From: Bob Mason

Re: Status Report

Twin Lakes Dam

1. Attempted to get WVIC to lower dam setting through office of Congressman Sean Duffy and local media with mixed success.
2. On July 17, 2017, on behalf of property owners below the Twin Lakes Dam, Robert Mason sent a letter to the Federal Energy Commission (FERC) requesting that FERC authorize/order the Wisconsin Valley Improvement Company to set the Twin Lakes dam setting at 4 or less for a period of 9-12 to allow waters below the dam to return to normal levels. He also spoke directly with FERC. The letter also requested that FERC assist in taking steps to ensure that this type of flood event does not happen again, to include an evaluation of 1) Twin Lakes Dam integrity; 2) calculating impacts both above and below the Twin Lakes dam to determine the dam discharge setting; and 3) timely notice to parties below the dam when water is to be released at a rate that could cause property damage.
3. On July 18, 2017, the Twin Lakes dam was set to a discharge rate of 1 inch. Also, the FERC requested that WVIC evaluate the impacts of the June release from Twin Lakes and, in accordance with FERC's request, the WVIC is considering changes to its operations and/or processes that it might propose to stakeholders and the FERC.
4. In a July 18, 2017 letter to the FERC Secretary Kimberly Bose, the WVIC said "WVIC is willing to discuss with Mr. Mason and other stakeholders reasonable alternatives that could mitigate damage to downstream properties as the result of releases from any of WVIC's projects. The WVIC invited us to offer suggestions and recommendations as part of their review. The WVIC review is underway and their response is due back to the FERC by August 4, 2017. I was contacted by Peter Hansen, Vice President of Operations, WVIC and will work with him and FERC to make sure that our recommendations are provided on the record in a timely and constructive basis.
5. On August 4, 2017, WVIC CEO Thomas Kipp submitted a letter to FERC Secretary Kimberly Bose. The letter proposed two actions as a result of the June 2017 deviation at the Twin Lakes Development as follows:
 - a. Conduct further hydrologic evaluations and downstream assessments at each of the 16 natural lake dams operated by WVIC and, if warranted, propose modifications to Article 408 (Public Relations Plan) by October 1, 2019. Conduct assessment of Twin Lakes Development by April 27, 2018
 - b. Complete a hazard rating review for the Twin Lakes Development and submit results to FERC by December 31, 2017.
6. On August 14, 2017, FERC letter to WVIC Thomas Kipp stated:

- a. Did not consider deviation that occurred June 12-17, 2017, a violation of Article 403 of your license.
 - b. Believe you could have been more proactive in your communications before, during and after the deviation with interested parties.
 - c. Agree with the two actions proposed by WVIC and believe the efforts will be proactive for any future similar occurrences.
 - i. Must file with FERC the results of the further hydrologic evaluations and/or downstream assessments that you perform and any proposed amendment to the Communications Plan pursuant to Article 408 by October 1, 2019.
 - ii. Must file with FERC the results of the complete hazard rating review for the Twin Lakes Development by December 31, 2017.
7. Recommend the following next steps:
- a. Coordinate meeting with all 16 natural lake dam lake associations below the dams and local government officials. Additional potential invitees include Congressman Sean Duffy representative; WVIC representative, WDNR representative.
 - b. Obtained volunteer help from Pioneer Lake Association members (e.g., legal, technical).
 - c. Continue discussions with WVIC.
 - d. Prepare Pioneer Lake Association comments to WVIC and FERC.
8. Send thank you letter to Congressman Sean Duffy and request continued assistance.
9. Continue local media updates.

Property Damage Cost Recovery

1. Law firm Omelia, Schiek and McEldowney completed research as to the Federal and State statutes and case law that govern Wisconsin Valley Improvement Company (WVIC). The law firm concluded that:
 - a. "Wisconsin Statute 182.70(4) clearly allows any property owner whose property is damaged by any dam or construction operated by WVIC to sue the WVIC for damages or an injunction. Such suit would occur in circuit court in the county where the damaged lands are located."
 - b. Based on a Westlaw search for cases in which WVIC was a party, "there are no Court of Appeals or Supreme Court cases in which WVIC was sued because of causing damage to a landowner's property. There are also no annotations in the statutes regarding sec. 182.70(4). There have been suits between Wisconsin Public Service and WVIC involving disputes over whether dams can be opened, water levels altered, etc. but nothing involving private parties vs the WVIC (at either the Court of Appeals or Supreme Court levels)."
 - c. "Given the lack of published case law and statutory annotations and because of the clear language of sec. 182.70(4)... Pioneer Lake property owners have available traditional causes of action for property damage caused by WVIC, assuming they can establish causation and damages. They could also seek an injunction to prevent WVIC from engaging in conduct that causes significant changes in water elevation to Pioneer Lake."

- d. "The statute of limitations for property damage claims is six years. See Wis. Statute S893.52(1)."
2. Pioneer Lake Association has received approximately 22 property damage claims with estimated total damages exceeding \$200,000.
3. Proposed next steps:
 - a. Obtain cost estimates for legal representation from multiple law firms
 - b. Prepare a letter (with help from an attorney) to WVIC requesting a meeting to discuss the payment/reimbursement of property damage costs without the need and expense of litigation.
 - c. Obtain comprehensive property damage cost estimates.