

July 7, 2008

Ms. Michelle Schneider, Water Management Engineer  
Wisconsin Department of Natural Resources  
Waukesha Service Center  
141 NW Barstow Street, Room 180  
Waukesha, WI 53188

Dear Ms. Schneider:

Order to Draw Down the Nemahbin Roller Mill Dam, Field File #67.27 Dated June 18, 2008

The Upper Nemahbin Lake Management District (UNLMD) are in receipt of a copy of the abovementioned Order.

We note the responsibility of the WDNR, pursuant to Section 31.02(2) of the *Wisconsin Statutes* to “conserve and protect all public rights in navigable waters.” To this end, the UNLMD note that the proposed drawdown order fails to fully address the rights of the public along the reach of the Bark River downstream of Roller Mill Dam. While the order notes the deteriorated state of the mill race, it is silent on the integrity of the spillway which is the primary means of passing flows through the impoundment.

The UNLMD note that, with the recession of water levels in the Applebecker Millpond, formed by the Roller Mill Dam, and the reestablishment of hydrologic control within the Middle Bark River at the Nagawicka Lake Dam, the degree of threat created by a possible failure of the mill race is greatly reduced. Consequently, the risk to life also must be diminished, and the need for action under Section 31.19(5) of the *Wisconsin Statutes* upon which the complete drawdown of the impoundment is predicated has become less urgent. In this regard, the risk that remains is a risk to property and to the public rights in the waterway. This risk would be significantly heightened by the drawdown as proposed.

Documentation cited by the WDNR in the Environmental Analysis and Decision on the Need for an Environmental Impact Statement (EIS) indicates that there is flocculent sediment present in the dam basin that is likely to be transported downstream in the event of a dam failure or abandonment. Transport of this sediment downstream into the Bark River would reduce and restrict navigability of this section of stream and could significantly impair public rights to navigate this portion of the Bark River, which historically has provided access to Upper Nemahbin Lake for the riparian property owners. In addition, this sediment also poses a risk to both instream fishes and mussels, including a State threatened mussel (*Venustachoncha ellipsiformis*). Loss or reduction in the extent of this population of fishes and mussels

would result in a diminution of public interests in the Bark River system upstream of Upper Nemahbin Lake and below Nagawicka Lake. The UNLMD submit that these interests could be preserved by an appropriately staged process of drawdown and stream restoration as indicated in the WDNR Environmental Analysis and Decision on the Need for an Environmental Impact Statement (EIS).

We further note the authority of the Wisconsin Department of Natural Resources (WDNR) pursuant to Section 31.19(5) of the *Wisconsin Statutes* to order a reduction in water level in an impoundment pursuant to a WDNR investigation that determines that a “dam or reservoir is not sufficiently strong or unsafe and that the dam or reservoir is dangerous to life or property.” However, we believe that the findings of fact associated with the abovementioned order fail to acknowledge the issues identified in the WDNR Environmental Analysis and Decision on the Need for an Environmental Impact Statement (EIS) necessary to ensure that the ordered reduction in water level is accomplished in such a manner as not to pose additional risk to Upper Nemahbin Lake, riparian property owners, and properties located along the Bark River between the Roller Mill Dam and Upper Nemahbin Lake.

Therefore, the UNLMD would: (1) reiterate our request for a public hearing pursuant to Section 31.06 of the *Wisconsin Statutes* to allow for consideration of the important unresolved issues noted in Section 1 of the Environmental Analysis and Decision on the Need for an Environmental Impact Statement (EIS); (2) note that the hearing process pursuant to Section 31.253 of the *Wisconsin Statutes* does not apply as specifically noted under Paragraph 31.251(4)(b); and, (3) submit that the hearing process set forth in Section 31.185 of the *Wisconsin Statutes* proceed as per our previous request. Additionally, the UNLMD would request that the WDNR modify paragraphs 2 and 3 of the Order for Dam Drawdown such that water levels be maintained in the Millpond at such an elevation as to prevent the downstream transport of flocculent sediments from within the basin created by the Roller Mill Dam and that such actions be taken to isolate the mill race which is the specific portion of the dam structure that is at risk of failure. Such actions could include the placement of a temporary coffer dam or other structure, subject to engineering design.

The UNLMD notes that: the UNLMD is an affected party being contiguous to and downstream of the Roller Mill Dam, and that this request is made within the 30 days provided under Section 227.42 of the *Wisconsin Statutes*.

Sincerely,

Bill Barthel, Water Quality Chairman  
Upper Nemahbin Lake Management District

cc: Mr. James D'Antuono, Waukesha Service Center, WDNR  
Mr. Brent Binder, Water Management Engineer, Plymouth Service Center, WDNR