

Dam Sequence No 01513



Formal Action



Year:

1945



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of Harry B. Nelson and)
Twelve Other Persons Requesting a)
Finding of What Constitutes the) 2-WP-643
Normal Level of Muskellunge Lake,)
Town of Cloverland, Vilas County)

FINDINGS AND RECOMMENDATION

The application of Harry B. Nelson and others requests that the Public Service Commission of Wisconsin determine and find the normal water level of Muskellunge Lake, town of Cloverland, Vilas County.

Hearing was held on September 18, 1945 in the court house in Eagle River, Vilas County, before Commissioner W. F. Whitney, presiding, and Examiner Adolph Kanneberg.

Appearances:

Conservation Commission of Wisconsin by

Col. A. H. Smith
Arthur Oehmcke, Northeast Fisheries Area
Supervisor
Woodruff

G. A. Deku
2909 West Clark Street
Milwaukee

Willard B. Miller
Eagle River

John Domanek
Route 1
Eagle River

Alfred Jahn
Route 1
Eagle River

Charles Leighley
Route 1
Eagle River

O. J. Egelseer
5319 North Thirty-fourth Street
Milwaukee

Frank Wierichs
Eagle River

Arthur Hertel
5813 North Maplewood
Chicago 45, Illinois

Of the Commission Staff:

Walter Muegge, engineering department

Opinion

The evidence offered at the hearing was somewhat sketchy. Only two of the witnesses were familiar with Muskellunge Lake for a period of about a decade and a half. One witness had known the lake for 26 years and the other for 31 years. The hearing was not very well attended. This was probably due to the fact that the application did not include a request for permission to construct and operate a dam for the purpose of maintaining the level of Muskellunge Lake at the elevation found to be normal by the Commission.

The file of the Commission contains considerable correspondence between the Public Service Commission and persons interested in the lake, in which the Commission urged that the interested parties organize for the purpose of providing funds to finance the cost of the construction of a dam or prevail upon the town or county to construct one. Since Muskellunge Lake and Muskellunge Creek are both navigable waters, no dam may lawfully be constructed in the outlet stream for the purpose of maintaining the water level of the lake at the elevation found to be normal by the Commission until a permit therefor has been obtained from the Public Service Commission of Wisconsin under chapter 31, Statutes. This will require the filing of an application under section 31.05, Statutes, and a public hearing thereon. The findings of the Commission herein of what the normal level of Muskellunge Lake is will be considered tentative. If upon a hearing on an application for a permit to construct, maintain, and operate a dam in the outlet stream of Muskellunge Lake for the purpose of maintaining the lake at normal elevation, a showing is made that important facts not now before the Commission have been omitted

which might have resulted in a finding that the normal level of the lake is either higher or lower than is hereinafter found, the Commission reserves the privilege of receiving such additional evidence, reconsidering its finding herein, and either affirming or modifying the same.

Muskellunge Lake is located in section 9, 16, and 17, township 40 north, range 9 east, in the town of Cloverland, Vilas County. The lake contains a water surface of about 272 acres. The lake is shallow, having a maximum depth of about 16 feet. It appears to have no inlet. It is spring-fed, the springs arising in bogs at the north and east end of the lake. The outlet stream is known as Muskellunge Creek. The creek leaves the lake from its westerly bay and follows a meandering course through a low marshy land in a southwesterly direction for about 3 miles and discharges into Little St. Germain Lake. The water level of Little St. Germain Lake is controlled by a dam in its outlet stream, directly north of highway 70. The dam is owned by the Wisconsin Valley Improvement Company and operated during the winter months for the release of water for power production. Muskellunge Creek is meandering, narrow, and of low gradient. It was subject to the accumulation of logs, brush, and debris. It seems to have been the favorite habitat of the beaver for many years. The beavers would build their dams in the stream and maintain the same until the timber in the vicinity used for food became exhausted and then move to a different location. So far as the record shows, beavers had dams in the stream as far back as 31 years ago. From time to time, until about 1935, some of the dams were abandoned by the beavers and rebuilt at different locations, whereas some of the dams were destroyed by man. From 1932 to 1935 the beavers "really got out of control" and their dams were blasted from time to time because they caused high water which inundated the town road. Thus the activities of the beavers resulted in undesirable fluctuations of the water level of the lake. Their dams were finally removed about 1935 or 1937. It also appears that a crew from the C.O.C. camps cleared Muskellunge Creek of brush and other obstructions, including beaver dams.

Witness G. P. Frederickson, who was familiar with Muskellunge Lake for 31 years and was chairman of the town of Cloverland from 1930 to 1938 or 1939, testified, among other things, that there was a barrier in the mouth of Muskellunge Creek which was washed out by the extreme high water after the beaver dams had been removed, that the water receded about 12 inches, judging from a certain rock in Muskellunge Lake just off the Engelseer property.

Arthur J. Hertel testified that after the beaver dams had been finally removed, about 1935, the water receded 15 or 16 inches.

C. H. Leighley testified that water in the lake receded about 18 inches. John Domanek testified that in 1932 he constructed his buildings and that the footings were laid in concrete, that he obtained the water for mixing concrete by placing his foot upon a certain log embedded in the sand on the beach, that the water in the lake was about level with the top of the log, and that condition continued about 4 or 5 years thereafter.

Elevations taken on September 18, 1945 by W. A. Muegge of the engineering staff of the Commission showed the following elevations:

Lake level	90.84
Bench mark - wash by water	91.16
Top of log as per testimony by Domanek of water level 1932	92.16

Thus, the level of the lake on the date of the hearing was 1.32 feet below the top of the log testified to by Mr. Domanek. The elevations herein given are referred to the datum of bench mark 936A, described as follows:

Bench mark 936A is the top of bronze tablet marked Wisconsin Conservation Department, Biology Division, set in concrete post located about 60 feet east of northeast corner of John Domanek cottage at southwest end of lake and about 15 feet south of the edge of lake. It is within a few feet of the line between sections 16 and 17, in the township and range hereinbefore described, assumed elevation 100.0 feet.

Arthur Oehmcke testified that he observed a wave-cut beach that had an elevation 12 to 18 inches above the water level of Muskellunge Lake in October 1944. The water level of the lake in October 1944 was at

approximately the same elevation of the water level in the lake at the time of the hearing; namely, 90.84 feet. In explanation Mr. Cehmcke testified:

"The reason I assumed it was an old wave-cut beach or bank was because there were no large trees growing in that area and there was grass and sedges beginning to come in, which is the same type of vegetation that comes in on recently dried areas and the small trees coming up there were only five or six years old, some birch and a few small popple."

Findings

THE COMMISSION FINDS:

1. That Muskellunge Lake in the town of Cloverland, Vilas County, is a meandered navigable lake.
2. That the normal level of Muskellunge Lake is at elevation 91.84 feet, with reference to the bench mark described in the foregoing opinion.

Recommendation

IT IS THEREFORE HEREBY RECOMMENDED:

That the persons interested in Muskellunge Lake organize for the purpose of either providing funds to construct, maintain, and operate a dam in the outlet stream of Muskellunge Lake for the purpose of maintaining Muskellunge Lake at its normal elevation, or prevail upon the town of Cloverland or the county of Vilas to do so.

The Commission reserves the right to modify its finding of what the normal elevation of the lake is if at any hearing on an application to construct, maintain, and operate a dam in the outlet stream for the purpose of maintaining the lake at normal level it is made to appear that the Commission in this proceeding was not advised of important facts which might have resulted in a different finding of what the normal level of Muskellunge Lake is.

Dated at Madison, Wisconsin this 24th day of October 1945.

PUBLIC SERVICE COMMISSION OF WISCONSIN

W. H. Whitney
Commissioner

Lyman F. Gable
Commissioner

Samuel Bryan
Commissioner

Dam Sequence No

1513



Formal Action



Year:

1948



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Muskellunge Lake
Property Owners Association for
a Permit to Construct, Operate,
and Maintain a Dam in Muskellunge
Creek, a Navigable Stream, Under
the Provisions of Section 31.05,
Statutes

2-WP-741

PERMIT AND ORDER

The Muskellunge Lake Property Owners Association applied to the Public Service Commission on June 12, 1948 for a permit to construct, operate, and maintain a dam in Muskellunge Creek, a navigable stream, at the outlet of Muskellunge Lake. The dam site is on government lot 1, section 17, township 40 north, range 9 east, Vilas County.

The purpose of the dam is to maintain the level of Muskellunge Lake for conservation.

Hearing: July 27, 1948 at Eagle River before Examiner W. H. Cartwright.

Appearances:

Muskellunge Lake Property Owners Association by

Clarence Domanek
Secretary-Treasurer
Eagle River

Conservation Commission by

Arthur Oehmcke
Woodruff

Opinion

The Public Service Commission has heretofore found the normal elevation of Muskellunge Lake to be at 91.84 feet in docket 2-WP-643 dated October 24, 1945. The elevation is referred to datum of bench mark 936-A which is a bronze tablet

marked Wisconsin Conservation Department, Biology Division, set in a concrete post located about 60 feet east of the northeast corner of the John Domanek cottage at the southwest end of the lake and about 15 feet south of the edge of the lake. Elevation of bench mark is 100.00 feet. In its findings in that docket, the Public Service Commission recommended that an association be formed to construct a dam to maintain the normal level of the lake.

The applicant in the present action petitioned for a permit to construct and operate a dam to maintain a level 1 foot higher than the normal level heretofore found. However, objection to the increased level was offered by Willard B. Miller, a riparian owner, in that his property would be damaged at this higher level. The association therefore amended its petition to request a permit for a dam to hold the normal water level of elevation 91.84 feet.

The proposed dam will be on the property of Gene A. DeKu, a member of the association. The dam will be about 30 feet long, being a spillway section.

The nearest city is Eagle River. There is no dam above this site. The nearest dam below is on Little St. Germain Lake.

The proposed dam will not be capable of producing 50 theoretical horse power for 50 percent of the time throughout the year.

Findings

THE COMMISSION FINDS:

1. That the application and all the proceedings had thereon fully comply with all of the requirements of the Wisconsin Statutes.
2. That the construction, operation, and maintenance

of this dam will not materially obstruct existing navigation or violate other public rights and will not endanger life, health or property.

Permit

AND HEREBY THERE DOES ISSUE AND IS GRANTED to the applicant, the Muskellunge Lake Property Owners Association, the permit provided for by subsection (3) of section 31.06, Statutes, for the construction, operation, and maintenance of a dam in Muskellunge Creek, a navigable stream, on government lot 1, section 17, township 40 north, range 9 east, Vilas County, hereinbefore described.

Order

IT IS ORDERED:

That no construction of the dam shall be started until the plans for the structure have been approved by the Public Service Commission of Wisconsin.

Dated at Madison, Wisconsin this 10th day of September 1948.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Samuel Bryan
Commissioner

W. F. Whitney
Commissioner

Commissioner