

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Gloria L. McCutcheon, Regional Director

Waukesha Service Center
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Waukesha, Wisconsin 53188
Telephone 262-574-2100
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March 8, 2010

IP-SE-2009-68-00496

Thomas Day- Chairman
Eagle Springs Lake Management District
PO Box 196
Eagle, WI 53119

Dear Mr. Day:

The Department located an error in the copy of your permit and order for the application to modify the water levels on Eagle Spring Lake in Waukesha County. Findings of Fact number 8 states that Eagle Spring Lake is an Outstanding Resource Water when in fact only downstream of Eagle Spring Lake to Lower Phantom Lake is an Exceptional Resource Water as identified in NR 102 of the Wisconsin Administrative Code.

Attached is corrected copy of your permit and order which lists the conditions which must be followed. Please read the permit and order carefully so that you are fully aware of what is expected.

If you have any questions about your permit, please call me at (262) 574-2100.

Sincerely,

for
Jennifer Jerich
Water Management Specialist

cc: Dale Pfeiffle, USACOE
Richard Mace- Waukesha County Zoning Administrator
Robert Kwiatkowski- Town of Eagle Chairman
SEWRPC
Paul Alexy- Arenz, Molter, Macy & Riffle, s.c.
Jim McNelly- WDNR
Bill Sturtevant- WDNR
Michelle Schneider- WDNR

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

Application of the Eagle Spring Lake
Management District to modify the order
setting water levels or flows on Eagle
Spring Lake, Town of Eagle, Waukesha
County.

IP-SE-2009-00496

FINDINGS OF FACT, CONCLUSIONS OF LAW, PERMIT AND ORDER

The Eagle Spring Lake Management District, PO Box 196, Eagle, WI 53119, filed an application with the Department on 01/30/09, under Section 31.02(1), Wisconsin Statutes, to modify the order setting water levels or flows on Eagle Spring Lake held by the Wambold Dam. The Dam is located in Section 36, Township 5 North, Range 17 East, Town of Eagle, Waukesha County. Permit granted and Order issued.

FINDINGS OF FACT

1. The Eagle Spring Lake Management District, PO Box 196, Eagle, WI 53119, filed an application with this Department on 1/30/09, under section 31.02(1), Wisconsin Statutes, to modify the order setting water levels on Eagle Spring Lake, located in the in Section 36, Township 5 North, Range 17 East, Town of Eagle, Waukesha County.
2. The applicant proposed to increase the operating levels of the Wambold Dam to be maintained between 820.52 feet and 820.82 feet above the National Geodetic Vertical Datum of 1929 (NGVD-29). These elevations correspond to 9.40 and 9.70 feet on the currently installed staff gage. Elevation 9.0' on the staff gage is equal to elevation 820.123 NGVD-29. This elevation is referenced to a bronze tablet on the northwest wingwall of the Wambold Dam (elevation 821.158).
3. Eagle Spring Lake is navigable in fact at the project site and drains into the Mukwonago River which is a navigable waterbody.
4. Eagle Spring Lake has been generally held above the currently ordered water levels except during low flow. The Lake has generally been held at the requested water level elevations.
5. No change in the operation of the dam is necessary to hold the lake at the requested levels as required under this order.
6. The levels prescribed in the order will protect the public interests for recreational uses.
7. Eagle Spring Lake is a warm water fishery. The fishery will not experience water levels that are higher than what has been experienced over the past years. Establishing permanent water levels at this elevation is not expected to result in a change to the current fishery.
8. Eagle Spring Lake is not listed as a trout water in Department of Natural Resources Publication 6-3600(80). The Mukwonago River immediately downstream of Eagle Spring

Lake is listed as a Class 3 trout stream and an Exceptional Resource Water in Chapter NR102, Wisconsin Administrative Code.

9. The proposed water levels will result in the shoreland-wetlands along Eagle Spring Lake experiencing a permanent authorized water level that is approximately 6 inches higher than with the previously authorized water levels.
10. The project will conform to the standards in Chapters 31.02, Wisconsin Statutes.
11. The proposed project will not result in a change of operational water levels from those currently being maintained and therefore does not adversely affect water quality and will not increase water pollution in Eagle Spring Lake or cause environmental pollution as defined in Subsection 283.01, Wisconsin Statutes. The unauthorized water levels that have been maintained for many years may have resulted in impacts to the water quality of Eagle Spring Lake.
12. The Department has evaluated the proposed project in light of the Wisconsin Environmental Policy Act (Section 1.11, Wisconsin Statutes) and has determined that the granting or denial of the permit would not be a major state action significantly affecting the quality of the human environment. The Department completed an Environmental Assessment and held a public meeting for the initial proposal on September 10, 2009.

CONDITION

1. The Lake District agrees to assume the responsibility to assure that it has the right to flow lands of all properties affected by holding the Wambold Dam at the elevation approved herein. Agreement to this condition includes the agreement by the Lake District to indemnify, release and hold harmless the Department from any past, present or future claim by an affected property owner claiming that the Lake District does not have the right to flow their property or that their property rights are negatively impacted by the Wambold Dam. In the event of any such claim, the Lake District explicitly agrees to defend the Department in any action challenging the Lake District's right to flow lands and/or the Department's issuance of this permit under chapter 31 of the Wisconsin Statutes.

CONCLUSIONS OF LAW

1. The Department has authority under Section 31.02(1), Wisconsin Statutes, and the foregoing Findings of Fact, to issue an order granting the permit requested.
2. The Department has complied with Section 1.11, Wisconsin Statutes.


ORDER

IT IS THEREFORE ORDERED THAT the application of the Eagle Spring Lake Management District under Section 31.02(1), Wisconsin Statutes, to modify an order setting water levels or flows on Eagle Spring Lake, located in the in the NW ¼ of Section 36, Township 5 North, Range 17 East, Town of Eagle, Waukesha County, be, and the same is hereby approved subject to the following conditions:

1. The operating levels for Eagle Spring Lake are to be maintained between 820.52 feet and 820.82 feet above the national Geodetic Vertical Datum of 1929 (NGVD-29). This elevation is referenced to a bronze tablet on the northwest wingwall of the Wambold Dam (elevation 821.158). The normal water level range should be maintained to the maximum extent practicable by the reasonable and proper operation of the Wambold Dam.
2. As provided in condition 1 above, the Eagle Springs Lake District agrees to indemnify, release and hold harmless the Department for any past, present or future claim contesting the Lake District's right to flow the affected properties pursuant to this order. This indemnification expressly provides that the Lake District will defend the Department in any such claim or in any claim involving the Department's issuance of this order.

Dated at Waukesha Service Center, Wisconsin on March 8, 2010.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 

Jennifer Jerich
Water Management Specialist