

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: October 14, 2014
TO: Gerry P. Broderick, Chair, Parks, Energy and Environment Committee
FROM: Paul D. Kuglitsch, Assistant Corporation Counsel *PK*
SUBJECT: File No. 14-739, specifically, information concerning the Estabrook Dam

The Committee on Parks, Energy and Environment at its meeting on September 9, 2014, heard testimony concerning the Estabrook Dam *draft* Environmental Assessment and the Department of Parks, Recreation and Culture's likely recommendation to remove the dam. One of the speakers, Attorney Thomas P. Gehl, on behalf of the Milwaukee River Preservation Association, an association comprised primarily of riparian owners in favor of dam reconstruction, raised two issues: (1) that Estabrook Island is owned by Milwaukee County and not the Federal Bureau of Land Management ("BLM"); and (2) that Milwaukee County could be liable to the riparian owners for up to \$21,000,000 in damages for diminution in property value should the dam be removed. I will address both issues in order.

1. Ownership of Estabrook Island. The evidence currently available to us seems to suggest the island was part of the existing shoreline owned by Milwaukee County when the dam was constructed in 1937. Perhaps the most significant proof of this is a County record from 1937 clearly identifying the island as part of the then existing shoreline. *See* the Milwaukee County Regional Planning Department's "*Estabrook Park Dam Plot Plan; Ice Guard and Spillway Details*" attached as **Exhibit A**. This County record and a 1937 caption for a conceptual drawing of the Estabrook Dam published in the Milwaukee Journal identifying the island as part of the existing shoreline (*See Exhibit B*) certainly give the impression that the island was created from County-owned property. Nonetheless, the BLM continues to assert jurisdiction over the island. In support of its position, the BLM references an 1835 Surveyor General's Office Plat map showing two islands situated in about the same position as the islands are today. *See Exhibit C*. Then, in 1995, after the island was created and the dam built, the BLM resurveyed that portion of the Milwaukee River, again showing two islands. *See Exhibit D*. The BLM, however, appears to ignore any distinction between the two islands depicted in the 1835 and 1995 Plat maps.
2. Riparian Owners' Property Valuations. If the dam was to be removed, the riparian owners can sue the County for any diminution in property value, which they would have the burden of proving. For a number of reasons, it is not at all certain that there would be a significant difference in property values between land on the impounded river vs. land on the free-flowing river.

Cc: All Supervisors
Kelly Bablich
Raisa Koltun
John Dargle