

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Wednesday, June 30, 1999 at Gateway Technical College - Kenosha Campus, 3520 - 30th Avenue, Kenosha, Wisconsin. The meeting was called to order at 8:30 a.m.

PRESENT: Trygve A. Solberg, Chair
Neal W. Schneider, Vice-Chair
James E. Tiefenthaler, Jr., Secretary
Herbert F. Behnke
Francis W. Murphy
Howard D. Poulson

ABSENT: Stephen D. Willett

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Chairman Solberg noted that Kenosha Mayor, John Antaramian was present and thanked him for accompanying the Board on the tour Tuesday afternoon. (The Board and staff toured several Kenosha brownfields redevelopment projects including the Harborpark development along the lakefront, the former Frost Company property and the Daimler Chrysler plant. Mayor Antaramian "officially" welcomed the Board to Kenosha.

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ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of May 26, 1999.
Committee of the Whole of May 26, 1999.

Mr. Poulson MOVED, seconded by Mr. Behnke, approval of the minutes as presented. The motion was carried unanimously by those members present.

1.B Agenda for June 30, 1999.

Secretary Meyer noted the addition of Item 3.C, a \$10,000 donation from Sturgeon For Tomorrow. With that change, Mr. Poulson MOVED, seconded by Mr. Tiefenthaler, approval of the agenda for June 30, 1999. The motion was carried unanimously by those members present.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

Mr. Tiefenthaler MOVED, seconded by Mr. Behnke, approval of the real estate transactions as presented. The motion was carried unanimously by those members present.

3. Committee of the Whole.

3.A Presentation of the Rebecca Wallace Award by Secretary George Meyer.

Secretary Meyer, joined by the Wallace children, Jeremy, Mitch and Spencer, announced that Janet Beach Hanson was this year's winner of the Rebecca Wallace Award. Ms. Hanson is currently a nonprofit grants manager for the Bureau of Community Financial Assistance in the DNR's Division of Customer Assistance and External Relations. Ms. Hanson was recognized for her work with many nonprofit organizations in helping them obtain stewardship funds, her guidance in the development of financial partnerships for conservation, including Friends of Wisconsin State Parks, and authoring the stewardship report for the Governor's task force. Secretary Meyer noted that Ms. Hanson's nomination was supported by the Ice Age Trail Foundation, the Wisconsin Farmland Conservancy, UW Extension Stewardship Advisory Committee, Wisconsin Chapter of the Nature Conservancy and the Madison Audubon Society.

Ms. Hanson said she felt very honored to receive the Wallace award. "I like the concept of this award because it recognizes not only the work of a DNR employee, but also the importance of the whole idea of public-private partnerships. It is absolutely critical that many, many people, both inside and outside of government, have a personal connection with our Wisconsin landscape if we're going to have an ecologically, viable future."

3.B Citizen participation.

Joan Rohan and Donna Peterson, both of Racine and representing the Chiwaukee Prairie Preservation Fund, told of their efforts, as well as many DNR staff, in working toward the preservation of the Chiwaukee Prairie. The organization has raised and donated \$10,000 to the Department for land purchases for Chiwaukee, and has pledged another \$10,000 to be used for future acquisition. They noted that since 1986, the State has purchased approximately 380 of the 400 acres targeted for Chiwaukee Prairie North. Gaining title to the remaining 20 acres (60 lots) will be difficult to acquire since the price of most of the lots exceed the \$6,000 maximum limit per lot imposed by the DNR. She asked if the Board would support a change from the current price limit to the local assessed valuation. Ms. Peterson distributed a map showing the lots needed to complete the Chiwaukee Prairie North project.

Chairman Solberg asked for the Department's position. Secretary Meyer stated that several landowners responded to recent Department inquiries with interest in selling their properties to the state and that 17 appraisals were currently being completed. Secretary Meyer said the Department will continue to work with the Governor's Office to see if the maximum limit could be relaxed to allow the purchase of some of these properties.

Sue Michetti, Racine, member of the John Muir Chapter of the Sierra Club Statewide Executive Committee, asked that the petition for rule-making on the mining moratorium law be taken up by the Natural Resources Board at the next meeting. She asked that the Board support authorizing public hearings to be held in Madison, Milwaukee and several other locations for the purpose of promulgating rules.

3.C Adoption of the Department's Strategic Plan.

Darrell Bazzell, Deputy Secretary, presented the final version of the Department's updated Strategic Plan. He recalled that in January of 1999, the Board reviewed and approved a draft updated Strategic Plan which was subsequently sent out for public review. In February, about 2,500 copies of the plan, along with an input survey, were distributed to conservation and environmental organizations; industry and business associations; federal, state and local government officials; regional planning commissions; Indian Tribes; basin partners; university staff; agricultural interests; employee unions; and legislators. The Department received written comments from over 300 individuals. Those comments were overwhelmingly in support of the plan and many were incorporated in the updated document.

Mr. Bazzell went on to say that careful attention was paid to concerns received from the forestry industry and hunting and fishing supporters. Comments were received from the farming community stating that the Department needs to more clearly acknowledge in the document that farming is key to Wisconsin's economy. Mr. Bazzell called attention to changes made in the plan. Under the Vision statement, the following language was added: "We recognize that forestry, farming and nature-based recreation - like hunting, fishing and trapping - are key to the state's economy and quality of life." Under the Goal of the Sustaining Ecosystems section, the following statement was added: "B. Use planning and management methods that maintain, protect and enhance productive and sustainable forests, fisheries, wildlife and other harvestable natural resources."

Mr. Bazzell further indicated that language was also added to more clearly state the Department's commitment to managing for sustainable ecosystems, science-based management and that considerations be given to long-term socio-economics alongside ecological considerations. Strategies were also added to clarify the Department's commitment to providing a system of state forests, wildlife, fisheries and parks and other properties and the Department's management of those properties to support hunting, fishing, and gathering of harvestable resources.

Mr. Bazzell then discussed the implementation phase pointing out that it is the Department's intent to develop an implementation plan for each of the four goals. He said these plans will spell out the Agency's

operational direction. Mr. Bazzell also mentioned that Department staff are currently working on another plan specifically for fish and wildlife at the request of the U.S. Fish and Wildlife Service as part of Federal Grant requirements with the Service.

In conclusion, Mr. Bazzell recognized the Department's Strategic Planning team for its efforts in helping to shephard this process through to date.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board adopt the Strategic Plan, as presented.

Chairman Solberg mentioned a letter the Board received on June 28 from the Wisconsin County Forests Association requesting the Board to "postpone final adoption of the draft Strategic Plan until August, so that further comments could be obtained and reviewed by the Department." Secretary Meyer stated that the Wisconsin County Forests Association has been part of this process from the beginning and noted that the Governor's Council on Forestry unanimously supported the final draft Strategic Plan which included the vote of the Chair of the Wisconsin County Forests Association who is a member of the Governor's Council on Forestry. Mr. Meyer further indicated that he would have a response drafted to the letter from Colette Matthews, Executive Secretary of the Wisconsin County Forests Association.

Chairman called for a vote on the motion to approve the Strategic Plan. The motion was carried unanimously by those members present.

3.D INFORMATIONAL ITEM - Scrap Recycling Industry Storm Water Cooperative Compliance Program.

Susan Sylvester, Administrator, Division of Water, introduced the item, followed by Gordon Stephenson of the Runoff Section in the Bureau of Watershed Management. Other presenters included Bob Est, President of CCP; Dave Kendziorski, Environmental Consultant for CCP and Peter Peshek. In 1987, Congress passed amendments to the Clean Water Act that regulates storm water discharges from certain types of industrial facilities. Over the past five years, the Department worked closely with Wisconsin Institute of Scrap Recyclers (WISRI) to establish an industry-specific storm water discharge permit. WISRI requested that a Cooperative Compliance Program (CCP) be part of that permit process. Ms. Sylvester said the CCP is the first type of partnership of its kind in Wisconsin.

The Cooperative Compliance Program privatizes certain regulatory activities previously done by the Department. The CCP concept was developed by the Department of Natural Resources and WISRI to provide effective and economically feasible approaches to improving water quality associated with storm water runoff from scrap recycling facilities. It is based on trust that industry can self police rather than the conventional command-and-control approach that government has taken in the past.

Approximately 65 members of businesses operating under the Standard Industrial Code 5093 - Scrap and Waste Material, have come together to form the Wisconsin Cooperative Compliance Program, Inc. (WCCP). The WCCP is one of five organizations requesting certification as a CCP under the storm water permits. It is a non-profit corporation that is governed by an eight member Board of Directors. The Board hired a consultant to provide technical assistance to WCCP members. Members of the WCCP and other CCPs will comply with the storm water permit which includes the following conditions:

- *Receive extensive annual training and guidance;
- *Receive expert technical assistance by a qualified consultant;
- *Conduct monthly self-inspections;
- *Participate in annual compliance audits; and
- *Utilize a set of Best Management Practices agreed upon by the Department and the WCCP.

With the aid of slides, Dave Kendziorski gave a brief overview of a typical scrap metal recycling facility. He then discussed the efforts of the Department and WISRI to establish a storm water permit program that addresses the potential pollution sources at a scrapyard. Since there are no numerical water quality standards that apply to storm water, he said, there are always questions on the part of the facilities on which Best Management Practices are really appropriate. He said it is left up to the facility to figure out how much investment they have to make to control storm water pollution. Most facilities, he said, feel "monitoring to be an absolute waste of time and money." Mr. Kendziorski feels it detracts from implementing Best Management Practices. With this in mind, he said, the Department and WISRI began

looking at a different type of permitting option. He called attention to the Department's statutory obligation to assure that adequate pollution control is achieved at these facilities in order to protect Wisconsin's lakes and streams. Mr. Kendziorski said when this process first began, the Department was concerned about the scrap metal industry's ability to assess and evaluate the degree of compliance with the permit. He then described some of the key features of the program. Mr. Kendziorski said there is no monitoring; no storm water sampling; and no visual observations that are required by facilities that participate in the CCP. Instead, they are allowed to focus on selecting and implementing best management practices that provide direct water quality benefits.

Mr. Kendziorski also discussed the levels of checking compliance with the permit. He said the facility itself has responsibility of conducting inspections and the CCP consultant conducts audits in order to verify compliance. The Board of Directors has the responsibility to report to DNR that all facilities in the CCP are in compliance with the permit. He said if a facility has a problem with compliance, it would be terminated from the CCP and referred to the DNR.

In conclusion, Mr. Kendziorski said he is confident this program will be successful and anticipates the Department will extend the CCP concept to other industries as well. He noted the interest from other states who are waiting to see how well this program works.

3.E INFORMATIONAL ITEM - Update on Wisconsin State Parks System centennial plan.

Sue Black, Director, Bureau of Parks and Recreation, gave a brief review of plans to commemorate 100 years of Wisconsin state parks in the year 2000. She noted that in early May, the Governor kicked off a centennial commission charged with the development of a broad and integrated program of centennial activities. Goals of the centennial celebration include:

- Create a celebration that focuses on the entire state parks system;
- Honor the past while looking toward the future of the state parks system;
- Generate widespread publicity through the state;
- Enhance the image and awareness of Wisconsin state parks to increase visitation, revenue and tourism;
- Articulate benefits to the state and its citizens; and
- Create a "Centennial Park."

Ms. Black called attention to Chairman Solberg's membership on the commission and that the dedication of a "centennial park" is being proposed at Mr. Solberg's suggestion. Ms. Black said the Department will be looking at a new acquisition for that park, and perhaps a trail as well. Mr. Schneider asked if there was a way the citizens of the state could pay for a centennial park and named for the citizens of the state in commemoration of this event. He suggested perhaps a \$1 or \$2 donation from each park visitor.

Ms. Black then went through the schedule for the proposed statewide events as follows:

- January 13, 2000 - Opening ceremony and flag raising ceremony in the Capitol's Rotunda
- January 13, 2000 - Flag raising in all state parks
- April 29, 2000 - Centennial tree planting
- June 4, 2000 - Open house day in all state parks (birthday cake for all visitors)
- September 20, 2000 - Fall Celebration
- December 10, 2000 - Closing ceremony at Interstate Park

Ms. Black also called attention to a variety of local events that will take place across the state park system; i.e., candlelit ski and hike outings, prairie plantings, guided hikes, and many more.

Ms. Black distributed a sponsorship handbook which discusses centennial funding and recognition. She reported the first donation of \$5,000 from the Wisconsin Park and Recreation Association to launch the celebration, will be scheduled on a future Board agenda for formal acceptance.

Ms. Black also gave the Board a brief update on the park reservation system.

3.F Retirement resolutions.

1. Phyllis Fish.

2. Adrian Hagan.
3. Dennis Mahy.
4. William Moorman.
5. Chester Pryga.
6. LeRoy Wiesner.

Secretary Meyer reviewed the careers of each retiree and commended them for their exemplary years of service. Mr. Behnke MOVED, seconded by Mr. Murphy, approval of the resolutions. The motion was carried unanimously by those members present.

4. Board Members' Matters.

4.A Heritage and State Park and Forest Trust Grants

Mr. Behnke asked for information on the Heritage State Park and Forest Trust Fund, established by the legislature after the Board approved the Bay Mountain State Trail easement sale to MRC Telecommunications Corporation. It was his understanding that the fund benefits only one property, Heritage Hill State Park. Mr. Behnke asked for a report, perhaps at the August Board meeting, on the amount currently in the trust fund, how this money could better be utilized, and the number of friends groups who could benefit. He also suggested that the Department attempt to seek a legislative change to broaden language that would allow other state parks and forests to qualify.

4.B Proposed bowfishing rule.

Mr. Schneider asked if the bowfishing rule proposal was scheduled on the August Board agenda. Secretary Meyer said it was.

4.C Unmarked commercial fishing nets in Lake Michigan.

Chairman Solberg said he was recently contacted by Louis Kowieski (former Conservation Congress member) expressing concern about safety issues associated with unmarked commercial fishing nets floating in Lake Michigan. District Warden Doug Hoskins said he was also contacted by Mr. Kowieski and the net was removed. He stated that the Department is aware of the problem and will remove the nets whenever found and/or reported.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

6. Operating Committees.

6.A Air, Waste and Water/Enforcement Committee.

6.A-1 Minutes of May 26, 1999.

Mr. Poulson MOVED, seconded by Mr. Schneider, approval of the minutes for May 26, 1999 meeting.

6.A-2 Adoption of Order WT-39-98 - revision of Chapter NR 200, Wis. Adm. Code, pertaining to applications for discharge permits and water quality standards variances.

Tom Muga of the Bureau of Watershed Management presented a brief overview of the proposal. The changes include:

--A statement, in general terms, of the type of information the Department may require permittees to submit on application forms, and more specifically, the effluent monitoring requirements for various categories and sizes of dischargers. This will generally not result in changes to what the Department currently requires case-by-case but serves to formalize the process and should result in improved consistency.

--The creation of a new subchapter to set form requirements for filing applications for water quality variances. Currently, the Department conveys information requests by letter after an applicant notifies the Department of its intent to apply for a variance. State statutes require the Department to specify by rule these requirements.

Mr. Mugan also noted that a hearing was held in January of 1999. There were no appearances by the public, however, a few written comments were received. Based on those comments and comments from EPA and the Rules Clearinghouse, changes were made to the rule. Mr. Mugan said there has been little controversy with this package, since the changes for permit applications formalize current practices and the variance application requirements closely reflect what is currently required by letter.

Mr. Schneider MOVED, seconded by Mr. Poulson, that the Board adopt Order WT-39-98 as presented. The motion was carried unanimously by those members present.

6.A-3 Adoption of Order WT-59-98 - revision of Chapters NR 200 and 206, Wis. Adm. Code, pertaining to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day.

Roger Larson of the Bureau of Watershed Management presented the proposed changes to Chapters NR 200 and 206 which will increase the threshold that will be used to determine whether or not to issue WPDES permits for private sewage systems from 8,000 gallons per day to 12,000 gallons per day.

Three public hearings were held in December of 1998. Five individuals from outside the Department attended the hearings. No changes were made as a result of verbal or written comments provided at the hearings, basically to stay in line with Department of Commerce rules. A number of minor changes were made resulting from comments provided by the Legislative Rules Clearinghouse.

Mr. Poulson MOVED, seconded by Mr. Schneider, adoption of Order WT-59-98 as presented. The motion was carried unanimously by those members present.

6.A-4 Adoption of Order AM-58-98 - revision of Chapters NR 409 and 439, Wis. Adm. Code, pertaining to the acid rain portion of operation permits and reporting, recordkeeping, testing, inspection and determination of compliance requirements.

Lloyd Eagan, Director of Air Management, presented the revisions to Chapters NR 409 and 439. The significant change to the existing state acid rain rules would be re-creation of a new section to incorporate the new NOX provisions of the federal acid rain program. Ms. Eagan indicated a public hearing was held March 25, 1999 regarding the proposed acid rain rule updates. There were no comments voiced at the hearing. Written comments were received from EPA and the Legislative Council Rules Clearinghouse, most pertaining to format and style and responded to in the green sheet package.

Mr. Behnke MOVED, seconded by Mr. Schneider, adoption of Order AM-58-98 as presented. The motion was carried unanimously by those members present.

6.A-5 Adoption of Order AM-16-99 - revision of Chapter NR 485, Wis. Adm. Code, pertaining to emission limitations (cutpoints) for motor vehicles.

Lloyd Eagan noted this item has been to the Board several times in the past. Under the current rule, the final phase of cutpoints is scheduled to take effect on December 1, 1999. This phase implements more restrictive cutpoints for model year 1980-1986 cars, 1984-1986 light trucks and 1979-1986 heavy trucks. The proposed rule will repeal the final phase of cutpoints in the current rule for these three vehicle categories and indefinitely extend the time period covered by the next-to-final phase in the current rule.

Ms. Eagan said this revision is proposed to prevent many costly repairs to older vehicles. While there will be an increase of VOC emissions, she said the increase can be offset by other control measures such as autobody refinishing controls or through other elements of the Inspection/Maintenance program by training repair technicians to more effectively repair vehicles.

Mr. Tiefenthaler MOVED, seconded by Mr. Behnke, adoption of Order AM-16-99 as presented. The motion was carried unanimously by those members present.

6.A-6 PENDING ITEM - Adoption of Emergency Order FH-29-99 - creation of Chapter NR 328, Wis. Adm. Code, pertaining to regulations for water ski jumps and platforms (Item 6.A-2, Minutes of May 26, 1999).

Mike Staggs, Director, Bureau of Fisheries Habitat and Protection, recalled that in April the Joint Committee for Review of Administrative Rules directed the Natural Resources Board to adopt, as emergency rules, Department program guidance on water ski jumps and platforms. The proposed emergency rules were placed on the Board's May 26 meeting agenda for consideration. Several representatives of various interest groups and several lakeshore property owners testified. They agreed strongly on the issue that the permitting system for ski jumps prior to the adoption of Section 30.135, Wis. Stats., was far more preferable than the system under the current statute. They recommended that Section 30.135, Wis. Stats., be formally repealed by the Legislature.

After hearing this broad based testimony, the Natural Resources Board, by motion at its May 26, 1999 meeting, directed the Department to formally request the Legislature to consider repealing Section 30.135, Wis. Stats. Mr. Staggs called attention to Secretary Meyer's letter to the Joint Committee for Review of Administrative Rules (JCRAR) relaying the Board's action, also stated that the "Board retained the proposed emergency rules implementing the statute and would await JCRAR's decision for further direction."

Mr. Staggs further reported that JCRAR held a public hearing on May 27, 1999, then met in Executive Session the same date and unanimously voted to "suspend Administrative Rule NR 328, effective July 5, 1999."

Mr. Staggs stated that it was his understanding from JCRAR's action, that once the Board passed this rule and with JCRAR's suspension vote, would allow legislation to be introduced to either repeal or amend the rule. Therefore, Mr. Staggs recommended that the Board adopt Emergency Rule FH-29-99(E) to allow this process to continue.

Secretary Meyer observed there may be some who are interested in proposing legislation that would weaken the protection of lakes for riparian use by ski jumps. Others would like to go back to the old system which Mr. Meyer pointed out worked for 28 out of 29 ski jumps in the state of Wisconsin. He further commented that when legislative hearings are held on a future legislative proposal, the Department will make sure that all interest groups are notified so that the legislature hears from everyone, not just the one ski group for which the previous legislation was drafted.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, the adoption of Order FH-29-99(E). When put to a vote, the motion was carried unanimously by those members present. (There was a consensus among Board Members they adopted this rule so the process of the repeal could continue; the vote does not represent their endorsement of the rule as currently drafted.)

6.A-7 Authorization for hearing on revision of Chapters NR 216, 300, 405, 406, 408 and 411, Wis. Adm. Code, pertaining to the fee refund or permit guarantee program required by s. 299.05, Wisconsin Statutes.

Lloyd Eagan explained that Section 299.05 of the Statutes, directed the Department to develop rules to refund license or approval fees if it fails to make a determination on an application within specified time limits. The proposal affects three programs: Bureau of Fisheries and Habitat in its issuance of permits under Chapter 30, Stats.; the Air Program for air pollution construction permits issued under Chapters NR 405, 406, 408 and 411, Wis. Adm. Code; and the WPDES program for stormwater permits issued under NR 216, Wis. Adm. Code.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board authorize public hearing. The motion was carried unanimously by those members present.

6.A-8 Authorization for hearing on revision of Chapter NR 140, Wis. Adm. Code, to establish groundwater standards and preventative action limits for toluene and xylene.

Mike Lemcke of the Bureau of Drinking and Groundwater, presented this item. In 1994, the Board requested that a study be conducted to identify what concentrations of toluene and xylene in water would pose a concern from a taste and odor perspective. An advisory committee was formed in 1994 and the UW-River Falls was contracted in November of 1996 to conduct the study. Approximately 450 students conducted the study and along with recommendations from the advisory committee, have developed rules that would revise the enforcement standard for toluene and xylene to conform with federal drinking water standards and would revise the preventive action limit for these substances to address taste and odor concerns.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board authorize public hearing. The motion was carried unanimously by those members present.

6.B Land Management, Recreation and Fisheries/Wildlife Committee.

6.B-1 Minutes of April 28 and May 26, 1999.

Mr. Murphy MOVED, seconded by Mr. Schneider approval of the minutes of the April 28 and May 26, 1999 meetings. The motion was carried unanimously by those members present.

6.B-2 Green Bay to Greenleaf State Trail land acquisition - Brown County.

Dick Steffes, State Real Estate Officer, presented this item, explaining that the Department obtained an option to purchase about 14 miles of railroad grade from Wisconsin Central, LTD, for \$435,000 from Green Bay to Greenleaf in Brown County. The proposed trail is located along the east bank of the Fox River in the City of Green Bay, Village of Allouez, and the City of DePere. It then leaves the metropolitan area and travels through rural agricultural land to the Village of Greenleaf. If approved by the Board, the trail will be developed and maintained by Brown County. Mr. Steffes pointed out that the City of Green Bay and Brown County propose to eventually connect this trail to the Mountain Bay State Trail which travels west from Green Bay.

Gary Hanson, Trails Coordinator for the Northeast Region, presented a video highlighting a few segments of the 14-mile corridor.

In response to Mr. Behnke, Mr. Hanson believed that about 2 miles of the trail would impact residential areas. Mr. Behnke also asked about opposition to other DNR trails as they were being proposed and the outcome of that opposition once the trails were up and running. Both Steffes and Hanson stated that the DNR trails are popular and that most of the fears dissipate once the trails are in operation. Mr. Hanson gave an example of local opposition to the Mountain Bay State Trail between Green Bay and the Village of Pulaski when it was first proposed. Currently, several new subdivisions are being built in the area adjacent to the trail and Mr. Hanson said the first and most expensive lots to sell were the ones adjoining the trail surface.

Mr. Schneider asked if other trail users, such as the snowmobilers, had expressed interest in purchasing the grade, and if the grade was in use at the present time. Mr. Steffes indicated that last train use of the grade was in 1989 and at the present time the grade remains idle. Mr. Hanson said it was his understanding that a proposed Brown County management plan calls for nonmotorized use of the trail (hiking, biking, etc.). Neither had heard of any interest in the trail by the snowmobilers.

Mr. Tiefenthaler asked for clarification of trail financing which was explained by Mr. Steffes.

Judy Watermolen of Green Bay spoke in opposition to the acquisition of this rail corridor. She stated that landowners attempted to work with Brown County, but the county dismissed every suggestion and concern brought up by the landowners. Ms. Watermolen also discussed decreasing trail usage of other Brown County trails and did not believe this trail was needed. She also called attention to problems she has had with trespassers, snowmobiles and other motor vehicles involving noise and littering on a daily basis. She pointed out that the town boards of Rockland, Greenleaf and Allouez had all voted no to this proposed trail.

Sean Ryan of Green Bay, representing the Bay Shore Bicycle Club, spoke in support for the acquisition of the rail corridor. By acquiring the corridor and allowing Brown County to develop the trail, would provide a north-south recreational corridor along the east shore of the Fox River. Mr. Ryan noted the overwhelming support for this trail which was made know at the numerous public input sessions held last summer and fall. He urged the Board to approve the acquisition of this rail corridor.

Nancy Nusbaum, County Executive for Brown County, spoke in support for this trail. She noted that the trail concept was adopted by Brown County Regional Planning in 1968; Green Bay Comprehensive Plan in 1979; City of DePere Comprehensive Plan in 1982 and in 1983 the Allouez Open Space and Outdoor Recreation Plan. Ms. Nusbaum said she was not aware of any vote taken by the Allouez Town Board opposing the trail.

Mike McFarlane, Director of Parks for Brown County, also spoke in support for the acquisition of the rail corridor. He noted overwhelming public support for the project because it is a major north-south pedestrian corridor that will provide a safe link between cities/towns in a heavily populated area.

Mr. Poulson noted that in some areas the trail goes through agricultural property. He asked how the county accommodates the landowner having to cross the trail to access his property. Mr. McFarlane said trail crossings are marked prior to trail development. He noted that farmers cross the Mountain Bay trail daily for hauling harvested crops, as well as for other farm operations, and said there has never been any problems.

Cliff Wall, Village of Allouez, a landowner whose property is dissected by the right-of-way, spoke in support for the trail and urged the Board to approve the acquisition of the rail corridor. Mr. Wall said he has never experienced any problems brought forth by the opponents and looks forward to the corridor being converted to a recreational trail for all the citizens of Wisconsin.

At this point, Chairman Solberg read a letter from Cameron S. McCane, President of the Village of Allouez, as follows:

"I have been asked by State Representative Phil Montgomery to write to you in regard to the Rails to Trails from Green Bay south to Greenleaf that will be on the agenda June 30 for the Natural Resources Board meeting in Kenosha.

"I was asked to attend the meeting representing the Village of Allouez in which the trail runs through. I will be unable to attend the meeting because I chair the meeting of the Central Brown County Water Authority which meets that same day.

"On August 16, 1988, the Allouez Village Board passed a 5-year outdoor recreation open space plan. Part of the plan included the trail along the Fox River. The two Brown County supervisors representing Allouez both voted in the affirmative for the development of the trail. I would like to go on record as being very supportive of the Rails to Trails program in Brown County. I have spoken to other Allouez Village Trustees who support the program; however, it has not been an agenda item since the August 1988 meeting. I am personally asking your Board to support the Rails to Trails along the Fox River."

Bill Hotaling of DePere spoke in opposition. He said the trail divides his property in half and he would have to double fence and double gate to maintain privacy and security. He was concerned that access to the river would be limited and property values adversely affected as riverfront property becomes trailfront property. He noted that he, along with several other landowners, have retained legal counsel and have filed a petition with the Surface Transportation Board. According to Mr. Hotaling, after researching Wisconsin Central Railroad's railbanking procedures, the law firm concluded that Wisconsin Central, through omission by not filing in a timely manner, had abandoned the corridor thereby prohibiting their right to railbank. He said they are awaiting a decision from the Surface Transportation Board and are prepared to take the case to the Federal Court of Appeals where he said similar cases are running 2 to 1 in favor of reversionary property owners. Mr. Hotaling stated that the Board "may be buying something from the railroad that really isn't for sale or shouldn't be for sale." He asked the Board to defer action until a decision is received from the Surface Transportation Board.

John Maynard, Milwaukee, an attorney representing the Fox River Neighborhood Association, stated that counsel for the Surface Transportation Board advised him recently it would be at least 2 to 4 years before the matter was resolved. He did not believe the Board should go ahead with this acquisition until a decision is handed down by the Surface Transportation Board. Mr. Maynard stated that even though the matter is still in litigation, "Brown County in many respects has acted as if the trail is already open and the harm that is being done is irreparable because if the land ultimately does revert to these owners it will be difficult to keep people off there once they've gotten used to using that corridor. I expect that we will very shortly be in litigation with Brown County."

Mr. Behnke MOVED that the Board approve the purchase of 144.12 acres of land, in accord with "Rails to Trails" legislation from Wisconsin Central, Ltd., for \$435,000. Mr. Tiefenthaler seconded the motion.

Mr. Behnke asked for additional information on the reversionary situation. Mr. Steffes explained that the Surface Transportation Board is the official body that rules on railroad grade abandonments. He said the Board did not approve abandonment of this railroad grade. Instead, the Board gave a "negotiation period" for the state to negotiate a Rails to Trails purchase. Mr. Steffes indicated that was done and "we feel that this is intact as a Rails to Trails transaction and that the reversions do not occur because it was never abandoned. If a rail company comes to the State of Wisconsin in the future and says we need to reinstate rail, we'll have to give up our trail. That's the purpose for not allowing the reversions to occur."

Secretary Meyer asked Mr. Steffes the following question: "If this Board is overruled and a court would determine later that it's abandoned, then the reversions have to be dealt with." Mr. Steffes said that was correct. Mr. Behnke: "then the protocol on that would be back to the original property owner before the railroad acquired it?" Mr. Steffes said the Department would look at the individual deeds along the rail corridor. "If the railroad acquired it with warranty deed in 1873, the Department would be the owner. If the railroad acquired with an easement for rail purposes only, it would revert to the abutter - the current owner who has earned the right to that reversionary property by owning the abutting property. Where we've had an abutter on each side, it went to the center line if it was a poor title area and the south 50 feet went to one owner and the north 50 feet went to the other."

There was also a brief discussion with regard to the cost of removing the swing bridge.

Chairman Solberg called for a vote on the motion to approve the acquisition. The motion was carried unanimously by those members present.

6.B-3 Adoption of Order FR-21-99 - revision of Chapter NR 46, Wis. Adm. Code, pertaining to stumpage value adjustments and administration of Forest Crop and Managed Forest Laws.

Ken Hujanen of the Bureau of Forestry presented the amendments to NR 46 which include the annual stumpage rate adjustments, stumpage rate zone changes and building clarification note. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average price change for sawtimber is a 4.38 percent increase over current rates. The pulpwood proposed prices are, on the average, 23.61 percent higher compared to current prices.

In response to Mr. Behnke, Mr. Hujanen explained the redefinition of "human residence" and withdrawal criteria.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler adoption of Order FR-21-99 as presented. The motion was carried unanimously by those members present.

6.B-4 Hook Lake-Grass Lake Wildlife and Natural Area land acquisition - Dane County.

Dick Steffes explained the Department's option to purchase an easement on 67.7 acres from the Estate of Chester Manson for \$161,200. The property includes 1,320 feet of frontage on Hook Lake and will protect the lake from sedimentation. The purchase will also protect an archeological site and will preclude development within the wildlife and natural area. The Department will receive the right of first refusal when the owners decide to see the remaining rights. The owners will continue to lease this land for agricultural purposes except for the southernmost part of the acreage. Mr. Steffes noted that the Federal

government, through the Natural Resources Conservation Service Farmland Protection Program, will contribute 50 percent of the cost for the easement.

There was some concern expressed by Board Members about justifying a purchase that does not allow for public use. Secretary Meyer explained that purchasing this easement places the land in a "holding pattern" until such time when the owners decide to sell the remaining rights. At that time, he said, the Department would gain full public use. Mr. Steffes called attention to the fast rate of home building occurring in Dane County. He also noted discussions of the Stewardship Task Force of buying farmland easements around Department projects from keeping the area free from development. Mr. Steffes said the Department would prefer to purchase this property in fee, but it was the best that could be negotiated with the owners.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, that the Board approve the purchase of the easement rights on 67.7 acres for \$161,200 for the Hook Lake/Grass Lake Wildlife and Natural Area. The vote on the motion:

Affirmative - Messrs. Solberg, Tiefenthaler, Behnke, Murphy and Poulson.

Negative - Mr. Schneider.

Absent - Mr. Willett.

The motion was carried.

6.B-5 Green Bay West Shores Wildlife Area land acquisition - Brown County; and approval to accept a donation of \$5,000 from Whitetails Unlimited to be used toward the purchase.

The Department obtained an option to purchase 39 acres from Chester and Alice Lewicki for \$80,000. The purchase price exceeds the appraised value of \$75,000, therefore Whitetails Unlimited has donated \$5,000 to be used for this purchase. The land is needed to provide areas for public access for hunting to achieve deer management goals near urban areas and to preserve important fish and wildlife habitat. There being no presentation nor discussion of this item, Mr. Behnke MOVED approval. Mr. Tiefenthaler seconded the motion. When put to a vote, the motion was carried unanimously by those members present.

6.B-6 Statewide Public Access (Lake Twelve) land transactions - Washington County.

Mr. Steffes explained the Department's proposal to purchase 12.11 acres from Roger Johnson and Michael Pflughoeft for \$190,000 for public access in Washington County. The Department will resell one or two backlots of about two acres each for an estimated price of \$35,000 per lot to recoup some of the costs. After the sales, the Department will have 450 feet of lake frontage. Mr. Steffes said that boating usage is expected to be non-motorized such as canoes and kayak access. At the present time there is no public access to Lake Twelve.

Secretary Meyer noted that the Department will work closely with area landowners on how this project will be developed. He said some landowners were unaware of the Department's intent.

Mr. Behnke indicated he was not opposed to this acquisition, but wanted to call attention to the tour the previous day when the park manager at Bong mentioned a 55 acre parcel for sale for \$200,000 but was told the asking price was too high for land outside the project boundary. In this case, Mr. Behnke said he did not understand why purchase of this 55 acre parcel was not a priority because of encroachment problems that could develop, and thought the Department should perhaps revisit its land acquisition priority listing.

Mr. Behnke MOVED, seconded by Mr. Murphy, approval of this purchase. The vote on the motion:

Affirmative - Messrs. Solberg, Schneider, Tiefenthaler, Behnke and Murphy.

Negative - Mr. Poulson.

Absent - Mr. Willett.

The motion was carried.

6.B-7 Approval to sell an easement to Mt. Horeb Telephone Company along the Military Ridge State Trail in Iowa County for placement of an underground fiber optic cable.

Mr. Steffes reviewed the Department's proposal to sell an easement to Mt. Horeb Telephone Company in Iowa County for placement of an underground fiber optic cable. The item was presented to the Board because it involves the sale of land rights on Department property at a price greater than \$50,000. The length of the trail is estimated at 15.7 miles for an estimated value of \$54,950, or \$3,500 per linear mile. The value of land rights is consistent with what other public landowners are receiving. Mr. Steffes said the utility will restore the trail after installation.

There was discussion about the trust fund that was created by the legislature when an easement on the Mountain Bay State Trail was transacted. The legislation requires funds from conveyed easements on parks, trails and state forests. Secretary Meyer noted that a report would be prepared and sent to the Board in August.

Mr. Behnke MOVED, seconded by Mr. Poulson approval of this item. When put to a vote, the motion was carried unanimously by those members present.

6.B-8 DONATION - \$30,160.09 from the Estate of Arthur B. Troka to be used to purchase wetlands in southeastern Wisconsin.

Mr. Murphy MOVED, seconded by Mr. Behnke, acceptance of the donation. When put to a vote, the motion was carried unanimously by those members present.

6.B-9 Proposed legislation pertaining to the practice of sustainable forestry.

Gene Francisco, Director of the Bureau of Forestry, reviewed the green sheet package (a copy is incorporated in the official Board minutes). He explained that as part of the Budget Adjustment Bill (AB 768), the Legislature included a provision requiring the Department to submit proposed legislation to encourage the practice of sustainable forestry by July 1, 1999. Mr. Francisco said the proposal resulted from concerns that local governments were proposing regulations and ordinances that prevented forest landowners from practicing sustainable forestry. Some of those concerns included: prohibiting the use of herbicides necessary for reforestation and forest improvement activities; restricting the weights of logging trucks traveling on town roads which prevented timber harvesting; and establishing ordinances that prevented tree cutting along roads, lakes and streams.

Mr. Francisco stated that a wide array of individuals and groups were contacted at the outset of this effort and over 50 external individuals have worked with staff to develop the draft legislation. After the first meeting, he said it was apparent there was strong opposition to developing legislation that created strict forest practice standards. Also, it was felt that legislation should not infringe on local government's ability to control land use.

Mr. Francisco indicated that since the green sheet package was mailed, additional comments were received from the Governor's Council on Forestry. He said the reference to global warming will be deleted at the Council's request. The Council feels too much scientific debate remains on whether carbon dioxide has an impact on climate change. He added that other minor changes will also be made to the draft. Mr. Francisco concluded by stating that staff will continue to work with the legislative drafting bureau to insure the proposal meets legislative intent.

Mr. Tiefenthaler MOVED, seconded by Mr. Murphy, approval of the draft legislation. When put to a vote, the motion was carried unanimously by those members present.

7. Department Secretary's Matters.

7.A Request from the Senate Agriculture, Environmental Resources and Campaign Finance Reform Committee for changes to the administrative rule proposal on Irrevocable Trust for mining operations.

Secretary Meyer recalled this item resulted from a petition signed by several legislators recommending that an irrevocable trust or some long-term permanent instrument be created and adequate to fund all worst case

remedial and preventive measures of a metallic mining project. After considerable public input on proposed administrative rules, the Natural Resources Board approved the proposed revisions to Chapter NR 132 in September of 1997 to establish an irrevocable trust fund for metallic mining projects. Hearings were then held by standing committees of the Legislature and both asked that the Department and Board consider additional modifications to the proposed rule.

The Senate Committee recommended that the irrevocable trust fund should be established in an amount sufficient to fund all possible worst case preventive or remedial measures. In addition, the Committee suggested that the trust fund be fully capitalized very early in the life of a mining project, perhaps even prior to construction. The Assembly Committee urged the Department to consider the changes suggested by the Senate Committee. A copy of the green sheet and attachments is incorporated in the official Board minutes. Both letters from the legislative committees are a part of the green sheet package.

After several discussions with Senator Clausing, Secretary Meyer said a final determination was made. He said it is the staff's position that the range of occurrences considered in developing the trust fund must be limited to those events that have a "reasonable" possibility of occurring. The rule has been modified to clarify the intent, but the requirement that the occurrence must be reasonably possible has been retained. The Department has added a proposed provision requiring a permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. This will assure that adequate funds are available through the life of a project, including the very early stages of project development. This was the primary concern expressed by the Senate Committee.

Mr. Behnke MOVED, seconded by Mr. Murphy, approval of the rule attached to the green sheet.

Mr. Tiefenthaler felt the changes suggested by the legislative committee should be specifically stated in the motion. He then MOVED to amend the main motion to include the changes as follows:

S. NR 132.085 (5)(b) should read:

"(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures ~~that have a reasonable possibility of being necessary~~ needed to correct all reasonably possible occurrences. Costs for worst case preventive or remedial measures shall be used when the measures are shown to have a reasonable possibility of being necessary."

S. NR 132.085 (10) should read:

"(a) during the period of scheduled payments into the trust fund, the permittee shall establish and maintain a separate performance bond or satisfactory insurance coverage in an amount adequate to cover all risks and associated remedial and preventive measures identified under par. (5)(b).

(b) The performance bond or insurance shall remain in effect until issuance of a certificate of completion of reclamation for the entire mining site.

(c) The performance bond or insurance shall be issued by a company licensed to do business in the State of Wisconsin and shall be subject to the termination and replacement requirements specified in s. NR 132.09(2)(a) 2 and 3.

(d) If implementation of remedial or preventive measures under sub. (4) is needed prior to issuance of a certificate of completion of reclamation for the entire mining site, the performance bond or insurance shall only be used to fund the necessary actions in the event the trust fund is not sufficient to cover the entire costs of remediation or prevention.

S. NR 132.09(3) is amended to read:

"NR 132.09(3) Upon receipt of a satisfactory reclamation bond, ~~and~~ the certificate of insurance and evidence of the establishment of the necessary trust fund and associated performance bond or insurance in accordance with s. NR 132.085, the department shall give written authorization to the operator to commence mining in accordance with the mining and reclamation plans."

Mr. Behnke seconded the motion. The motion was carried unanimously by those members present. Chairman Solberg called for a vote on the main motion, as amended. The motion was carried unanimously by those members present.

7.B Request from the Assembly Natural Resources Committee for modifications to Order FH-26-98 pertaining to commercial fishing for smelt on Lake Michigan and Green Bay.

Secretary Meyer noted this rule, FH-26-98, was adopted by the Board in October of 1998. It reduced the annual total allowable commercial harvest of smelt from 2,358,000 pounds to 713,340 pounds. Representative DuWayne Johnsrud, Chairman of the Assembly Natural Resources Committee, questioned the need for a reduction of that size, and in March the Assembly Natural Resources Committee recommended a modification. Mr. Meyer said the staff worked with the assembly committee and an agreement was reached to now recommend an annual harvest limit of 1,000,000 pounds. He added this will be an intermediate step toward development of a smelt harvest limit that reflects lakewide smelt abundance.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board amend Order FH-26-98 to establish a commercial harvest limit of 1,000,000 pounds, of which no more than 351,993 may be taken from Green Bay. The motion was carried unanimously by those members present.

7.C DONATION - \$10,000 from Sturgeon For Tomorrow to be used toward the sturgeon propagation program at the Wild Rose Hatchery.

Mr. Poulson MOVED, seconded by Mr. Tiefenthaler, acceptance of the donation. When put to a vote, the motion was carried unanimously by those members present.

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The meeting was adjourned at 2:00 p.m.