

Natural Resources Board Conference Call

A conference call including members of the State Natural Resources Board and Department staff was held on Thursday, November 16, 2001, in Room 774B (GEF 2), 101 South Webster Street, Madison, Wisconsin, from 9:07 a.m. to 9:28 a.m.

Participating Board Members

Trygve A. Solberg, Chair (Minocqua)
James E. Tiefenthaler, Jr., Vice Chair (Waukesha)
Herbert F. Behnke (Shawano)
Gerald W. O'Brien, Secretary (Stevens Point)
Catherine L. Stepp (Sturtevant) began participation at 9:15
Stephen D. Willett (Phillips)

Non-Participating Board Members

Howard D. Poulson (Madison)

Department Staff Present in Room 774B

Darrell Bazzell, Secretary
Franc Fennessy, Deputy Secretary
Barbara Zellmer, Executive Assistant
Linda Jahns, Executive Staff Assistant
Paul Heinen Policy Advisor
Steve Miller, Administrator-Division of Forestry
Richard Steffes, Real Estate Director
Laural Steffes, Director of Communication and Education
Robert Manwell, Land Public Affairs Manager

Others Participating Via Telephone

Chuck Quirnbach, Public Radio
Ron Kazmierczak, Director of Northeast Region

From the Press

No one was present

ORDER OF BUSINESS

1. Wisconsin Public Service land acquisition - Marinette and Oconto Counties.

Richard Steffes, Real Estate Director, and Secretary Bazzell presented the Wisconsin Public Service land acquisition of Marinette and Oconto Counties. Mr. Steffes stated the Department has obtained agreement to purchase 9,239 acres of land in fee title and easement rights on 383 acres in the northeastern Wisconsin Counties of Marinette and Oconto from Wisconsin Public Service Corporation for \$25,000,000. The land includes 70 miles of Peshtigo River frontage surrounding Caldron Falls, High Falls, Johnson, and Potato Rapids. He further stated that the Department requests that the Board establish the Peshtigo River Shoreline Project with an acreage goal of 12,890.5 acres; approve the purchase of 9,239 acres in fee title and a scenic easement on 383 acres at a price of \$25,000,000 and acceptance of title to submerged lands; and authorize the Department to borrow ahead from the Stewardship Program's debt authority in the amount of \$13,500,000 for this transaction. Mr. Steffes also stated there is a section of land, 640 acres, that is located in Oconto County that is in the Nicolet National Forest. The Forest Superintendent has approached the Department and expressed interest in acquiring these acres to block in with the national forest. Mr. Steffes stated, the Department would like to consider this for the future. The property is currently under FERC. Mr. Steffes offered a few examples of FERC not being sufficient to protect lands mentioning that in 1984 FERC

regulation was dropped from the Chippewa Flowage and we were fortunate enough to acquire that land. If that happened in today's market, that would probably be subdivided and sold. Another example, on the west bend of the Petenwell Flowage in Juneau County the FERC protection is only 100 feet wide and this summer the Wisconsin River Power Company sold 51 acres to Taylor Investments for about \$9,300.00 an acre. They did not get the 100 feet of frontage but this shows the value of land that has access to water. Taylor Investments subsequently broke this acreage into 18 lots, grossed a million and a half-dollars on that 51 acres and they did that in two hours. Mr. Steffes stated these values are not the same as in Marinette County but it gives one a perspective of another point or view of what can happen with beautiful land such as this.

Mr. Behnke, commended the Department for having the foresight in protecting this property before such a threat becomes evident and then do we scramble and compete with the investors and the developers for the land. I feel this is good foresight on the part of the Department to move in this direction at this time.

Secretary Bazzell, a secondary issue that has come beyond the FERC license requirement, it has to do with the land that the company is retaining for full potential development purposes. Secretary Bazzell stated that he wanted the Board to understand the steps the Department has taken to protect those lands. For the lands that we were not able to acquire that may, in fact be developed at some future time. There will be deed restrictions requiring or prohibiting development within 100 feet of the shoreline, the ordinary high water mark. The Department also has a number of scenic view restrictions, similar to the kind of restrictions that are seen on the Willow Flowage on the Lower Wisconsin River, things that require very selective cuttings to protect the view shed, coloration of the housing (for earthly colors), restrictions on the lot size (lot size is a minimum of four acres), restrictions on the height of the structures. So there are a number of steps the Department has taken to protect not just the environment but to protect the view shed so these structures are not visible from the waterway. Secretary Bazzell stated that the Department did have some discretion as to which lands were, in fact, retained by the Company. So, the Department made sure that in every case of retained lands, those lands were adjacent to existing development. Those were additional provisions the Department was able to negotiate with Wisconsin Public Service.

Citizen Participant

Todd Ambs, Executive Director of the River Alliance of Wisconsin, spoke in opposition to the purchase of the Wisconsin Public Service land. Mr. Ambs stated that he works with the River Alliance and they were actively involved with discussions prior to the Wisconsin Public Service Corporation receiving the most recent licenses to operate hydropower facilities on the Peshtigo River. He stated that his organization strongly believes that the announcement Wednesday that the State of Wisconsin will buy 9,200 acres along the Peshtigo River violates the intent of the federal license articles and should be opposed, at least at the present time. He further stated that everyone, including the company, agrees about one fact today, that Wisconsin Public Service does not currently have the authority to sell the land in question. This land is contained within the project boundaries of the licenses the company was granted in 1998. Those licenses, which run for 40 years, require the company to continue to maintain this land in its current state for the duration of the licenses. Therefore, this announcement is very premature at best and sets a dangerous precedent. While having this land transferred to state ownership is certainly preferable to having it carved up for development, this provision takes precious tax dollars for land purchases that should be going to other projects. The company is being allowed to use our public water for free to produce hydropower. Requirements like the ones in these licenses are very common in Federal Energy Regulatory Commission (FERC) licenses as fair compensation to the state in exchange for letting the company have the exclusive use of our water for their private gain. It is only fair that they be required to adhere to contractual obligations that they agreed to as part of obtaining their hydropower-operating licenses. Mr. Ambs stated the Natural Resources Board should not approve this sale unless and until FERC allows Wisconsin Public Service to break their license agreement. Both the Department of Natural Resources and the U.S. Fish and Wildlife Service are already on record in opposition to letting Wisconsin Public Service out of their contractual obligations. That should remain the state's position when Wisconsin Public Service goes to FERC seeking to amend their license. If, despite the very justified opposition to allowing the company to break its 40-year commitment, FERC still approves the license modification, then and only then should the state move forward with this purchase. He stated that the River Alliance will argue at FERC that if the company wants to reopen these licenses, then all aspects of the licenses should be reopened, including the hydropower operating agreements. This is only fair because if the various parties

engaged in the license discussions had known that Wisconsin Public Service planned to sell this land other provisions in the licenses, including the way the six hydropower facilities should operate, might well have been negotiated differently. He further stated that allowing the company to amend their licenses in this way is also a very bad precedent for this state. One that we can ill afford in tough budgetary times. This sort of request to FERC is very unusual, if not unprecedented. Licenses are certainly amended, but never to remove this much land and rarely this early in the life of a license. We are told by very reliable sources that if this deal goes through, several other companies with existing license agreements will go to FERC and seek similar amendments. Tens of thousands of acres on rivers like the Wisconsin and the Chippewa, among others, are likely to go on the auction block. Unless the State of Wisconsin has a spare half billion dollars or so to throw around, that land will wind up developed and forever altered. Mr. Ambs stated that Wisconsin Public Service Corporation knew the terms of this license when they got it. They should be required to abide by the terms of that agreement.

Discussion pursued.

Mr. Behnke, proposed a motion to modify the Department's recommendation to modify the recommendation to add the following language:

- 4) direct the Department to commence a planning process, with input from local residents, landowners, and the business community, to develop a master plan for the land being acquired;
- 5) naming this project the "Peshtigo River State Forest", subject to the local planning committee review; and
- 6) that, consideration be given to a reasonable acreage be added to the Tommy G. Thompson Centennial State Park to improve the park's operation capacity.

Mr. Behnke MOVED, seconded by Mr. Willett, that the Board accept the modification, as presented. The motion was carried unanimously by those members participating.

Mr. Behnke MOVED, seconded by Mr. Willett, that the Board adopt the Department recommendation to establish the Peshtigo River Shoreline Project with an acreage goal of 12,890.5 acres; approve the purchase of 9,239 acres in fee title and a scenic easement on 383 acres at a price of \$25,000,000 and acceptance of title to submerged lands; and authorize the Department to borrow ahead from the Stewardship Program's debt authority in the amount of \$13,500,000 for this transaction and the modification to the recommendation stated above. The motion was carried unanimously by those members participating.

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The Committee adjourned at 9:28 a.m. on November 16, 2001.