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☞ September 2011 Special Session Assembly Bill 24

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2011-12

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on Natural Resources...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2013)



- Eldred Carbino, Odanah — Bad River Band of Lake Superior Chippewa
- Frank Connors, Odanah — Bad River Band of Lake Superior Chippewa
- Peter Lemieux, Odanah — Bad River Band of Lake Superior Chippewa
- Glenn Stoddard, Eau Claire — Bad River Band of Lake Superior Chippewa
- Bob Rice, Iron River — Bad River Watershed Association
- Nels Swenson, Oregon — Wisconsin Ducks Unlimited
- Jodi Habush Sinykin, Milwaukee — Midwest Environmental Advocates
- Shahla Werner, Madison — Sierra Club
- Lori Grant, Madison — River Alliance of Wisconsin
- Beth Bennett, Madison — Wisconsin Newspaper Association
- George Meyer, Madison — Wisconsin Wildlife Federation
- Don Hammes, Middleton — Wisconsin Wildlife Federation
- Chuck Matyska, Cecil — Wisconsin Wildlife Federation
- Betty Borchert, Oshkosh — Wisconsin Wildlife Federation
- Amy Moudlach — Save the Water's Edge Educational Team
- Sarah Rogers, Madison
- Jeff Smith, Madison — Trout Unlimited
- Gina Cook, Town of Harmony
- Denise Schmidt, Verona
- Julie de la Terre, Viola
- Angela Thorp, Madison
- Elaine Swanson, Pickett
- Kennedy Rubert-Nason, Madison — Wisconsin League of Conservation
- Jennifer Giegerich, Madison — Wisconsin League of Conservation Voters
- Thomas Thorensen, Fitchburg — Wisconsin League of Conservation Voters
- John Keckhaver, Madison — Wisconsin Association of Lakes
- Jerry Knuth, Plover
- Darlene Cook, Middleton — Save Copper Creek
- Michael Cain, Madison
- Amy Owen, Madison
- Karen Matteoni, Madison
- Margaret Wella Pulera, Darien
- Judy Treml, Green Bay
- Michael Arrowood, Oakfield
- Jim Limbach, Stevens Point
- Sharon Gaskill, Black Earth

- Bill Vance, Westfield — Friends of Central Sands
- Mary Relwoold, Ashland
- Warren Kehn, Ashland
- Sharon Gulseth, Madison
- Laura Priebe, Milwaukee
- Nancy Livingston, Albany
- Patrick Hammel, Madison
- Elizabeth Paerl, Middleton
- Brett Hulse, Madison — Representative, 77th Assembly District
- Mark Perenboom, Appleton — Fox Valley Trout Unlimited
- Paul Dearlove, Madison — Lake Ripley Management District - Wisconsin Lakes - Friends of Lake Wingra

#### Appearances for Information Only

- Al Shea, Madison — WI Department of Natural Resources
- Erin O'Brien, Madison — Wisconsin Wetland Association

#### Registrations For

- Bill Matter, Deerbrook — Greater Bass Lake P&R Dist
- Jolene Plautz, Madison — WI Towns Association
- Cicily Smith, Madison
- Tom Larson, Madison — NDIOP-WI
- John Reinemann, Madison — Wisconsin Counties Association
- Scott Manley, Madison — Wisconsin Manufacturers and Commerce
- Jerry Deschane, Madison — Wisconsin Builders Association
- Chad Wuebber, Middleton

#### Registrations Against

- Cheryl Austin, Lancaster
- Mousey Miller, Waunakee
- Ann Knapstein, Madison
- Pam Robson, Portage
- Tom Robson, Portage
- Christa Westerberg, Stoughton
- David Bender, Madison
- Cal Goldsmith, Madison — Save Copper Creek
- Dana VanHoesen, Gays Mills — Save Copper Creek
- John Durben, Cecil — Wisconsin Council of Sports Fishing Organizations
- Traci Peloquin, Montello
- Mary and Tom Rondeal, Blue River
- Daniel Bach, Madison — Lake Beulah Protective and Improvement Association

- Karen Etter Hale, Madison — Madison Audubon Society and Wisconsin Audubon Council
- John Patterson, Monroe
- Karen Bassuer, Madison
- Barbara Timmel, Oconomowoc
- Katherine Conley, Oconomowoc
- Steve Born, Madison
- Mary Jo Vance, Westfield — Friends of the Central Sands
- Karen Walsh, Madison
- Lisa Conley, Oconomowoc — Rock River Coalition
- Twyla Clark, Madison
- JR Fahrenkrug, Neenah — Central Wisconsin River Keepers
- Severin Swanson, Pickett
- Casey Egelston, Madison — The Nature Conservancy
- Sally Drew, Madison
- Levi Wood, Madison — Audubon, Wisconsin Society of Ornithology
- Chris Gavin, Madison
- Melissa Gavin, Madison
- Virgil Schroeder, Cecil — Wisconsin Trappers
- Jayne Meyer, Madison
- Julie Steigerwaldt, Madison
- Jared Smith, Middleton
- Karen Thimlee, Madison
- Zach Alter, Madison
- John Bayley, Madison
- Paul Matteoni, Madison
- Dan Wang, Madison
- Marissa DeGroot, Madison
- Steve Brooks, Mount Horeb
- Linda Lehman, Wausau — Trout Unlimited
- Matea Varvodic, Madison
- Caroline Brock, Madison
- Jean MacCubbin, Madison
- Jennifer Lewis, Fitchburg
- Helen Findley, Madison
- Karen Pope, Madison
- Zach Schuster, Madison
- Bob Nauta, Oregon
- Barbara With, LaPointe
- George Borchort, Oshkosh — Wisconsin Wildlife Federation
- Charles Brown, Milton — Wisconsin Wildlife Federation
- Carolyn Brown, Milton — Wisconsin Wildlife Federation
- Kristine Pettersen, Madison — Madison for the Penokees

- Gerhard Luerschwager, Mount Horeb
- Sonja Luetschwager, Mount Horeb
- Jonathan Beers, Madison
- Katie Clements
- Mark Sethne, Plattville
- Mario Quintana, Sun Prairie
- Laura Chern, Madison
- Avier Larson, Madison
- Elizabeth Wheeler, Madison
- James Wishart, Madison
- Abigail Jackson, Madison
- David Pedersen, Madison
- Leonard Sobczaj, Milwaukee
- Molli MacDonald, Madison
- Matt Krueger, Madison
- Kerry Schumann, Madison
- Jennifer Jackson, Cassville — League of Conservation Voters
- Cecil Smith, Madison
- Eric Mosher, Madison
- Pat McKeever, Monona
- Alfonso Flores, Madison — Friends of Starkweather Creek
- Laura Riggs, Madison
- Maureen Early Ruzicka, Madison
- Steve Hiniker, Madison — 1000 Friends of Wisconsin
- William Kilgour, Madison
- Hugh Schmidt, Madison
- Christina Anderson, Madison
- Daniel Werner, Madison
- Robert Liska, Madison
- Donald Pay, Madison
- Lia Vellardita, Madison
- Martin David, Middleton
- Sherry Caves, Middleton
- Joanne Schwarzberg, Madison
- Mary Ann Alleci, Madison
- Tom Kastue, Middleton
- Linda Hechenblack, Madison
- Genie Ogden, Madison
- Whitney Steffen, Madison
- Valerie Van Horn, Madison
- Michael O'Rourke, Madison
- Matt Dannenberg, Madison
- Frances Rowe, Coloma

- Janet Bewley, Madsion — Representative, 74th Assembly District
- Kelda Helen-Roys, Madison — Representative, 81st Assembly District
- Terese Berceau, Madison — Representative, 76th Assembly District
- Thomas Stole, Eau Claire
- Natalie Byrne, Madison
- Elizabeth Ward, McFarland
- Gary Werner, Madison
- Sarah Lozanora, Madison
- Angela West Blank, Middleton
- Elizabeth Wessel, Madison
- Thomas Theresen, Fitchburg
- Kathy Liska, Madison
- Peter Cannon, Madison
- Will Gruber, Madison
- Jeremiah Thompson, Madison
- David Gritteath, Madison
- Cathy Loeb, Madison
- Christy Stamos — Madison
- Lawrence Landwehl, Middleton
- Eileen Breitweiter, Middleton
- Sandra Rae River, Madison
- Jane Liess, McFarland
- Stephen Laubach, Madison
- Kara Pennayer, Madison
- Don Ferber, Madison
- Wendy Schneider, Madison
- Chris Taylor, Madison — Representative, 48th Assembly District
- Denise O'Meara, Wauwatosa — Wisconsin League of Conservation Voters
- JoAnne Wroblewski, Oregon
- Lloyd and Sharon Jongeivs, Coloma
- Omar Poler, Madison
- Alycia Kaplan, Madison
- Jo Vukelich, Madison
- Mark Steward — Wisconsin County Code Administrators
- Bernie Schlafke, Madison
- Courtney Bateman, Madison
- Roger Larson, Madison
- Allison Werner, Madison

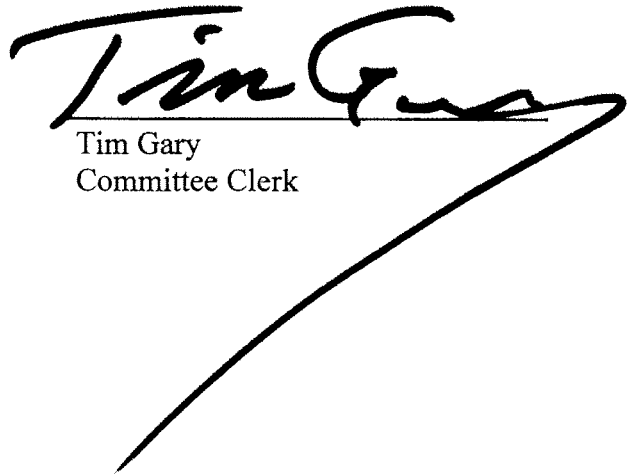
- Pete Christianson, Madison — Wisconsin Newspaper Association
- Samantha Treml, Green Bay
- Kendra Wochos, Madison
- Jessica Lovesta Banks, Madison
- Dennis Grzezinski, Milwaukee — Midwest Environmental Advocates
- Dana Haraman, Coloma
- Rita Keleny, Madison
- Dick Lamers, Colfax — Tainter Menomen Lakes Improvement Association
- John Wetzel, Holmen — LaCrosse County Conservation Alliance
- Alan Green, Spring Green
- Sierra Pope, Madison
- Staush Grustynski, Green Bay — Green Bay Trout Unlimited
- Todd Ambs, Madison — River Network
- Dean Hiegger, Sturgeon Bay — Clean Action Council of Northeast Wisconsin
- David Sanoers, Cambridge
- Rita Keleny, Madison
- John Hermanson, Luxemburg
- Robert Schaefer, Madison
- Tom Thrall, Fitchburg
- Garylord Yost, River Hills
- Diana Lawrence, Appleton
- Duane Barmore, Middleton
- Ned Gatzke, Sparta
- Tamara Baus Tupesis, Cambridge
- Diane Fansetta, MadisonJon — Wisconsin Network for Justice and Peace
- Jane Jiumaleh, Madison
- Mary Walters, Madison
- Lois Langenfeld, Madison
- Kevin Schiesser, Madison
- Carl Sack, Madison
- Mark Peerenboom, Appleton — Fox Valley Trout Unlimited
- Katya Leonard, Viroqua — Valley Stewardship Network
- David Pionre, Milwaukee — WLCY
- Cindy Breunig, Madison
- Seth Jensen, Madison
- Jon Becker, Madison

Registrations for Information Only

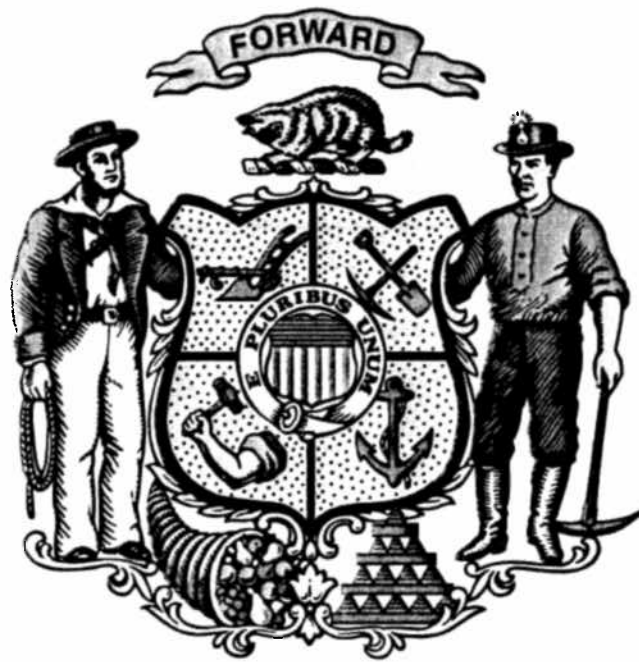


- Bob Obama, Mountain — Trout Unlimited

December 8, 2011 Failed to pass pursuant to Senate Joint Resolution 1.

A handwritten signature in black ink, appearing to read "Tim Gary", is written over a horizontal line. A long, sweeping diagonal stroke extends from the bottom right of the signature across the page.

Tim Gary  
Committee Clerk





**DEPARTMENT OF THE ARMY**  
**ST. PAUL DISTRICT, CORPS OF ENGINEERS**  
**180 FIFTH STREET EAST, SUITE 700**  
**ST. PAUL MINNESOTA 55101-1678**

**AUG 01 2011**

REPLY TO  
ATTENTION OF

Operations  
Regulatory

Mr. Keith Gilkes, Chief of Staff  
Office of Governor Scott Walker  
115 East, State Capitol  
P.O. Box 7863  
Madison, Wisconsin 53707-7863

Dear Mr. Gilkes:

I am writing to follow up on my April 5<sup>th</sup>, 2011 meeting with Patrick Roetker in your Madison office. During that meeting, my staff and I provided Mr. Roetker some information regarding the Corps of Engineers' (Corps) regulatory authorities and implementation processes in Wisconsin under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. During that meeting, we also discussed the interrelated nature of existing federal and state water and wetland permitting procedures in Wisconsin. At the conclusion of the meeting, I offered to provide your office additional information regarding how proposed changes to the State's water and wetland regulatory programs could affect Corps regulation of these resources. Enclosed is an information sheet that provides some general information describing the Corps permitting programs and some of the interrelationships between Wisconsin Department of Natural Resources (WDNR) and federal permit procedures in Wisconsin (Attachment A).

The Clean Water Act allows for the development of federal/state partnerships in implementing water protection laws in our nation. The relationship between the Corps and the State of Wisconsin has been a model one in that regard. While it is our understanding that the State is considering restructuring some of its environmental rules and practices, it is my sincere hope that we can continue to work together in a way that leverages the best of both state and federal resources as we work to protect Wisconsin's waters and wetlands.

As your office and the Legislature contemplate changes to Wisconsin's water and wetland regulatory programs, I would like to call to your attention to the existing relationship between the State's regulatory programs and the Corps' regulatory programs. What follows is a brief description of situations where Wisconsin's regulatory programs have a significant interface with Corps regulatory activities. I hope that you find this information useful to your offices' policymaking processes.

(1) GENERAL PERMIT PROGRAM. The majority of Corps authorizations for work in waters and/or wetlands in Wisconsin are "general permits." General permits are

a form of expedited permit review specifically authorized by §404 of the Clean Water Act for activities that have minimal impact, both individually and cumulatively. Some of the Corps general permits are "programmatic general permits." By definition, a programmatic general permit authorizes certain projects that are regulated by another regulatory authority, and also satisfy Corps permitting requirements. In Wisconsin, the Corps has a programmatic general permit for certain activities regulated by the WDNR under certain portions of Chapters 30 and 31 of the Wisconsin statutes.<sup>1</sup>

In the event that the State regulatory programs underlying this programmatic general permit were to change in any material respect, either statutorily or administratively, the Corps would need to reevaluate our general permit to determine whether the Wisconsin permitting program, as revised, still met all Corps permitting requirements. In the near term, if the state regulations are significantly altered, then our general permits will likely need to be revoked and reissued. Reissuance, if appropriate, may take six months to a year to complete. In the interim, permit applications would be reviewed under our individual permit review process, which would generally take 60 to 120 days longer than the general permit process. In the long term, we would seek to re-establish a programmatic general permit for those categories of activities that remain subject to both state and federal authority.

(2) ENVIRONMENTAL REVIEW. The Corps and the WDNR also interact closely when evaluating large, complicated projects. A good example of this is permitting for ferrous mining projects. Ferrous mining projects typically require a Corps permit for work in jurisdictional waters or wetlands associated with mineral extraction and processing. While ferrous mining projects are fairly new to our program in the State of Wisconsin, we have several years of experience in the review and permitting of similar mining projects in Minnesota. Enclosed is an information sheet that summarizes some of the typical review timeframes applicable to our permit evaluation process for ferrous mining projects (Attachment B). To proactively address any proposed ferrous mining legislation, we have developed several additional points for you to consider regarding Corps review of these types of projects:

(a) Corps reviews of large or complex projects often require preparation of an Environmental Impact Statement (EIS). Preparation of these documents is more efficient when we prepare joint federal/state environmental documents with our state partners at the WDNR. As shown in Attachment B, our agency timeframe for preparing an EIS typically exceeds two years. Should changes in state law either legally or practically preclude the Corps and the WDNR from preparing a joint EIS, it may force the separation of the state and federal review, with two separate EIS documents, resulting in duplication of effort, and additional expense to the permit applicant.

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<sup>1</sup> The current version of Programmatic General Permit GP-001-WI can be viewed at <http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=681>.

(b) The Corps routinely completes extensive field reviews for large, complex projects. These reviews not only ensure adequate representation of aquatic resource boundaries, but also provide key information to better assess important natural features in the area. Concurrent review with the WDNR assists applicants by providing coordinated feedback regarding state and federal jurisdiction and our assessment of the resources.

(c) From a permitting standpoint, Federal guidelines<sup>2</sup> regarding our public interest review require due consideration be given to the effect the proposed activity will have on historic properties and archaeological resources, including Indian religious or cultural sites.

(d) Waters that are subject to Corps jurisdiction can include wetlands, streams, rivers, lakes, and other aquatic resources. Impacts to resources such as lakebeds and streams must be addressed in our permit evaluations.

(3) COMPENSATORY MITIGATION. Both the Corps and the WDNR require permit applicants to first avoid, and then minimize, impacts to aquatic ecosystems to the greatest extent practicable. This process, referred to as sequencing, includes a third step at the federal level that generally requires applicants to provide compensatory mitigation for unavoidable impacts to aquatic resources (wetlands, lakes, streams). Compensatory mitigation is not restricted to scenarios where aquatic resource loss is deemed significant, nor is it restricted to federal waters. The Corps regulations are flexible regarding compensation location (on, near, or off-site), type (permittee-responsible, bank), as well as amount of compensation required. For ease of implementation, a replacement ratio may be used as a guideline for determining the amount of compensation required; however, compensatory mitigation is primarily based upon an assessment of aquatic resource functional service loss versus functional service gain, and is not a set ratio.

(4) MITIGATION BANKING. In Wisconsin, as in most parts of the country, mitigation banks are a useful tool for providing environmental compensation (more commonly referred to in the regulatory arena as compensatory mitigation) for impacts to aquatic resources. Mitigation banks are proposed, evaluated, and overseen in accordance with guidelines established by the Interagency Review Team (IRT). The IRT in Wisconsin is made up of representatives from the Corps, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, and the WDNR.

One of the central tenants of mitigation banking is the establishment of service areas for approved banks. A "service area" is the geographic area for which credits generated by a particular mitigation bank can be used. The service area is an important concept under federal law where the proximity of the mitigation to the area of aquatic impact is an important criterion for determining the suitability of a given mitigation bank and for determining the amount of mitigation required. Abandoning or deviating from

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<sup>2</sup> Reference 33 CFR Part 320.4(e).

Operations – Regulatory  
Governor Walker’s Office, July 2011

the process and guidelines established through the IRT would increase the likelihood that permittees will need to accomplish separate mitigation for state and federal permits. This may put applicants in a position to comply with two different sets of mitigation standards, multiplying expense and time spent by the regulated public on this aspect of permitting.

I hope that this information is useful to your office in understanding the interrelationship between Corps and WDNR permitting programs. I appreciate your office’s desire to streamline the State’s regulatory programs and ask that you keep us apprised of any changes that are made so that I can make any appropriate adjustments to the Corps program.

In my experience, the WDNR is a valuable partner in the regulation of waters and wetlands and the Corps will continue to work with the WDNR to the extent we can under state law. Please feel free to contact me at (651) 290-5197 if you have any questions or are in need of further information.

Sincerely,



Tamara E. Cameron  
Regulatory Branch Chief  
St. Paul District Corps of Engineers

Enclosures:

Attachment A: St. Paul District Regulatory Program Overview;  
Attachment B: June 2011 Informational Pages – Ferrous Mining.

Copy furnished:

Mr. Eric Schutt, Deputy Chief of Staff  
Office of the Governor  
Room 115 East, State Capitol  
P.O. Box 7863  
Madison, Wisconsin 53707-7863

Wisconsin Senator Neil Kedzie  
Chair, Senate Committee Natural Resources and Environment  
Room 313 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Wisconsin Senator Harry Moulton  
Chair, Senate Committee on Workforce Development, Small Business and Tourism

Operations – Regulatory  
Governor Walker's Office, July 2011

Room 306 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Wisconsin Representative Jeffrey Mursau  
Chair, Assembly Committee on Natural Resources  
Room 18 North, State Capitol  
P.O. Box 8953  
Madison, WI 53708

Wisconsin Representative Mary Williams  
Chair, Assembly Committee Jobs, Economy, and Small Business  
Room 17 West, State Capitol  
P.O. Box 8953  
Madison, WI 53708

Secretary Cathy Stepp  
Wisconsin Dept. of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921







**VALLEY**  
**STEWARDSHIP**  
 — NETWORK —

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 Businessman  
 Marilyn Volden  
 Viroqua Schools  
 Darin Von Ruden  
 WI Farmers Union  
 Marty McEvoy  
 McEvoy CPA, CFP

October 25, 2011

State Capitol  
 101 E. Wilson St.  
 Madison, WI 53703

RE: Special Session Bill 24

Greetings,

For the past ten years, Valley Stewardship Network (VSN) and its members have been dedicated to providing clean water and healthy food within the Kickapoo region and beyond. **Today, on behalf of the Valley Stewardship Network, I am writing to urge you to oppose Special Session Bill 24.**

VSN has many major concerns with the potential effects of this particular bill including:

- Speeding up the approval process for permits;
- Limiting the public's input and involvement;
- Eliminating permit restrictions on certain sensitive waterways such as designated trout streams; and
- Increasing the likelihood of impairing our waterways statewide.

To reiterate the basics of the water cycle, it is crucial to point out that our waterways are connected, and water is continuously recycled throughout the atmosphere, land, soil, vegetation, groundwater and surface waters. Pollutants and contaminants can enter the system at any point and spread throughout. Human activities such as construction, development, high-capacity wells and mining continually affect the quality of our limited freshwater supplies as well as the ability to ensure clean drinking water for our communities.

This bill is designed to significantly speed the process of permitting by the DNR, the organization charged with protecting the environment. As quoted from the Wisconsin Department of Natural Resource's webpage,

*"Water resources are the foundation for Wisconsin's economy, environment and quality of life. Managing, conserving and restoring them for the benefit of Wisconsin citizens now and in the future is a big job, and one WDNR's Water Division staff share with local governments, citizens and businesses."*

If passed, the provisions of Special Session Bill 24 would hinder the DNR's ability to adequately assess potential environmental impacts only to expedite the approval process for businesses. It even goes as far as to automatically grant a permit if the DNR does not respond within the

~People of the Kickapoo Valley working together to promote good stewardship of the watershed.~



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— NETWORK —

124 1/2 South Main Street • Viroqua, WI 54665  
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proposed time limits. Proper environmental review is especially important as the possible consequences to our water supplies may well last a lifetime and will be felt by all. Clean water is a priceless resource essential to the survival of life, and it becomes very expensive to fix after contamination occurs.

Special Session Bill 24 has been linked to efforts currently being prospected in northern Wisconsin; however, the ramifications of this bill will be felt statewide. For instance, the Driftless region of southwestern Wisconsin is a unique, ancient landscape, untouched by the last ice age. It supports numerous trout streams and rivers, and in the entire four-state Driftless region, trout fishing adds over 1 billion dollars to the local economy. The well-being of many small, rural communities depends on the protection of clean water and natural habitats.

Nevertheless, southwestern Wisconsin has been the target for sand mining operations and several more are currently being proposed. If this bill is passed, it will be even easier for activities such as sand mining, to drastically alter our landscapes. Another current issue in our area involves an out-of-state landowner with property in Crawford county. This individual has applied to build a high-capacity well capable of pumping 500 gallons per minute within 550 feet of Copper Creek, a Class I Trout Stream. Under the bill's proposed amendments, designated trout streams such as Copper Creek would not be identified as an area of significant scientific value.

Additionally, Special Session Bill 24 would limit the rights of citizens' input and involvement, in particular, those invested in the condition of their hometown rivers and streams. For example, the public notice of the proposed high-capacity well was published in the local newspaper, which prompted concerned citizens to mobilize to protect Copper Creek. However, this bill would exclude public notices published in local media sources in favor of a general notice on the internet, where they may go unseen. Empowering businesses for short-term financial gains at the expense of our environment and of our citizens will only create more struggles and hardships in the long-run.

Again, I urge you to oppose Special Session Bill 24 so that we may protect our natural resources to assure clean water for our and future generations' survival. Thank you for your consideration.

Sincerely,

Katya Leonard  
Water Quality Program Manager  
Valley Stewardship Network

*~People of the Kickapoo Valley working together to promote good stewardship of the watershed.~*





**Wisconsin  
County Code  
Administrators**

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October 25, 2011

Senator Neal Kedzie  
Chair-Committee on Natural Resources and Environment  
Room 313 South  
State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Re: SS-SB-24

Dear Senator Kedzie,

Please accept this letter regarding SS-SB-24 DNR Permits on behalf of the members of the Wisconsin County Code Administrators (WCCA). Our members are charged with administration of shoreland zoning regulations derived solely from WI DNR Administrative Code NR115. Upon my review of the proposed legislation, it appears the intent is to remove the responsibility for issuance of permits for shoreland filling and grading and boathouses from the Wisconsin DNR. A major concern is an apparent shift in regulatory responsibilities based on the ordinary high water mark. Once again, our members are concerned that there has been no consultation with the zoning administrators as to this new requirement. Lastly, with the implementation of WI Administrative Code NR 115 suspended, this newest legislation seems oddly timed.

Please place this letter in the record for a public hearing scheduled for Wednesday, October 26, 2011 at 11AM regarding SS-SB-24. The members of the Wisconsin County Code Administrators respectfully request your committee's consideration of SS-SB-24 take into account the potential impact on counties. We request time to consult with Wisconsin DNR staff to complete a thorough review of any new regulatory requirements.

Sincerely,

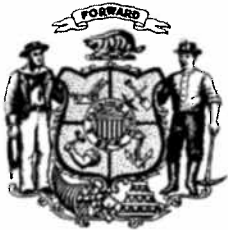
*Mark Steward*

Mark Steward, President  
Wisconsin County Code Administrators  
marksteward7@yahoo.com

cc: Cathy Stepp, Secretary, WDNR  
Doug Parrot, WCA  
WCCA Executive Board  
WCCA NR 115 Subcommittee



# WISCONSIN STATE LEGISLATURE



October 25, 2011

Comments on Special Sessions AB 24

Tom Thrall  
State Biologist (retired)  
USDA  
Natural Resources Conservation Service

First of all, I want to state that the League of Conservation Voters has done an excellent analysis of the specific item by item impacts of this bill and I fully support those comments.


The whole theme of this bill is to speed up or eliminate wherever possible, the DNR permitting process. This would be accomplished by cutting back or eliminating input from the public, minimizing or eliminating DNR staff review time, automatic permit extensions, and an increase in general permits. This bill is a great example of pushing for short term economic gain at the expense of long term negative environmental consequences.

The fact of the matter is that virtually every development, particularly those near waterways, has a consequence on water quality and quantity and also for wildlife. The extent of that consequence on any individual project or group of projects is what the DNR must evaluate. Permits are granted based on whether the proposed project meets the criteria of existing laws and regulations which are designed to minimize the severity of a project on the water and associated resources being affected. The permitting process was developed for a reason. There were frankly, some bad things happening.

It is not an easy task that the DNR has to analyze the specific site impacts that a proposed project has on a. It takes time to do a decent evaluation and public input is essential, since the public is ultimately affected. The public also needs time to digest the facts involved, which sometimes can be very complex.

Now the DNR is not perfect. Someone can always point to what seemingly is a very minor alteration that for some reason has taken months for a permit response, but these kinds of things must and should be addressed internally by DNR management. Cutting back on public input and all the other shortcuts being proposed is not the answer. The pressure on our water, air and wildlife resources has never been greater. The permitting processes protecting our waters were put into effect for a reason. In my opinion, if anything they should be strengthened and not weakened.

Finally, mines and high capacity wells always have the capacity for very high, long lasting negative impacts. Using shortcuts or rush jobs when evaluating mines and high capacity wells is inexcusable.

  
Tom Thrall  
Fitchburg, Wisconsin



Wednesday, October 26, 2011

Presentation to the Assembly Natural Resources Committee

AB 24

From Michael Arrowood

Chairman Wisconsin Wildlife Federation Inland Fisheries Committee  
Chairman of Board of Directors, Walleyes For Tomorrow  
37 year Conservation Congress Delegate, Fond du Lac County  
37 Year Secretary, Winnebagoland Conservation Alliance, Fond du Lac  
County  
22 year member of Conservation Congress Warm Water Fish Committee

Mr. Chairman and members of the Committee, thank you for the opportunity to address the committee.

For the sake of brevity, I will be brief and blunt in my comments.

What I find most striking about the content of AB 24 is the total lack of intelligence displayed by the author(s).

Lack of intelligence with regard to lake ecology. Lack of intelligence with regard to water ecology. Lack of intelligence in regard to fish ecology. Lack of intelligence with regard to air quality. Lack of intelligence with regard to forest ecology.

Lack of intelligence with regard to the adverse economic impact of the proposed legislation to the citizens and business community of the State of Wisconsin. Lack of intelligence with regard to the social impact on lake property and forest owners in Wisconsin.

500 → I will quickly focus on only two aspects of AB 24. First, the proposal to allow removal of 50 cubic yards of vegetation by each riparian landowner annually. What was the intelligent reasoning for allowing this quantity to be removed?

1. There are more than 10,000 lakes in Wisconsin. Does this "one quantity fits all" mentality make any sense at all?
2. Riparian landowners do not own the vegetation in any lake in Wisconsin.
3. Near shore vegetation is absolutely critical habitat for the survival of juvenile fish in virtually every lake and river in Wisconsin.
4. Near shore vegetation provides the oxygen that allows fish to survive.
5. There is no regulation of timing of removal, method of removal or species of plants allowed to be removed delineated in AB 24.



6. Where is the economic impact analysis of the alteration of the lake ecology that will occur as a result of vegetation removal?

The second aspect of AB 24 is the proposal to allow removal of 50 cubic yards of lake or stream bed material annually by each riparian land owner. What was the intelligent reasoning for allowing this quantity to be removed?

1. There are over 10,000 lakes in Wisconsin. Does this "one quantity fits all" make any sense at all?
2. Riparian landowners do not own the lake bed of any lake in Wisconsin.
3. Near shore lake bed topography is the only natural feature that limits boat size and numbers on many lakes in Wisconsin
4. Allowing the proliferation of piers and boats will significantly alter the "culture" of virtually every lake in Wisconsin.
5. There is no regulation of the timing of removal, type of material allowed to be removed, method of removal or pollution control requirements delineated in AB 24.
5. Where is the economic impact analysis of altering the use pattern of virtually every lake in Wisconsin?

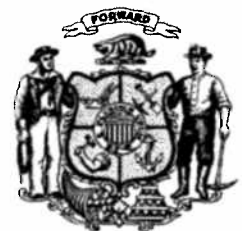
AB 24 is a PRO POLLUTION BILL. It will facilitate the pollution of the physical environment and cultural environment of Wisconsin in more ways that can be presently imagined.

Thank you for your time.

Michael Arrowood  
W 7859 E Clark Rd.  
Oakfield, WI 53056  
920-579-0106



# WISCONSIN STATE LEGISLATURE



## **Testimony Relating to Special Session Bills SB24/AB24**

**Michael J. Cain**

**Attorney at Law, Madison, WI**

**Oct. 26, 2011**

I am attorney who resides in Madison, WI. I appear representing myself as a citizen who enjoys using WI's water resources for fishing, boating and recreation.

There are some positive aspects of these bills, but I have significant concerns and objections to many of the provisions of Special Session Bill AB24/SB24. Because of those concerns, I appear in opposition to these bills.

I am a lifelong WI resident, having grown up in Southwest WI. I received a Bachelor of Science degree in Biology (with an emphasis on Aquatic Biology) from UW Stevens Point in 1972. I received a Juris Doctor from the University of WI Law School in 1976. I served as an attorney with the WI Department of Natural Resources for 33 years. I was the primary attorney dealing with surface water and wetlands (Chapters 30 and 31, Stats.) and the Public Trust Doctrine for 31 of those 33 years. I was involved in the reviews of thousands of permits, hundreds of enforcement actions, and the development and administration of statutes and rules relating to these surface water and wetland issues.

I currently am on the Board of the Environmental Law Section of the WI State Bar. I lecture regularly, as a guest lecturer, at UW and Marquette Law Schools and at UW universities on water law, wetlands, and Public Trust issues.

Upon receiving a copy of these bills, I conferred with numerous experts from around the state concerning the potential impacts of some of the provisions of this proposed legislation.

### **Summary**

It is clear that numerous provisions of this bill are problematic from a resource protection, public participation and Constitutional standpoint. It appears clear to me that, in order to make informed decisions concerning the full potential impacts of this bill more time and study are required.

If this bill were adopted as currently proposed it would result in significant losses of valuable wetlands, fishery and wildlife habitat in Wisconsin's navigable waters through the dredging provisions contained in Sections 40 to 43 of the Bill. If adopted as proposed it would result in

the placement, in clear violation of the Wisconsin Constitution, Article IX, Section 1, of private structures such as condominiums, hotels, commercial and retail facilities on the beds of Wisconsin's lakes and rivers, under Section 6 of Bill. In Section 5 of the Bill, it countervails the scientific and professional judgment of the Department of Natural Resources in existing rules relating to "areas of significant scientific value" (NR1.05(4), Wisconsin Administrative Code) and limits the consideration of many areas that are important to the life histories of threatened and endangered resources, limits the consideration of the lower St. Croix River (despite prior legislative findings in Section 30.27, Stats., that "it is in the public interest" to preserve this "unique scenic and recreational asset"), and eliminates the consideration of Special Area Management Plans (SAMPS) and Special Wetland Inventory Study (SWIS) wetlands.

This Bill changes important provisions of WI law relating to the placement of piers and the number of boat slips that may be placed by riparian owners, i.e., persons who own land abutting a waterbody, in a manner which, in my opinion, will result in the loss and degradation of valuable near shore habitat in our lakes and rivers.

The Public Hearing process outlined in this bill creates problems for the public due to the 20 day timeline for requesting hearings, even, apparently, in some circumstances where the complete project information has not been provided to the WI DNR. This will cause problems for the public, the applicants, and the Department in the processing of permits. The burden of proceeding and burden of proof are placed on the person requesting the hearing, even though the placement of structures and undertaking activities in navigable water is a privilege, not a right of the Applicant. As stated below, I believe these provisions are very bad public policy, they trample on the rights of all citizens, including myself, and also violate the Public Trust Doctrine.

There are other provisions relating to bridges and culverts, and low hazard dams, and other activities which I do not have sufficient understanding to comment in detail about at this time.

### **Hearing Process**

The hearing process outlined in this bill reduces the time for requesting a public hearing or for the DNR to decide to hold a hearing on its own from 30 to 20 days. (Section 58, page 22) As outlined in the bill analysis, this timetable can begin even if the application is not complete. (Section 56) It is unreasonable to require that a potential objector file the objection at a time when it may not be possible to understand the entire project proposal. This will cause difficulty for both the applicant and objecting parties, since a party may be forced to file an objection in circumstances where, if the application were complete, they might better understand the project and not object.

This 20 day timeframe is unreasonably short. The problems for the public are made more serious because of the existing provisions of Section 227.483, Stats., which provide that costs may be assessed against a party if it is found that a “claim or defense is frivolous”.

The importance of this is further compounded by the presumptive approval provisions in Section 60 of the bill which provides that “if the department fails to comply with the time periods...a decision issuing the permit, modifying the permit, or approving the contract shall be considered to be rendered....”.

In Section 72 of the bill, the “burden of proof” and the burden of proceeding first at a hearing is placed on the Petitioner, which will in most cases be a party objecting to a project. This changes the longstanding policies embodied in Wisconsin law, the Department’s hearing rules (NR 2) and in Chapter 227, WI Stats, relating to Administrative Hearings and the due process rights of the public when dealing with Public Trust waters. This is unreasonable, as the Applicant should have the burden of proceeding and the burden of proof to present the project and provide evidence that the project meets the statutory standards. This is especially true in applications which impact public navigable waters, as there is no right to the placement of structures or other activities on the bed of public trust waters. A riparian owner does have valuable rights, including the rights to make “reasonable use” of their water frontage and their land. The activities which affect public waters are limited by the Public Trust Doctrine and the paramount public rights in these waters. As the Wisconsin Supreme Court stated in Muench v. PSC, 261 Wis. 492(1952):

*Navigable waters are public waters and as such they should inure to the benefit of the public. They should be free to all for commerce, for travel, for recreation, and also for hunting and fishing, which are now mainly certain forms of recreation. Only by so construing the provisions of our organic laws can the people reap the full benefit of the grant secured to them therein. This grant was made to them before the state had any title to convey to private parties, and it became a trustee of the people charged with the faithful execution of the trust created for their benefit. Riparian owners, therefore, took title to lands under navigable waters with notice of such trust and subject to the burdens created by it. It was intended that navigable waters should be public navigable waters, and only by giving members of the public equal rights thereon so far as navigation and its incidents are concerned can they be said to be truly public.*

Based on the Public Trust Doctrine, I believe there are significant public policy and Constitutional questions concerning whether the public hearing processes outlined in these Bills are defensible.

## **Bulkhead lines**

In Section 6, page 9, there is a provision relating to bulkhead lines which states that, "A riparian owner may place additional fill or a structure on the filled portion of a bed of a navigable water within an established bulkhead line for any purpose without obtaining an approval under this chapter if [fill was placed before the effective date] and there is no lease under. S. 24.39 before the effective date."

There are many established bulkhead lines in the State, some of which authorize filling on state owned lakebed and riverbed (including Lake Michigan, Lake Superior, Lake Monona and Lake Winnebago, the Fox River, the Mississippi River, the Milwaukee River, etc.). There have been numerous proposals to place condominiums, hotels or other commercial and retail facilities on areas of state owned lakebed and riverbed. There is currently litigation, where WI DNR is represented by WI DOJ, on Lake Michigan in the City of Two Rivers where there is a proposal to place condominiums on filled lakebed behind a bulkhead the bed of Lake Michigan. See Attachment A, which is an Exhibit showing the proposed condos on lakebed.

I do not know with certainty how many of these circumstances exist, but there are many of them across the State of Wisconsin. I was personally involved in many proposals to place private residential and commercial structures on lakebed and riverbed (an average of 8 to 10 per year) when I was an attorney at WI DNR. This is a significant statewide issue. If this legislation is adopted as drafted it will result in efforts to construct these types of facilities on the beds of navigable waters throughout the State.

This provision is clearly a violation of the Wisconsin Constitution. The Courts have made it clear that there are limitations on all parties, including the Legislature, in allowing activities to occur on the beds of public trust waters for private purposes. When the Legislature enacted a statute in the late 1800's to authorize the draining of Big Muskego Lake in Waukesha County for development purposes, the case went to the WI Supreme Court.

The Court held that the legislative Act was a violation of the public trust doctrine and that the lake must be restored, stating, in *Priewe v. Wisconsin State Land and Improvement Co.*, 103 Wis. 537 (1899):

*"The legislature has no more authority to emancipate itself from the obligation resting upon it which was assumed at the commencement of its statehood, to preserve for the benefit of all the people forever the enjoyment of the navigable waters within its boundaries, than it has to donate the school fund or the state capitol to a private purpose."*

## **Dredging**

In Section 40 of the Bill, there is a new Exemption created allowing the removal of up to 10 cubic yards per year of materials from the bed of a navigable water “if it is necessary to allow access to place or remove a pier or wharf....”. My understanding is that the DNR currently allows the removal of up to 2 cubic yards for placement of a pier. This Bill proposes a fivefold increase and allows the removal of a large truck full of material each year. This should not be an Exemption, since it is obvious that the vast majority of riparians place and remove their pier without dredging material from the bed of the lake or river. If a person actually needs to remove 10 cubic yards per year, they can obtain an individual permit and would be covered under the maintenance provisions that currently exist in Subsection 30.20(1t), Wis. Stats., to “remove material for maintenance purposes” where material has been “previously removed”. This new Exemption will result in the cumulative loss of a great deal of littoral zone habitat.

In Sections 40 to 43 of the bill draft, there are requirements that the WI DNR adopt general permits for two additional dredging activities, including;

1. Any riparian owner may remove up to 50 cubic yards from a “lake or stream adjacent to the riparian owner’s property....for purpose of placing or maintaining a boat lift”. This is unnecessary and excessive. 50 cubic yards of material will fill 5 large dump trucks. It is, in the opinion of experts I have talked to and based on my own observations, not necessary to remove such a large amount of material to place a boat lift. The provision does not even limit the removal to the footprint of the boat lift, but rather allows removal from a “lake or stream adjacent” to the property. (Section 42)
2. A person may “annually remove” up to “500 cubic yards of plant or animal nuisance deposits from a stream, inland lake, or outlying waters if it impedes navigation or access....”. Again, this is excessive and, based on my personal observations and discussions with experts, is not needed as a General Permit.

The Department has adopted provisions to deal with removal of “plant or animal nuisance deposits” on outlying waters under Chapter NR 345, WI Admin Code. This makes sense, in light of the Cladophora and mussel issues that have arisen on those outlying waters. (See Attachment 1, which has a photo of Cladophora (algae) removal and a reference to NR 345). I have not found an expert who believes that such dredging is needed on streams and inland waters in Wisconsin.

It is clear that creating an expectation that people could remove 500 cubic yards (50 large dump trucks) annually of plant material would potentially result in the destruction of large areas of

riparian wetlands and bogs in our inland lakes and streams. One expert I talked to said this could “decimate” valuable spawning and wildlife habitat on our inland waters.

I have personally been involved in many cases as an Attorney for WI DNR where developers and landowners attempted to put marinas or extensive piers in bogs and valuable wetland habitat on the shores of lakes and rivers. As one example, I attach a map of Lake Nagawicka in Waukesha County, where we had extensive litigation with a developer who started placing piers and a marina in a floating bog (see the Kettle area on the attached USGS map- Attachment 2). I have also attached a photo of the area that was proposed to be impacted by the marina/piers for the subdivision. (Attachment 3). During my tenure at WI DNR we dealt with many similar proposals, and my experience is that they were increasing as people tried to develop land which had bogs or wetlands fronting the upland.

If there is a need for removal of 50 or 500 cubic yards of materials on streams or inland lakes, it should be dealt with by the issuance of an individual permits, since it appears it would be a rare occurrence. Again, if a person received such a permit, maintenance dredging could be undertaken pursuant to Subsection 30.20(1t), referenced above and found in Section 41 of this Bill. If there are circumstances (due to drought, etc.) where access is an issue, it can be dealt with by an individual permit with maintenance conditions. In my opinion, there is a very great potential to lose valuable resources with General Permits that give rights to persons which might be abused by land owners who fail to understand the value of the wetland or bog resources involved.

### **Areas of Significant Scientific Value**

WI DNR has adopted, by rule in NR 1.05, WI Admin Code, “areas of special natural resource interest”. As a subset of these, in NR 1.05(4), the DNR identified “areas with significant scientific value”. Section 5 of the Bill removes from this designation many waters that are currently covered under this designation, dismissing the scientific and natural resource management judgments that have been made by the Department. The Bill also provides that the WI DNR “may include only the following”, which apparently precludes any future designations of “Areas of significant scientific value” by the Department.

The limitations in the Bill include:

1. The current designation includes “Waters or portions of waters that contain endangered and threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory”. (NR 1.05(4)(a). The new designation would be “Specific portions of waters that contain critical habitat for endangered or threatened species” and “Specific portions of waters that are immediately adjacent



to [critical habitat] and that “directly affect that habitat.” This is very narrow and, in my opinion, ecologically invalid, as impacts to waters quite far removed (upstream or downstream) can have significant impacts on endangered and threatened species depending on their life history, prey relationships, water quality impacts, etc. Additionally, the provision imposed in the Bill will be difficult or impossible for the Department to administer or enforce, since, it is my understanding, much of the “critical habitat” has not been documented and catalogued at this time.

2. The current designation for wild and scenic rivers reads “Federal or state, under ss. 30.26 and 30.27, Stats., designated wild or scenic rivers.” (NR 1.05(4)(e). The new designation includes “Rivers that are included in the national wild and scenic rivers and rivers that are designated under s. 30.26.” I am not an expert on wild rivers, but it obviously removes the Lower St. Croix (which is included in S. 30.27. ) This is surprising to me since, in Section 30.27, Stats., the Legislature has previously made a finding that “The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of the state of Wisconsin.”
3. The draft removes areas with Special Area Management Plans (SAMPS) and Special Wetland Inventory Studies (SWIS) waters and wetlands from the list. I have experience with both of these categories of water resources, and, in my opinion, it is a serious problem to eliminate them from consideration. If people think the categories are too broad, there are more reasonable ways to define limitations within these categories.

It appears to me that it is very bad public policy to limit, through Legislation, the authority of the WI DNR to use its professional scientific and natural resource judgment, to identify “Areas of Special Natural Resource Interest” (ASNRI’s) and “Areas with significant scientific value.” This is especially true since the scientific knowledge and awareness of the value of resources is constantly evolving. Many areas of ecology and limnology evolved greatly since I received my undergraduate degree 39 years ago, and will continue to evolve in the future. It is a disservice to the people of the State to not allow the resource agency’s policies to evolve with this increasing knowledge.

**Personal watercraft**

The current law allows a Riparian owner to have two boat slips for the first 50 feet and one boat slip for each additional 50 feet. (30.12(1g)(f)). Section 8 of this bill would allow, on the same frontage, two personal watercraft for the first 50 feet and one personal watercraft for each additional 50 feet.

For a person with a 100 foot lot, under this bill, you could now store 6 watercraft on “boat slips” over the water.

This is, in my opinion, excessive and intrudes into the public’s rights in navigable waters.

Section 9 of this Bill also authorizes additional slips for personal watercraft for multi-owner properties (condos and back lots) under sub. 30.12(1j)

Under current law, these properties can have 4 boat slips for the first 50 feet and 2 for each additional 50 feet. If you add personal watercraft to this, you have 6 boat slips for the first 50 feet and three for the next 50 feet. On a 100 foot lot for a back lot development, there would be the right to place 9 boat slips over the water. Under such a circumstance, it appears there may be very little or no natural shoreline remaining.

The impacts of such a concentration of boat slips over the water on public rights and other natural resources impacts are well documented. I attach as Attachment 4 a set of photos that was used when I was at DNR showing the impacts on the habitat from the maintenance of a large number of boats over a lakebed. It creates a biological dessert due to prop wash and lack of sunlight for plants to grow. Cumulatively, this causes significant loss of the near shore “Littoral habitat” (See attachment 5) which is where much of the biological activity in a lake or river systems occurs. For inland lakes and rivers, the littoral zone is that portion of the lake that is shallow enough to allow plant growth (in Wisconsin lakes it is usually 10 to 15 feet in depth). This zone is home to most of the aquatic plant life (both rooted and floating) in a pond or lake because the high amount of sunlight reaching it allows for significant photosynthetic activity. This is also the area that is most impacted by riparian structures and boat storage.

There are other alternatives to storing all of these boats over public waters and disrupting the entire shoreline habitat, including upland storage of some watercraft and concentrated storage in areas where there might be less disruption to important habitat.

### **Piers**

I will not discuss this in detail, but the provisions of Sections 10 to 19 remove the registration system that was established to catalog existing piers and decks and bring them into compliance with relaxed standards. The provisions in this bill jettison those processes, grandfather all piers

and decks without registration, and authorize "loading platforms" of up to 200 square feet with no dimensional limitations. These are allowed in areas of "special natural resource interest" under Section 22 of the draft.

The impacts of large decks or loading platforms are, like marinas. Well documented. I attach a series of photos from a Florence County deck enforcement action which shows the assemblage of aquatic plants in the near shore area and the total lack of plants (and their associated invertebrates, minnows, fish, etc.) under the deck. The cumulative effects are obvious and, in my opinion, serious. I think these provisions require further thoughtful scrutiny.

### **Land Grading**

There are provisions in Section 36 through 39 which eliminate the need for grading permits where a storm water discharge permit is being issued under s. 283.33, Stats., or a shoreland zoning permit has been issued pursuant to an ordinance enacted under s. 59.692.

I do not have a complete understanding of how these programs interact. While some streamlining may be useful, it is my opinion that these provisions they need to be scrutinized further and that more detail is needed. My experience around that State is that some counties are very progressive in their zoning standards and review and have adequate staff to assure that projects are properly designed and implemented. In other counties, that is not the case. If there are not adequate safeguards and State oversight we can expect that there will be environmental degradation due to lack of local administrative resources and Public Trust/Constitutional concerns re: delegation of the statewide interests to local governments.

The Wisconsin Supreme Court, in *Muench v. Public Service Commission*, 261 Wis. 492(1951), struck down a delegation of authority to counties where there was a controversy over the placement of a dam on the Namekagon River. The Legislature granted authority to counties to make the final decision on the placement of dams on all waters except those in state parks and state forests under the "county board law", which provided:

*...but in case of a dam or flowage located outside the boundaries of a state park or state forest no permit shall be denied on the ground that the construction of such proposed dam will violate the public right to the enjoyment of fishing, hunting or scenic beauty if the county board....approves the construction of such dam. Section 31.06(3) 1947.*

The WI Supreme Court held that the issue of "public rights of hunting, fishing, and scenic beauty by the erection of a dam on a navigable stream is of statewide concern", and that the statute that precluded findings by the state regulatory agency for public trust issues (then the PSC, now the DNR) was unconstitutional. The Court stated, on re-hearing:

*The trust doctrine has become so thoroughly embodied in the jurisprudence of this state that this court should not now repudiate the same, as it applies to the rights of recreational enjoyment of our public waters....*

*It is a well-recognized principle of the law of trusts that a trustee charged with the duty of administering a trust cannot delegate to agents powers vested in the trustee which involve an exercise of judgment and discretion.... The delegation of power attempted in the "county board law" permits the "public right to the enjoyment of fishing, hunting or natural scenic beauty" in a navigable stream to be seriously impaired or destroyed through the action of a county board and the Public Service Commission is rendered powerless thereby to intervene to protect these public rights. Such an attempted delegation of power by the legislature, involving as it does a complete abdication of the trust, is therefore void. (Emphasis added) Muench at pp. 515-l and 515-m.*

If there is not proper oversight of grading projects by the State of Wisconsin to assure protection of public rights in navigable waters, I believe this provision will suffer the same fate as the "county board law" for dams.

### **Boathouse repairs**

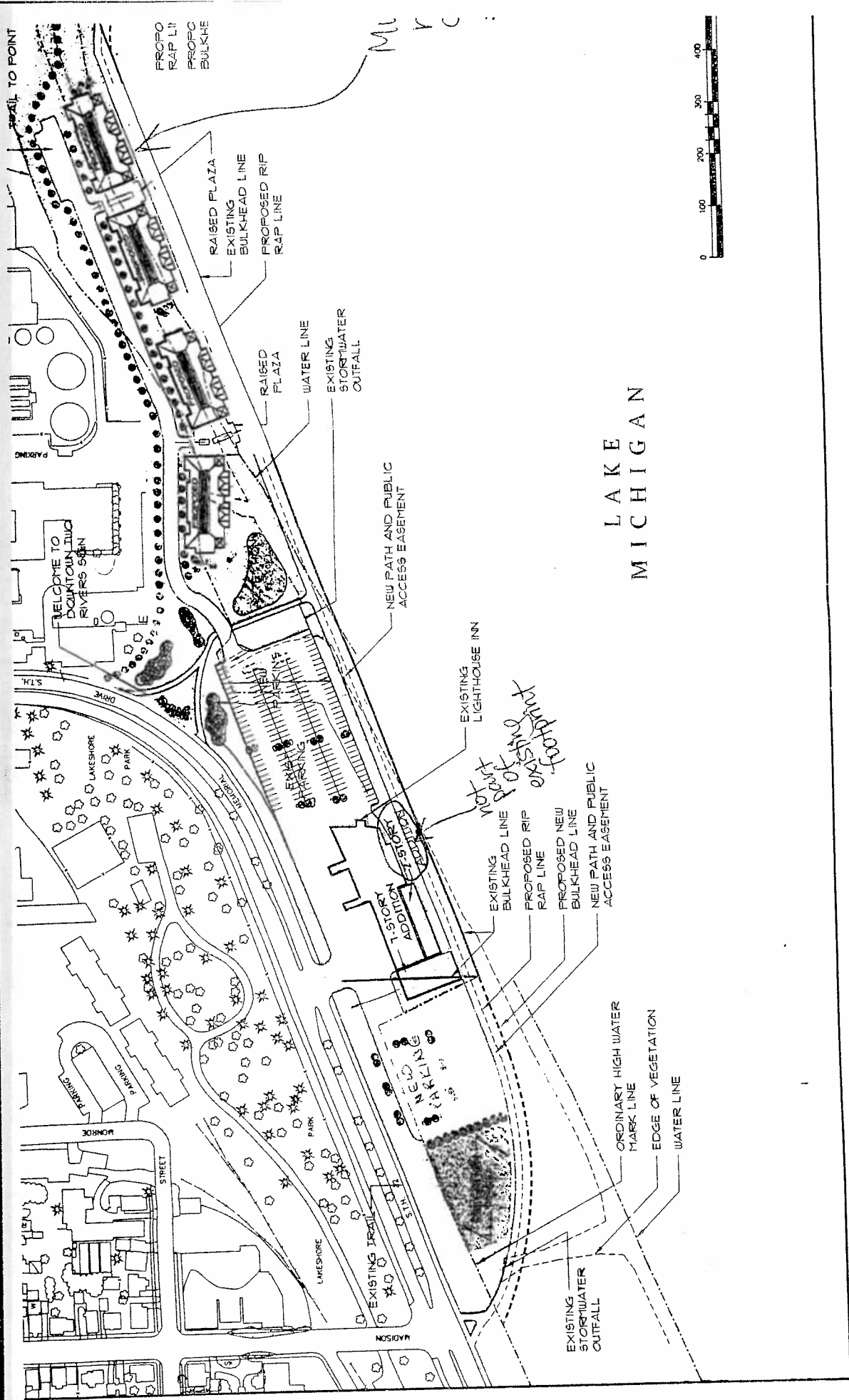
There are provisions in Sections 25 to 28 of the draft bill which relate to the repair of boathouses. I will defer to others re: the full impact of these provisions, but it appears, when you combine Section 25, which defines "maintain and repair" and Section 27, which deals with boathouses that were in existence in 1979, that it will be a rare circumstance where a boathouse of that vintage would be removed. I do not have a great deal of experience in this area, so I will leave this to others to scrutinize. Boathouses clearly impact the ability of the public to utilize waters for exercising their public rights. Like decks and marinas, they have impacts to the ecology of the water body.

There are many other provisions of the bill (Bridges and Culverts, Low Hazard Dams, Prospecting permits, etc.) that I do not have sufficient background to discuss.

Thank you for the opportunity to provide comments on these bills.

Michael Cain, Attorney at Law

Madison, WI Phone- 608-225-6071 E-mail- cainmjc@gmail.com



LAKE  
MICHIGAN



M U N I C I P A L

*not part of existing footprint*

Removal of algae, vegetation and mussell shells- NR 345, WI Adm. Code



88°26'

88°24'

88°22'









43°6'




43°4'

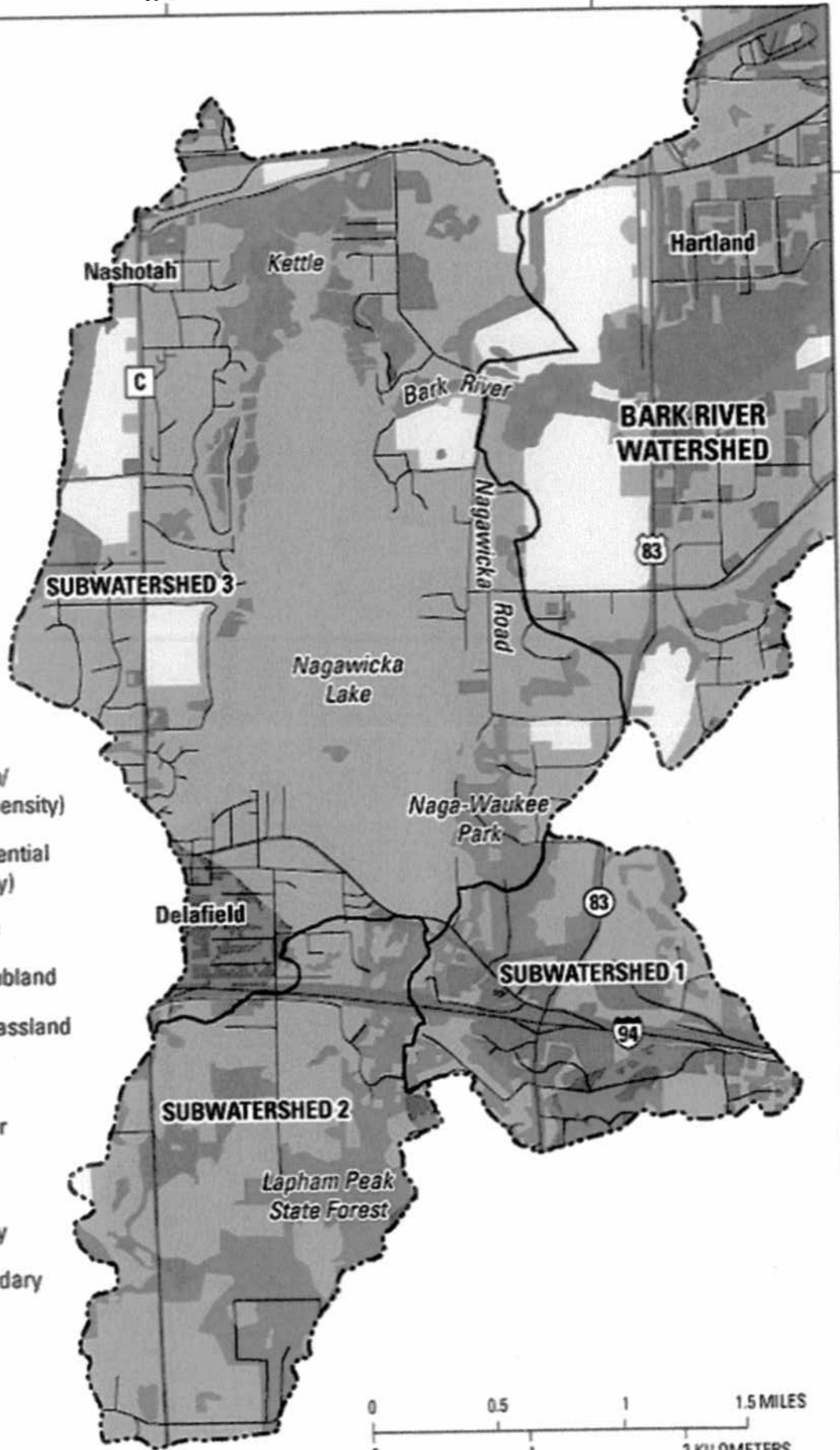
43°2'

**EXPLANATION**

**Land cover**

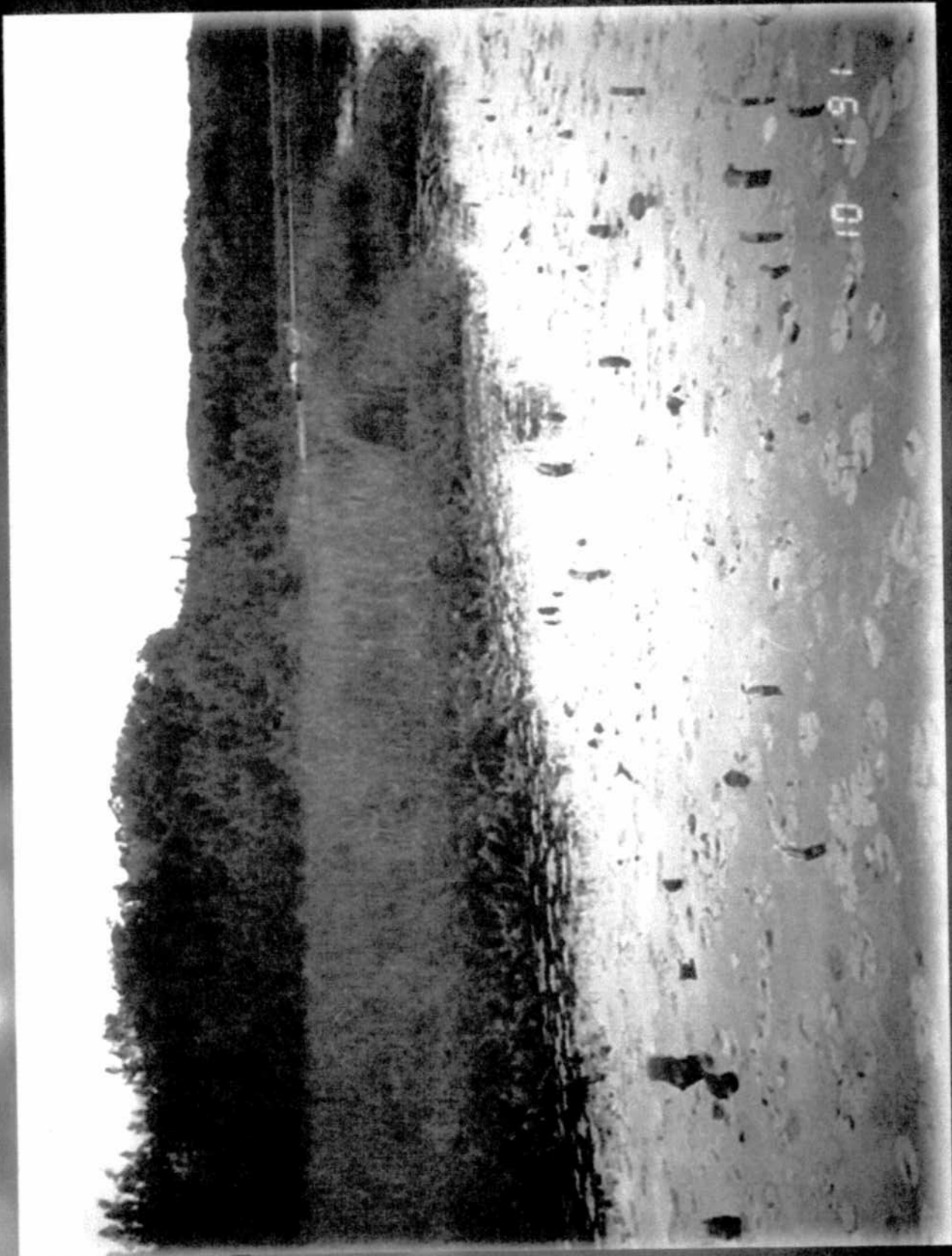
-  Urban (high/moderate density)
-  Rural residential (low density)
-  Agriculture
-  Forest/shrubland
-  Pasture/grassland
-  Wetlands
-  Open water
-  Barren

-  Watershed boundary
-  Subwatershed boundary
-  Road



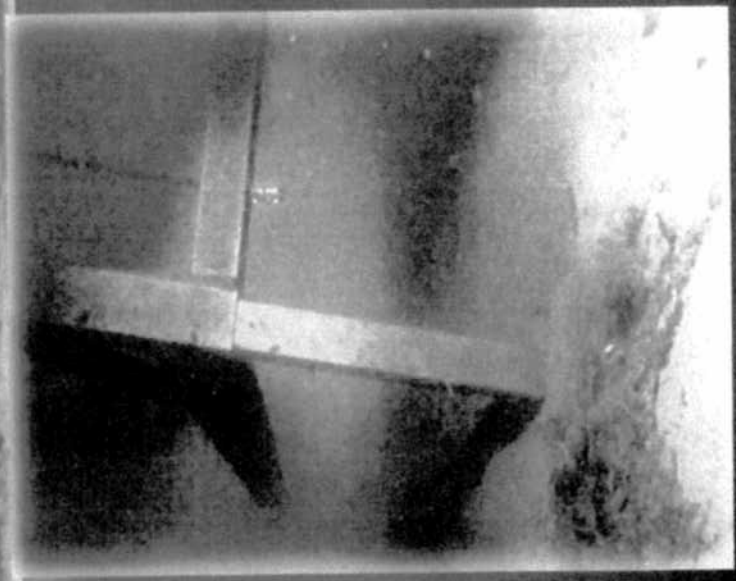
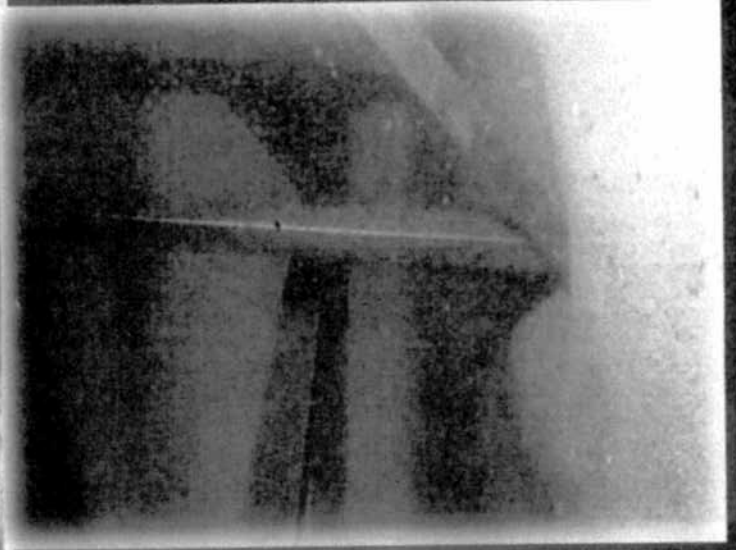
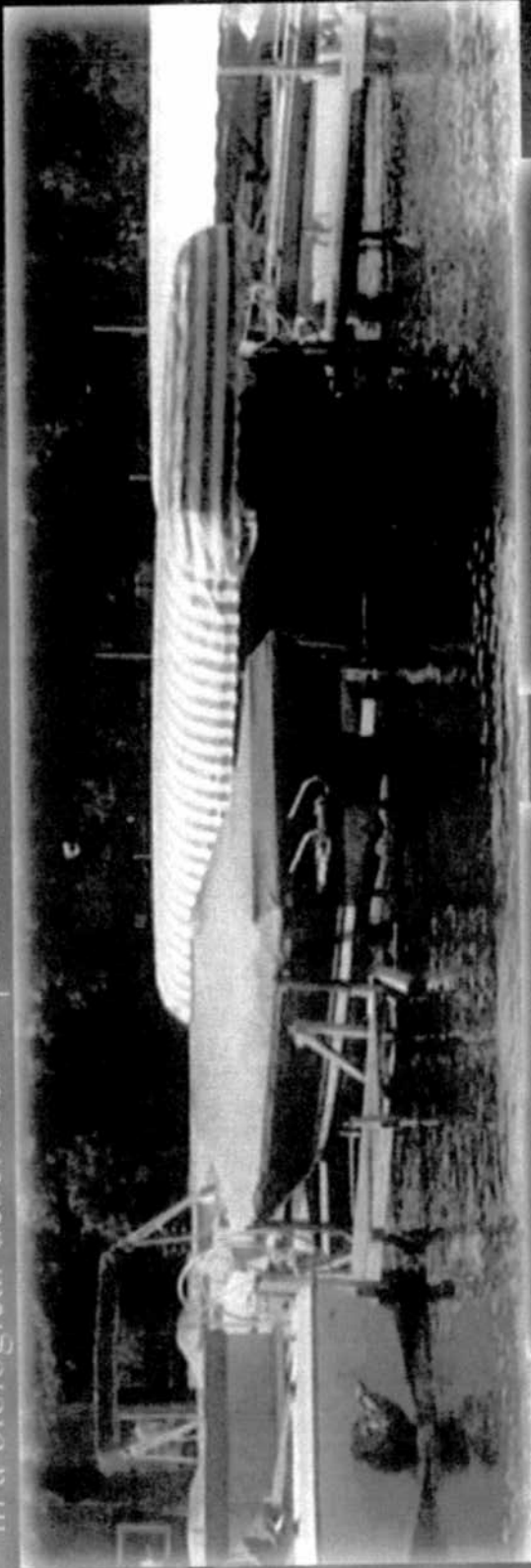


Attachment 3





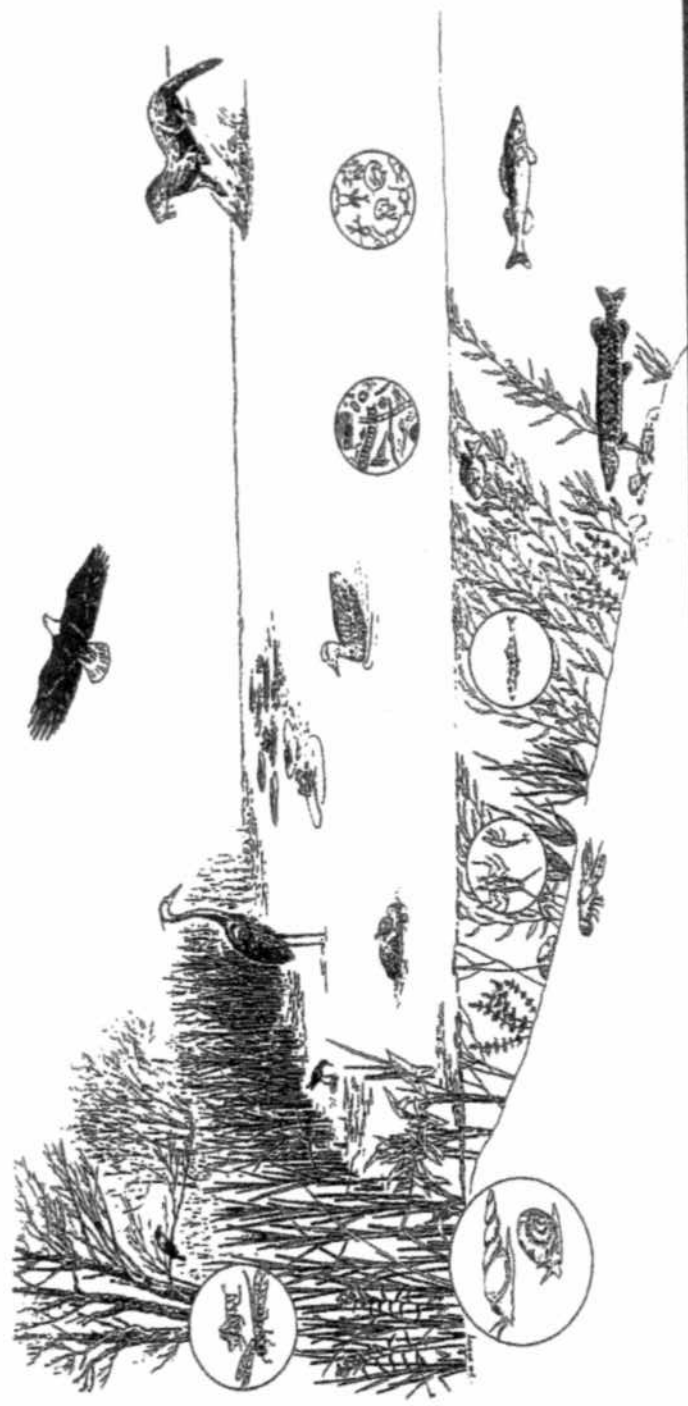
Creation of marinas causes loss of littoral zone habitat and eventually results in a biological desert below piers and boat lifts.



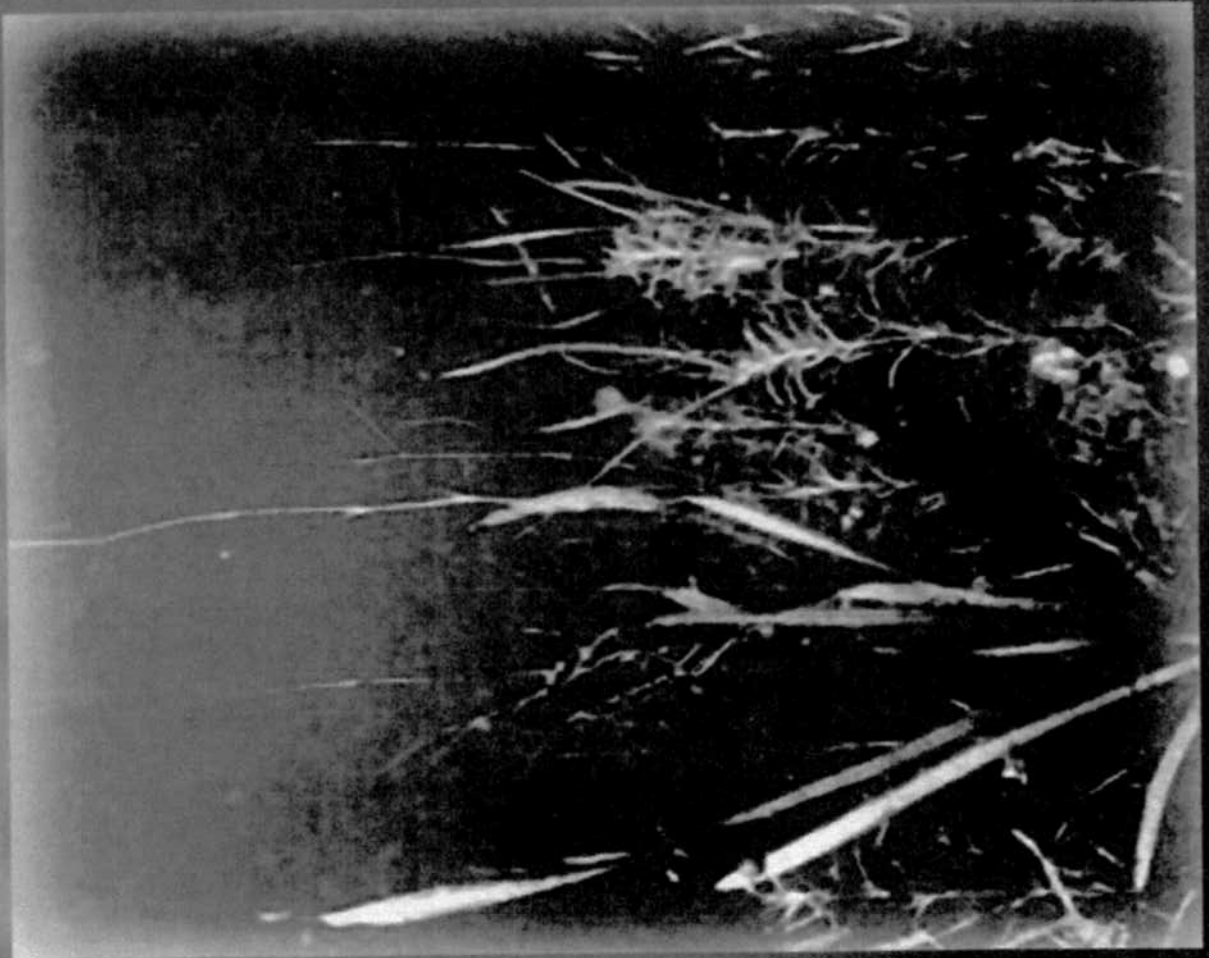
# Competing Uses in the Littoral Zone

## General Types of Aquatic Plants

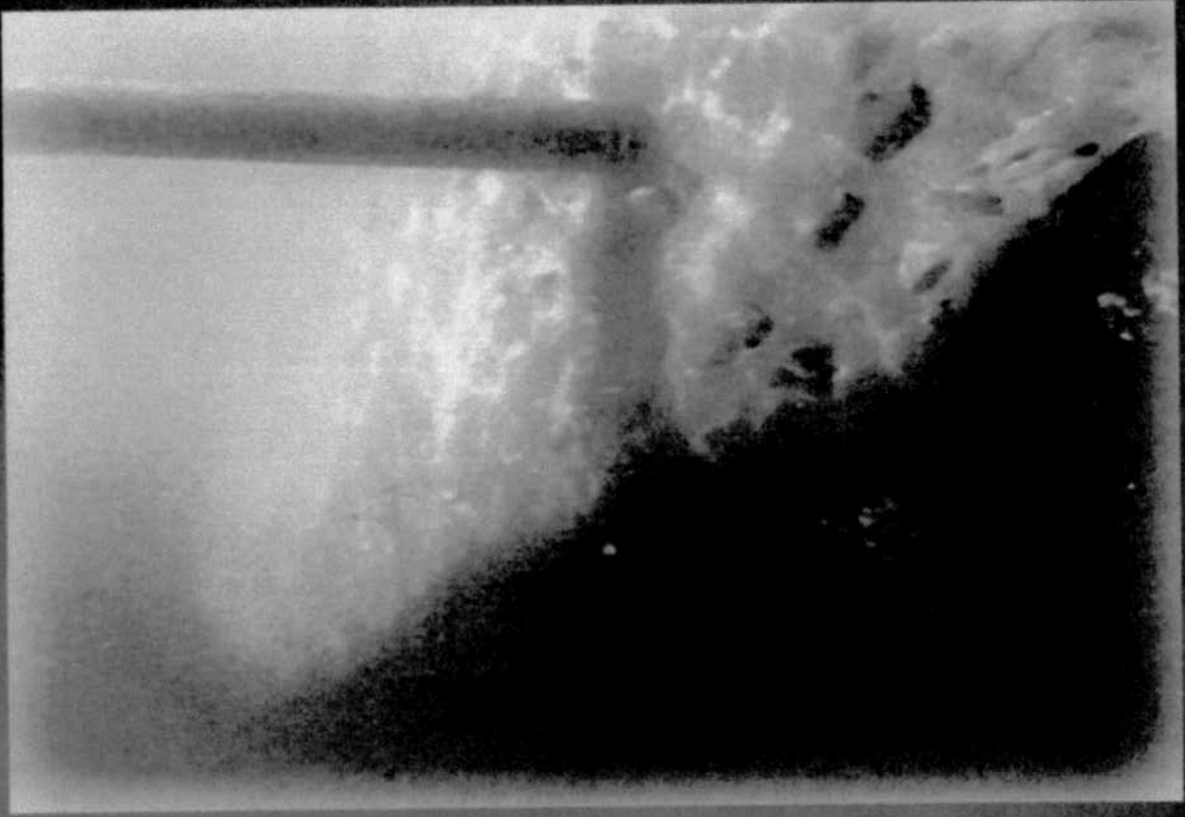
- **Emergent Plants** (from shallow water table to ~5' water depth) Includes bullrushes, cattails, arrowhead, wild rice, sedges, pickerelweed, etc.
- **Floating Leaf Plants** (1.6' to about 10' water depth) Includes water lilies, American lotus, watershield, water knotweed, some pondweeds, etc.
- **Submersed Plants** (all depths to about 33') Includes coontail, milfoil [natives and exotic], waterweed, pondweeds, buttercup, bladderwort, etc.



Diverse plant  
community

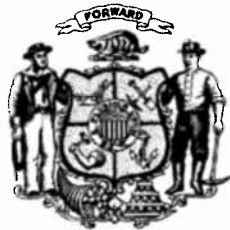


Disappearance of plant  
community due to large pier





# WISCONSIN STATE LEGISLATURE





Our Mission:

*"To educate and provide opportunities for people of diverse interests to work together to improve the environmental, recreational, cultural, and economic resources of the Rock River Basin"*

October 26, 2011

Chairman Neal Kedzie  
Senate Natural Resources and Environment Committee  
Chairman Jeffrey Mursau  
Assembly Natural Resources Committee

RE: SB 24

Dear Members of the Senate and Assembly Natural Resources Committees,

On behalf of the board of the Rock River Coalition, I ask for your opposition to SB 24, which significantly weakens the state's authority and ability to protect our waters.

Our organization is dedicated to build partnerships and provide education to protect and improve the Rock River basin

This great river basin covers nearly 3,800 square miles of South Central Wisconsin. Shaped by the last glacial episode, this rolling landscape was once covered by thick woodlands interspersed with oak-savanna, prairies, wetlands, and numerous streams and lakes.

Today, the Rock River and its numerous tributaries thread their way through this landscape that spreads over 10 counties inhabited by more than 750,000 residents. Urban centers include Madison, Janesville and Beloit as well as smaller cities such as Waupun, Watertown, Oconomowoc, Jefferson and Beaver Dam.

Although the basin is experiencing rapid growth, it is still largely rural in character with agriculture using nearly 75% of the land area. The basin enjoys a healthy economy with a good balance of agricultural, industrial and service businesses.

Recreation and wildlife abound on over 150 lakes and impoundments and on 2325 miles of streams. The Horicon Marsh is an internationally recognized wetland and bird sanctuary..

We believe SB would severely damage the protection of our states lakes, streams, wetlands and groundwater. Wisconsin's reputation for a healthy environment is a great draw to major industries, the jobs that depend on them and families who live here. Please kill this bill.

Sincerely,

A handwritten signature in black ink that reads "Lisa Conley". The signature is written in a cursive style.

Lisa Conley, Board of Directors.



October 26, 2011

## Testimony Relating to Senate/Assembly Bill 24

**Submitted by:** Paul Dearlove

**Representing:** Lake Ripley Management District (as District Manager)  
Wisconsin Lakes (as Board member)  
Friends of Lake Wingra (as Board member)

Thank you for allowing me to speak. I come before this body as a representative of the Lake Ripley Management District, which serves and represents the interests of over 1,500 property owners (both riparian and non-riparian) in Jefferson County. I have been with the District as its Lake and Watershed Manager for 13 years, and have dealt with countless projects involving the Wisconsin DNR and Chapter 30 permitting. This includes everything from issues associated with piers and shoreline riprap installations, to wetland restoration work and battling ill-advised dredging proposals.

I also come before you as someone who volunteers for the nonprofit boards of Wisconsin Lakes and the Friends of Lake Wingra. Wisconsin Lakes alone is made up of individuals, businesses and literally hundreds of lake groups from around the state – all of whom care deeply about protecting the future health and quality of our public waters.

Finally, I come before you as a lifelong angler, and as someone whose family has owned lakefront property on Lake Beulah in Walworth County for 30 years. I can assure you that my frequent group fishing trips, and our collective recreational spending habits, have helped many local economies throughout Wisconsin over the years. I can also tell you that the quality of these experiences is driven by the quality of the waters we choose to visit.

Let me brief but clear with my comments on SB 24. I am opposed to this bill. I am opposed to the speed and manner in which it was developed and introduced for public comment. I am opposed to the lack of clarity on what it is intended to accomplish and what public interest it is intended to serve. I am opposed to its apparent deference to the private applicant and developer over (and at the expense of) DNR review authority. In total, this bill does little in the way of safeguarding our natural resources and the public interest in those resources. Rather, this bill reduces already limited opportunities for public input and transparency, expands the number and scale of activities that can occur with little or no oversight, creates easily exploitable loopholes, and calls for an unprecedented system of “default” permitting favoring private over public interests. (Consider: expedited procedures for plan reviews, tighter timelines and DNR mandates for permit processing, new permit exemptions, reduced noticing requirements, and diminished opportunities for public hearings or challenges to ill-advised projects.)

To quote part of a Wisconsin Supreme Court decision in Hixon v. PSC:

"A little fill here and there may seem to be nothing to become excited about. But one fill, though comparatively inconsequential, may lead to another, and another, and before long a great body may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage, once gone, they disappear forever."



## Weaknesses in SB/AB 24

### 1. Greatly reduces the public's role in water policy in Wisconsin

- Fast Tracks a comprehensive regulatory bill which impacts everyone in the state who has an interest in our world class waters.
- Removes the public's right to participate fully in the legislative process.
- Alters the public notice process to require a Class 1 notice under Ch. 985 OR notice on the DNR's Website.
  1. There is no procedure outlined for the web based notification,
  2. No requirement that the web notice meet the standards of a Class 1 notice,
  3. No transition time for people to move from newspaper notices to electronic notices,,
  4. No backup plan for rural areas without internet connection, with slow dial-up connection or without access to public computers with internet connection.
- Alters this public notice requirement for Ch. 30 Navigable Waters, Ch. 283 WPDES and Storm Water, Ch. 285 Air Pollution Control Permits, Ch. 289 Solid Waste Facilities, and Ch. 291 Hazardous Waste Management

### 2. Drastically alters the mechanisms for which permitting is carried out

- Default permitting – if the DNR runs out of time the permit is granted even if DNR staff worked diligently on the application.
  1. Allows only ONE request for additional information if the department's determines and application to be incomplete or have insufficient detail,
  2. No time limits for applicant's submittal of additional information upon department's request,
  3. Clock begins on public comment time line once the department gives notice of pending application - not necessarily a complete application - therefore public may be commenting on OR requesting a public hearing on an incomplete application.
- Allows DNR to issue General permits where currently Individual permits are required.
- General permits are now allowed for greater removal of lake bed (dredging) in navigable waters from 10 cubic yards (5 pick up trucks) to 500 cubic yards (250 pick up trucks).
- A permit or contract CANNOT be denied because an application is incomplete, but the time limits can expire.
- Removes DNR discretion when determining to extend an individual permit – now the bill requires the department to extend individual permits if the grantee requests an extension before the time limit expires.
- No limit on the number of extensions that can be requested.
- DNR must set, by administrative rule, time limits for High Cap well permits, prospecting permits and oil or gas production licenses. If time limits are not met default permitting occurs.

### 3. Weakens environmental standards that have traveled through public debate in the recent past

- Piers – we have all participated in the process creating policy for 2004 Wis. Act 118, the original Job Creation Legislation, that revamped the Chapter 30 program - including piers. Additional modifications were made in 2008 with legislation that expanded the



configuration options for exempt piers and provided greater flexibility in the number of boat slips permitted and created the registration system to grandfather pre-2004 piers.

- Exempts all piers from permitting requirements if they were in place upon the date of publication of this bill, even though pier permitting requirements were recently revised and significant compromise was made by all represented interests.
- Eliminates registration of any pier, even though pier registration was recently revised and significant compromise was made by all represented interests.
- Boathouses – places repair and maintenance provisions of boathouses in the statutes, even though there was a comprehensive 10 year public process on NR 115 which details provisions on repair and maintenance.
- Increases allowances for grading even though there was a comprehensive 10 year public process on NR 115 which details provisions on grading above the ordinary high water mark.

#### **4. Removes authority to react to new threats or trends in natural resource management**

- Enumerates “areas of significant scientific value” into the statutes which means that DNR cannot add or subtract through a rule revision process; changes will require legislative process.
- Allows a riparian owner to place additional fill or a structure on the bed of a navigable water within an established bulkhead line (artificial shoreline line set by municipality which extends into the navigable water – below the Ordinary High Water Mark) without a permit if it was filled before the bill takes effect (current violation) or if the fill is placed for a public purpose.