



ADAM JARCHOW

STATE REPRESENTATIVE • 28TH ASSEMBLY DISTRICT

Testimony on AB 600/SB 459 – Lands Near Water
Assembly Committee on Environment and Forestry
Public Hearing: Tuesday, January 5, 2016 – 12:01 p.m.
State Capitol – 417 North

You cannot think about Wisconsin, without thinking about lakes, rivers and streams that we all love so much. Many of us have spent countless hours, fishing, canoeing, waterskiing and swimming in Wisconsin's lakes and rivers. One of the reasons many of us endure cold days like today is because we can ice fish for now, we know that in a few months we will be splashing around in a lake with our kids. We depend on lakes and rivers for recreation, tourism and property tax revenue, among so many other things. I believe every single person in this room today wants them to remain pristine and safe for generations to come. This, however, does not mean that steps cannot be taken to simplify, clarify, codify and make technical adjustments to state laws regarding the lands near water.

In other words, we can have both. We can have clean, pristine lakes and rivers, vibrant wetlands, while also promoting economic growth and job creation. In addition, there is something fundamental at stake when we are talking about the use of property. In my opinion, the right to use and enjoy private property is a solid foundation on which this great republic has been built. The federal and State and Federal Constitutions contain a variety of civil rights protections. Among these are the right to free speech, the right to gun ownership, the right to be free from unreasonable search and seizure, the right against self-incrimination and the right to trial by jury. But rights that are too often overlooked (and in my opinion have been given short shrift by our courts) are property rights. There is a right against deprivation of a property right without due process. And there is a prohibition of takings without just compensation. Together, these rights represent (or rightly should represent) a bulwark against a government untethered from rules. Unfortunately, sometimes our courts have turned a blind eye to the piles of rules and regulations that impact an individual's property.

Justice Prosser recognized this problem in a 2006 concurring opinion in Hilton v. Department of Natural Resources. Justice Prosser noted how that case "epitomizes the growth of agency power, the decline of judicial power, and the tenuous state of property rights in the 21st Century." Justice Prosser went on to bemoan the current state of judicial review of agency decisions noting that "...Wisconsin Courts are expected to rubberstamp the agency's decision unless the agency's legal interpretation is plainly wrong."

Given this incredible deference to agency actions, decisions and interpretation, it is imperative that the Legislature provide clear, consistent guidance to agencies. It is imperative that we in the legislature protect our role in our system by asserting legislative supremacy over agencies.

It is imperative that we, as legislators, step in when we see agencies misinterpreting or misapplying laws or engaging in activities that deprive fundamental rights. In our system of government, agencies are not supreme. Agencies are subservient to the people who serve in this body and the Senate as the duly elected representatives of the people. Agencies exist only because the Legislature has delegated some of its constitutional power. And when we see this power being misapplied or used in a way that does not best serve our constituents, it is time of this body to reassert its role.

And that is all this bill does. By and large, this bill represents a technical fix bill. There are a couple of provisions that create some new common-sense laws, but generally this bill fixes issues and errors in legislative application or interpretation.

For example, this bill clarifies that man-made ditches and storm water control structures are not navigable waters. Even if a storm water detention system is navigable at times, this bill states that it is NOT applicable to the same regulations that the natural waters of Wisconsin are. When these important structures are designed and implemented, this will cut the red tape and allow a streamlined process for these systems to begin doing their jobs.

This bill makes small changes to DNR permitting. It prohibits the DNR from requiring a sediment sample from a dredging project unless there is information that shows that the sediment could be contaminated. Requiring a sample for dredged sediment simply because it is being dredged is unnecessary and costly. This bill exempts permits for lake grooming. Current law says that raking a beach is dredging. That is not the case. I am happy to clarify this law so people are able to clean up a beach.

Next, ASNRI is an Area of Special Natural Resource Interest. Currently, if one part of a body of water is considered ASNRI, then the entire body of water is therefore ASNRI. This bill allows the certain part of the lake or stream to be considered ASNRI without the entire body of water having to have that designation. JCRAR would have to approve new ASNRI designations. Again, reasserting our role as the elected representation of the people.

This bill clears up current law creating flexibility for property owners to maintain riprap or an existing seawall to preserve their shore from erosion. It clarifies current law allowing dock sharing agreements. This bill allows changes to boathouses including repairing their foundations and keeping any changes made that affect the purpose of use of their own boathouse. This means if the boathouse is being used as something other than storing a boat - that will be allowed. It also clarifies rules applying to three sided boat shelters.

When a wetland permit is needed by a property owner, the DNR directs applicants to consider a "practical alternative" to that permit. As you can imagine, those alternatives are typically not practical. This bill eases that burden on property owners.

This bill allows motor vehicles (ATVs) to be driven on the beds of a navigable water for permitted activities. Keep in mind, this does not allow unfettered ripping around of 4 wheelers in lakes. The law current allows (30.29, stats) ATVs to operate on lake and stream beds for a

variety of reasons. This simply clarifies the rule to allow it to assist with work being done on the landward side. So if you are riprapping and you need to operate the ATV to assist with that, it is allowed.

This bill also clarifies current law relating to infrastructure for transmitting electricity, water, gas, sewer, data, communications, or other utilities. This codifies best practices for the property owner. This bill also make it easier for property owners to use best practices for storm water management. Removing hurdles that interfere with storm water management minimizes runoff into lakes and streams.

President and United State Supreme Court Justice William Howard Taft said, **“Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and the one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institution established by the human race.”** This bill, along with my other property rights legislation seeks to rebalance the scales between property owners and government by putting the power back in the hands of the hardworking taxpayer.

I have heard a lot of hyperbole about this bill that warns about the sky falling if/when it passes. The negative response by some of the so-called conservation organizations immediately after circulating the bill for cosponsorship was astounding. I can't imagine that they were able to read and fully understand this legislation in mere minutes before they proclaimed their opposition. I get it... they have an agenda that could not possibly be challenged by common sense and the mere thought of property rights, but their claims are based on emotion, not rational thought.

One claim says that the bill allows for developers to build right on top of lakebeds close to the water, then they can get that land for free and in turn restrict public access to the lake. They are leaving out some very important information. This bill ensures that dry land is used as dry land. Lakebeds are currently, and under this bill, will continue to be constitutionally protected by the Public Trust Doctrine. Dry land is not protected in the same way. This part of the bill builds on current case law that recognizes that title to lakebeds can be passed from the state to the riparian owner in certain circumstances. Here, instead of leaving property that has been filled for more than 4 decades in legal limbo and effectively useless, this bill recognizes the reality that some lakebeds were filled a long time ago, and they remain filled today. So we have a choice. We can let some of the most valuable land in our state lay fallow or we can use that land and reap the economic benefits from that use. I choose economic growth, I choose jobs, and I choose a growing tax base.

Another claim is that the bill allows a riparian owner to dredge up three dump truck loads full of sediment from the lake every year. While this bill does require a general permit to be issued allowing 30 cubic yards of sediment to be dredged from a lakebed each year, per riparian owner, there are real world examples of why this provision is necessary. For example, there is a lake in my district where many riparian owners (who make up a very large chunk of the property tax base in their county) have difficulty accessing the middle of the lake from their dock with a boat because of so much sediment in that lake. These people pay extremely high

property taxes, come to the area to spend their money and contribute to the local economy, yet they are unable to reach the lake from their shoreline, and they are unable to enjoy a nice swimming area due to a buildup of muck. This issue could be solved, but the heavy hand of the government thinks it knows best. What the opposition won't tell you, is that this bill again builds on current law. Current law already requires the same exact general permit for rivers. Why wouldn't we allow lakes to be included?

Unfortunately, the rhetoric from conservation special interest groups in the past has been deafening. Chicken Little would be so proud of the cries that the sky is falling in reaction to past legislation. For example, in 2003, during the Doyle years, Act 118 (The Job Creation Act), which reformed air and water permitting was slammed by environmental groups who said that it would: *"Adversely impact fish and wildlife habitat, Destroy natural scenic beauty, Remove opportunities for the public to give their input regarding shoreland actions that will negatively impact local lakes and streams, and Allow air polluters to operate with ineffective government oversight."* Of course we know these things did not happen. Air emissions in this state have dropped dramatically since the passage of Act 118, Wisconsin's wildlife habitats are still intact, Wisconsin's scenic beauty still rivals our neighbors', and the public has more opportunity to give input than ever.

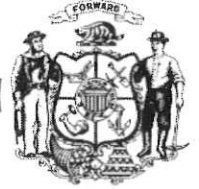
During that 2003 debate, one group even went so far as to send out a mailer with images of smoke stacks and crying babies while suggesting that Act 118 would kill babies. It didn't.

Over the years, environmentalists, who think they are doing the work of the people and protecting them from harm, have used a variety of scare tactics to fit their agenda. All emotion, no facts or common sense. They have done this with a litany of bills in this legislature and I hope all of you can see beyond their hyperbole and will take the side of the hardworking property owner.



Frank Lasee

WISCONSIN STATE SENATOR
FIRST SENATE DISTRICT



Senator Lasee's Testimony Assembly Bill 600 Property Rights—Lands Near Water

When people buy land, they don't hope to keep it the same as when they bought it, they want to improve it—make it better! Unclear and overbearing regulations make it hard for people to improve their property in the way they believe is best. Instead they find themselves fighting against bureaucratic red tape and unclear rules and regulations.

When people are able to improve their property, it creates jobs, increases property values, and drives Wisconsin's economy. We need to do better so that Wisconsin's property owners can do better.

This package addresses several areas where Wisconsin's regulations can be better:

Classifying dry land as dry land: All over Wisconsin there are developed ports and harbor areas that were filled or became dry land due to natural processes and many times these areas have been dry land for over one hundred years. Sometimes the boundary of what was dry land and what is fill isn't clear, but either way it is now dry land and nobody is advocating to dig the land out and flood the area with water.

These areas are frequently left blighted because of the uncertainty of ownership. This bill creates a mechanism where only lands that have been dry since 1975 can clear up the uncertainty of ownership and those dry lands can be used for gainful purposes by the owner of the land abutting it.

Classifying ditches and stormwater ponds as artificial water bodies: People all over the state are struggling with the unclarity of state laws regarding ditches and man-made water bodies. When the DNR is trying to apply their water regulations to man-made water bodies, they are wasting resources where they shouldn't. This bill clarifies that artificial water bodies are different than lakes and streams.

Protecting lakes and streams from runoff: This bill eliminates red tape when people want to build or maintain structures that prevent or reduce nonpoint water pollution. Conservation-minded people all around the state hit regulatory hurdles when they try to build features that reduce pollution. Everyone agrees that reducing pollution is a good thing. This bill makes it easier for people to do better to reduce runoff.

Reducing duplicative utility applications: When our public utilities have to jump through regulatory hoops, it costs all of us ratepayers money. When our utilities work through their processes in the Public Service Commission to build our utility infrastructure, the approvals can be challenged by the public at that time. This bill seeks to streamline that process by having the PSC and DNR challenges to be addressed at the same step in the process.

ASNRI reforms: We all recognize that protecting the environment is important. The ASNRI program has been misused, and now almost all waters in the state are designated ASNRI! When all waters are "special" then the truly special waters don't get the protection they need. This bill creates processes to reclassify the truly special waters as ASNRI so they will get the priority protection they deserve.

Other technical reforms and clarifications: There are several other technical provisions in this bill that address situations that needed simplification. Government gets bogged down by administering regulations that consume a lot of resources but don't offer good value. Good government prioritizes what's important, and this bill seeks to restore balance in many of those misdirected priorities.



Wisconsin Department of Natural Resources Testimony for AB 600
Assembly Committee on Environment and Forestry
January 5, 2016

Good afternoon Representative Mursau and Committee members. I am Pam Biersach, Director of the Bureau of Watershed Management, for the Department of Natural Resources. Thank you for hearing the agency's testimony, which we present for informational purposes.

Title to the bed of certain filled navigable waters.

Under Article IX, Section 1 of Wisconsin's Constitution, navigable waters are held in trust by the state for use of the public. The state also holds title to the beds of lakes. Current law provides the ability for the department to authorize fill on the bed of navigable waters, under Section 30.12(1) of the statutes. Typically that fill is associated with shoreline protection activities.

Current law, under ss. 30.11, also provides for the ability of municipalities to set bulkhead lines along shorelines, which allows fill into the waterway up to the line of navigation for the purposes of improving access to navigation. Once approved, that fill can then be used by riparian landowners for the placement of navigation aids such as piers, wharves, boat lifts, etc. In addition, the Board of Commissioners of Public Lands (BCPL) has been delegated the authority to enter into lake and riverbed *leases*. BCPL is authorized to enter in to leases with municipalities for recreational facilities related to public navigation, and with private individuals for navigation or harbor improvements as long as the uses allowed in the lease are consistent with the public's interests in the navigable waters.

These processes each allow varying levels of fill along shorelines, and can also include compensation to the people of Wisconsin for the use of public lands. Fills that are not authorized by one of these processes are not legal.

Section 8 of the proposed legislation gives ownership of fill above the ordinary high water mark placed before 1975 to the riparian property owner, and prohibits the department from requiring the riparian to remove unauthorized fill above or below the OWHM. This section also requires the Department to provide a quitclaim deed to riparian owners for the fill above the OWHM. The new section includes no size limit and no requirement of compensation to the public similar to current law.

Aquatic Plant Management

The department currently has general permits available to allow the removal of nuisance aquatic plants on riparian shorelines with or without mechanized equipment. These general permits are specific to invasive plant management and require plant material removal and disposal plans. These general permits are valid for five years at a time with opportunities for extension and renewal.

Sections 1 and 30 create permit exemptions to allow removal of aquatic plants from exposed lake or river bed, between the ordinary high water mark and the water's edge, and on outlying waters. The activity needs to be completed in accordance with section 24 (proposed 30.125 in the bill), which creates a provision for "shoreline maintenance in outlying waters." The bill doesn't include maximum limits on the disturbance area or method of

removal or filling. On the Great Lakes shorelines, this work could encompass anywhere from a few square feet to several thousand square feet with unlimited movement, removal or addition of publicly owned material on exposed lake or river bed without state oversight.

Dredging

The legislature prescribed the individual permit process for the department to use when project proposals with a greater potential to cause negative impacts to fish and wildlife habitat, water quality, recreation and navigation cannot be adequately conditioned under a statewide general permit. Sections 29-34 of the bill create general permits for dredging activities currently assigned to the individual permit process.

The practices this bill includes for coverage under a general permit is the dredging of 30 cubic yards per year for five years on inland waters, and the dredging of 100 cubic yards per year for five years on outlying waters.

On the developed shoreline of inland lakes, rivers and streams, general permits will be available for over 800 cubic feet of removal from each property per year. If a property is located on the Great lakes or on the Fox River near Green Bay, then 2,700 cubic feet could annually be removed from the shoreline of each property owner.

Under sections 32 and 33, the bill states that the department may not require sediment sampling for maintenance dredging general permits or for dredging individual permits unless the department has specific information to indicate contaminants may be present. The bill doesn't define the term "contaminant" for Chapter 30 which will require rule language to interpret how the term is defined and how sampling decisions are made by the department.

Applicability of navigable water law to artificial water bodies

Chapter 30 of Wisconsin statutes currently includes rules for boating safety and regulation of navigable waters. Under Section 6 of the bill, proposed ss. 30.053 removes all authority under this chapter related to artificial waterways. This means boating safety regulations will no longer be valid on waterways defined as artificial. We believe the intent was to limit department authority over dredging of small artificial features like storm water ponds. If so, modifications proposed to 30.19 (sections 26-29 of the bill) achieve that particular goal.

Boat Shelters

Section 17 adds language under ss. 30.12(3)(c) that prohibits the department from conditioning a general permit to limit the distance a boat shelter is placed from shore. This provision has the potential to increase public safety risks (collision, property damage, and injury) by allowing the unconditional placement of boat shelters and other mooring devices into the line of navigation.

This section also prohibits the department from conditioning boat shelters based on the degree to which adjacent land is developed. Since 1991, permanent boat shelters have only been allowed adjacent to developed shorelines.

Boathouses

The construction of new boathouses and fixed houseboats below the ordinary high water mark of navigable waters has been generally prohibited since 1979. By rule, "construct" includes the building of additions onto these structures. The original purpose of s. 30.121 was to phase out wet boathouses. The legislature subsequently lifted the cap on allowable repairs to all boathouses. Section 19 of this bill adds foundations to the list of items that may be replaced, and section 21 allows reconfiguring of a boathouse, meaning that a new boathouse may be built in place of an existing boathouse.

By current definition, for a structure to be considered a boathouse it must be used for the storage of watercraft and associated materials. Section 3 of this bill changes the definition so that a structure can be considered a boathouse (and allowed to remain below the OHWM) if it has been used for at least one year for the storage of watercraft, regardless of the current use. This change would allow any use of a boathouse and is not directly related to a riparian's *rights to navigation*.

Section 20 of this bill allows the owners of wet boathouses listed on the national or state register of historic places to expand provided the expansion occurs within the listed historical boundary and does not involve the placement of any new structure on the bed. There are approximately 20 boathouses currently listed on the National Register of Historic Places in Wisconsin. Section 23 of this bill also allows for the permitted expansion, in addition to repair or maintenance under current law, of commercial boathouses on outlying waters.

Areas of Special Natural Resource Interest

Section 7 redefines areas that possess significant scientific value, narrowing the scope of what the Department may review. Instead of water bodies being designated as ASNRI based on the presence of endangered or threatened aquatic species as currently exists under NR 1.05, Wis. Admin Code, the bill defines "areas that possess significant scientific value" as *portions* of water that contain critical habitat for endangered and threatened species. The bill also requires JCRAR to review and approve each location with a December 31, 2017 deadline, or the designations will be removed.

The statutory deadline of December 31, 2017, will be difficult to achieve, placing some waters containing threatened and endangered species and their habitat without similar or identical protection.

Riprap

The current riprap repair and replacement general permits allow riprap in areas of special natural resource interest as also required by the bill. In addition, DNR currently employs a fairly simple, science based erosion calculator that helps landowners and contractors determine the type and amount of hard armoring necessary for a particular area of shoreline.

As a replacement, sections 11, 12, and 13 of the bill create a choice between two rock height options; the first being a standard 4 foot height and the second being "top of bank." The department shall authorize a general permit for whichever is lower. We are uncertain if the 4 foot determination would be sufficient on lake shores that experience medium to high energy wave erosion, especially the Great Lakes. Conversely, the term "top of bank" has not been defined by this bill. Based on experience developing general permits for river and stream shoreline protection, what one would consider as the "top of bank" is has multiple potential interpretations. In addition to creating statewide consistency and compliance issues, this also has the potential for landowners to either not have enough shoreline protection or pay more for shoreline protection than needed.

Wetland permits

Sections 40 and 41 reintroduce the division between state and federally regulated wetlands that was eliminated in the 2012 wetland law change (2011 Act 118) for the purposes of streamlining state wetland reviews in Wisconsin. Currently, DNR can proceed with its permit review concurrently with the Army Corps of Engineers. With this reintroduction and specified review processes for federal vs nonfederal wetlands, it will be necessary for permit applicants to wait for the Army Corps of Engineers to make a formal jurisdictional determination before the department can identify the proper review process and proceed with project evaluation.

To illustrate, sections 42 and 43 of the bill create exemptions and minimize alternatives analyses for activities that are currently not recognized under federal law; in this case, work related to storm water features and

roadside ditches. This creates differences in the state and federal review processes and is anticipated to result in different application materials, review times and outcomes for applicants.

Under current law ss. 281.36, wetland permits constitute water quality certification as required by the Clean Water Act. Because federal CWA statutes and rules do not limit the review of practicable alternatives for federal wetlands, USEPA and ACOE may determine that state-issued wetland permits do not constitute water quality certification for purposes of the federal CWA permit that is also required. This essentially means that the state's permits will no longer be recognized by ACOE or EPA.

The department believes at least 80 percent of all wetland fill applications are federally connected and subject to federal jurisdiction. The USACOE believes the number is significantly higher.

Nonpoint Water Pollution

The storm water provisions of the Clean Water Act (33 USC 1251 or 1387) require DNR to regulate, through use of best management practices, the discharge of pollutants from storm water into waters of the United States. "Best management practices" are defined in NR 216 to mean "measures, practices, techniques or devices employed to *avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.*" DNR is uncertain if we will be able to comply with the CWA requirements (using best management practices to minimize the discharge of pollutants to waters of the US) if DNR is required to allow a best management practice to be located *within* a water of the US.

Thank you, Chairman Mursau and Committee members for your time and consideration. I'm happy to try answering any questions you may have.



To: Assembly Environment and Forestry Committee Members
From: Tom Larson, Senior Vice President of Legal and Public Affairs
Date: January 5, 2016
RE: Private Property Rights – AB 600/SB 459

The Wisconsin REALTORS® Association supports AB 600/SB 459, legislation aimed at strengthening private property rights by, among other things, codifying current case law, clarifying the intent of current statutes, and streamlining the regulatory process for waterfront property owners who seek to use and enjoy their property in a reasonable manner.

Proposed Legislation

To establish a better balance between environmental protection and private property rights, AB 600/SB 459 contains the following provisions:

- 1. Wetlands – Practicable Alternatives** -- Under current law, the DNR is required to review “practicable alternatives” to a wetland fill as part of the wetland permit process. Unfortunately, the DNR has interpreted “practicable alternative” very broadly to include doing the project on a different site (including sites not owned by the party) or not doing the project. Although doing a project on a different site or not doing the project is almost always a “practicable alternative” under DNR’s interpretation, it is rarely a realistic or economically feasible alternative for most property owners.

Moreover, current law already limits “practicable alternatives” to alternatives located on the same site of the discharge or adjacent to that site for expansion of existing industrial, commercial or agricultural facilities. See Wis. Stat. § 281.36 (3n)

AB 600/SB 459 applies the same “practicable alternatives” concept found in Wis. Stat. § 281.36 (3n) to other types of proposed projects (i.e., new residential, commercial and industrial projects) if the fill:

- (a) occurs in a nonfederal wetland; and
- (b) does not affect more than 20% of the area or more than 5 acres.

The applicant would still be required to meet all other requirements for an individual permit, including the requirement to provide wetland mitigation for any areas filled.

- 2. ASNRI waters** – 2003 Wis. Act 118 was enacted to create exemptions from Ch. 30 permitting requirements for certain minor activities (e.g., placing of boat hoists next to piers on a seasonal basis, deposits of sand and gravel less than 2 cubic yards, replacing or repairing existing riprap of less than 100 lineal feet on inland lakes). However, the exceptions do not apply in certain exceptional waters defined as “areas of special natural resource interest” (ASNRI). The ASNRI designation was intended to be narrowly applied to

only those special environmental areas that were truly sensitive, but the DNR has applied the designation broadly to entire water bodies, even if the "special natural resource interest" is located in only one small portion of the waterway. This means that a significant portion of Wisconsin waterways are not eligible for any of the exemptions in the statute (e.g., all of the Madison lakes are considered ASNRI).

AB 600/SB 459 would provide greater certainty for property owners regarding Ch. 30 regulations (activities in/near navigable waterways) by limiting the scope of waters designated as "ASNRI" to include only:

1. Specific portions of waters that contain critical habitat for endangered or threatened species
 2. Specific portions of waters that are immediately adjacent to an area that contains critical habitat for endangered or threatened species and that directly affect that habitat.
 3. Wild rice waters
 4. Rivers that are included in the national wild and scenic rivers system and rivers that are designated as wild rivers.
3. **Raising/lowering water levels.** When raising or lowering water levels controlled by a dam, Wis. Stat. § 31.02(1) requires the DNR to "protect property." The meaning of the directive is not clear and has caused confusion. For example, some have interpreted the term to mean that the DNR is required to regulate water levels so that property is not physically submerged by rising water levels, while others maintain that the term requires the DNR to make sure property values are not decreased by higher or lower water levels. This issue was raised in Rock-Koshkonong Lake Dist. v. DNR, 2013 WI 74, where the Supreme Court held that DNR must consider the impact of lake levels on waterfront property owners prior to adjusting water levels controlled by a dam.

AB 600/SB 459 would essentially codify the holding in Lake Koshkonong and require the DNR to consider the potential impact of lowering and raising water levels on property values and economic development before engaging in such activity.

4. **Minor Dredging in Lakes.** Currently, if a lake property owner wants to remove sediment from a lake bed to place a pier or gain access to a boat lift, an individual permit would be required in almost all cases from DNR. These permits require public notice and a review period that takes 105 days or more and can be subject to a contested case hearing. The permit standards are set on a case by case basis.

Property owners on rivers and streams who want to dredge less than 25 cubic yards on an annual basis could do so with a general permit. A general permit authorizes minor activities under a standard set of conditions and can be obtained in 30 days. There are approximately 16 conditions for the general permit for rivers.

AB 600/SB 459 would require DNR to create an equivalent GP for lakes and would allow the DNR to develop general permit standards appropriate for lakes.

The WRA respectfully requests your support for AB 600/SB 459. If you have questions or need additional information, please contact us at (608) 241-2047.

Before the Assembly Environment and Forestry Committee

**Testimony on AB 600
On behalf of the Wisconsin Realtors Association
and Wisconsin Builders Association
January 5, 2016**

Paul G. Kent

Thank you for the opportunity to comment on AB 600. While the bill contains a number of separate provisions, we will be focusing our comments on a few of the key provisions.

1. ASNRI -- Areas of Special Natural Resource Interest

ASNRI's are a designation that was created to limit the use of activities which were exempt from obtaining a permit under Wis. Stat. ch 30. The use of exemptions is limited through four separate mechanisms:

- Exempt activities are statutorily limited to activities that are limited in scope and impact. They include things such as:
 - A deposit of sand, gravel, or stone that totals less than 2 cubic yards
 - A boat shelter, boat hoist, or boat lift
 - Seasonal piers
 - Replacement of 300 linear feet of existing riprap.
- Exempt activities are subject to restrictions in DNR rules. For example, exempt riprap repair must meet 16 separate conditions under NR 328.03.
- Exempt activities are subject to DNR "recapture" provisions which allow DNR to require a general or individual permit if DNR believes there could be a significant impact.

The ASNRI designation was an additional level of protection that was originally intended to only apply to four specific areas. Wis. Stat. s. 30.01(1am) provides:

- (1am) "Area of special natural resource interest" means any of the following:
 - (a) A state natural area designated or dedicated under ss. 23.27 to 23.29.
 - (b) A surface water identified as a trout stream by the department.
 - (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15.
 - (c) An area that possesses significant scientific value, as identified by the department

The term scientific area was intended to capture scientific areas defined in NR 1.32. Instead, DNR created a new rule, NR 1.05 that extended the term to a list of 8 different types of waters and applied the designation to the entire water body, even if the species or their habitat are limited to certain portions of the waterway. See example from the Madison area which is attached. This means that even something as well understood as the placement of a new exempt pier is not allowed in most of the waters in the state because of the ASNRI designation.

This bill retains all of the ANSRI areas noted in Wis. Stat. §30.01(1am) except it limits the scope of “scientific areas” to a defined list of sites and limited areas within designated waterbodies.

2. Wetlands – Practicable Alternatives

Current law requires the DNR to review practicable alternatives to a wetland fill as part of the wetland permit process. Unfortunately, DNR has construed the scope of what is a practicable alternative very broadly to include the acquisition of new sites. Wis. Stat. § 281.36 (3n) limits the review of practicable alternatives to alternatives located at the site of the discharge or adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge will result in:

- The proposed project has a demonstrable economic public benefit,
- The proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or
- The proposed project will occur in an industrial park that is in existence at the time the application is submitted.

This does not address situations where there are other kinds of developments for which a more limited view of practicable alternatives is also warranted. This bill expands the same concept to other proposed projects if the fill occurs in a nonfederal wetland. There is also a limitation in the bill to insure that the fill does not affect more than 20% of the area or more than 5 acres. The applicant would still be required to meet all other requirements for an individual permit, including the requirement to provide wetland mitigation for any areas filled.

3. Changes to lake levels

DNR can establish lake levels through its authority under Wis. Stat. ch. 31. In *Rock-Koshkonong Lake District v. State Dept of Natural Resources*, 2013 WI 74, the Supreme Court held that DNR must consider the impact of lake levels on waterfront property

owners prior to adjusting water levels controlled by a dam. This bill would codify that holding.

4. Piers - Shared Piers

Some have suggested that the current riparian easement statute Wis. Stat. §30.133, precludes riparians from entering into shared pier agreements with neighboring property owners. Clarifying the law to allow such agreements would reduce the number of piers in navigable waters.

5. Boathouses

Since 1979, the construction or expansion of boathouses below the ordinary high water mark, wet boathouses has been prohibited. However, hundreds of pre-1979 boathouses have been partially or entirely converted to uses including living quarters, recreational rooms, restaurants or other uses. Recently, DNR has taken the position if a boathouse is not used exclusively for the storage of boats or other navigational purposes it is illegal. In one recent enforcement case DNR stated, "No statutory right protects a riparian owner who converts a legitimate boathouse to another use."¹

This interpretation creates uncertainty for the owners of hundreds of existing boathouses. The bill does not change restrictions on the construction, expansion or conversion of boathouses, but it clarifies that an existing boathouse does not need to be used exclusively for the storage of boats.

6. Minor Dredging in Lakes

Currently, if a lake property owner wants to dredge material to provide access to a navigational channel or pier an individual permit would be required in almost all cases from DNR. These permits require public notice and a review period that takes 105 days or more and can be subject to a contested case hearing. The permit standards are set on a case by case basis.

Property owners on rivers and streams who want to dredge less than 25 cubic yards on an annual basis could do so with a general permit. A general permit authorizes minor activities under a standard set of conditions and can be obtained in 30 days. There are approximately 16 conditions for the general permit for rivers. This bill would require DNR to create an equivalent GP for lakes.

¹ Case No DNR-14-026 DNR Reply Br. at 3.

7. Sediment Sampling for Dredge Sites

DNR has proposed a guidance document that would require testing of sediment removed from dredging operations in the absence of existing data. On many sites this can cost \$3,000 to 5,000 or more and delay the processing of permits where there is little cause for concern. This bill would remove the requirement for sediment sampling for individual or general permits unless there is a known contaminant source.

8. Stormwater Ponds

Stormwater ponds are designed to meet state stormwater standards for construction sites and municipal stormwater requirements. In many areas municipalities are being faced with requirements to reduce sediment in stormwater by 65-80%. This is extraordinarily difficult without the use of stormwater ponds. This bill contains several provisions to allow for the construction and maintenance of such ponds.

To be effective such ponds must be maintained and accumulated sediment removed. Because these water management features retain water they can develop wetland characteristics. Thus, the removal of sediment and the reshaping of these ponds can trigger wetland and dredging permit requirements. These requirements are unnecessary for such artificial ponds and can result in significant costs and delays. In some cases they can impede the maintenance activities. This bill clarifies that wetland and dredging permits are not required for stormwater ponds.

In addition in many cases, stormsewers that daylight into open areas have eroded channels to natural streams or lakes. DNR has taken the position that stormwater ponds may not be placed in navigable waters even where the water is artificially created. The proposed bill would allow for in line ponds in "navigable or nonnavigable artificial waterways."

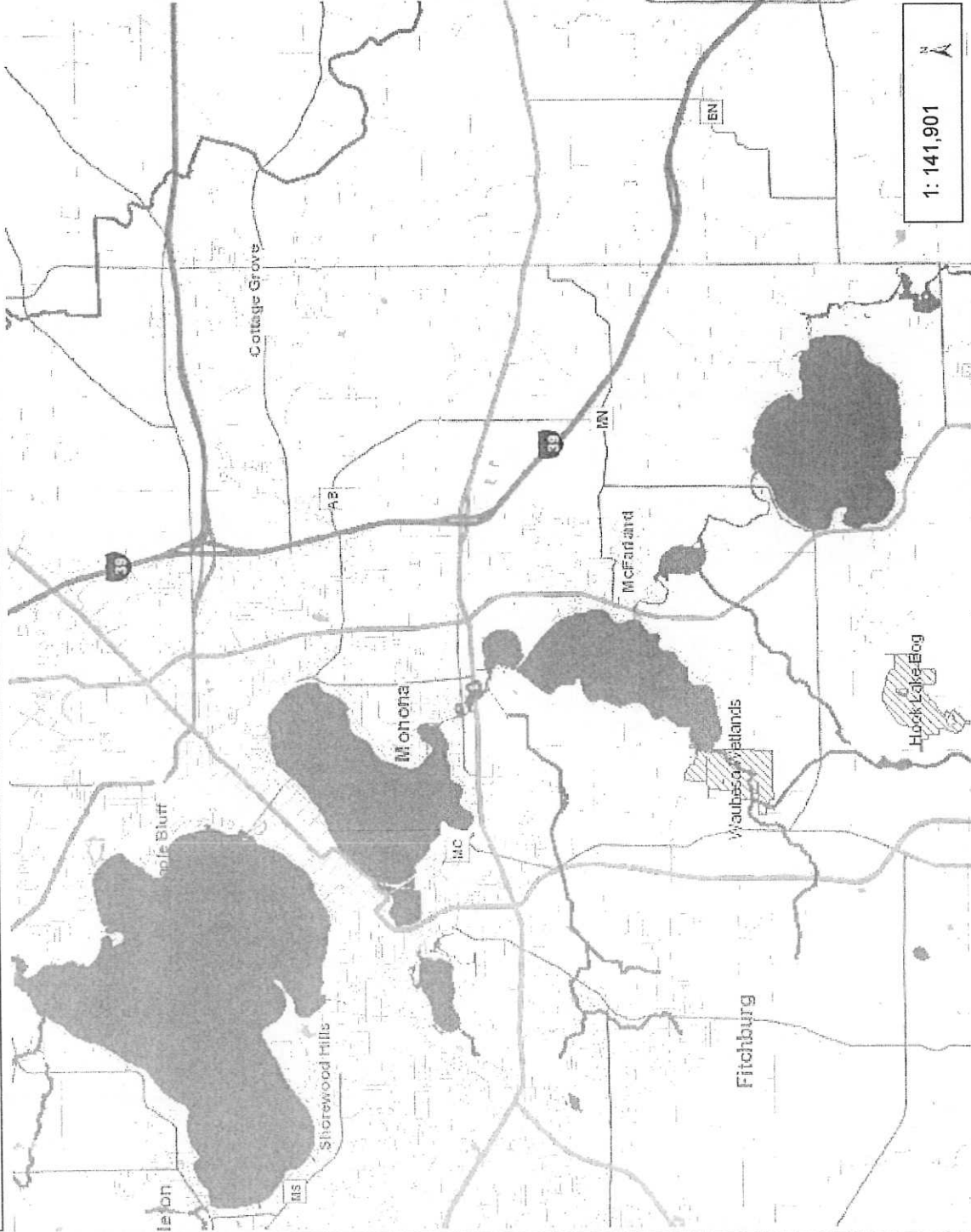
9. Beach Grooming

Beach areas often include areas below the ordinary high water mark. Current state law regulates the removal of vegetation subject to a waiver. The law allows DNR to create a rule to waive permits to allow reasonable removal of plants to maintain waterfront property. Wis. Stat. § 23.24(4)(c). The DNR did promulgate a rule, but limited the waiver to a maximum width of 30 feet. See, NR 109.06(2)(a).

Even though this is listed as a waiver, DNR has issued permits limited to the same 30 foot restriction. In addition, the department sometimes uses other provisions in its navigable waters law, such as the requirement for dredging permits or grading permits to restrict these activities as well.

Last session, a bill was introduced to allow beach grooming in outlying waters – the Great Lakes, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere. 2013 AB 804. This bill incorporates those changes with a cross reference to Wis. Stat. §23.24(4).

Surface Water Data Viewer Map



1: 141,901

4.5 Miles 2.24 0 4.5 Miles

NAD_1983_HARN_Wisconsin_TM
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Legend

- PRF Sensitive Areas of Lakes
- PRF Other Public Rights Feat.
- ASNRI Wild and Scenic Rivers
- ASNRI Outstanding and Except
- ASNRI Trout Streams
- ASNRI Wild Rice Streams
- ASNRI Quality Wetland Stream
- ASNRI Endangered Threatene Concern Streams
- ASNRI Outstanding and Except
- ASNRI Quality Wetland Areas
- ASNRI Wild Rice Areas
- ASNRI Trout Spring Ponds
- ASNRI Endangered Threatene Concern Areas
- ▨ ASNRI State Natural Areas
- PNW Musky Streams
- PNW Sturgeon Streams
- PNW Musky Areas
- PNW Sturgeon Areas
- PNW Walleye Areas
- PNW Lakes Less Than 50 Acr
- Rivers and Streams
- Open Water

Notes

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Areas of Special Natural Resource Interest

30.01 Definitions. In this chapter:

(1am) "Area of special natural resource interest" means any of the following:

(a) A state natural area designated or dedicated under ss. 23.27 to 23.29.

(b) A surface water identified as a trout stream by the department.

(bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15.

(c) An area that possesses significant scientific value, as identified by the department.

30.12 Structures and deposits in navigable waters.

(1g) EXEMPTIONS. A riparian owner is exempt from the permit requirements under this section for the placement of a structure or the deposit of material if the structure or material is located in an area other than an area of special natural resource interest, does not interfere with the riparian rights of other riparian owners, and is any of the following:

(e) A boat shelter, boat hoist, or boat lift that is placed on a seasonal basis adjacent to the riparian owner's pier or wharf or to the shoreline on the riparian owner's property, in accordance with rules promulgated by the department.

(f)

1. A pier or wharf to which all of the following apply:

a. It is no more than 6 feet wide.

b. It extends no further than to a point where the water is 3 feet at its maximum depth as measured at summer low levels, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is farther from the shoreline.

c. It has no more than 2 boat slips for the first 50 feet of the riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline footage.

2. Notwithstanding the width limitation in subd. 1., a pier may have an area as a loading platform that is more than 6 feet wide if the surface area of the platform does not exceed 200 square feet.

Waterways

Discover

how Wisconsin protects waterways by holding them in trust for everyone to enjoy.

Find

the permits you need for your waterfront property projects.

Learn

about the permit process that protects public waters.

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- [Wetlands](#)

Waterway and wetland information line

Can't find the answer to your question on our web pages? Call our information line:
920-662-5452

Waterway protection Pier, dock and wharf decision matix

Do I Need A Permit

This is a text link version of our piers interactive question and answer Flash module to help you understand if you need a permit from the Wisconsin Department of Natural Resources. Please go through and answer each question. This will help you determine if you need a permit for your pier, dock or wharf.

PWC) allowed:

Question 5

Will your new pier or wharf be located in an Area of Special Natural Resource Interest (ASNRI)?

- If your answer is “yes,” go to [Question 3](#).
- If your answer is “no,” go to [Question 6](#).
- If your answer is “I don’t know,” please use our [Designated Waters Search](#) online mapping tool to find your location and to determine if the location you want to place your pier is designated as an Area of Special Natural Resource Interest (ASNRI). If you are unsure about using the Designated Waters Search tool visit our [tutorial](#) to learn how. Once you do that, please go back and answer yes or no to Question 5.

Question 6

Will any part of your new pier or wharf be over 6 feet wide?

- If your answer is “yes,” go to [Question 7](#).
- If your answer is “no,” go to [Question 4](#).
- If your answer is “I don’t know,” we provide a diagram animation showing you the difference between the main stem and loading platform of a pier with three different pier configurations, and provide link to the [How to measure your pier \[VIDEO Length 2:52\]](#).

Question 7

What part of your new pier or wharf will be over 6 feet wide?

- If your answer is “main stem, you will need to apply for an individual permit. Please visit [Water Permits](#) to apply for a pier, dock and wharf individual permit.
- If your answer is “loading platform,” go to [Question 8](#).
- If your answer is “I don’t know,” we provide a diagram animation showing you the difference between the main stem and loading platform of a pier, and provide link to the [How to measure your pier \[VIDEO Length 2:52\]](#).

Question 8

Will your proposed loading platform have a surface area of 200 square feet or less?

- If your answer is “no, you will need to apply for an individual permit. Please visit [Water Permits](#) to apply for a pier, dock and wharf individual permit.
- If your answer is “yes,” go to [Question 4](#).
- If answer is “I don't Know,” we provide a diagram animation showing how to calculate the square footage of your loading platform, and provide link to the [How to measure your pier \[VIDEO Length 2:52\]](#).

Last revised: Thursday October 31 2013

Chapter NR 345

DREDGING IN NAVIGABLE WATERWAYS

NR 345.01 Purpose.
NR 345.02 Applicability.
NR 345.03 Definitions.

NR 345.04 Dredging.
NR 345.05 Enforcement.

Note: Chapter NR 345 was created as an emergency rule effective April 19, 2004; chapter NR 345 was repealed and recreated by emergency rule effective August 24, 2004.

NR 345.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for removal of material from the beds of navigable waterways as regulated under s. 30.20, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05.

NR 345.02 Applicability. This chapter applies to removal of material from the bed of navigable waterways under s. 30.20 (1), (1g) (b), (1m), (1t) and (2), Stats. Any person that intends to remove material from the bed of a navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

Note: For most dredging projects, the discharge of carriage return water is regulated by ch. 283, Stats., and requires a Wisconsin pollutant discharge elimination system (WPDES) permit. Similarly, for most dredging projects, the disposal of dredged material is regulated by ch. 289, Stats., and requires authorization under ch. NR 500. In accordance with 2003 Wisconsin Act 118, removal of material from non-navigable waterways is no longer regulated under s. 30.20, Stats.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05.

NR 345.03 Definitions. (1) "Area of special natural resource interest" has the meaning in s. 30.01 (1am), Stats., and as identified by the department in s. NR 1.05.

Note: "Area of special natural resource interest" means any of the following:

- (a) A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.
- (b) A surface water identified as a trout stream by the department under s. NR 1.02(7).
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.
- (c) An area that possesses significant scientific value, as identified by the department in s. NR 1.05.

Information and lists can be obtained by contacting the department, or found on the department's website at <http://dnr.wi.gov>, under the topic "Waterway and Wetland Permits".

(2) "De minimus" activity means the dredging of less than 2 cubic yards in a calendar year from a specific waterbody or disturbance of bottom material during the manual removal of aquatic plants that meet the requirements of s. NR 109.06 (2).

Note: Where the bed material is privately owned, the permission of the property owner is required.

(3) "Department" means the department of natural resources.

(4) "Dredged material" means any material removed from the bed of a navigable waterway by dredging.

(5) "Dredging" means any part of the process of the removal or disturbance of material from the bed of a navigable waterways, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material. For the purpose of ch. 30, Stats., dredging does not include "de minimus" activities as defined in sub. (2).

(6) "Final stabilization" means that all land disturbing construction activities at the site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(7) "Hazardous substance" has the meaning specified in s. 289.01 (11), Stats.

Note: Notwithstanding substances that meet the definition of hazardous substances in s. 289.01 (11), Stats., for the purpose of removing material from the bed of navigable streams and lakes, "hazardous substances" include all chemicals present at concentrations at, or greater than the *threshold effect concentration* as published in Consensus Based Contaminated Sediment Evaluation (DNR 2001).

(7k) "Jetting" means the action of dredging bottom sediments, including disturbing or resuspending sediment, while using water or air forced through a hose by means of a pump or vacuum to dislodge and collect aquatic plants, tubers or seeds.

(8) "Manual dredging" means removal or disturbance of bottom material by hand or using a hand-held device without the aid of external or auxiliary power. Manual dredging is often associated with the collection of aquatic insects for bait, removal of nuisance vegetation or debris and the panning for gold or other material. For the purpose of ch. 30, Stats., manual dredging does not include "de minimus" activities as defined in sub. (2).

(9) "Navigable waterway" means any body of water with a defined bed and bank, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

Note: This incorporates the definition at s. 30.01(4m), Stats., and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

(10) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristic.

(10g) "Outlying waters" has the meaning in s. 29.001 (63), Stats.

(10r) "Plant and animal nuisance deposit" means a recent and natural deposit within the swash zone of a waterway of mussels, dead fish, *Cladophora* or similar natural, biological-based material caused by wave action in a quantity that is causing an annoyance, damage, or health issue to the public or waterway.

Note: "Plant and animal nuisance deposit" does not include the natural deposition of the native lakebed material like sand, cobble, silt, detritus, and other organic material.

Note: Effective Aug. 1, 2012, s. 30.20(1t)(b), Stats., is repealed. As provided by s. 30.206(1r), Stats., the General Permit for Removal of Plant and Animal Nuisance Deposits authorized by s. 30.20(1t) (b), Stats., and s. NR 345.04(2)(b), (c), and (im) in which this definition is used is invalid effective June 6, 2013. This permit is replaced with Statewide General Permit GP5-2013-W1 (WDNR-GP5-2013), which is found on the department website <http://dnr.wi.gov> under the topic "Waterway." WDNR-GP5-2013-W1 expires June 5, 2018, unless renewed, modified, or revoked on or before that date.

(11) "Previously dredged area" means an area below the ordinary high water mark of a navigable waterway from which material was historically removed.

(12) "Riparian" means an owner of land abutting a navigable waterway.

(12m) "Rutting" is defined as an elongated depression caused by wheels or tracks of machinery, equipment or other vehicles and is 6 inches deep or more.

(13) "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as

from the stream by an installed silt fence or a protective, vegetated buffer strip not less than 20 feet in width.

10. The trench excavation, filling and installation of utility crossing the below the ordinary high mark shall be completed within an 8-hour period.

11. In perennial streams, clean, washed gravel or crushed stone or clean river stone originally removed from the utility trench or plowed channel, shall be used as backfill material to replace the excavated material. In intermittent streams with no flow present, the originally removed material may be used as backfill material for the dredged trench if the disturbed site is immediately stabilized.

12. When the dredging is complete, the streambed contours shall be the same as the pre-construction contours.

(e) *Standards for maintenance dredging in established drainage districts.* Dredging to maintain a district drain which is part of a drainage district established under ch. 88, Stats., is eligible for a general permit subject to the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest.

2. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located where there are public rights features as described in s. NR 1.06.

3. Dredging shall comply with s. ATCP 48.32.

4. Maintenance of the district ditch and any structures in the ditch shall comply with the established specifications and compliance plan under ss. ATCP 48.20 and 48.22.

5. Dredging may not exceed the volume or extend beyond the dimensions of the previously dredged project.

(f) *Standards for manual dredging.* 1. A general permit, subject to all of the following limitations may authorize manual dredging activities that do not meet the exemption standards in s. NR 345.04 (1) (d).

2. The dredging operation meets the definition of manual dredging in s. NR 345.03 (5).

3. For each riparian property, the amount of bottom material removed from a waterbody may not exceed 10 cubic yards in a calendar year.

4. The project may not be located where there are public rights features as described in s. NR 1.06.

Note: When the state is the riparian property owner, the requirements of ch. NR 45 shall be met.

(g) *Standards for maintenance dredging of previously dredged areas.* Maintenance dredging of material from an area from which material has previously been removed is eligible for a general permit subject to all of the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

3. Dredging may not exceed the volume or extend beyond the dimensions of the previous dredge project.

4. The applicant has provided information that the area meets the requirements of "previously dredged area" as follows:

a. The applicant can demonstrate that previous removal of material was authorized by the department; or

b. The applicant can demonstrate historical information documenting the previous removal of material including the date of removal, the volume of material removed and location of the material disposal.

5. Unless the dredging project is for the removal of material associated with maintenance of a harbor or marina located on Lake Michigan or Superior, the material removed may not exceed 50,000 cubic yards.

(h) *Standards for jetting to harvest aquatic plants, tubers or seeds.* Jetting of the bottom sediments during the harvesting of aquatic plants is eligible for a general permit which will meet the substantive requirements of ch. NR 109, subject to all of the following limitations:

1. The project shall be in a location where the bed of the waterway is privately-owned or a location where the bed of the waterway is publicly-owned if the department determines that the project is consistent with the aquatic plant management activities authorized under ch. NR 109.

Note: Under Wisconsin law, the bed of natural lakes is publicly-owned, and the bed of rivers and streams is owned by the adjacent riparian to the center of the river or stream. For impoundments or raised lakes, the bed is privately owned to the edge of the natural lakebed.

2. The applicant shall be licensed by the department of agriculture, trade and consumer protection as a nursery grower under s. 94.10, Stats.

3. All dislodged aquatic plants and floating debris shall be removed from the waterbody at the end of each day.

4. The equipment and motors used for jetting loose the aquatic plants shall conform to the following specifications:

a. The pumps may not exceed 6 ½ horsepower.

b. The hoses may not exceed 3 inches inside diameter.

c. The intake strainer may not exceed 3/8 inch mesh.

5. To provide for re-growth of aquatic plants, the area dredged may not exceed 50 feet by 15 feet and an area 5 feet in width shall be left undisturbed around all dredge sites regardless of its size. Multiple areas 50 feet by 15 feet may be dredged within a waterbody if consistent with subd. 6.

6. The general permit authorizes up to 5 acres of jetting, but no more than 50% of the aquatic vegetation from the waterbody.

7. Only one general permit shall be issued for each area of a waterbody on an annual basis.

(i) *Standards for dredging less than 25 cubic yards from a river or stream.* Dredging less than 25 cubic yards is eligible for a general permit subject to all of the following limitations:

1. The dredging may not be located on a lake or impoundment, in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

2. The bottom material shall be dredged by mechanical operation of a bucket excavator or backhoe.

3. The dredged material may not be temporarily stockpiled within 75 feet of the ordinary high water mark.

4. The removal of bottom material shall be located in less than 3 feet of water and within 50 feet of the ordinary high water mark.

5. The dredging may not result in water depth greater than 5 feet.

6. For each riparian property, the amount of bottom material dredged from a waterbody may not exceed 25 cubic yards in a calendar year.

(im) *Standards for removal of plant and animal nuisance deposits.* All of the following are standards for removal of plant and animal nuisance deposits.

1. The removal shall only be located in outlying waters.

2. This general permit is for the one time removal of the plant and animal nuisance deposit. Only 3 general permits for plant and animal nuisance deposits may be issued for any area of a waterbody on an annual basis. For the general permit requirements listed under this paragraph, an area of a waterbody is the geographical location of the project as indicated on the general permit application form.

Note: General permit application forms are available at department service centers and on the department website at <http://dnr.wi.gov> under the topic "Waterway and Wetland Permits".

3. The project area to which this general permit applies shall be under the same ownership as the applicant.

GENERAL PERMIT APPLICATION INSTRUCTIONS

To apply for this General Permit, submit all of the required information listed below. A complete submittal with detailed plans will allow us to make a decision about your permit application. Permit processing review times begin when the application is received by the Department and is determined to be complete.

Please note that you are responsible for obtaining all necessary local (e.g. city, town, village or county) and U.S. Army Corps of Engineer permits or approvals in addition to any applicable state permits prior to commencing any work at the project site.

The Department offers the opportunity to apply electronically for all waterway and wetland permits. The Water Permits portal page can be found at <http://dnr.wi.gov/Permits/Water/>

Informational Requirements:

1. **Pre-Application Requirements.** Prior to submission of a complete, signed application form, anyone seeking to remove material from the beds of waterways is required to provide the following preliminary information including:
 - a. Name of waterbody and location of project,
 - b. Volume of material to be dredged,
 - c. Brief description of dredging method and equipment, including any containment BMPs to be used.
 - d. Brief description of proposed disposal method and location,
 - e. If a disposal facility is to be used, size of the disposal facility,
 - f. Any previous sediment sampling (including field observations) and analysis data from the area to be dredged or from the proposed disposal site,
 - g. Copy of a map showing the area to be dredged, the depth of cut, the specific location of the proposed sediment sampling sites and the bathymetry of the area to be dredged,
 - h. Anticipated starting and completion dates of the proposed project.
2. **Application form.** A complete, signed application form "Water Resources Application for Project Permits (WRAPP)" (Form# 3500-53) <http://dnr.wi.gov/files/PDF/forms/3500/3500-053.pdf>.
3. **Application fee.** Checks should be made payable to "Wisconsin DNR." A list of fees can be found at <http://dnr.wi.gov/topic/waterways/Permits/PermitProcess.html>.
4. **Site maps** which clearly illustrate the location and perimeter of the project site, and its relationship to nearby water resources (e.g. lakes, rivers, streams, wetlands), major landmarks and roads.
5. **Photographs** that clearly show the existing project area. Remember that too much snow cover or vegetation may obscure important details. If possible, have another person stand near the project area for size reference.
6. **Project plans and specifications** reflecting the General Permit Eligibility Standards as listed in the project-specific checklist below. If your project does not meet all of the eligibility standards, you will need to apply for an Individual Permit.
7. **Electronic documents.** If you are applying on paper, all documents listed above must also be submitted in an electronic format, either by enclosing a disk with your application materials, providing a link to an ftp site, or by other electronic methods. If possible, please create a separate file for each component of the application (i.e., forms, photos, maps, plans, etc.). Each file must be less than 15 megabytes in size, and the total size of the files combined must be less than 30 megabytes.

Eligibility Criteria:	
Projects that do not meet all criteria are not eligible for this general permit. If your project does not qualify for this general permit, you may apply for an individual permit.	
The dredging may not be located on a lake or impoundment, in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.	
The bottom material shall be dredged by mechanical operation of a bucket excavator or backhoe	
The dredged material may not be temporarily stockpiled within 75 feet of the ordinary high water mark.	
The removal of bottom material shall be located in less than 3 feet of water and within 50 feet of the ordinary high water mark	
The dredging may not result in water depth greater than 5 feet.	
For each riparian property, the amount of bottom material dredged from a waterbody may not exceed 25 cubic yards in a calendar year.	
Any dredged material removed from the waterbody may not be permanently placed in a wetland, or floodway or re-deposited below the ordinary high water mark of a navigable waterway.	
Any dredged material removed from the waterbody may be temporarily stockpiled in an upland area provided it is separated from the stream by an installed silt fence or a protective, vegetated buffer strip not less than 20 feet in width.	
Dredged material may be temporarily placed for not more than 8 hours within a wetland or below the ordinary high water mark of a navigable waterway if the material is placed on matting with appropriate erosion control to prevent runoff. Any areas used for temporary placement shall be completely restored within 24 hours.	
The project shall be conducted in a manner that prevents dispersal of sediment away from the project site. Temporary control measures such as silt curtains shall be used as needed, and shall be installed prior to dredging and removed from the waterbody no more than 24 hours after dredging is complete. Any temporary control measures shall follow all state lighting requirements and may not obstruct navigation.	
Dredging shall be conducted to minimize the re-suspension of sediment to the maximum extent practicable in accordance with the following: <ul style="list-style-type: none"> • For trout streams identified under s. NR 1.02 (7) and perennial tributaries to those trout streams, the total suspended solid concentrations may not exceed 40 mg/L. • For all other waters, the total suspended solid concentrations may not exceed 80 mg/L. 	
The applicant shall provide information that the dredged material does not contain any hazardous substance as follows: <ul style="list-style-type: none"> • Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347; or • Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347; or • By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways. 	
If the project location is within the riparian zone, the applicant is the riparian owner or has permission of the riparian owner to dredge the bottom material.	

<p>Erosion control measures shall meet or exceed the technical standards for erosion control approved by the department under subch. V of ch. NR 151. Any area where topsoil is exposed during placement, repair or removal of a structure shall be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. These standards can be found at: http://dnr.wi.gov/topic/stormwater/standards/.</p>	
<p>Unless part of a permanent storm water management system, all temporary erosion and sediment control practices will be removed upon final site stabilization. All areas disturbed during removal of temporary erosion and sediment control practices will be restored.</p>	
<p>Any area within 75 feet of the ordinary high water mark, where topsoil is exposed during construction, shall be stabilized within 24 hours to prevent soil from being eroded and washed into the waterway.</p>	
<p>All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.</p>	
<p>The project plans minimize adverse impacts on fish movement, fish spawning, egg incubation periods and high stream flows, the project may not occur during the following time periods:</p> <ul style="list-style-type: none"> ✓ September 15 through May 15 for trout streams and navigable tributaries to trout streams. ✓ March 15 through May 15 for ALL waters located south of state highway 29. ✓ April 1 through June 1 for ALL waters located north of state highway 29. <p>NOTE: Per ch. NR 1.02(7), the department identifies and classifies trout streams to ensure adequate protection and proper management of this unique resource. To determine if a waterway is a trout stream, you may use the Designated Waters Theme on DNR's Surface Water Data Viewer: http://dnr.wi.gov/topic/surfacewater/swdv/</p>	
<p>All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.</p> <p>The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.</p> <ul style="list-style-type: none"> • Inspect and remove aquatic plants, animals, and mud from your equipment. • Drain all water from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps. • Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another. <p>Wash your equipment with hot (>104° F) or high pressure water, steam clean or allow your equipment to dry thoroughly for 5 days.</p>	
<p>Follow the most recent department approved washing and disinfection protocols and department approved best management practices to avoid the spread of invasive species as outlined in NR 40, Wis. Adm. Code. These protocols and practices can be found on the Department website at http://dnr.wi.gov/topic/Invasives/bmp.html Keyword: "equipment operator" and at http://dnr.wi.gov/topic/Invasives/documents/EquipOper.pdf</p>	

To Apply:

Once your application is complete, submit using the online system, or mail it to the permit intake address based on the county where your project is located. If you have questions or problems filling out or completing the application requirements, contact the Water Management Specialist for your county.

Permit intake addresses and Water Management Specialist contact information can both be found at the following web link: http://dnr.wi.gov/topic/Waterways/about_us/county_contacts.html



US Army Corps
of Engineers,
St. Paul District

U.S. Army Corps of Engineers (Corps) Information: Regulatory Program in Wisconsin

Written testimony for AB 600
January 5, 2016

The Corps regulates the discharge of dredged and fill material in all waters of the United States (WOUS, most wetlands and waterbodies) pursuant to Section 404 of the Clean Water Act (CWA). Activities over, under, and within navigable WOUS are regulated pursuant to Section 10 of the Rivers and Harbors Act (RHA).

The Corps enjoys a cooperative work environment with the Wisconsin Department of Natural Resources (WDNR). Interagency collaboration allows our agencies to better serve the public and meet program goals.

Corps Jurisdictional Determinations

- The Corps uses Approved Jurisdictional Determinations (AJD's) to document jurisdiction. An AJD is the only means the Corps may use to establish if an aquatic resource is, or is not, a WOUS.
- According to the WDNR, roughly 20% of the wetland and waterway projects authorized under Wisconsin Chapters 30, 31, and 281.36 were for aquatic resources documented by the Corps as non-jurisdictional.
- "No jurisdiction" determinations for "isolated wetlands" require Corps coordination with the United States Environmental Protection Agency (EPA) for 15 days prior to finalizing the determination.
- Many AJD's include a Corps "Significant Nexus" evaluation. These evaluations are generally time consuming, require substantial field data collected during the growing season, and require coordination with the EPA for 21 days prior to completing our determination.
- Since 2012, the Corps and WDNR have concurrently reviewed applications because the state review process was not dependent upon findings of Corps jurisdiction. If the WDNR's range of practicable alternatives depends upon Corps jurisdictional findings, state review may not be completed until after the Corps AJD process.
- In the vast majority of cases, applicants for Corps permits do not request an AJD, but rather accept a Preliminary JD (PJD), which is not an official determination regarding whether a water is a WOUS. This process allows applicants to move forward with Corps permitting without the time constraints often associated with the AJD process. Defining the WDNR review process for PJD wetlands as synonymous with a "Federal wetland" is imprecise. If the term "Federal wetland" is retained, applicants must request an AJD from the Corps to determine the alternatives review process required by the WDNR. In many cases this will substantially increase the time necessary for applicants to obtain all necessary determinations and authorizations.

Corps Permit Evaluation

- The Corps alternatives review is never limited by rule to on-site and immediately adjacent. The appropriate range of alternatives for a proposed project may be identified by the Corps during pre-application meetings.
- Section 404 CWA authorization may only be granted for projects determined by the Corps to be the least environmentally damaging practicable alternative to accomplish the project purpose.
 - Fill, such as riprap, proposed in excess of what may be needed to stabilize a shoreline may be ineligible for Corps authorization.
 - Online storm water ponds may not be authorized by the Corps if a practicable alternative with less impact to the aquatic ecosystem is available to meet the project purpose.
- The Corps regulates previously filled Section 10 RHA waters, even if the fill results in conversion of the aquatic resource to dry land. While a shift in ownership for these areas to the riparian landowner may limit Chapter 30 regulation; this would not obviate the need to obtain federal authorization. Further, these areas may continue to be regulated by the Corps pursuant to Section 404 CWA, unless the fill previously placed converts the area to dry land. Fill above the OHWL should not be presumed to remove all aquatic features, as an example, these areas may be considered wetland.



US Army Corps
of Engineers,
St. Paul District

U.S. Army Corps of Engineers (Corps) Information: Regulatory Program in Wisconsin

Written testimony for AB 600

January 5, 2016

Corps Exemptions

- Exemptions from state regulation are frequently misinterpreted by the public as applicable to the Corps program. Similar exemptions for both the state and Corps reduces the risk for enforcement activity. The Corps has no complement to the Chapter 281.36 exemption changes proposed in AB 600.
- All "outlying waters" described in AB 600 are regulated by the Corps under Section 10 RHA and Section 404 of the CWA. Activities proposed in AB 600 as exempt, such as sand leveling, soil grooming, and debris removal in "outlying waters" continue to require authorization from the Corps.

Key Corps Regulatory Staff serving Wisconsin

- Branch Chief: Tamara Cameron (800) 290-5847, extension 5197, or 651-290-5197
- State Program Manager and Acting NE Section Chief: Rebecca Graser (651) 290-5728
- SE Section Chief: Todd Vesperman (651) 290-5857



**Testimony of Amber Meyer Smith
Director of Programs and Government Relations
Assembly Bill 600/Senate Bill 459
Assembly Environment and Forestry Committee
January 5, 2016**

Thank you for the opportunity to voice the concerns of our 20,000 members and supporters to AB 600. We are testifying in opposition to AB 600 because it will do serious harm to our waterways. Wisconsin is facing some critical water quality issues right now – algae blooms clogging our beaches from excess nutrients, contaminated drinking water wells in some areas of the state due largely to polluted runoff, spreading invasive species, and a dead zone in Green Bay are just some of the more egregious water quality problems. And AB 600 will only exacerbate some of these problems by promoting more development in sensitive waterways and wetlands and allowing for large amounts of virtually unmonitored lake dredging and other activities that disturb critical spawning habitat. While there are many parts of this bill that are of concern to Clean Wisconsin, I will focus on a few today.

Serious impacts of lake dredging

With over 15,000 lakes in Wisconsin ranging from under 5 acres to hundreds of acres, a uniform approach for lakebed dredging is simply not appropriate. Dredging certainly serves a purpose for lakefront property owners, but in order to protect the quality and integrity of a lake, it must be done with careful consideration for the unique properties of that lake. AB 600 allows huge amounts of dredging annually on a lake with only a general permit – 30 cubic yards equals 3 dump trucks per property per year on inland lakes, and 100 cubic yards on the Great Lakes.

Dredging can have a variety of negative impacts to lakes, including:

- Fisheries and ecosystem health
- Neighboring property effects
- Reduced water quality
- Release of potentially toxic materials
- Spread of invasive species

We've heard supporters of the bill note that there is already a general permit in place for rivers and streams, but there are vast differences in the shoreland ecology around a lake versus a river. On rivers, habitat tends to not be as concentrated around the shoreland as it is on lakes. Dredging every year on a river might make more sense than a lake because river flow can cause sediment to fill in much more quickly than on a lake. Without that sedimentation, the cumulative effects of dredging year after year can do more damage to a lake. In addition, while waterfront property ownership extends to the navigation channel of a river, lakefront property ownership only extends to the ordinary high water mark on lakes. Lakebed dredging is not appropriate for a general permit, and we ask that you remove it from the bill.

More development in wetlands

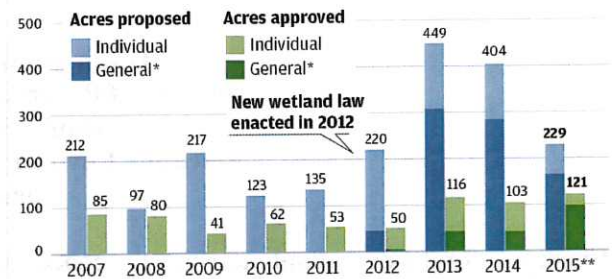
This bill would open up all non-federal wetlands to more development by making the alternatives analysis needed for a wetland fill permit much less rigorous. Roughly 20% of Wisconsin's wetlands are non-federal, or 1 million acres, and would be much easier to fill under this bill. Wetlands provide critical functions for

Wisconsin's landscape – providing habitat for waterfowl and other species, acting as a sponge for floodwaters and filtering impurities out of water.

The Legislature just passed a huge wetlands reform package in 2012, and as the Wisconsin State Journal recently reported, it has led to nearly twice the rate of wetland fill permits being issued. With the increased wetland development this bill allows for, the results will be more flooded basements, more dirty waterways and less habitat.

Wisconsin wetland acreage proposed and approved for elimination

Developers rushed to build on wetlands after a new law in July 2012 relaxed restrictions while requiring the purchase of credits to offset filling of larger sites. Acreage approved for fill increased at a slower rate.



*Act 118 created general permits with fewer restrictions for filling wetlands under 10,000 sq. feet.
 ** Partial year numbers

Note: DNR officials said data may have been entered less consistently before 2012.

SOURCE: Wisconsin Department of Natural Resources

State Journal

Lakebed deed

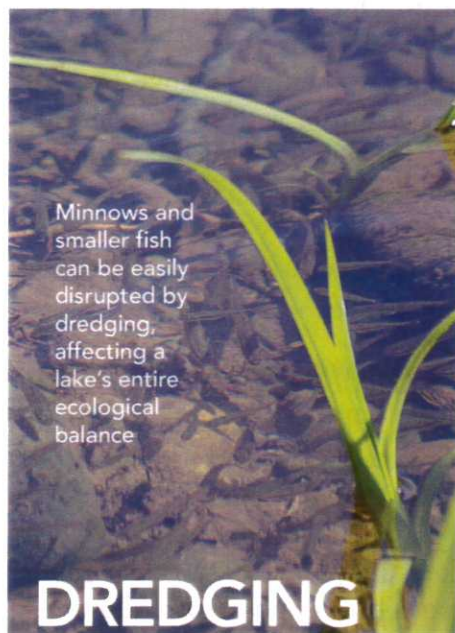
Under Wisconsin's public trust law, lakebed belongs to the public. Requiring DNR to grant lakebed deeds for private use infringes on this constitutionally protected public right. There is already a procedure under Ch. 13 that allows filled lakebed to be conveyed to private interests. Courts have continually held that the key issue to satisfy the constitutional public trust doctrine requirement that our waters remain in trust for the public is that any lakebed development include public access requirements. But categorically giving away an unknown amount of lakebed that was filled before 1975 – regardless of whether it was filled naturally or artificially, and regardless if it was filled legally or illegally is a disproportionate response with unknown consequences.

Other provisions

While we've chosen to highlight just a few of our biggest problems with the bill, other issues are also problematic, including:

- Removing all "Areas that possess significant scientific value" designations unless JCRAR approves of new list before the end of 2017
- Exempting roadside ditches from wetland permits – key northern pike spawning areas in Green Bay
- Removing contested cases for utility permits

It is for all these reasons and many more that we must oppose AB 600. We hope you will give serious consideration to these concerns and the far-reaching impact AB 600 will have on the quality of Wisconsin's waterways.



Minnows and smaller fish can be easily disrupted by dredging, affecting a lake's entire ecological balance

DREDGING

can have a wide range of impacts and unintended consequences on lakes, including:

- » Releasing toxic materials
- » Harming fisheries & ecosystems
- » Damaging or destabilizing neighboring properties
- » Allowing invasive species to prosper
- » Reducing water quality

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Dredging is the process of removing material from river or lake bottoms, often to reshape an area. When done carefully, dredging can be an effective tool for increasing access to our waterways.

Due to dredging's many potential ecological impacts, a significant amount of site-specific study and precaution is needed to avoid harming neighboring property, fish populations and ecosystems; disturbing toxic materials; promoting growth of invasive species; and generally reducing water quality.

Impacts on fisheries and ecosystems

Dredging disturbs ecosystems by removing and killing critical organisms on river or lake bottoms that help purify the water, cycle nutrients and stabilize lakebed, among other things. These organisms also play an important role at the base of aquatic food chains, and changes in those populations can have cascading impacts throughout the aquatic ecosystem.¹

Dredging can also change the properties of the water in ways that directly impact fisheries, such as decreasing clarity and increasing sedimentation in the near term, and altering the landscapes where fish live or spawn in the long term.² For example, while smaller fish and minnows often live in the shallow water of a lake, dredging can upset spawning and make those areas accessible to larger predators, disrupting the ecological balance that sustains game fish.

Neighboring property impacts

Since dredging involves the removal of sediment, it has a direct impact on the shape of lake or river bodies. However, the impact is not always limited to the immediate area; it can also change sediment stability, impacting neighboring structures.

Dredging can change sediment stability, impacting neighboring structures

Reduced water quality

Dredging in lakes can have significant impacts on water quality as well; for example, organic matter and nutrients released during dredging can trigger algal blooms.³ Stinky, rotting algae on shores is major concern for lakefront property owners.

1. See, e.g., Covich, A., Palmer, M., and T. Crowl. 1999. The Role of Benthic Invertebrate Species in Freshwater Ecosystems: Zoobenthic species influence energy flows and nutrient cycling. *BioScience* 49/2: 119-127.

2. See, e.g., Webb, C., Wisconsin Department of Natural Resources. 2001. Environmental Analysis on Dredging in Door County. EA0006.

3. Webb, C., Op. Cit.



How is lakebed dredging different from river dredging?

While some impacts from lakebed dredging and river dredging are similar, there are a number of important differences. One reason is that the water flow through rivers means they are generally dynamic systems more resilient to change.⁶ In addition, property ownership of a river is much different from that of a lake. A riverfront property owner owns the riverbed to the navigational channel, whereas a lakefront property owner only owns to the Ordinary High Water Mark. The rest of the waterway is publicly owned.

Release of toxic materials

Over time, toxic chemicals such as heavy metals and other pollutants can settle out of water and accumulate in sediments. Dredging disturbs those sediments, potentially releasing the toxic materials back into the water and environment.⁴ Some chemicals, like mercury, may even have changed their chemical state and become more hazardous during burial. Dredging also causes water flow to change, resulting in additional disturbance of sediments.

Dredging must be done with care for the individual circumstances of each property

Invasive species

Healthy aquatic communities help protect against invasion by non-native species. By disturbing the natural habitat of the lakebed and damaging or destroying native plants and leaving behind bare sediment, dredging allows invasive species to gain an easy foothold in lakes⁵ and allow them to spread to new areas.

How is dredging currently controlled?

Currently, the Wisconsin DNR allows dredging through an individual permit. The individual permit process allows lakefront property owners the ability to dredge while minimizing the impacts to fish habitats and lakebed.

Assembly Bill 600/Senate Bill 459

A recently proposed bill in Wisconsin would allow each lakefront property owner to dredge up to 30 cubic yards EACH YEAR, equaling 3 dump trucks, with only a general permit which is not tailored to the lake's unique ecology or neighbor and habitat concerns. The proposal also allows up to 100 cubic yards, or 10 dump trucks' worth, to be removed on the Great Lakes. While dredging can be a useful tool for waterfront property owners, it must be done with care for the individual circumstances of each property, not granted under a blanket permit that doesn't consider how those removed materials will impact the neighbors' property, game fish populations, sediment stability, and presence of toxic material.



AB 600/SB 459 would allow up to 3 dump trucks of material to be dredged by each lakefront property owner each year



Dredging can disrupt the ecological balance that sustains game fish

4. See, e.g., G. Davidson et al. 2005. Trace Elements in Sediments of an Aging Reservoir in Rural Mississippi. Potential for Mobilization Following Dredging. *Water, Air, and Soil Pollution* 163: 281-292.
 5. See, e.g., N. Nichols. 2007. Disturbance and Invasions: Protect the good, improve the not-so-good. *The Lake Connection*. Wisconsin Association of Lakes.
 6. See, e.g., Reice, R., Wissmar, R., and R. Naiman. 1990. Disturbance regimes, resilience, and recovery of animal communities and habitats in lotic ecosystems. *Environmental Management* 14: 516-529.



Assembly
PUBLIC HEARING
Committee on Environment and Forestry

The committee will hold a public hearing on the following items at the time specified below:
Tuesday, January 5, 2016
12:01 PM
417 North (GAR Hall)
Assembly Bill 600

Mr. Chairman; members of the committee, my name is Joel Haubrich and I am here on behalf of WEC Energy Group's two Wisconsin utilities, We Energies and Wisconsin Public Service. We support AB 600 because it will true-up the utility siting law that was created in 2011 with more recent legislation.

Simply, sections 4, 5 and 6 of AB 600, align DNR wetland permit procedure with the utility siting laws.

In 2003, utilities and Governor Doyle worked to craft Wisconsin Act 89. It created a process designed to coordinate the review and approval by the DNR and the PSC of proposed power plants, electric transmission lines, and natural gas pipelines.

In 2011, the legislature passed Act 118. The Act created wetland general permits and wetland individual permits.

Act 118 provided for administrative and judicial review of DNR decisions related to wetland individual permits after the permit has been issued. What that resulted in is a permit that does not follow the utility siting law.

The utility siting law presumes all permits will have a hearing and be “contested” simultaneously with the PSC permitting process.

The new wetland individual permit is now the only permit out-of-line with the utility siting process – provisions in 2011 Act 118 could unwittingly turn the coordinated utility siting process on its ear.

The proposal in AB 600 aligns the utility individual wetland permitting process with the utility siting statutes – sticking with the legislative intent of having PSCW and DNR permits run in parallel.



214 N. Hamilton St. #201 Madison, WI 53703

Phone 608-250-9971 Fax 608-287-1179

Testimony on AB 600: Presented by Erin O'Brien, January 5th 2016

14 years ago, this legislature enacted protections for isolated wetlands with unanimous bipartisan support. These wetlands mattered then and that's no less true today.

Exactly three years ago, I testified before this legislature on a bill that sought to reform Wisconsin's wetland regulatory program. To the surprise of many, there were provisions in that bill that Wisconsin Wetlands Association supported.

We supported establishment of a single permit program for all wetland projects because it streamlined the application process, without harming the resource.

AB 600 reverses those efficiencies by creating separate permit review criteria for federal and nonfederal wetlands. The only way for applicants to know which rules apply is to request something called a jurisdictional determination from U.S. Army Corps of Engineers. I encourage you to consult with them about the burden this creates for applicants.

In 2012, we also supported establishing a limited review of alternatives for expansions of existing facilities because we understood that off-site alternatives were rarely feasible in the real world these limited reviews would apply to only a small number of projects.

There were other provisions we opposed because they would allow destruction of wetlands when reasonable alternatives were available. This proved true. In the three years since those reforms were enacted, the average annual amount of authorized wetland filled has nearly doubled.

But those impacts pale in comparison to what will be allowed under AB 600, and Wisconsin Wetlands Association is unequivocally opposed.

AB 600 limits the review of alternatives for project that impact any isolated wetland. The intent is to help people who own isolated wetlands to develop them. In the process, it creates incentives to purchase new wetland property with the intent to build, or to subdivide and sell off parcels in order to create multiple, developable wetland properties.

As a result, we can expect to see more construction in low-lying, flood-prone areas, and the conversion of more drained agricultural lands to other developed uses. These changes will harm public interests for private gain, and taxpayers will suffer the consequences.

Isolated wetlands are some of our most valuable and most vulnerable wetland resources. They tend to be small, but are abundant on the landscape, accounting for approximately 20% of all of

the wetland in the state. Their job is to capture and slow the flow of large volumes of rain and snowmelt - collectively, they hold a tremendous amount of water.

When isolated wetlands are filled, the water they stored needs a place to go. Isolated wetland development sends more water downstream more quickly. The extra volume increases flood peaks. The increased velocity scours stream banks and farm fields, carrying sediments and nutrients along with it.

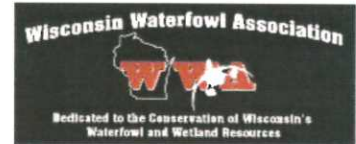
Downstream, farmers receive more water than they can handle. Local bridges, culverts, and roads get washed out. People and property are put in harm's way.

The only thing that keeps these types of impacts from becoming even more widespread are the laws we have on the books now to encourage avoidance and minimization of wetland impacts.

And AB 600 is only the latest in a series of bills currently in play that reduce wetland protections. This piecemeal approach to wetland policy is harming the lakes, rivers, and communities that need the protective services wetlands provide.

The citizens of this state wanted these wetlands protected. Please vote no on AB 600.

Questions on this testimony should be directed to WWA Policy Director, Erin O'Brien at 608-250-9971.



TO: Chairman Mursau and Members of the Assembly Committee on Environment and Forestry;
RE: Testimony Opposing AB 600 Provisions

We are speaking to you on behalf of Ducks Unlimited, the National Wild Turkey Federation, Pheasants Forever/Quail Forever, WI Waterfowl Association and Green Bay Duck Hunters Association, with a combined membership of more than 60,000 sportsmen and women in Wisconsin regarding the proposed legislation AB600.

Two items are of most concern due to potential negative impacts upon Wisconsin's sportsmen/women and outdoor economy.

1. The creation of a general permit authorizing any riparian owner to remove up to 30 cubic yards of material annually from a lake bed on an inland lake, and up to 100 cubic yards annually from an outlying water. Also says WDNR cannot forbid use of mechanical equipment to conduct the activity.
 - a. These nearshore areas are some of the most productive fish and wildlife habitats on WI lakes. Loosening protection of these areas could have a dramatic effect on long term stability of fish and wildlife populations.
 - b. These actions will negatively impact recreational opportunity. Nearshore emergent vegetation currently provides cover needed for legal hunting of waterfowl. Nearshore submergent and emergent vegetation provide excellent angling opportunities.
 - c. Hunters and anglers fuel a \$4 billion industry and support more than 50,000 jobs in Wisconsin. These are Wisconsin jobs that cannot be exported to another country!
 - d. These actions can already be permitted under current legislation with proper environmental considerations in place.

Our Recommendation: Because these actions can already be permitted, we do not support this provision to ensure against major loss of nearshore habitat.

2. Establishing a requirement for non-federal wetlands that DNR shall limit its review to those practical alternatives (to avoid & minimize wetland impacts) to which the following apply: 1) The alternative is consistent with the purpose and scope of the project; 2) The alternative is located at the site of the discharge or located adjacent to that site if both sites are owned by the same person.
 - a. This provision will expose an estimated 1,000,000 acres of wetlands with little to no protection from permanent destruction. These small wetlands scattered across state provide much of the breeding habitat for WI waterfowl and other wildlife. Wisconsin has already lost 47 percent of its wetlands and cannot afford to accelerate additional loss.
 - b. These actions can already be permitted under current legislation with proper environmental considerations in place. New ILF Mitigation and other changes to legislation in 2012 have allowed for increased flexibility while maintaining some level of protection in place. These changes are working as indicated by the doubling of annual authorized wetland fill activities since these changes.

Our Recommendation: Because these actions can already be permitted, we do not support this provision in AB600.

Outdoor recreation is BIG BUSINESS in Wisconsin, and is fueled by habitat on both public and private land where sportsmen and women can hunt, fish, trap, birdwatch and conduct other recreational activities. In 2013, 1.55 million Wisconsin hunters and anglers spent \$4.03 billion, or approximately \$11 million dollars a day. Hunters and anglers support more jobs in Wisconsin than the University of Wisconsin, Menard's, and Kohl's combined, the state's three largest employers (55,722 vs. 29,964). AB600, as currently written, would have long term negative effects on hunting, fishing and trapping in Wisconsin.

Our organizations focus on conserving wildlife habitat for sportsmen and women in Wisconsin. As statewide representatives with more than 60,000 members, we specifically request that AB 600 be revised to eliminate:

- The creation of a general permit for nearshore dredging.
- The provision to lessen protections on non-federal wetlands.

We encourage the Wisconsin Legislative Sportsmen's Caucus members to unite with sportsmen and women in opposition to these changes as well. Together we can ensure that future generations of sportsmen and women will have productive and natural resources upon which to recreate, and abundant wildlife to enjoy. Thank you for your consideration.

Respectfully submitted by Ducks Unlimited, Pheasants Forever/Quail Forever & National Wild Turkey Federation, Wisconsin Waterfowl Association and Green Bay Duck Hunters Association.

Cc: – WI Senate Members
– WI Assembly Members



WISCONSIN WILDLIFE FEDERATION

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January 5, 2016

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WWF Testimony Opposing Assembly Bill 600


Chairman Mursau and Members of the Assembly Committee on Environment and Forestry, thank you for the opportunity to testify in strong opposition to Assembly Bill 600. The Federation represents 195 hunting, fishing and trapping organizations in this state. In addition you will hear from a number of other major state conservation organizations that have similar concerns about this bill.

Why are sportsmen and women so strongly opposed to this bill? The reason is that several portions of this bill significantly weaken protection for the fish and wildlife habitat that is so important for hunting and fishing in the state. Without quality fish and wildlife habitat, our Constitutional Right to hunt, fish and trap becomes relatively meaningless. The key habitat areas damaged by this bill are over 1,000,000 acres of wetlands in this state and the vital near shore, shallow riparian waters of all our inland and outlying lakes. Those near-shore areas provide the habitat for fish, furbearers and waterfowl.

The stated reason for the bill is that it is necessary to protect private property rights. We surely can all agree with that objective. However what the bill ignores is that private property ends at the ordinary high water mark of lakes. Below the ordinary high water mark the lakebed is public property which is owned by all citizens of the state. In fact this bill will seriously damage these critically important public property rights.

Let me highlight portions of the bill that will over time cause this serious damage:

1. Section 31. This is one of the most damaging sections of the bill. It removes the authority of DNR to review as individual permits the dredging of up to 30 cubic yards of material from the bed of inland lakes off any lake lot every year and up to 100 cubic yards of material from the bed of outlying lakes of any lake lot every year. These near shore areas are critical areas of fish and wildlife habitat in the state and DNR should be allowed to inspect each of these areas before permits are issued and the sportsmen and women should be allowed to have an opportunity to raise concerns about the loss of fish and wildlife habitat prior to the granting of the permit.



2. Section 41. This section of the bill substantially reduces the alternative analysis required of developers proposing to fill portions of the 1 million acres of non-federally regulated wetlands in the state. When new projects are proposed, developers have alternative locations to place their development. If this provision is approved, developers will have an incentive to purchase cheaper wetland areas in which to construct their developments. These 1 million acres of non-federally regulated wetlands are prime habitat areas for waterfowl and furbearers in the state. The Federation supports the additional testimony of the Wisconsin Wetland Association on this issue.

3. Section 42. This section of the bill exempts roadside ditches from the need from wetland permits. On its face that sounds harmless, but, as some of you know, the roadside ditches in the proximity of the western side of Green Bay provide extensive critical habitat for northern pike spawning for the northern pike fishery in Green Bay. We also know that roadside ditches in other parts of the state provide similar spawning habitat for game fish and recommend that the Committee ask DNR for a complete report of such spawning areas prior to acting on this bill.

4. Section 7. This section removes the current additional regulatory protection for "Areas that possess significant scientific value". These areas are critical habitat for endangered and threatened species, wild rice waters, ecologically significant coastal wetlands, national wild and scenic rivers and state wild rivers. Redesignation of such areas of significant scientific value under this bill will no longer be scientific decisions but rather political decisions of the Legislature's Joint Committee for Review of Administrative rules.

5. Section 17 and 18. These sections allow boat shelters off riparian lots to be placed at unlimited distances from the shoreline, well beyond the line of navigation necessary for the type of watercraft using the boat shelter. This will cause navigational hazards and obstructions to navigation for anglers and other recreational boaters.

6. Section 22. This section allows the major expansion of in-water boathouse construction on Lake Michigan and Superior and all of their tributaries. The construction of new boathouses has been prohibited for 45 years because of their unnecessary intrusion into public waterways. Boathouses have been successfully constructed on the upland for the past 45 years.

7. Section 24. This section allows totally unregulated shoreline leveling and grooming of riparian areas of Lake Superior and Lake Michigan and their tributaries. Not even a general permit is required for such activities. Those shoreline areas often provide valuable fish and wildlife habitat.

8. Sections 11, 12 and 13 allow the place of riprap in areas including Areas of Special Natural Resource Interest that will damage fish and wildlife habitat on shoreline areas.

9. Section 38. This section allows the actual construction of stormwater management pond in public waterways denying the use of citizens the ability to use such areas.

10. Section 8. This section gives portions of public inland and outlying navigable waters that have been filled prior to 1975 to private landowners and DNR is directed to provide quitclaim deeds to those private owners. This affects at a minimum 71 parcels on inland and outlying waters. Lakebeds are owned by the citizens of the state and are held in trust to be protected by the Legislature and the DNR. According to repeated Wisconsin Supreme Court cases over the last 160 years, past efforts of the Legislature to turn over public navigable waterways for private development have been found to be in violation of Article 9, Section 1 of the Wisconsin Constitution. This section of the bill will generate many lawsuits to protect public ownership of navigable waterways.

Chairman Mursau and Committee Members, thank you for the opportunity for the Wisconsin Wildlife Federation to testify on Assembly Bill 600. As you deliberate on this bill, please remember Wisconsin hunters, anglers and trappers and the need to protect fish and wildlife habitat that is so vital to hunting, fishing and trapping in this state.

George Meyer
Executive Director
Wisconsin Wildlife Federation

FOX VALLEY RIPARIAN RIGHTS ASSOCIATION

MEMO

January 5, 2016

The Fox Valley Riparian Rights Association was formed to advocate for the property rights of riparian owners in the Fox River Valley who wish to fully enjoy the benefits of the property they own which has frontage on a lake or river. **As such we are strongly in support of AB 600.**

We support all the provisions of the bill, but wish to emphasize several which are of particular interest to us.

1 – Reform of ASNRI designation. By designating nearly every body of water in the Fox Valley as ASNRI, the DNR has effectively negated the will of the Legislature in enacting previous Chapter 30 reforms. It becomes very difficult to access the exemptions and general permits that the law contemplates when the entire Lake Winnebago system, for example, is designated ASNRI.

2 – Permanent Boat Shelters. The current regulations on when and where you can erect a permanent boat shelter do not conform to common sense. The bill would remove restrictions that deny a general permit for a boat shelter when it is more than 30 feet from shore, lies near an “undeveloped” shore, or when there is a nearby boat house.

3 – Boathouses. Again some common sense reforms to allow you to “keep what you have”. Assuring that foundations can be replaced, for example, and that you don’t lose your “grandfather” status if you don’t have a boat in the boat house one year.

4 – Rip Rap. The bill would allow rip rap to be placed high enough to protect the shoreline from erosion when accounting for water level variation and the effect of wind and waves. Current regulations are very restrictive in this area.

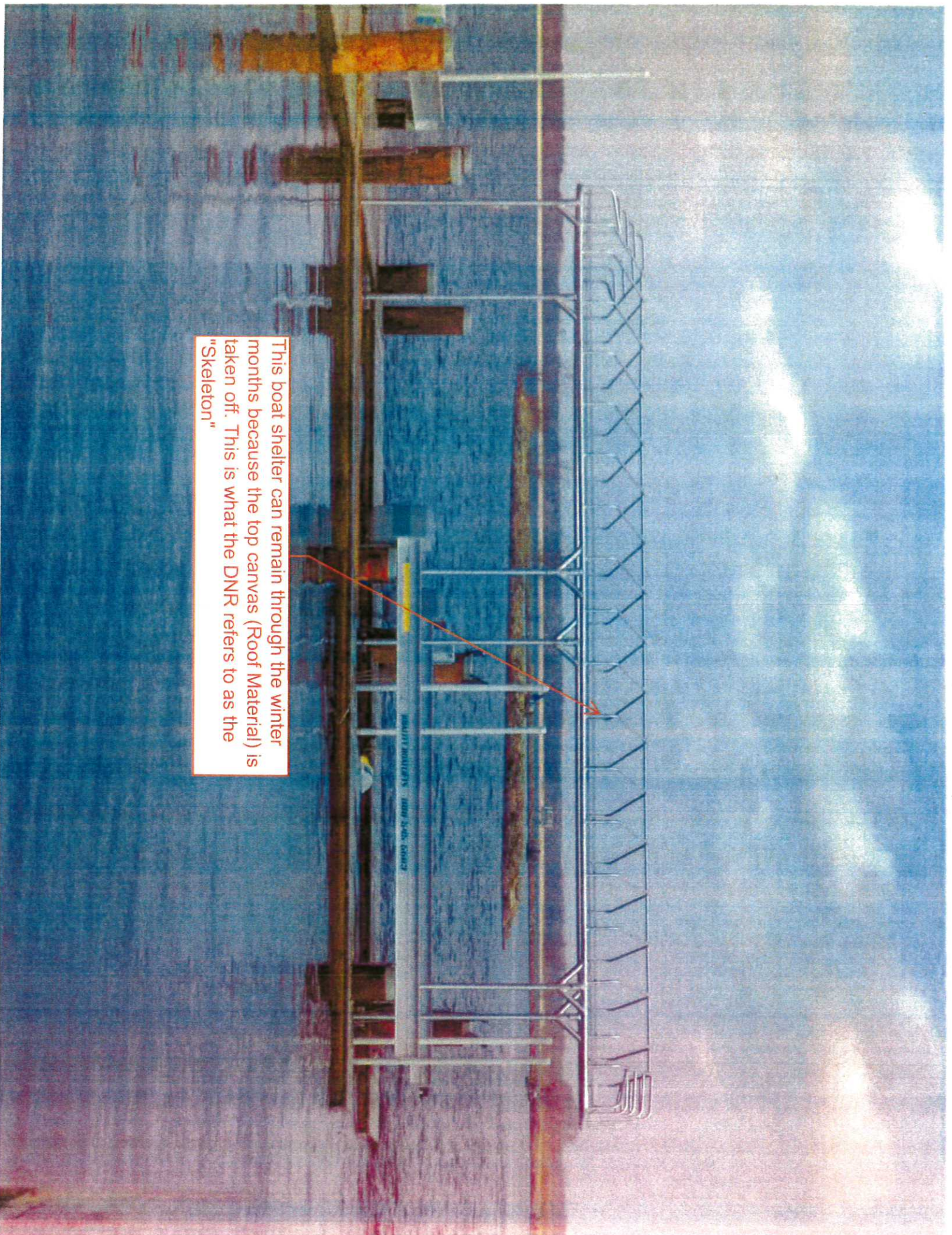
5 – Seawalls. Again under the heading of “keep what you have”, the bill allows replacement seawalls for purposes of preventing shoreline erosion.


6 – Minor Dredging. The bill will allow a riparian owner to remove up to 30 cubic yards of material under a general permit. This is often a necessary component of a pier or rip rap project and the current individual permitting process is cumbersome at best. 30 cubic yards are equal to 2 or 3 loads on a dump truck.

In conclusion, we urge you to support AB 600 to protect property rights for riparian owners.

If you have any questions feel free to contact our representative: Bob Welch 608 819 0150

This boat shelter can remain through the winter months because the top canvas (Roof Material) is taken off. This is what the DNR refers to as the "Skeleton"





This property owner needs to remove his boat shelter very winter because his property has a small boat house on land. The department told him he could remove all the roofing materials and leave the skeleton frame for the winter months.



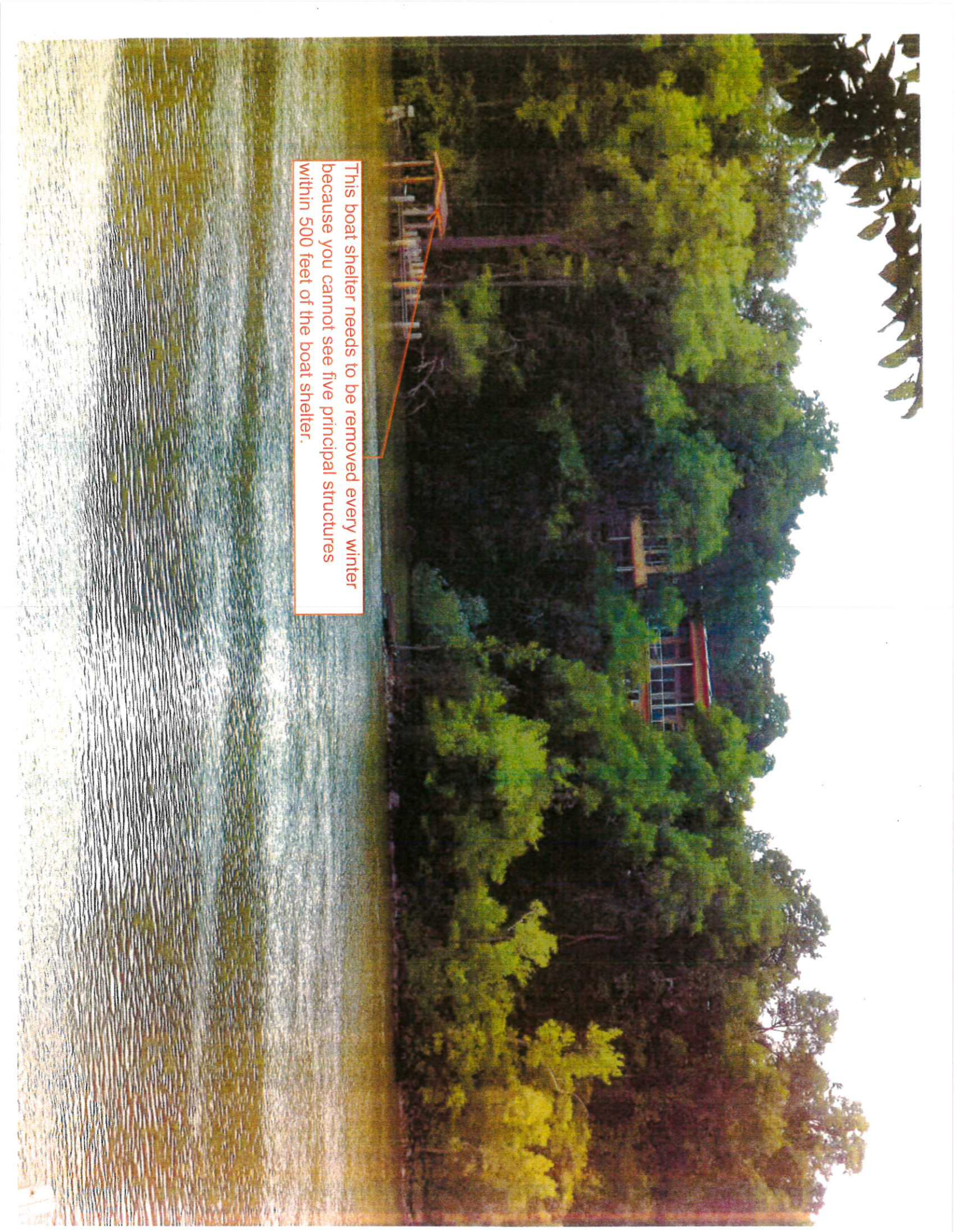
This property owner needs to remove his boat shelter every winter because his property has a small boat house on land. The department told him he could remove all the roofing materials and leave the skeleton frame for the winter months.



This boat shelter has to be removed every winter because it is 45 feet from shore. Law restricts distance in river to 30 feet from Shore. Boatlift is in needed water depths to operate boatlift.



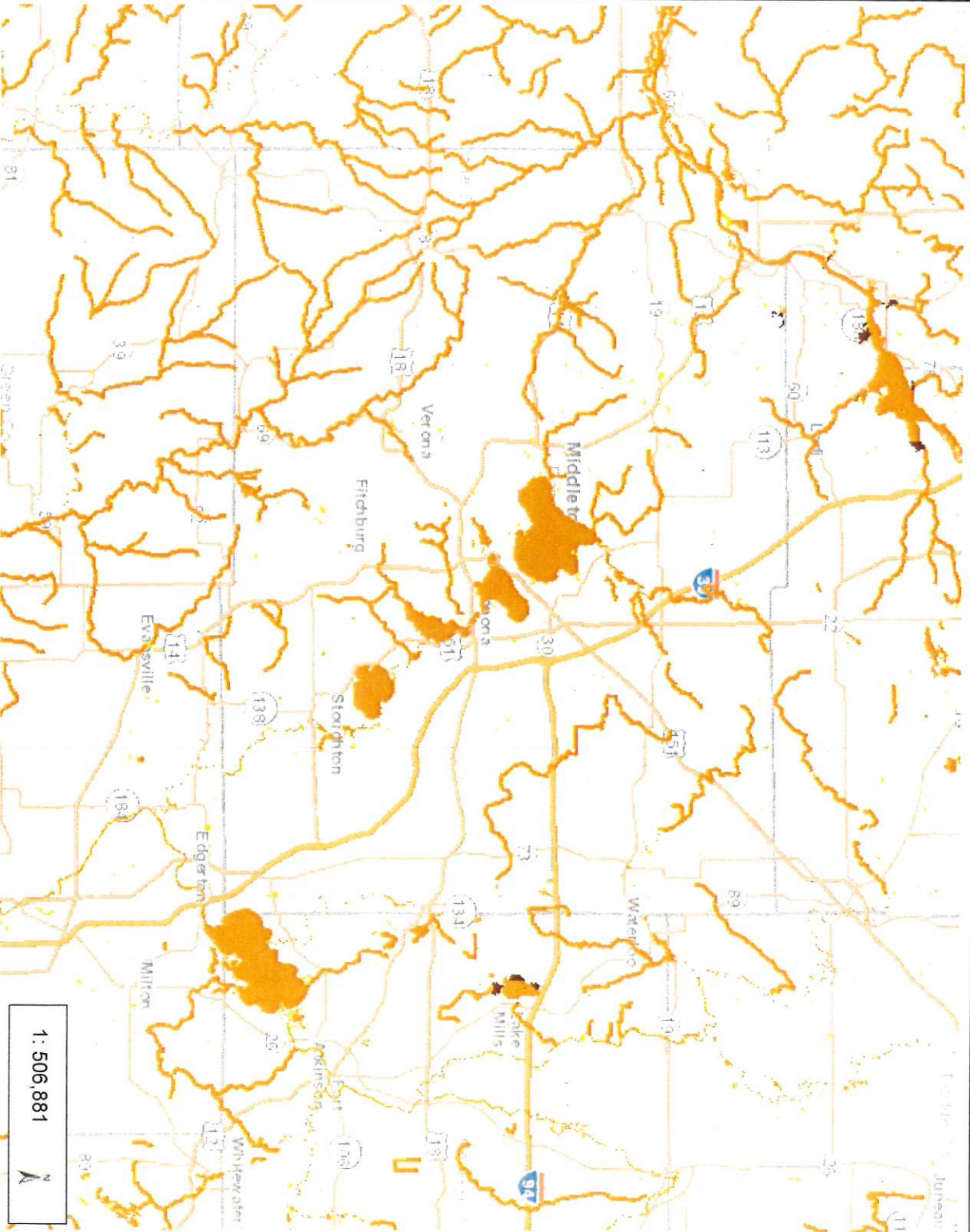
This property owner cannot have a permanent boat shelter over his boatlift and boat because his boatlift is out to the water depth needed to float his boat. His lift is out about 50 feet and the law states a permanent boat shelter can only be 30 feet out from shore in rivers.

A photograph of a lake with a boat shelter on the shore. The shelter is a wooden structure with a red roof, partially obscured by trees. A text box with a red border and a line pointing to the shelter contains the following text:

This boat shelter needs to be removed every winter because you cannot see five principal structures within 500 feet of the boat shelter.



Surface Water Data Viewer Map



NAD_1983_HARN_Wisconsin_TM
© Latitude Geographics Group Ltd.

1 : 506,881



- Legend**
- Rivers and Streams
 - Open Water

Notes

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/org/legal/>



January 5, 2016

Representative Jeffrey Mursau, Chair
Assembly Committee on Environment and Forestry
Room 113 West
State Capitol

RE: AB 600 Opposition

Dear Representative Mursau and members of the Assembly Committee on Environment and Forestry,

Thank you for the opportunity to testify on AB 600. The River Alliance of Wisconsin is a non-profit organization with nearly 2,000 individual, business and organizational members around the state of Wisconsin, dedicated to the protection, enhancement and restoration of our rivers and watersheds. We echo many others here today in voicing our strong opposition to this bill. The changes proposed in this bill do not discern between minor logistical clarifications and full-blown rollbacks to the protection of public water from pollution and unchecked development. Most concerning is the attempt to take from the residents of Wisconsin that which belongs to us all and give it to a few.

We understand and appreciate the need to balance protection of property rights with management of common resources but the changes proposed in AB 600 seem to ignore the reality that in lakes, even more clearly than in rivers, there is a line where property rights end and public rights begin. This bill is deeply concerning because it is attempting to redraw that line all over the place and favor some property rights over that of others.

While there is little in this bill we can say anything positive about, I would like to highlight three particularly harmful provisions:

1) Defining what is a navigable water:

This bill continues in the vein of several other bills this session to limit what is a navigable water and thus subject to permitting and pollution protection laws. While on its face, it may sound reasonable to exclude man-made water bodies from navigable water regulations, the reality is that many of them are intimately connected to waters of the state whether because they are constructed in wetlands or near headwater springs or because a drainage ditch was carved out of what was once a natural stream or because of subsurface water connections. It's not hard to see that if you allow polluted stormwater runoff into any artificial waterway that connects to headwaters or wetlands or to other small streams that feed into natural navigable waters, you are sanctioning the pollution of those downstream waters.

2) More private development on public property

This bill is allowing more and bigger development into the bed of the lake, which is public property. Allowing boat shelters to once again be built in the water rather than on the shore after 50 years seems like a solution desperately seeking a problem. And one that ignores the real economic, environmental and navigational safety issues of allowing large structures to be built in the lake again.

3) More unchecked dredging of the shoreline

AB 600 is also proposing to allow annual dredging of up to 3 dump trucks for every lakefront property owner and up to 10 dump trucks in certain bigger waters with just a general permit.

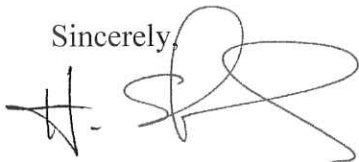
The shoreline is often where the most valuable habitat for fish and aquatic wildlife resides. It is also contiguous with the shoreline of adjacent neighbors on a lake. Furthermore, continued disturbance of shorelands can exacerbate invasive species problems already plaguing so many of our waters. With the proposed changes to make this kind of dredging subject to a general permit, DNR expertise will no longer be tapped to determine whether one property owner's dredging project will affect fisheries, invasives or the stability of their neighbor's shore. With this bill, you as a lakeshore property owner will no longer even get to know if your neighbor is about to plow out three dump trucks worth of shoreline next door or even have a way to raise any concerns since general permits don't have a public comment or public notice opportunity built in like individual permits do.

How exactly is this protecting property rights when an action has the potential to harm your property and you no longer get a say or even get to know it's coming?

Make no mistake, despite its catchy name, this bill is not a private property rights bill. Any bill that makes it easier for one land owner to pollute the water that all property owners share, any bill that allows one property owner's activities to affect the water quality and quality of life of others around him or her, and removes transparency, engagement and agency expertise from that process does not have the interest of waterfront owners at heart. We all lose.

Thanks again for the opportunity to comment and we sincerely hope you will not allow AB 600 to move forward as it stands.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen Sarakinos', written over a horizontal line.

Helen Sarakinos
Policy Director



WISCONSIN LAKES

We Speak for Lakes!

4513 Vernon Blvd., Suite 101, Madison WI 53705

608.661.4313 ~ 608.661.4314 fax

info@wisconsinlakes.org

TESTIMONY TO WISCONSIN ASSEMBLY COMMITTEE ON ENVIRONMENT & FORESTRY REGARDING 2015 AB 600 (RE: THE REGULATION OF NAVIGABLE WATERS & WETLANDS)

Presented by Michael Engleson, Executive Director

January 5, 2016

Thank you for the opportunity to testify today in opposition to AB600.

My name is Michael Engleson, Executive Director of Wisconsin Lakes, a statewide non-profit conservation organization of waterfront property owners, businesses, lake associations, lake districts, and individuals who care about the health and safety of Wisconsin's over 15,000 inland lakes. We represent roughly 300 lake organizations, who in turn have over 80,000 members.

This wide ranging bill diminishes many areas of Wisconsin's water law, but regardless of whether the specific objection is to its permissive treatment of dredging, rip rap, seawalls, piers, boathouses and boat shelters, its rejection of the protection of many sensitive shoreline areas and undeveloped wetlands, or even its free giveaway of state-owned lake bed, our members understand that it undermines an important principle.

The members of Wisconsin Lakes understand that as much as the right "to do" on one's own property might be important to some, the right to not be impacted negatively by the actions of other property owners is even more important. An unhealthy lake negatively impacts everyone on that lake – not only from the standpoint of the environment, but also from the standpoint of the individual property owner and potentially the value of their property. The members of Wisconsin Lakes understand that this bill will lead to the degradation of their lakes, and even that some of the provisions in the bill could lead to direct negative impacts *on their own shoreline and property*.

For instance, the bill would allow each property owner on a lakeshore to dredge up to 30 cubic yards per year. Even if done under the guidelines of an individual permit, such activities will impact neighboring properties – potentially spreading invasive species, destroying habitat, lowering water clarity, or causing unwanted aquatic plant growth.

Similarly, allowing expanded use of boat shelters and piers, as well as expanding the areas where rip rap and seawalls can be repaired without an individual permit and preventing DNR from prohibiting such repair in sensitive shoreland areas will negatively impact lakes and the property owners living on them.

Simply put, this bill is bad news for Wisconsin's waters and those who live on and use them, even if it appears to some it would work to their own self-interest. On behalf of Wisconsin Lakes' members, I ask you not to move this bill forward.

Wisconsin Lakes is a statewide nonprofit organization with nearly 1,000 members and contributors including individuals, businesses, and lake associations or districts representing more than 80,000 citizens. For over 20 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection and restoration of Wisconsin's lake resources.

My husband John and I have owned our home on the shores of Delavan Lake since 1974. We both have environmental science backgrounds, and from the beginning of our time as lake residents, we have followed closely the local, county and statewide efforts to protect and advocate for the health, protection and sustainability of Wisconsin's waters. In my earlier years of ownership, my vocabulary was made up of references to My Lake. Over time, with extended involvement with all the lakes in Walworth County, those references became Our Lakes. In my current role as President of Wisconsin Lakes, and working closely with the Wisconsin Lakes Partnership, I no longer limit my concerns and advocacy to My Lake.

Part I of the story I bring to you today begins in the early 60's...many of you may recall that for decades Delavan Lake experienced a devastating decline in water quality and an almost complete loss of healthy habitat in and around this large lake. From the 1960's until 1990, all seemed lost in bringing this lake back to life. A unique and diverse partnership was formed that included elected officials from the Town of Delavan, surrounding communities, Walworth County, UW Dept. of Civil & Env. Engineering, USEPA, WDNR, Army Corps of Engineers, USGS, WI Dept. of Ag, US Fish & Wildlife, Delavan Lake Improvement Association and the Delavan Lake Sanitary District, and most importantly, the citizens and businesses affected by what was then described as 'the dead lake'. Following the largest and most complex lake rehabilitation project ever completed, beginning in 1986, Delavan Lake became a 'star' in Southeast Wisconsin, and the story of this project has been presented at conferences throughout the United States and countries abroad.

Part II of the story takes us to 2004 when extensive and continuous water quality monitoring demonstrated a negative trend that posed a threat to the hard work undertaken by the rehabilitation partnerships. The Delavan Lake Improvement Association knew that Delavan Lake riparian owners would most certainly be adversely affected by another decline, but they also understood that the community as a whole would suffer economically if the lake returned to its green, smelly, unsightly condition from earlier decades.

It was time to talk economics! To understand the concept of property rights that is so often referenced when we attempt to balance the need for natural resource protections with that of private ownership of lake properties, we must broaden our vision to a wider audience. We need to look back from the shoreline, way back, and identify those who are invested in our healthy waters and consider their property rights and their voices. In 2004, the DLIA contracted with UW-Whitewater Fiscal and Economic Research Center with a goal to evaluate and quantify the relationship of a healthy Delavan Lake to its local economy. Surveys included local businesses, riparian owners, recreational boaters, fishing enthusiasts, visitors, resorts, non-residents...in other words, the stakeholders for investing in a healthy lake did not stop at the shoreline. This study concluded that the economic health of a community is directly related to the health of its lake(s).

How does the story of Delavan Lake relate to the legislative initiative , AB600?

All of those surveyed in the DLIA study benefit from the collective understanding and adherence to Wisconsin's Public Trust Doctrine. Any weakening of that doctrine diminishes their respective rights, and their voices are not heard in AB600. What we do at the shoreline and into the water should not be a single ownership choice...when that is allowed to happen, examples like Delavan Lake of the 70's and 80's could become the norm. I shudder to think that is a legacy we would be proud to extend to the generations to come. Is that somewhat overstating the outcomes? Maybe so. But, clearly the solutions and partnerships implemented in 1990 are also likely to become 'pie in the sky'. What, then, should we do?

I ask you and your colleagues to put this legislative initiative aside, and come together to arrive at more realistic and fair answers to the concerns of shore land property owners that reflects and respects the science, history and experience that is well documented in water law to date.

Those who have the first hand knowledge and experience in stories like that which I am sharing with you today should be invited to the table. That is a legacy I can live with.

Mary Knipper
2320 Lake Shore Drive
Delavan WI 53115
262/206-1728
Maryknipper6@gmail.com

Delavan Lake Improvement Association – Past President

Walworth County Lakes Association – Co-founder, President Emeritus

Kettle Moraine Land Trust – Past Vice President

Wisconsin Lakes – Director 2007-2012
President 2012-Present

Contact: Marinella Pro,
Crawford Stewardship Project
President
marinellapro1@gmail.com, 608-632-
3112

December 30, 2015

RE: AB600/SB479

Assembly Committee on Environment and Forestry
Senate Committee on Natural Resources and Energy

Bill AB600/SB479 would create serious environmental repercussions for our wetlands and shorelines in Wisconsin. As such, Crawford Stewardship Project opposes the bill as written.

The bill would allow destruction of isolated wetlands and emergent wet-shore wetlands, which are important public resources. It creates incentive for purchase of wetland property for speculation. It encourages development of low lying and wetland properties. It allows unregulated development of some of our most valuable waterfowl and other wildlife habitat places in our state.

Further, the bill would allow even more annual acreage of permitted wetland destruction far beyond the already authorized changes enacted in 2012. According to the Wisconsin State Journal, those 2012 changes have already doubled the average acreage of authorized wetland development. Required mitigation has not kept pace with destruction of wetlands. In fact, not one of the 123 acres of compensatory mitigation required since 2012 has been restored. Given these programs take time, to increase the volume of wetland fill at this time is unacceptable.

The bill would also allow private development on lake beds, including public land, and closing public access. It allows up to 3 dump truck loads of lakebed sediment to be removed by land owners, destroying wildlife and lake habitat.

AB600/SB459 will likely lead to dirtier lakes, fish kills, and destruction of wildlife habitat.

Please take the time to contact the Wisconsin Wetlands Association to learn just how important our wetlands are to clean water, both surface and groundwater.

Natural resources are invaluable for our tourism industry and as wonderful places to enjoy and make our homes. This legislation will compromise our wetland and other water resources.

Respectfully submitted,

Marinella Pro
Crawford Stewardship Project Coordinator

LA CROSSE COUNTY CONSERVATION ALLIANCE

The La Crosse County Conservation Alliance represents over 25 conservation organizations in La Crosse County with thousands of members.

We are opposed to AB 600 as it will radically change the direction that Wisconsin has taken over the past four decades to provide protection to our remaining wetland base. We need to keep in mind that by 1970, Wisconsin had lost about 50% of its original wetlands (including floodplains) with 70 - 80% losses occurring regionally.

Wetlands are not only important habitats for multiple species of wildlife, including waterfowl and furbearers, but when the floodplain component is included, are vital buffers for flood waters.

We are currently viewing nightly the destructive power and expense of flood waters as high water along the Mississippi River and its tributaries ravish portions of Missouri, Illinois and points south.

La Crosse and the Coulee Region survived the record Mississippi River flood heights of 1965. Also, many of our members and others in the Coulee Region look forward to and cherish an important fall ritual - the Duck Season! We want to make sure La Crosse survives the next high water event and to continue to enjoy our fall duck hunting.

Will either of these be possible if we continue to escalate the destruction of our remaining wetlands and floodplains? If AB 600 is passed, many additional thousands of acres of wetlands and floodplains will be lost in the coming decades. Flooding expenses will dramatically increase and our waterfowl resource will decline. Unfortunately, these costs will once again be born by the general public. Remember, there is - No Free Lunch!

Thus, the La Crosse County Conservation Alliance is strongly opposed to AB 600!

John Wetzel, Secretary
N8020 Amsterdam Prairie Road
Holmen, WI 54636
608-526-4238



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Assembly Committee on Environment and Forestry
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: January 5, 2016
Re: AB 600, Regulation of Navigable Waters, Wetlands, and Artificial Streams

The League of Wisconsin Municipalities supports AB 600. The bill provides municipalities with additional flexibility for complying with stormwater regulations. The cost of complying with such regulations is expensive. By creating more flexible ways to reduce pollutants in stormwater the bill helps municipalities save tax dollars.

Stormwater detention ponds are designed to help municipalities meet state stormwater standards. AB 600 contains several provisions to allow for more efficient construction and maintenance of such ponds.

- a. To be effective such ponds must be maintained and accumulated sediment removed. Currently, the removal of sediment and the reshaping of these ponds can trigger wetland and dredging permit requirements. These requirements are unnecessary for such artificial ponds and can result in significant costs and delays. In some cases they can impede the maintenance activities. This bill clarifies that wetland and dredging permits are not required for stormwater ponds.
- b. In addition, in many cases, storm sewers that daylight into open areas have eroded channels to natural streams or lakes. DNR has taken the position that stormwater ponds may not be placed in navigable waters even where the water is artificially created. The proposed bill would allow for in line ponds in "navigable or nonnavigable artificial waterways." Also, current law prohibits DNR from giving credit to a municipality for a best management practice that is located in a navigable water. AB 600 provides that DNR must give credit for any pollutant reduction achieved by an in-line pond within an artificial waterway when determining compliance with performance standards specified in a stormwater discharge permit.

We urge the committee to recommend passage of AB 600. Thanks for considering our comments.

Testimony on AB 600

The Nature Conservancy

Paul Heinen, State Government Relations Director

Thank you Chairman Mursau and Members of the Assembly Environment and Forestry Committee, for the opportunity to appear today on behalf of The Nature Conservancy's 20,000 members in Wisconsin in **opposition** to Assembly Bill 600. There are many changes to Wisconsin's navigable waters and wetlands laws in the bill that we oppose, but we would like to highlight three sections in particular that we suggest be removed or modified.

The three sections are Section 7, the new limits on areas that DNR may identify as Areas of Special Natural Resources Interest (ASNRI); Section 8, the changes to the Title of Lakebeds, and Sections 42 and 43, exempting roadside drainage ditches from wetland regulations.

Section 7 of AB 600, which limits the areas that DNR can identify as ASNRI, is bad environmental policy. Wildlife and science professionals should make these decisions depending upon each water body's unique characteristics. If the ASNRI is, as the bill would define, just where the species is located or immediately adjacent, they can make that decision. If they believe a broader area is needed to protect a species, that decision should be made by a professional with that expertise.

Section 8 of AB 600 provides that any area of a navigable water that was filled before 1975, and has remained filled, is owned by the riparian owner in whose riparian zone the filled area is located. We understand the Wisconsin water law that regulates these long-deserted brownfields along many waterways can be a hindrance to reclaiming and remediating these often very valuable properties. The law was written that way to protect all citizens' rights to enjoy and safeguard our waters. We believe that spending the time to look at this issue on a statewide basis with all of the affected groups and municipal representatives would be a valuable exercise and may lead to consensus on how to allow some development while protecting our public waters. The Nature Conservancy stands ready to serve on that study committee.

Sections 42 and 43 of AB 600 remove the need for wetland permits from roadside ditches. I have attached pictures taken from the west side of Green Bay showing roadside ditches that are prime spawning grounds for Lake Michigan northern pike. These ditches may be dry 10 months of the year, but during spring when the snow melts, the ditches become home to tens of millions of fry as they make their way from the wetlands downstream to the cold waters of Lake Michigan. They are critical natural corridors found all over Wisconsin, and they need protection all year long. Maintaining natural spawning by keeping fish passages open is a better idea than spending money to stock fry or fingerlings. That is why a wetland review is needed when alterations to these ditches are suggested. A careful



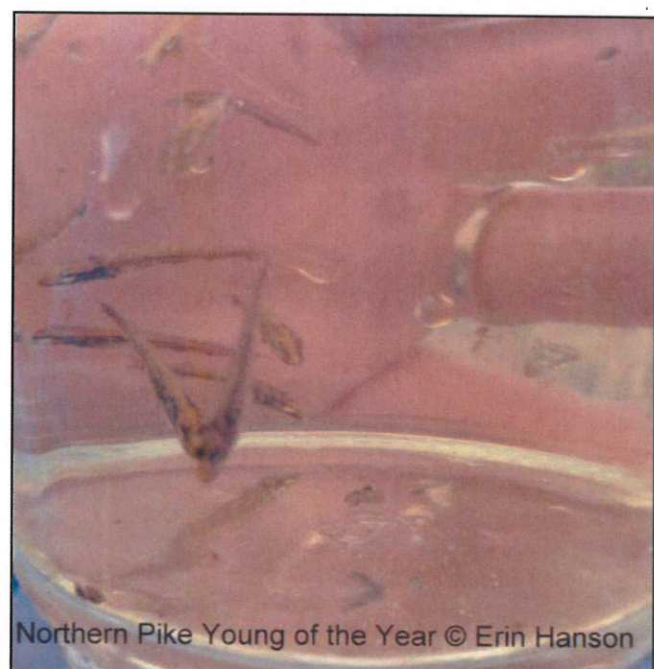
Protecting nature. Preserving life.

The Nature Conservancy in Wisconsin
633 West Main Street
Madison, Wisconsin 53703

tel 608/251-8140
fax 608/251-8535
nature.org/wisconsin

review upfront could save a whole fish hatchery's worth of value to our anglers. As you may know, the US Army Corps of Engineers has jurisdiction over these ditches, which they currently allow the WI DNR to manage. If we give up that legal ability, the federal government will step in.

Thank you for the opportunity to appear before you today. If you have any questions, feel free to call Paul Heinen at 608-316-6412.



Northern pike © The Nature Conservancy



Young of year traps along road © Rachel Van Dam

Mrs. Lisa Conley
516 Lac La Belle Drive
Oconomowoc, WI 53066
(262) 567-5947
Lconley101@gmail.com

January 5, 2016

RE: AB 600

Representative Jeff Mursau
PO Box 8953
Madison, WI 53708

Dear Representative Mursau and Members of the Assembly Environment and Forestry Committee,

As a lake front property owner I am strongly opposed to the provisions of AB 600 that would allow my neighbors, with no public notice, to dredge their lake shore lands annually. Not only will this allow the destruction of fish spawning areas, but allow people to accommodate bigger boats and motors than are safe and practical for shallow areas of our lake. Also, weed control in the 1950's has left a residue of arsenic in our lake bed that can be stirred up and come in contact with the families and young children who love to swim in our lake.

Also, the destruction of wetlands to be allowed in this bill would threaten the quality and recharge of our lake water and the well water we depend on for our family and our community's use.

Sincerely,



Mrs. Lisa Conley

January 4, 2016

Senator Jon Erpenbach
Senate District 27
Room 104 South, State Capitol
Madison, WI 53707-7882

Representative Sondy Pope
Assembly District 80
Room 118 North
State Capitol
P.O. Box 8953
Madison, WI 53708

Mr. Erpenbach, Ms. Pope, and members of the Hearing Committee:

I am writing in regards to the Draft Assembly Bill 600 (AB 600), which makes various changes to the regulation of navigable waters, artificial water bodies, wetlands, and nonpoint source pollution. I encourage you to reject the bill as currently written. Some of the changes proposed in AB 600 threaten to undermine Wisconsin's valuable resources and scenic beauty. To highlight a few of the proposed provisions that I find concerning:

1. Annual bed material removal: The requirement of the DNR to issue a general permit that authorizes a riparian owner to remove 30 cubic yards of material from the bed of an inland lake and 100 cubic yards of material from the bed of outlying waters once each calendar year would result in permanent and ongoing losses of wetland and aquatic habitat necessary for endangered, sport fish, and game resources. This provision should be eliminated completely from the proposed legislation.
2. ASNRI designation ability: Limiting the ability of DNR to designate areas of special natural resource interest (ASNRI's) and requiring the Joint Committee for Review of Administrative Rules to approve this identification limits the agency's ability to regulate resource protection based on science and changes in the economy and landscape. ASNRI designation should be well-defined features and resources, but designation ability should be maintained by DNR.
3. Rip rap general permit conditions: The provision that would authorize the riprap to extend to the top of the bank of the navigable water or four feet above the OHWM, whichever is lower would permanently change Wisconsin's shorelines. As a person routinely involved in bank stabilization efforts, I understand that this elevation and extent of rip rap on banks is largely unnecessary and overkill for erosion control purposes. I recommend the current allowance of rip rap up to the OHWM be maintained.
4. Operation of a vehicle in navigable waters: This provision, if enacted, should a) maintain a maximum threshold allowance for vehicle operation and also b) ensure that operation does not occur in waterways identified as habitat for endangered resources.

5. Practicable alternatives analysis: The proposed amendments of the practicable alternatives analysis to require the DNR to consider alternatives consistent only "with the overall purpose and scope of the project" would potentially omit even a "no action" alternative or other alternatives that may yield other economic or environmental benefit. Limiting analysis to only those options consistent with the proposed project eliminates functional alternatives analysis and undermines the defensibility of the State's environmental review and regulatory capabilities.

I am respectfully asking that you do not support AB 600 as proposed. By doing so, you will help ensure Wisconsin's valuable resources and scenic beauty are sustained for ours and future generations.

Sincerely,



Dan Salas

W5153 Washington Road
Monticello, WI 53570