

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Wednesday, May 26, 1999 at the Holiday Inn Convention Center & Expo, 1501 North Point Drive, Stevens Point. The meeting was called to order at 8:30 a.m.

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

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Chair Trig Solberg welcomed Francis "Bill" Murphy to the Natural Resources Board. (Mr. Murphy was appointed by Governor Thompson on April 30, 1999 to replace Betty Jo Nelsen of Oconomowoc. Ms. Nelsen resigned from the Board following the April Board Meeting.)

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ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of April 28, 1999.
Committee of the Whole of April 28, 1999.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the minutes as presented. The motion was carried unanimously.

1.B Agenda for May 26, 1999.

Secretary Meyer noted that Item 7.A (Irrevocable Trust for mining operations) was being delayed to the June Board meeting, at the request of Senator Alice Clausing. With that change, Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, approval of the agenda for May 26, 1999. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

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

3. Committee of the Whole.

3.A Presentation of the John C. Brogan environmental awards by Secretary George Meyer.

This item was taken up during the Committee of the Whole meeting.

3.B Presentation of the 1999 Wetland Conservation Achievement Award from Ducks Unlimited.

This item was taken up during the Committee of the Whole meeting.

3.C Recognition to Wisconsin Conservation Wardens for 120 years of service.

This item was taken up during the Committee of the Whole meeting.

3.D Citizen participation.

This item was taken up during the Committee of the Whole meeting.

3.E Retirement resolutions.

1. Bob Deer.
2. Richard Pagel.
3. Gary Patzke.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the retirement resolutions as presented. The motion was carried unanimously.

3.F INFORMATIONAL ITEM - Integrated Ecosystem Management Project - Shioc River, Shawano County.

This item was presented at the Committee of the Whole meeting.

3.G INFORMATIONAL ITEM - Update on the Northern Region Master Plan process.

This item was presented at the Committee of the Whole meeting.

3.H INFORMATIONAL ITEM - Video presentation entitled, "Wisconsin's Student Hunter."

This item was presented at the Committee of the Whole meeting.

4. Board Members' Matters.

4.A Fish and wildlife license sales.

This item was brought up during the Committee of the Whole meeting.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

6. Operating Committees.

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

6.A-1 Minutes of April 28, 1999.

The minutes were approved as presented.

6.A-2 Adoption of Emergency Order FH-29-99(E) - creation of Chapter NR 328, Wis. Adm. Code, pertaining to regulations for water ski jumps and platforms.

Mr. Willett presented background on this item. In the past, all water ski platforms and jumps required a Chapter 30 permit. New law (1997 AB 100, ACT 27) allows riparians to place water ski platforms and ski jumps in navigable waters without a permit under limited conditions. The new legislation also directed the Department to prepare rules for water ski platforms and jumps. The Department did so and the Board authorized hearings on administrative rules which were held in October of 1998. Opposition at the hearings focused on the Departmental guidance document. Many hearing respondents confused criteria for requiring permits contained in the guidance document with criteria for granting permits. Others argued that specifying potential impacts in guidance would ensure more "substantive" objections which they felt would help the objectors. The Department received little specific comment on the administrative rule itself. In general, most argued that it did not meet the intent of s. 30.135, Wis. Stats.

On April 27, 1999, the Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on water ski platform/jump rules development. Much of the testimony centered on local controversies concerning Lake Noquebay. Peter Peshek, representing the Wisconsin Dells Visitor and Convention Bureau, recommended that s. 30.135, Wis. Stats., be repealed. He argued that the statutory language does

not provide what the sponsors intended. Subsequent to the hearing, JCRAR directed the Department to use the emergency rule-making process to promulgate the program guidance concerning permit application determinations for water ski jumps and platforms as an administrative rule.

Mr. Willett stated that the Air, Waste and Water/Enforcement Committee, after some trepidation, recommended and he therefore MOVED that the Board direct the Department to draft a letter to JCRAR, for delivery before JCRAR's hearing on May 27, 1999 at 10:00 a.m., requesting consideration of the testimony before the Board's Air, Waste and Water/Enforcement Committee on May 26. The letter should state that citizens testified, almost universally, that the current law should be abrogated and the previous law reinstated. The letter should also detail that the Board recognizes the Department's role as an agency of implementing legislation and if the Legislative Committee directs the Department to proceed with the emergency order, as currently drafted, the Board directs the Department to do so. Mr. Poulson seconded the motion.

Mr. Murphy noted that the Committee did not believe this administrative proposal should be treated as an emergency.

When put to a vote, the motion was carried unanimously.

- 6.A-3 Adoption of Emergency Order RR-23-99(E) - revision of COMM 46 and authorization for hearing on a permanent rule on creation of Chapter NR 746 and revision of Chapters NR 716, 718, 720, 722 and 726, Wis. Adm. Code, pertaining to classification of sites with petroleum contamination.

Mr. Willett commented about the emergency status of this proposal pointing out that the adopting another emergency rule for COMM 46 allows the Department of Justice additional time to address issues relating to "clay type sites." The Committee therefore recommended and Mr. Willett MOVED adoption of Emergency Order RR-23-99(E) and authorization for hearing on permanent rules. Mr. Murphy seconded the motion. The motion was carried unanimously.

- 6.A-4 Authorization for hearing on revision of Section NR 812.05, Wis. Adm. Code, pertaining to clarification of grouting practices used for private wells by construction trades.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearings. Mr. Poulson seconded the motion. The motion was carried unanimously.

- 6.A-5 Authorization for hearing on revision of Section NR 20.12, Wis. Adm. Code, pertaining to set and bank pole markings on inland waters.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearings. Mr. Murphy seconded the motion. The motion was carried unanimously.

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

- 6.B-1 Minutes of April 28, 1999.

The minutes were unavailable for approval.

- 6.B-2 Adoption of Order FH-6-99 - proposed fishing regulation changes resulting from the 1999 Spring Fish and Wildlife Hearings.

Mr. Behnke reported that this question was divided in Committee to allow for a separate motion on the proposed early trout season. The Committee recommended and Mr. Behnke MOVED adoption of Order FH-6-99 (with the exception of the proposed early trout season). Mr. Tiefenthaler seconded the motion.

There was comments with regard to Sections 27 and 28 which establish a minimum length limit of 28 inches and a daily bag limit of 1 for walleye, sauger and hybrids on Kentuck Lake in Vilas County. It was noted this item was defeated in Vilas County at the Spring Hearing and it is not supported by the

Conservation Congress. Chairman Solberg expressed his opposition to this proposal. In response to Mr. Behnke, Mike Staggs, Director, Bureau of Fisheries Management and Habitat Protection, presented additional information on this proposal.

When put to a vote, the motion was carried unanimously.

Mr. Behnke gave a brief report on the Committee's discussion of the early trout season proposal. He noted that 13 individuals appeared - 4 in support and 9 in opposition to the proposal.

By a vote of 2-1 (Mr. Schneider voting no), the Committee recommended and Mr. Behnke MOVED the following recommendations:

1. Extend the season for the year 2000 and thereafter, until a viable compromise is voted on by the Natural Resources Board;
2. Direct Fisheries staff to work with the Conservation Congress to forge a compromise with all interested user groups and/or individuals;
3. Present the recommendation at the January 2000 Board meeting for action by the Natural Resources Board;
4. A final report should be completed by December 20 and issued for review by the Department and the Natural Resources Board addressing all issues including, but not limited to, enforcement, deletion of certain waters, type of hooks, wading in spawning redds, fishing pressure on popular waters, north/south biology differences, release techniques, trespass and landowner issues, etc.;
5. The Wisconsin Conservation Congress should be ultimately mindful that the goal of this rule continues to be additional fishing opportunity while protecting the resource; and
6. The Wisconsin Conservation Congress Trout Study Committee shall only define the compromise. Since the Committee's size is too large to do an effective job, the Natural Resources Board directs Chairman Oestreicher to appoint a Special Task Committee made up of 2 trout committee members who are for continuation of the early trout season and 2 members who are against a continuation of the early trout season.

Also included in the motion was Mr. Behnke's amendment as follows: "the final recommendation of the Congress Committee and other participants for continuation of the early trout season statewide is to include deletion of all sensitive streams from the statewide order to be adopted by the Natural Resources in January of 2000."

Mr. Tiefenthaler seconded the motion.

Mr. Schneider stated his support for the motion, but said he would vote against it because of the sensitive streams amendment. He felt the Board should wait until such time when it considers the recommendations in the Department/Congress report.

Steve Miller, Administrator, Division of Lands, asked for clarification of the Board's motion. He noted that #1 states to "extend the season for the year 2000 **and thereafter** until a viable compromise is voted on by the Natural Resources Board." Mr. Miller wanted to make sure that everyone understood that the extended early trout season would remain in effect longer than one year unless changed by the Board. It was also pointed out by Tim Andryk, Department's Legal Counsel, and Secretary Meyer that any changes made at the January 2000 Board meeting would require going through the rule-making process, i.e., public hearings, etc. Secretary Meyer also noted that the sensitive streams would not be in place for the 2000 season.

The vote on the motion:

Affirmative - Messrs. Solberg, Tiefenthaler, Behnke, Murphy and Willett.
Opposed - Messrs. Schneider and Poulson.

The motion was carried.

6.B-3 Adoption of Order WM-1-99 - proposed game regulation changes resulting from the 1999 Spring Fish and Wildlife Hearings.

The Committee recommended and Mr. Behnke MOVED adoption of Order WM-1-99 as presented. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-4 Adoption of Order WM-2-99 - revision of Chapter NR 10, Wis. Adm. Code, pertaining to wildlife management housekeeping changes.

The Committee recommended and Mr. Behnke MOVED adoption of Order WM-2-99 as presented. Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-5 Authorization for hearing on the revision of Chapter NR 10, Wis. Adm. Code, to establish the 1999 migratory game bird season.

The Committee recommended and Mr. Behnke MOVED that the Board authorize public hearings. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-6 Statewide Natural Areas land acquisition - Iron County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 52.35 acres from John Wagner and Scott Wagner for \$260,000. Mr. Schneider seconded the motion. The motion was carried unanimously.

7. Department Secretary's Matters.

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

This item was deferred to the June 30 Board meeting.

7.B DONATION - \$15,000 from the Natural Resources Foundation of Wisconsin, Inc. to be used toward the management of state natural areas in the LaCrosse Area.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler, acceptance of the donation. The motion was carried unanimously.

7.C DONATION - \$20,050 from the Natural Resources Foundation of Wisconsin, Inc. to be used toward the ornate box turtle recovery in Wisconsin and the timber rattlesnake study.

Mr. Willett MOVED, seconded by Mr. Poulson, acceptance of the donation. The motion was carried unanimously.

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The meeting was adjourned at 3:30 p.m.