

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Wednesday, December 8, 1999 at State Natural Resources Building (GEF 2), 101 South Webster Street, Madison, Wisconsin. The meeting was called to order at 8:30 a.m. All December Board Agenda business was conducted by the Full Board.

PRESENT: Trygve A. Solberg, Chair
James E. Tiefenthaler, Jr., Secretary
Herbert F. Behnke
Gerald W. O'Brien
Howard D. Poulson
Stephen D. Willett

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Chair Trig Solberg welcomed Gerald "Jerry" O'Brien to the Natural Resources Board. (Mr. O'Brien was appointed by Governor Thompson on April 30, 1999 to replace Neal Schneider. Mr. O'Brien was unanimously confirmed by the State Senate on 11/10/99). *Francis Murphy was not confirmed by the State Senate, thus, the Board will conduct business with six members until the Governor announces a replacement for the seat held by Mr. Murphy.

ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of October 27, 1999.
Committee of the Whole Minutes of October 27, 1999.

Mr. Poulson MOVED, seconded by Mr. Willett, approval of the minutes as presented. When put to a vote, the motion was carried unanimously.

1.B Agenda for December 8, 1999.

Chairman Solberg asked that Item 3.C (the mining moratorium petition) be taken up immediately following 3.A (Citizen Participation). With that change, Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the December 8, 1999 Agenda. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

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

3. Committee of the Whole.

3.A Citizen Participation.

Ralph Schommer of Ellsworth, a former Conservation Congress member, expressed concern about the recommendations of the Early Trout Season Task Force established by the Natural Resources Board in May of 1999. He supports the first Saturday in May to open the trout season in Wisconsin. "If we must choose one of the five compromises from the Task Force consensus, it should be to move the regular season opener to April 1." He felt that all other Task Force

proposals are not early seasons, but are actually winter seasons. Mr. Schommer feels the Task Force is stacked with proponents of winter fishing for trout, therefore, it cannot render an objective decision. He urged the Board not to approve an early trout season for Pierce County and asked that a county option vote be placed on the Spring Hearing Questionnaire. (A copy of Mr. Schommer's written statement is incorporated in the official Board minutes.)

Dave Blouin, Madison, representing the Sierra Club, disagreed with the Department's memorandum that states the Board does not have the authority to overturn fundamental decisions that the legislature made during the debate over the Moratorium. "We respectfully disagree with the Department's opinion on whether the Law requires one or two mines and whether the Law should take into account the geologic and climatic setting of an example mine. The Department does have the authority to authorize rule-making and should do so for all laws that come before it, but especially this one, given the amount of controversy over its interpretation." In addition, Mr. Blouin noted the absence of a definition of "net acid generating potential." He also noted that the Department is refusing to apply Wisconsin state groundwater and surface water standards to example mines to evaluate whether or not they caused pollution. He strongly feels that rules should be written to create a standard by which to judge an example mine for this state, not for one destined for some other state. To compound the problem, Mr. Blouin continued, the Department refuses to write a rule requiring that base-line data be required of an example, and also refuses to establish what type of monitoring data would be required. In conclusion, Mr. Blouin stated that the environmental community is ready to debate the issues in a fair, open process, "but a vote today to deny the petition would unfairly deny the public its right to be involved in the debate."

Roscoe Churchill of Ladysmith, asked the Board to direct the Department to draft rules to protect Wisconsin from corporate takeover. The Mining Moratorium Law, he said, was an attempt for concerned people to get their legislators to pass one law that could help regulate metal mining. Mr. Churchill said he understands what the intent of the law was supposed to be and "I don't need the Rio Algam Mining Company to interpret it for me. Mr. Churchill urged the Board to direct the Department to draft administrative rules which he said would represent the people of Wisconsin and protect our precious environment.

Laura Furtman of Webster, urged the Board to direct the Department to draft administrative rules. She read the lyrics from a song contained on a CD entitled, "Ecleritcution," released by musician, Eric Sorensen. The song, "The Ballad of Roscoe Churchill," tells the story about Churchill's efforts to fight mining issues.

George Rock of White Lake expressed concern about many different issues -- mercury in landfills, coal-fired industrial smokestacks, exotics coming into the U.S., and urged the Board to direct the Department to draft rules to implement the mining moratorium law.

Herb Buettner of White Lake stated that the natural resources belong to the people and was concerned that government would allow the mining companies to degrade the resource. He mentioned the high cost of cleanup efforts going on in the Fox River which had been degraded through PCB contamination and everyone should have learned from that degradation. He asked the Board to defy politics and do what is right and direct the Department to draft rules to implement the mining moratorium law.

Tom Wilson, Viroqua, representing the Wisconsin Stewardship Network and mining spokesperson for Northern Thunder, spoke in support of formal rule-making on the mining moratorium law. He feels the Department has "inadequately proven its case in the most crucial element of the rules request---what constitutes a mine site with "net acid generating potential?" A copy of Mr. Wilson's statement is incorporated in the official Board minutes.

Ed Frank, President of Wisconsin's Sharp-tailed Grouse Society (WSGS), stated that WSGS opposes including free applications for sharp-tailed grouse hunting permits with the Conservation Patron License. He indicated that WSGS feels that the free applications reduce the precision of sharp-tailed grouse harvest control. He asked the Board to change its policy to remove the free sharp-tailed grouse permit applications from the Conservation Patron License privileges. Without this change, he said, participation and success rates will continue to be very low, resulting either in large numbers of permits and a consequent increase in the chances of overharvest, or very conservative permit levels resulting in loss of allowable hunting opportunities. Secretary Meyer he will have the staff check into this and bring back a recommendation.

Ken Fish, Menominee Indian Tribe of Wisconsin, urged the Board to direct the Department to draft administrative rules on the Mining Moratorium Law. He felt Wisconsin's resources are being compromised for a foreign industry coming into the state.

Representative Spencer Black told the Board that the decision on whether or not to promulgate administrative rules was not discretionary. "The law clearly says under Chapter 227, that when an agency interprets the statutes, when it decides how to implement the law, that administrative rules must be promulgated.The rules process assures the public the chance to scrutinize, to know what the agency is doing, and to comment. It also assures the Legislature the chance to review the rules and to make sure that what the agency does is consistent with the legislative intent." Representative Black referred to Secretary Meyer's memorandum of November 30, 1999 which he felt did not properly address a definition of "significant" environmental pollution. He stated that the Department is making interpretations of the law which he said are favorable to the mining company. He added that if the Board thinks these interpretations are right and valid, they are still interpretations of the statute and must go through administrative rule-making. He urged the Board to "make sure that the statutory moratorium on sulfide mining that the Legislature passed a year and a half ago, is strictly enforced as it was intended by the Legislature and that you honor Wisconsin's open government tradition by accepting and approving the petition that is before you from legislators, environmental groups and Indian Tribes."

Mr. Behnke referred to s. 293.50 (2)(a) of the Statutes which states: "The department determines, based on information that is provided by an applicant for a permit under s. 293.49 and is verified by the department, that a mining operation in a sulfide ore body that, together with the host rock in which the ore body is located and in which the refuse is deposited, is capable of generating acid mine drainage operated in the United States or Canada for at least 10 years after December 31, 1996, without the pollution of groundwater or surface water from acid drainage or the release of heavy metals at the mining waste site or at the mine site." He stated that (b) repeats the exact wording and further states that "a mine has been closed for at least 10 years." Mr. Behnke asked if he was to interpret this to mean that "this would be the same mine in the statutes as having operated for 10 years and been closed for 10 years when the statute clearly says a mine in both (a) and (b)."

Representative Black stated that the amendment adopted by the Senate talks about, in that case, a mining operation referring to both of them.

Mr. Behnke asked why Representative Black did not include in the Mining Moratorium Bill the requirement that an example mine be similar in both geology and hydrology to the Crandon Mine situation. He said the bill talks about the acid producing potential of a mine that has been in operation but it does not address the water flow. Representative Black said there was language to address both in the original bill, but the language was removed through a legislative compromise. Mr. Behnke asked if the Board is to interpret the intent of the law or the actual law. Representative Black stated that the Board is to interpret the law, as written, and should be done through the rules process.

Apensanhkwat, Chairman, Menominee Indian Tribe, urged the Board to direct the Department to create rules to interpret the Law. He asked the Board to take into consideration that this "our only recourse at this juncture."

Secretary Meyer asked the Chair if he could address comments made to the Board during the public testimony session, especially those made by Representative Spencer Black on the Department's credibility. "He (Representative Black) talked about the credibility of the Department and clearly implied that the reason the Department has taken the interpretation on operating for 10 years and closed for 10 years was because the mining company submitted a set of example mines that didn't meet the 10 plus 10 standard. Now that is totally incorrect. And, in fact, we have been pretty clear on what our position was in terms of the statutory language to show that. The mining company did in fact submit documents that does meet the 10 plus 10 standards and we are reviewing those. Any indication that we did anything to avoid to assist the mining company is just totally wrong. That's nothing that's factual or accurate.

"The second point I'd like to make is public involvement because I feel very, very strongly in public involvement. The concern has been raised that the public will not have a say on whether or not the candidate mines submitted by the mining company meet in fact the very clear language of the mining moratorium law. There will be several opportunities for the public to have very, meaningful comment in regard to that. The first is that we have committed that when we come up with our draft environmental impact statement, that will be a major issue that we analyze in the document. That document then goes out for public review. It will be in every library in the State of Wisconsin. It will be widely available. There's a major mailing list which has hundreds, if not more, people on it who will have that document and will be able to comment on whether or not we have applied the law as clearly written to the candidate mines. If our staff feels they do not, they will say that in that document. If they think they do meet the standard in the law, it will be in the document.

"The other issue is the issue of interpretation. The law is very clear; the statute is clear on its face what is to be implemented by an administrative agency. This law was as heavily debated as any law that I can remember in my career in this Department. Clearly, it was the most heavily debated law in the last session of the Legislature. Every word was parsed out by the Legislature. In fact, it is clear on its face and that is what we're implementing. And we are doing so very carefully and we're not rushing to judgment as to whether or not any mine proposed by the Company meets the standard."

3.C Petition requesting the Department to develop rules to govern sulfide mining in Wisconsin and specifically define the implementation of the mining moratorium law (1997 Wisconsin Act 171) (Item 3.C, Minutes of September 29, 1999)

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Charles Hammer, Attorney in the Department's Bureau of Legal Services, presented this item. He noted that in September the Board was presented with the comprehensive green sheet package and supporting materials that endorsed the staff's recommendation, that while you empowered to adopt administrative rules, at least in this case, you are not obligated to adopt an administrative rule on the Mining Moratorium Law. Mr. Hammer also recalled that in September, the Board requested further information clarifying some additional rationale by Department staff regarding points raised in the petition. A copy of that document, a memorandum dated November 30, 1999 from Secretary Meyer, is incorporated in the official Board minutes.

Mr. Hammer stated that he would not go through the memo point by point, but did make a few comments. He mentioned that the memorandums done in both September and November to the Board were drafted reflecting the judgments by not only Secretary Meyer, but of several

Department lawyers, DNR geologists, and DNR engineers. He then went on to discuss the contested case hearing process.

Secretary Meyer called attention to a memorandum distributed by Representative Black from William Ford, Senior Staff Attorney with the Wisconsin Legislative Council which concludes that "given these rules of statutory construction and the language of the law, it appears highly likely that a court would conclude that the mining moratorium law does not require that one mine be used to meet both of the requirements of the law in order for a mining permit to be issued." Mr. Meyer asked Mr. Hammer to comment. Mr. Hammer indicated that both he and Mr. Lynch agree with Mr. Ford's conclusion.

Mr. Behnke asked if there was opportunity for the public to be involved in reviewing the proposal prior to issuance of the Draft Environmental Impact Statement. Mr. Hammer responded that Department staff has already billed back to the Company about \$3-1/2 million for work done by DNR staff and consultants hired by DNR. He added that any meeting held between DNR staff and the Company can and has been attended by the public. Mr. Hammer further stated that a hearing will be held on the Draft Environmental Impact Statement to comment on how the Department view the implications of the proposed Crandon mine in the draft stage. At that time, the staff will comment on "where we are with regard to our interpretation of the candidate mines that have been submitted by Nicolet Minerals Company. Also at that time, is when the Department to expects to hear from the public on their view of the candidate mines. Mr. Hammer said that information will also be distributed on the Department's Website.

Mr. Behnke felt the public's biggest concern is that they will not have a fair participation process without the drafting of administrative rules. He asked the Secretary to make a concerted effort to distribute information to the general public on when and how they can have input during the permitting process review.

Mr. O'Brien recalled that earlier Representative Black stated that before the Department can interpret the law, there must be an administrative rule. He asked for an explanation. Mr. Hammer responded that "under the law, there is an obligation to adopt rules under any particular program when the Legislature has mandated for that particular program. The statute that Representative Black referred to is a catch-all statute that deals with administrative law whereby agencies are empowered to adopt administrative rules when it helps fill in the blanks of the legislation and it helps administration of the program. It also mandates that the state adopt an administrative rule when it is in a sort of repetition fashion interpreting over and over and over again, case after case, after case, after case. The Wisconsin Supreme Court said there is no obligation under that law to adopt administrative rules when you're on the learning curve, when you've got a first-case, a second-case, a third-case, as you're trying to figure it out, then I believe and I think the Supreme Court endorses that the best approach is to adopt or to do a case-by-case analysis of interpretation, which, allows again anyone to come up with a different interpretation, because it isn't law. It doesn't have the force and effect of law like rules do.

"What I would like to point out is that the mining law itself, in which is embedded the moratorium law. The moratorium law was plugged into the broader mining law. That statute has a provision in it which specifically delineates 20 or 30 different subject areas the DNR must adopt administrative rules for. And we have. We have pages and pages of administrative rules. The Legislature, when it adopted the mining moratorium law, had to have known that in that same statute---the attorneys no doubt apprised the Legislators--that there was that place where if the Legislature chose or wanted to authorize or mandate that the DNR or the Board adopt rules, that's where you put it. That's where they put all the other requirements. They didn't do that in this case. You have to assume they consciously chose not to mandate the Department do rules. By the way, in the very section under which a decision is made as to whether or not a mine is

allowed, there is a requirement that the Department or the decision-maker, in this case the administrative law judge, make a determination as to whether something is consistent with the public health, safety, and welfare. We've adopted no rules on that. In fact, an earlier Board decided that didn't make sense. It would be best to evaluate a mine on a case-by-case basis. There is another statute right there that says we have to make a find that there is no net adverse economic impact with regard to any mine being proposed. I don't have the exact wording. A petition was applied earlier and an earlier Natural Resources Board decided no, that too should be addressed on a case-by-case basis. So there are places all over the mining law, the wastewater law, the air pollution law, where there are judgments made by agencies where there are no administrative rules."

Mr. Willett asked if there are guidelines for the Natural Resources Board to follow when or when not to direct the drafting of administrative rules to implement a law. Mr. Hammer responded: "Nothing that really would have you go during a break, and say that I'm bound by this. I think there is the guideline that you should adopt as a policy-making board administrative rules when you want to send a direction to staff as to how to administrate a program over time. So, when you get an administrative rule request before you or when you act historically you want to send a direction to staff, this is how henceforth when this issue comes up again and again, we would like you to decide it. But that is not an absolute. There are other times when in your own judgment you just feel you want to weigh in on an issue and make a statement and then you are empowered to adopt rules even for more limited applications."

Mr. Willett asked how often has the Department **not** drafted rules to implement statutory law since 1990. Mr. Hammer stated that he conducted a random search of environmental statutes in the Department's computer search program. He keyed in words to see where they appeared in the companion administrative codes to see how well it found them. In fact, he said it did not find them a lot of times. "So I can say, in general, probably more often than not if you page through the statutes, what you would find are concepts that have been interpreted as rules." Secretary Meyer stated that "if you were to take individual bills or policy issues that were included in the budget, since 1990 there are scores, probably in the hundreds of individual laws that were changed or enacted, where in fact, because they are clear on their face, have not been brought to the Board for rule-making. Generally, when you have those broad, or a direction from the Legislature or when the Legislature passes a one-line statute to establish a complex program and is expecting the Department to come forward to implement that program by rule, then we do it. There are many, many legislative changes that are in fact are just on their face and we do go ahead and implement them."

Mr. Willett, in response to Secretary Meyer, observed that "the DNR has a citizen Board to implement policy and what it seems to me that we're being told here is that there are times when the Department will decide what policy we will decide." Secretary Meyer: "Let me address that. I think we make the judgment and in fact anyone can disagree, including the Board or members of the Legislature, on whether or not there is ambiguity in the statute, whether or not there is a direct mandate from the Legislature to do so. When in fact the policy is very clear--I mean this Board sets policy for the Legislature which is the ultimate policy-maker in the State of Wisconsin. When they set a very, clear direct policy, that's binding on this Board and also binding on this Department, we implement it."

Mr. Willett said the question being presented to the Board is, "is it necessary to clarify that policy for the Department staff? Is that not where we are on this?" Secretary Meyer: "That is very well said."

Mr. Tiefenthaler: "I think we have to bring this full argument into focus, that being we don't want to create false hopes. If the Board would say yes and waive our wand and say we're going to

write rules on this because we do not have the authority to overturn what the Legislature has already put in place and if we would take the two major issues, that being the geology/hydrology and the two mines versus one mine--if we did this we would not be able to overturn those two because we've had many, many legal interpretations here and they all say the same thing. I don't think this is controversial at all. I think those two are pretty well defined. So that false hope to those who wish to stop that mine or wish to make the mine jump through additional hoops, I don't think it's going to happen. I think we should be clear on that from our Board's viewpoint. These philosophical questions of promulgation of rules by the Board and when and how we direct staff, I think this is almost a separate question. Yes, it's related, but I don't think it's where we need to be focusing right now. We're looking at these memos; we're reading all these things from September and back and forth. The Legislature was fairly clear on this one according to all the attorneys, independent joint legislative review councils, Ford and all these other people. I think we have to focus on that."

Mr. Behnke: "I agree. I'd like to commend the public who have been involved in this process. I think you have very, very much created an awareness which should be created on this important issue on the mine that has the capability of producing sulfuric acid that could get into our waterways. And because of your involvement in this, there are thousands of people in the State of Wisconsin now who will be watching the permitting process very, very closely. They will be made aware of how they can participate in the future and we hope that you will continue to let us know where we might be going wrong. So, thank you very much for all the efforts that you have made to bring out about this kind of awareness. And I'd like to take issue with a statement in "Wisconsin Trout Magazine," the Fall 1999 issue, an article written by Dean Simon entitled, "Petitioners trying to get DNR to write mining rules." On page 11 of the magazine, there is a statement as follows: "That the DNR Board, in closed meetings with mining company officials have decided to allow separate examples to meet the two criteria of 10 and 10. This is totally contrary to the original intent of the law." Mr. Behnke said he did not engage in any closed meetings with the mining company. "I would request that we ask Dean Simon to retract that statement publicly."

Mr. Tiefenthaler MOVED the Department's recommendation as follows: "That the citizen petition requesting development of administrative rules to interpret the Mining Moratorium Law, Wisconsin Act 171, Laws of 1997, be denied. Mr. Poulson seconded the motion. When put to a vote, the motion was carried unanimously (6-0).

- B. Adoption of Order SW-18-95 - creation of Chapter NR 135, Wis. Adm. Code, pertaining to nonmetallic mining reclamation. (Items 3.C, Minutes of September 23, 1998; 3.C, Minutes of October 28, 1998 and 3.B, Minutes of October 27, 1999).

Kevin Kessler, Chief, Policy Section, Bureau of Waste Management, reviewed the process followed since this item was last discussed at the September 1998 Natural Resources Board meeting. Several meetings were held between the Wisconsin Transportation Builders Association and Department staff in the fall of 1998 and continued into the spring of 1999. The meetings also included representatives of the Department of Transportation. A consensus was formed for a compromise on the regulation of local borrow pits. Under the compromise agreement, these mining sites would continue to be regulated under NR 135, but they would not be required to prepare a reclamation plan or provide financial assurance. The compromise required a slight modification of the existing statute, so the rule could not be brought back to the Board for adoption until the legislature considered the statutory change. In early May of 1999, the compromise rule and statutory language was communicated to all affected organizations through the advisory committee representatives. Each of the involved organizations had an opportunity to object to the compromise legislation before it was included in the biennial budget.

None of the organizations objected and several of them actively supported passage of the language. Mr. Kessler noted that one item the Board received comments on relates to the regulation of mining sites for local transportation projects, that is, gravel pits, quarries that might be just used for a local transportation project that was not under the supervision of the Department of Transportation. There is an exemption in the law for projects that are under the supervision of the Department of Transportation subject to their standard specifications and you don't have to go through the permitting process and comply with the same standards. The law states that DOT's standard specifications have to be consistent with this law. Mr. Kessler recalled for the Board that the Wisconsin Road Builders Association, at that time, objected and appeared before the Board and asked for an exemption for local projects where the Road Builders have entered into a contract with the county or local government to use DOT specifications even though DOT is not involved in the project.

A compromise was reached and the proposed provision, which is authorized by the new legislation, allows the DNR to proceed with administrative rules that provide for expedited "automatic permits" for certain local transportation projects where DOT is not involved. If the local transportation project will follow Wisconsin DOT standard specifications, the local nonmetallic mining reclamation regulatory authority would be authorized to grant a permit based on use of those specifications, but without requiring a more specific reclamation plan. The site would still be local regulatory authority's inspection, oversight and annual fees.

Mr. Kessler asked the Board to adopt the rule as presented with the provision that the effective date of the rule be December 1, 2000. The delayed effective date was requested by the Wisconsin County Code Administrators. The reason for this request was so the rule would coincide with the County schedules for adoption of their budgets and to be in the off-construction season to work with the county boards in the adoption of county ordinances. Mr. Kessler noted that the counties are required to adopt an ordinance to implement the law consistent with the DNR's overall standards.

In response to Mr. Tiefenthaler's questions on fees, Mr. Kessler stated that the statute requires that DNR to have a fee schedule for two reasons. The counties are required to forward to DNR a portion of their fees to cover DNR's overall statewide costs of administration and that fee schedule is in the rule. Secondly, Mr. Kessler indicated that DNR needs rules to establish fees to deal with those circumstances when a county does not adopt an ordinance and DNR then has to issue the permit and review the reclamation plans. He noted that is a separate process from administration of the overall program.

Mr. Willett MOVED, seconded by Mr. O'Brien, adoption of Order SW-18-95, as presented, with an effective date of December 1, 2000. The motion was carried unanimously (6-0).

3.D INFORMATIONAL ITEM - "World of the Whitetail," -- Teacher education kits and recognition to Whitetails, Inc., for donation to produce the kits on whitetail deer.

Tom Hauge, Director, Bureau of Wildlife Management, and Mary Kay Salwey, Wildlife Education Specialist, presented this item. They explained that about four years ago, a prototype "deer box" was created to help increase middle-school student knowledge and understanding of white-tailed deer and how these mammals interact with people. Each kit contains 24 activities dealing with the ecology, biology and management of white-tailed deer in Wisconsin as well as historical and current human relationships to the deer. Each kit also contains authentic biological specimens, including a deer hide, skull, antlers, a set of deer jaws from different aged deer, and even a partial skeleton. The kits are hand-crafted and cost is estimated between \$1500 and \$2000. With the help of Whitetails Unlimited, Inc., the DNR was able to assemble 20 sets of materials and make them available to the 12 CESAs (Cooperative Education Service Agencies)

and selected DNR offices statewide. The pilot project was field tested with teachers and students from urban, suburban and rural schools. The "deer boxes" debuted at the 1999 fall teacher's union (WEAC) convention in Milwaukee. Rave reviews have been given by all teachers and naturalists who have seen the boxes.

3.E INFORMATIONAL ITEM - Results of the 1999 gun deer season.

Tom Harelson, Director, Bureau of Law Enforcement, began the presentation with comments on the 28 hunting accidents that occurred during the 1999 gun deer season, an increase over last year's 17 reported accidents. A total of 1,459 arrests (23 juvenile) were reported during the gun deer season. The 1999 arrest totals represent the lowest number of arrests in over 23 years since the Bureau of Law Enforcement began keeping the data. When comparing arrests from the early 1990's to this year, Mr. Harelson said the staff found significant drops in numbers of arrests for 1) shooting from the highway; 2) loaded and uncased guns in a motor vehicle; 3) possess/loan or borrow the tag of another and 4) failure to tag deer. It is felt that the drop is a result of the use of the deer decoy; strong pre deer season effects at education and large numbers of tags available. He also indicated that since 1976, the number of juvenile arrests have declined by over 90 percent during the deer season. Mr. Harelson also pointed out a dramatic increase in the use of "large rifle" caliber handguns with scope reported by wardens working in "shotgun only" counties. He said firearm manufacturers have developed handguns in rifle calibers that were not available when the current regulations were developed. He also commented on the dramatic impact wardens have noticed that feeding and baiting has on the Wisconsin deer hunt. Wardens report numerous conflicts between hunters over hunting sites on public land and complaints of baiters concentrating deer on private land. Many hunters complain that the use of bait has greatly affected natural movement of deer that affects non-baiting hunters. (A copy of Mr. Harelson's complete report is incorporated in the official Board minutes.)

Mr. Tiefenthaler asked Mr. Harelson to comment on transporting deer in an enclosed vehicle. He feels this regulation should be repealed. He commented that sport utility vehicles and other vehicles make it almost impossible to transport deer unless your vehicle is open to the elements. Mr. Tiefenthaler also discussed the issue of hunting at closing hours--the 15-minute question. There was discussion about it being too dark in the morning when hunting begins and light after closing hours. There was also discussion about the problems of deer shining. Mr. Hauge recalled that the Board gave the Department approval to seek a legislative sponsor for legislation to prohibit shining from September 1 through December 31. Mr. Heinen was confident the Department would find a sponsor for the upcoming legislative session.

Mr. Hauge continued the presentation stating that to date, the reported 9-day gun deer season harvest was 382,914 and the reported early season archery harvest was 77,118 for a total of 460,032. He was confident that when the final data is in, adding in the harvest from the late archery season, the October Zone-T, tribal seasons, and damage shooting permits, the total harvest will exceed 480,000 deer. Over the next few months, Mr. Hauge said, the staff will complete unit by unit assessments. Mr. Hauge discussed various deer monitoring activities throughout the year. One very important activity is collecting samples to survey for Bovine Tuberculosis, Chronic Wasting Disease, Epizootic Hemorrhagic Disease Virus and Bluetongue Virus, and distribution of the Ixodes deer tick. In 1999, staff concentrated their efforts near Brule, Manitowoc, Plymouth, Ft. Atkinson, Kewaunee and Waupun. A total of 145 samples were taken from the heads of deer at registration stations in these areas, and another 85 from meat processing plants. One hundred nine blood samples were also collected from these six stations for Hemorrhagic Disease testing. No problems were found in the sampling.

Mr. Hauge, in planning for the 2000 gun deer season, the staff will pay particular attention to the Zone T units and those "watch" units that came close to being designated Zone T in 1999. The Zone T rule criteria does not extend to northern forests units. It is restricted to farmland deer management units, although Mr. Hauge said there is no question in his mind that many of the northern forest deer management units would meet Zone T criteria. Mr. Hauge added that Zone T proposed regulations would be brought to the Board in February for approval to take a framework to public information sessions. A final recommendation will be submitted to the Board in April.

Marilyn Davis, Director, Bureau of Customer Service and Licensing, mentioned some of the problems the automated license issuance system (ALIS) experienced prior to the archery season opener in September, significant improvements were made. The contractor, Central Bank of Missouri, increased their system capacity, tripling the number of transactions that could be processed at any given time. Additionally, modifications were made to the ALIS terminal software, which improved reliability and prevented downtime at agent locations.

ALIS issued 690,194 gun deer hunting licenses in 1999, the second highest number of licenses sold since 699,275 were issued in 1990. Ms. Davis indicated that 24% of all deer licenses issued in 1999 were sold within the last week before deer season, or almost \$6 million in sales. On the day before the season opened, 45,000 transactions were processed by ALIS.

Ms. Davis touched on who deer hunts in Wisconsin -- juveniles under the age of 18 represent 12% of the hunting population; 7% were Senior Citizens (65 years of age and older; 7% of the hunting public were female hunters. Of the 690,194 licensed hunters, 95% were Wisconsin residents. Residents from nine states represent over 50% of the 36,538 Wisconsin nonresident hunters (Minnesota, Illinois, Michigan, Iowa, Florida, Indiana, California and Texas). Ms. Davis indicated that every state in the union, including Alaska and Hawaii, were represented in the 1999 hunt. Ms. Davis also touched on where licenses were purchased.

F. Retirement resolutions.

1. Dr. Sanford Engel.
2. Kenneth Frost.
3. Russell Pope.
4. Florence Taylor.
5. Jon Warren.

Secretary Meyer reviewed the careers of each retiree and commended them for their exemplary years of service. Mr. Willett MOVED, seconded by Mr. Poulson, approval of the retirement resolutions as presented. The motion was carried unanimously.

Secretary Meyer noted Chairman Steve Oestreicher's presence in the audience and suggested that Ms. Davis present this information at a future Conservation Congress meeting.

Mr. Tiefenthaler complimented Ms. Davis and her staff on a job well done. He asked that consideration be given to "buying a tag application, buying a license on behalf of another."

4. Board Members' Matters.

4.A Early trout season.

Mr. Poulson noted that he has had numerous contacts from the farmers about the early trout season proposal. Secretary Meyer indicated that the Conservation Congress is taking the lead, and along with other trout-interested organizations, in working on recommendations which

will be submitted to the Board around December 20 for consideration at the January Board meeting.

4.B Timber cutting in the Lower Wisconsin State Riverway.

Mr. Tiefenthaler mentioned the timber cutting incident in the Lower Wisconsin State in which the Department did not obtain the proper permit and cut cedars that were between 100 and 150 years old. Mr. Tiefenthaler the cutting appeared to have little to do with the Department's prairie restoration project. He noted that the Lower Wisconsin State Riverway Board directed the DNR to develop a policy that would prevent such violations from happening in the future. Secretary Meyer stated that measures have already been taken including mandatory training of all new employees.

4.C Transporting deer in an enclosed vehicle.

Mr. Tiefenthaler asked that consideration be given to proposing a rule change on the transporting of deer in an enclosed vehicle.

4.D Allowing extended placement of portable tree stands on state lands.

Mr. Tiefenthaler proposed the following Natural Resources Board Advisory Question on the 2000 Spring Hearing Questionnaire:

"Allowing extended placement of portable tree stands on state lands - Current law requires the complete removal of any ground blind or elevated device on lands owned or under the control of the department each day at the close of hunting hours. The Natural Resources Board has heard concerns that this law is too restrictive. Persons using portable tree stands indicate that removing the stand after dark and then reinstalling the stand, again in the dark, increases the safety hazard and creates an extra disturbance in the woods. In addition, they suggest that regulations used for waterfowl blinds could be applied to tree stands to guard against abuse. The Natural Resources Board would like your opinions regarding the following suggestion. The proposal would allow persons using portable tree stands to leave their stands in place during the hunting seasons. No stands would be allowed prior to 2 days before the bow hunting season and all stands must be removed 1 day after the close of the late bow season. All stands would require the owner's name, address, and other important identification to be displayed on the stand. Placement of a stand would restrict usage to only the owner or his designee. Stands, like waterfowl blinds, are available to anyone on a first come, first served basis. Placement would be permanent stands and stands that significantly damage trees would still be banned.

Do you support allowing the extended placement of tree stands on state lands with the restrictions described above?

Yes_____ No_____

Secretary Meyer indicated he will have staff prepare a question for the Board to review and consider in January.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

6. Operating Committees' Reports.
- 6.A Air, Waste and Water/Enforcement Committee.
- 6.A-1 Minutes of October 27, 1999.

Mr. Willett MOVED, seconded by Mr. O'Brien, approval of the minutes as presented. The motion was carried unanimously (6-0).

- 6.A-2 Adoption of Order DG-24-99 - revision of s. NR 812.05, Wis. Adm. Code, pertaining to the disposal of pollutants, underground injection.

Jill Jonas, Director, Bureau of Drinking Water and Groundwater, explained that the proposed amendment is intended to clarify the existing policy regarding the underground disposal of a pollutant by means of well injection. The amended rule explicitly identifies the types of activities that are not prohibited under this section, identifies practices that require Department approval, and specifies criteria that must be considered before an approval is issued. The amended text does not impose any new requirements on any regulated entity. Similarly, the amended text does not relieve any regulated entity of any substantive requirements that currently exist.

Changes to s. NR 812.05 are being proposed to ensure that common construction practices which involve the underground placement of cement, concrete or bentonite grout for the purposes of soil and excavation site stabilization, tunnel support, underpinning or foundation strengthening, groundwater control or diversion, or for limiting structural settlement are not prohibited.

Ms. Jonas gave a brief chronology of staff efforts in the past few months. She explained that DNR staff members discussed the applicability of the grouting proposal that was being discussed for the Crandon mine. The Drinking Water staff believe that the prohibition did not apply and was never the intent of the regulation to have it apply. They consulted with DNR Legal Staff and were advised that the prohibition applied in a variance would be required. In December, 1998 and January 1999, the Drinking Water Staff (the Underground Injection Control Program) consulted with the U.S. EPA, Region V, and conferred with them prior to drafting language for an amendment. Their response to DNR was that grouting is not necessarily injection and the DNR may choose to regulate grouting, rather than prohibiting it. Ms. Jonas noted that regulating grouting just continues the DNR's current practice.

Ms. Jonas also gave the Board a brief chronology of how the Department developed its underground control program.

Claire Vanderslice of Cedarburg, made comments with regard to s. NR 811.17 on page 18 of the green sheet package which covers grouting and/or abandonment of wells. She did not believe the type of bedrock located in the area of the Crandon mine is sufficiently being looked at for the modeling for the Crandon mine permit. Secretary Meyer stated that the proposal before the Board is intended for the well code only. The mining codes, he said, deal with this kind of construction separately. The Environmental Impact Statement will address the issue of water passing through volcanic rocks and the grouting that is being proposed, etc.

Mr. Willett MOVED, seconded by Mr. O'Brien, adoption of Order DG-24-99 as presented. The motion was carried unanimously.

6.A-3 Authorization for hearing on revision of Chapters NR 108, 114, 809 and 811, Wis. Adm. Code, pertaining to safe drinking water and waterworks operator certification.

Don Swailes, Bureau of the Bureau of Drinking Water and Groundwater, presented this item. The major revisions conform with four final regulations promulgated by the U.S. EPA and one requirement promulgated in the 1996 Amendments to the Safe Drinking Water. Specific revisions paralleling federal requirements or regulations include: consumer confidence reporting requirements, interim enhanced surface water treatment requirements, disinfectant by-product requirements, variance and exemption requirements, and requirements for certified operators at small public systems.

Together, these new requirements and regulations will increase monitoring and reporting for surface water systems and public water systems that disinfect, increase consumer awareness of local public drinking water quality, expand opportunities for small public systems to obtain a variance from meeting some maximum contaminant levels, and mandate training and certification of small non-municipal public water system operators.

The rule revisions will primarily affect approximately 2300 community and non-transient, non-community water systems (such as municipalities, mobile home communities, schools and large commercial or industrial facilities which are served by their own wells). About 1650 small privately owned systems will need to obtain the services of a certified operator under these revisions and nearly 1150 systems will need to provide annual water quality reports to their consumers.

There was a brief discussion on the training that will be provided by DNR.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, Board authorization of public hearings. When put to a vote, the motion was carried unanimously.

6.A-4 INFORMATIONAL ITEM - Update on the nonpoint program.

Al Shea, Director of the Bureau of Watershed Management, reviewed the green sheet material. The redesign of the state's programs to address nonpoint source or runoff pollution is a major effort involving many agencies, interest groups and concerned citizens. The program changes are in response to 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9 that require significant changes to the DNR's Nonpoint Source Water Pollution Abatement Program and to the Department of Agriculture's Soil and Water Resources Management Program. The Governor in his veto message directed the DNR to work with the Departments of Commerce and Transportation to develop non-agricultural performance standards.

The statutory changes were driven in part from a Legislative Audit Bureau report recommending changes to the NPS and Animal Waste programs, a desire to implement the recommendations of the Animal Waste Advisory Committee (AWAC), a desire to eliminate duplication between programs and streamline state-level program administration, a need to facilitate a faster and more effective process to address the state's nonpoint source pollution problems, and a desire to enhance federal, state and local partnerships and shift decision-making more to the basin and local levels.

A joint DNR and DATCP work group development recommendations to accomplish this task and presented their proposal to a joint meeting of the Land and Water Conservation, Natural Resources, and Agriculture, Trade and Consumer Protection Boards January 27, 1998. As part of this proposal, agency staff proposed the formation of work groups to modify the programs in key functional areas, to identify administrative codes that will need revision and to provide

consistency as these codes are revised. The proposal also recommended the formation of an outreach advisory committee to guide the progress of the restructuring effort.

Mr. Shea reviewed the outreach process, beginning with two rounds of listening sessions. The first round included fourteen sessions held at the following locations around the state during April and May of 1998 - Richland Center, Waukesha, Green Bay, Black River Falls, Spooner, Rhinelander and Fennimore. Another listening session was broadcast over the University of Wisconsin's Educational Teleconference Network in late May, and written comments were accepted until the end of May. A report summarizing themes from the listening sessions and recommending actions was produced in May of 1998.

The second round of listening sessions was held in June 1999 at the following locations: Milwaukee, Madison, Rhinelander, Richland Center, Green Bay, Eau Claire, Spooner and Stevens Point. A video teleconference with Secretary Meyer and DATCP Secretary Brancel was held the evening of July 1, 1999. Information was distributed through press releases to various media outlets, a mailing of materials to 500 interested individuals, and posting on the DNR Web Site.

Mr. Shea indicated that the staff plan on submitting a proposal to the Natural Resources Board in January for hearing authorization. The hearings, he said, would be held in late March or prior to the planting season.

Mr. Shea touched on the proposed "non-agricultural performance standards":

Performance Standard for New Development and Redevelopment

- * Construction Phase. Design, install or apply, and maintain best management practices in accordance with a site plan for disturbed areas of five acres or more (one acre or more after EPA Phase 2 Stormwater Regulations go into effect). Proper installation and maintenance of practices is expected to reduce the average load of total suspended solids by 80 percent and phosphorus by 60 percent (compared to no controls). Proper installation and maintenance of practices is expected to reduce the average load of total suspended solids by 80 percent and phosphorus by 60 percent (compared to no controls).
- * Post-Construction (Stormwater Management) Phase. Design, install or apply, and maintain practices in accordance with a stormwater management plan to control total suspended sediment. Achieving this standard will have the effect of reducing the annual phosphorus and heavy metal loads by 50 percent.

In addition, this performance standard includes the following applications: control of petroleum products in runoff from gas stations and vehicle maintenance areas, and provisions for permanent vegetative cover in riparian areas in new development, except for structural transportation facilities.

Performance Standards for Developed Urban Areas.

- * Develop and implement a stormwater management plan to control pollutants to the maximum extent practicable. Stage 1 of the management plan includes education and activities like leaf collection and street sweeping is intended to reduce sediment by 20 percent and phosphorus and heavy metals by 10 percent. Stage 2 includes progressive use of a combination of higher efficiency and structural BMPs with an objective of achieving a 40 percent reduction in sediment, phosphorus and heavy metals.

Mr. Shea then discussed the "agricultural proposal":

Cropland Soil Erosion Control

- * Sheet, Rill and Wind Erosion. All farmland must be cropped to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil. Sheet and rill erosion refers to soil washing off cultivated fields. Wind erosion refers to soil blowing off cultivated fields.
- * Concentrated Flow Channels. Concentrated flow channels (water collecting and flowing in channels) within cultivated fields where runoff events have a high probability of causing sediment delivery must have grass vegetation.

Soil Loss from Riparian Fields

- * Cultivated fields in water quality management areas will have a maximum soil loss of 0.33 tolerable soil loss through use of individual or combinations of conservation practices.

Manure Storage and Management

- * Manure Storage Facilities that are new or substantially altered or abandoned must meet the current Natural Resources Conservation (NRCS) 313 technical standard requirements.
- * Clean Water Diversions must be used to divert clean water from feedlots and barnyard areas within water quality management areas.
- * Livestock operations will meet the four manure management prohibitions.

Manure Management Prohibitions

- * No overflow of manure storage structures.
- * No unconfined manure pile (equivalent volume to a 140 bushel manure spreader or 175 cubic feet) in a water quality management area, 1,000 feet from a navigable lake, or 300 feet from a navigable river or stream, or a site susceptible to groundwater contamination.
- * No direct runoff from a feedlot of stored manure into the waters of the state.
- * No unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

Nutrient Management

- * Nutrient applications shall be in accordance with the NRCS 590 nutrient management standard. This means that commercial nitrogen (N) and phosphorus (P) fertilizer shall not be applied at rates that exceed crop needs.
- * Unincorporated biosolids (manure and sludge) shall not exceed 75 pounds of phosphorus as P205/acre/year.
- * Soil loss shall not exceed tolerable limits (T), per the 590 standard.

* The state will identify specific technical standards that will result in compliance with the performance standards. A process will be specified for future development and update of needed technical standards. This process must ensure uniform, sound, cost-effective standards developed with broad-based expertise and review.

Mr. Shea indicated that there has been a lot of discussion and concern both by members of the Outreach Committee and others outside the committee. Some, he said, would like to see the process move along faster, while others feel it is moving too slowly. It was Mr. Shea's opinion that after the numerous listening sessions, the Department owes it to the public to go out with a draft rule to formal public hearings.

There was a discussion about the joint meeting of the DATCP and DNR Boards proposed for January 26. Dave Jelinski of the Department of Agriculture, Trade and Consumer Protection, indicated that the DATCP Board is currently looking at the draft rules and "our Board is looking at that whole collection of things and has given us a preliminary indication that until they feel comfortable, that they understand what's in it, they are not in a hurry to advance it to public hearings. So I believe the latest discussion that has taken place that I can feel comfortable with, that in the event that our Board has not yet become comfortable with our request to go to public hearing, the alternative would be to have some joint staff briefing with you on the 26th and that would cover both rules. And, the hope I think would be that in some fashion between now and then we can have some serious discussion about what the Board's wishes are."

Mr. Willett commented that if the DATCP Board needs more time, perhaps the joint meeting could be held in February. Secretary Meyer said he was concerned that delaying the hearing authorization to February would mean scheduling the hearings in May which is the planting season for farmers. He said it is critical that hearings be held so that farmers can attend. Mr. Shea indicated that "one of the things we have been concerned about is that we haven't had as good a turnout despite strong support from the ag newspapers and other notices, we did not get a very good turnout in either round of listening sessions from the agricultural community. We had a lot of agencies' staff, a lot of municipalities--we held meetings at night, we held them in the afternoon, we held them earlier, we held them later, and we still did not seem to get the agricultural community there." Mr. Poulson said his main concern was that "we start with 20 pages and it ends up being 60, and then finally when you get done it's going to be 500--and we haven't seen those 500 pages yet, as a Board."

Chairman Solberg inquired about the funding. He was concerned about the urban/municipality component. He asked if there were any exemptions. Mr. Shea: "In Act 27, for the agricultural performance standards they were not enforceable unless the state had evidence to provide cost-sharing. On the Ag side and the non-Ag side, the Legislature and the Governor were very supportive of nonpoint source pollution and put an additional \$19 million of bonding authority so that the two agencies have over \$50 million of cash and bonding authority in this biennium to do nonpoint pollution control." In addition, Mr. Shea stated that the Clean Water Fund through the Revolving Loan Fund, could be accessed by any municipality for environmental pollution control relating to stormwater. Mr. Shea also stated that for the transportation sector, the Transportation Fund would be utilized as part of the cost of building roads to put in these Best Management Practices.

Mr. Behnke noted that the Outreach Advisory Committee was meeting on December 16 and wondered if the Committee was ready to go forward with the rule proposal. He asked Mr. Poulson and Mr. Poulson did not think so. Mr. Shea said he scheduled this meeting as a courtesy to allow the Committee an opportunity to review the revisions the Department made resulting from comments and suggestions made at their last meeting. Mr. Shea added there are some issues the Committee will never agree on. Mr. Poulson said he would not disagree with that statement.

Mr. Poulson: "I think that the one thing you've got going for you is that you've got the combination of efforts. And you've also got the combination of efforts including the FSA and NRCS and you've got this whole outreach thing in the counties -- the LLCs. There are a lot of things to be straightened out there. I want to be sure that we can go when we're ready to go on this thing and we don't get plastered half-way into that process. We're cranking up to try to help out people with the learning curve on this whole thing and the statement that you made that only 10 percent are involved in nutrient management. When did we start talking about nutrient management? That's a pretty good number for as recently as we started to talk. If we move the learning curve, we begin to get the participation to get things happen so that EPA doesn't have to get their nose under the tent. And you let that camel in there once and he'll be all over----"

Mr. Solberg felt that before the Board could make a decision, the Board should have information on costs--"where the monies are coming from, who is involved, etc. If we're going to ask the Ag Committee to do this---if there is some little city located on a river where there may be runoff problems, they should be involved as well." Mr. Solberg felt very strongly that the costs have to be a part of the administrative rule. Mr. Shea indicated the staff is in the process of putting together a table showing a range of costs for different practices that would have to be put in place. He promised to have that information available for the January Board meeting.

Mr. Poulson: "It has to be able to accomplish something, yet at the same time we have to be practical. It's got to work. In this whole effort, the one thing that I've seen and have been concerned about is---you don't necessarily have to draw it out and write it down on a page as to how I'm going to farm. Tell me what it is that you want me to accomplish. What do you want me to accomplish and just as you're saying, give me some ideas and then in turn, let me figure out how I'm going to do that."

Mr. Solberg observed that if the fiscal notes are not in the rule, "we're going to get crucified when we go out there. I think you're right by separating these things, because each one is different. But at the same time, I don't see how we can exempt anybody in the State of Wisconsin."

Secretary Meyer indicated that he and Secretary Brancel will try to keep the joint meeting coordinated for the January meeting.

6.A-5 INFORMATIONAL ITEM - Update on the river strategy and grant program.

Mary Ellen Vollbrecht and Carroll Schaal of the Bureau of Fisheries and Habitat Protection, gave the Board a progress report on river strategy and coordination of river activities. Ms. Vollbrecht added that the presentations will set the stage for an emergency rule which the Department intends to submit to the Board for consideration at the January meeting.

The Department biennial budget initially requested a \$1 million increase in motorboat fuel tax to increase lake planning grants and to create a rivers grant program. The proposed budget provided draft legislative language creating the river grant program and broadening the scope of lake planning grant activities.

The Secretary's intent for creating a Rivers Grant Program was partly in response to constituent concerns, primarily from the northern tier of the state. In short, their complaint was that the nonpoint source program emphasizes restoration activities in urban and agriculturally dominated watersheds and that there were no programs to protect high-quality rivers and streams. Because the lake grant program fills this gap for lakes, it was reasoned that a similar model could be used for rivers and streams management. The Governor's budget recommended a 400,000/year increase for a combined lakes and rivers grant program. He accepted the draft grant statute language. He did not recommend modifications to the motor fuel tax and instead tapped other

sources (environmental and conservation funds). Rather than create a separate appropriation for rivers, it was included in the lake management (protection) grant allocation with no limit or restriction on how much money goes to either program.

The final version of the rivers grant program that was eventually approved by the Governor was as follows:

- River grants (planning and protection) reduced to \$300,000 per year.
- Unencumbered River Fund balance transfers to Lake Fund at end of the year.
- \$75,000 per year to DNR to contract with nonprofit Rivers Protection Group for organization/capacity development.

The two-year project position (\$93,500/2 years) to administer the program was vetoed, and the \$150,000 per year to DNR to fund a Watershed Center at UW-Stevens Point for director salary, staff support, LTE and supplies and services was also vetoed.

Mr. Willett asked Ms. Vollbrecht to explain the nonprofit organization that was contained in the biennial budget. Ms. Vollbrecht explained that an entity, other than the Department of Natural Resources, can provide technical assistance to local river organizations. The legislation specifies that it be a nonprofit organization, statewide in scope and that it has the capability to deliver technical assistance. Ms. Vollbrecht indicated that the River Alliance of Wisconsin and the Wisconsin Association of Lakes have expressed interest. Ms. Vollbrecht said she anticipated that the University of Wisconsin Extension will also be interested.

In response to Mr. Willett on proposing an emergency rule, Secretary Meyer indicated that the grant monies expire at the end of the fiscal year and cannot be carried over to the next fiscal year. The clear legislative intent, he added, was to allocate the grant money during this fiscal year. Mr. Meyer said the full rule-making process would go beyond July and the money would lapse.

Mr. Schaal summarized the River Planning and Protection Grant Program modeled after the Lake Planning and Protection Grant Program. He also went through the timeline for the rivers rule development. (A copy of the green sheet and attachments is incorporated in the official Board minutes.)

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

6.B-1 Minutes of October 27, 1999.

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

6.B-2 Southern Unit of the Kettle Moraine State Forest land acquisition - Waukesha County.

Dick Steffes, the Department's Chief Real Estate Officer, explained that the Department has obtained an option to purchase 38.76 acres from Kenneth Kau and Gerard Kau for \$155,000. The item was submitted to the Board because the purchase price exceeds \$150,000. The parcel has access on County Trunk Highways ZZ and N and will provide opportunities for public recreation in the state forest. In addition, the site is near the Scuppernong Marsh and will eventually be restored to wet prairie.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, approval of the purchase. When put to a vote, the motion was carried unanimously.

6.B-3 Statewide Habitat Areas Program land acquisition - Sawyer County.

Mr. Steffes explained that the Department has obtained an option to purchase 228 acres of land from Virginia White for \$154,000. The tract contains 6,100 feet of stream thread on Mosquito Brook, a Class IA native brook trout water and a tributary to the Namekagon River. In addition, it has 800 feet of frontage on an old flowage. There are bottom springs along the length of the stream. It provides critical brook and brown trout spawning, nursery and recruitment habitat, and a cold water refuge. Acquisition of the parcel will protect fishery resources, allow natural resource management, protect water quality, provide opportunities for public recreation, and protect the uplands from development that would degrade the quality of the stream.

Mr. Behnke MOVED, seconded by Mr. O'Brien approval of the purchase. The motion was carried unanimously.

6.B-4 Avon Bottoms Wildlife Area land transactions - Rock County.

Mr. Steffes explained that the Department has obtained an option to purchase 220 acres from Katharina Kerschner for \$187,000. The item was submitted to the Board because the purchase price exceeded \$150,000 and because about 100 acres are located outside the project boundary. The subject consists of land along both sides of the Sugar River including two miles of frontage. It includes wetlands and floodplain forests along the meandering river. The land outside the boundary lies between a levy and the southern bank of the river. The Department recommends including these acres within the project boundary since the levy provides a good boundary for management and all of the land is lowland forest, excellent for outdoor recreation and wildlife habitat.

Mr. Tiefenthaler MOVED, seconded by Mr. Behnke, that the Board approve the purchase of 220 acres for \$187,000 and modify the project boundary to include the parcel. The motion was carried unanimously.

6.B-5 Spread Eagle Barrens Natural Area land transactions - Florence County.

Mr. Steffes explained that the Department has obtained an option to purchase 381.04 acres from Florence County for \$407,000. The item was submitted to the Board because the purchase price is more than \$150,000 and because more than 40 acres are located outside the project boundary. The parcel contains oak and pine barrens, bracken grasslands, alder thicket, and northern sedge meadow. It includes 2,300 feet of two-bank frontage along Horseshoe Creek, a small stream that flows through the northwest area of the parcel. The parcel blocks into land either owned in fee by the Department or under easement by the Department. Acquisition will allow the Department to manage the natural area effectively, including prescribed burning, and to provide opportunities for natural area education and research. The property will continue to provide access for public recreation.

Mr. Behnke MOVED, seconded by Mr. O'Brien, that the Board approve the purchase as recommended and modification of the boundary to include the 40 plus acres that are located outside the project boundary. The motion was carried unanimously.

7. Department Secretary's Matters.

7.A Update on the 40-year acquisition planning project.

Secretary Meyer and staff gave an update on the status of the 2050 Land Acquisition Study that was directed by the Board at its April 1999 meeting. The study will be a comprehensive

evaluation of natural resources and outdoor recreation land acquisition needs. Secretary Meyer indicated that he had assigned responsibility to a group of senior administrators--Susan Sylvester, Jim Kurtz, Bob Roden and Steve Miller. Mr. Roden will direct the day-to-day work, and a small group of staff under the direction of John Pohlman and Signe Holtz to lead the process.

The first step in the study is to identify needs for recreation and resource protection and to identify appropriate criteria for selection of areas in which future acquisition will be pursued. To that end, the work group has focused its attention on the process to be used to involve the public and has assembled objectives and criteria that the Department and other agencies have used in the past.

The public and staff involvement process in development of needs and criteria will begin with a series of public meetings around the state in January and early February 2000. The meetings are tentatively scheduled for Spooner, Rhinelander, Green Bay, Milwaukee, Madison, La Crosse and Stevens Point during the week and in the evening. They will be supplemented with meetings within the Department. It is also anticipated that key stakeholder groups such as the Conservation Congress, the Wisconsin Parks and Recreation Association, the Farm Bureau, and others will be invited to discuss this project. The staff will synthesize the input received at these meetings and develop a final draft for additional review. These draft criteria will be brought to the Natural Resources Board at the June 2000 meeting for discussion.

Until this study is completed and used to establish acquisition priorities, the Department will continue to place priority on acquiring lands within existing project boundaries, following through with the current five-year acquisition plan, and dealing with significant new opportunities on a case-by-case basis in close consultation with the Board.

7.B DONATION - \$6,486.00 from the Wisconsin Public Service Corporation, Green Bay, to be used to complete a fishery survey for Lake Alexander on the Wisconsin River.

Mr. Poulson MOVED, seconded by Mr. Tiefenthaler, that the Board accept the donation. The motion was carried unanimously.

* * * * *

Ralph Schommer of Ellsworth, who appeared earlier during the Citizen Participation Session, asked the Board if he could finish his statement that he was unable to do earlier in the day. Mr. Solberg granted him a few minutes to do so. Mr. Schommer read from his statement:

"To all things there is a season. I believe that the first Saturday in May is the right time to open the trout season in Wisconsin. If we must choose one of the five compromises from the Task Force consensus, it should be to move the regular season opener to April 1. All other proposals are not early seasons at all, but are actually winter seasons. They are complex, divisive and designed to play off one part of the state against another. Those divisive proposals leave too much control in the hands of the bureaucrats. The DNR fish managers work for the cold water fisheries specialist who is unduly influenced by a minority special interest group which kisses up to Wisconsin cold water fisheries with national reports calling Wisconsin's inland trout management. A model for the Nation. Publication of early trout season drop in open house meetings was done only once on 10-12-99 and could have and should have been published on 10-19 and 10-26-99. The only real compromise that I see in this whole debacle is that the democratic process has been compromised.

"I believe that the task force is so stacked with the proponents of winter fishing for trout, or their underlings, that it cannot render an objective decision. At last count the makeup of the task force was DNR-13, Trout Unlimited-5, Federation of Fly fishers-3 and Conservation Congress-3.

"We in Pierce County, have always had a high level of farmer/landowner cooperation with sportsmen. An example was project respect which initially provided more acres of hunting opportunity in Pierce County than the other nine counties participating all put together. This acceptance of and cooperation with sportsmen and their organizations is partly due to our pioneer tradition of sharing the outdoors for the food and recreation provided by fish and game. Now the farmer/landowners are threatening to deny access to the trout streams if we are forced to have an early catch and release season. The forced acceptance of winter fishing on trout streams, for the benefit of a primarily non-resident minority segment of the fishing fraternity, is eroding the cooperative attitude that we have tried to foster through our sportsmen's clubs. The DNR is not well regarded in Pierce County because of the lack of services provided, some past bad wardens and a general lack of presence for many years. With two new young wardens and a resident forester we have a chance to change the way the DNR has been regarded in the past. Please don't make our job more difficult by alienating our farmer/landowners with an early trout season. A county option vote at the spring hearings would be a fair and equitable way of resolving this problem."

In response to Mr. Tiefenthaler, Mr. Schommer indicated that "the statement was made when you laid down the rules for the Conservation Congress that the Trout Study Committee was too big-- there are 24 members. There were 24 members on the task force and they all voted; only three of the Conservation Congress members could reasonably be considered to have an open mind, because of those is a regional director for Trout Unlimited, not hardly an open mind. When the five compromise proposals came to the floor of the task force contained in their September meeting, the only proposal that received supportive comments from Mr. Staggs and Mr. Claggett was that presented by Trout Unlimited. I am a member of Trout Unlimited and I don't like the undue influence they have with Fisheries Management in this state today. Nationally, they do a terrific job, but in this instance they have too much to say about what happens in cold water fisheries in Wisconsin."

* * * * *

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