

## REVISED JUNE BOARD AGENDA

An update of the June Board Agenda, as discussed at the September Board Meeting, to reflect Mr. Wilusz's changes which appear in red on page 13.

### NATURAL RESOURCES BOARD

#### MINUTES

The regular meeting of the Natural Resources Board was held Wednesday, June 27, 2001, at the Holiday Inn Express-Harbor Side, Wharf Conference Room, 5125 Sixth Avenue, Kenosha, Wisconsin. The meeting was called to order at 8:35 a.m. All June Board Agenda business was conducted by the Full Board.

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

#### ORDER OF BUSINESS

1. Minutes to be approved.

1.A. Full Board Minutes of May 23, 2001.

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

Committee of the Whole Minutes of May 23, 2001.

Mr. O'Brien MOVED, seconded by Mr. Tiefenthaler approval of the Committee of the Whole Minutes of May 23, 2001, as presented. The motion was carried unanimously by those members present.

1.B. Agenda for June 27, 2001.

Secretary Bazzell asked that the following changes be made to the agenda: Item 3.G (Approval of the joint Cooperative Management Plan for the Lower St. Croix National Scenic Riverway) be deferred to September; adding Item 6.B.19 (Adoption of Emergency Order FH-28-01(E) Amending s. NR 20.20 and s. NR 25.06, Wis. Adm. Code, pertaining to fishing for yellow perch in Green Bay.

With those changes, Mr. Behnke MOVED, seconded by Mr. Poulson approval of the June 27, 2001 agenda. The motion was carried unanimously by those members present.

2. Ratification of acts of the Department Secretary.

2.A. Real estate transactions.

Mr. Tiefenthaler MOVED, seconded by Ms. Stepp approval of the real estate transactions, as printed. The motion was carried unanimously by those members present.

3. Committee of the Whole.

Mayor Antaramian, Kenosha County Executive Allen Thiel and Senator Werch welcomed the Natural Resources Board to Kenosha.

3.A. Citizen Participation.

- 3.A.1 Laura Hewitt, Madison, representing Trout Unlimited, gave an informational presentation on the Economic Impact Study on Canoeing and Trout Fishing. Ms. Hewitt gave a slide presentation regarding canoeing and angling in Southwestern Wisconsin. She reviewed the research project indicating it collects demographic information of canoeists, anglers and their issues of concern; estimate the local economic impacts of canoeist and angler spending on local communities; and described the change in the impacts of canoeing and angling since the previous studies were conducted. She also spoke of the changes reflected in the number of anglers and canoeists. Ms. Hewitt then reviewed planning and development issues.
- 3.A.2. Ramsay Chang, California, representing Electric Power Research Institute, gave an informational presentation on controlling mercury emissions from power plants. He addressed mercury control technologies under development along with significant issues and data gaps.
- 3.A.3. Mike Durham, Denver, Colorado, representing ADA Environmental Solutions, gave an informational presentation on status of mercury control for coal fired boilers. Dr. Durham offered information regarding mercury control, power plant systems impacted by sorbent based mercury control, DOE/ADA-ES mercury control program and the rapid development plan for mercury control technology.
- 3.A.4. Bruce Ramme, Milwaukee, representing Wisconsin Electric Power Company, gave an informational presentation on the expected impacts to coal combustion product utilization (the risks, land filling, and costs) from mercury sorbent materials. Mr. Ramme presented charts and graphs (in an overhead presentation) demonstrating numbers for ash production and ash utilization percentages. Mr. Ramme also spoke to the effects of carbon in fly ash for concrete, American society of testing and materials, the economics of fly ash utilization versus disposal, the impact of mercury control for Pleasant Prairie Power Plant, and the cost aspect.
- 3.A.5. Dave Michaud, Milwaukee, representing Wisconsin Electric Power Company, gave an informational presentation on proposed mercury rules impacts on fish advisories. Mr. Michaud spoke of the major factors to be considered, the reasonable estimate of how much mercury (percentage) deposits locally, and gave Pleasant Prairie as an example.
- 3.A.6. Kristine Krause, Milwaukee, representing Wisconsin Electric Power Company, commenting on the process of the proposed mercury rule. Ms. Krause reflected on our coal power plants in Wisconsin, being the largest source of affected by the proposal. She stated the concerns of mercury in the environment and the costs.
- 3.A.7. Bill Skewes, Madison, representing Wisconsin Utilities Association, regarding mercury rule. Mr. Skewes spoke in opposition to a public hearing on the mercury proposal. He felt the draft rule was problematic. He further stated that he felt the 90 percentage reduction is technologically in-feasible, would be expensive, and would be paid out of the rate base. Mr. Skewes also stated he felt the offsets are problematic. He stated he felt this would end a coal firing generation in Wisconsin. He further stated this would force a switch to an expensive fuel. He also felt the draft appeared to allow the possibility that Wisconsin mercury rules could be more restrictive than federal EPA rules, which are expected in 2003. He stated he felt Wisconsin would become at risk where the business customers in the state would pay much more for energy for their competitors in other states. He felt this would be damaging for Wisconsin's economy and would have effects on Wisconsin working families. He stated that since mercury is a global problem we cannot solve the problem in Wisconsin lakes when air currents can transport it here from Asia, accounting for about 40 percent of the global pool.
- 3.A.8. Jeff Schoepke, Madison, representing Wisconsin Manufacturers and Commerce, regarding mercury rule. Mr. Schoepke presented information regarding the proposed mercury rule. He stated that in the opinion of Wisconsin Manufacturers and Commerce that the severity and implications of the rule compelled him to speak. He further

stated the assessments of the rule draft raised three major concerns: the rule would cost Wisconsin electric rate payers nearly one billion dollars for only two of the first three utility reductions; the rule threatens the ability to meet Wisconsin energy needs; and the rule does not solve the stated problem. He stated that Wisconsin Manufacturers and Commerce is working with the national organization to better assess the cost, however, the study is not complete. But, it shows a cost of one billion dollars for the 30 to 50 percent reduction amount. The study also concludes that the numbers cannot be assigned to the 90 percent reductions because that cannot be met at any cost. He stated this would be a significant impact on employers and families who bear these costs through increased electric costs. He further stated he felt the draft rule also poses a threat to our ability to generate enough electricity for a functioning economy. Mr. Schoepke thanked Secretary Bazzell that the draft include sensible alternatives provided by other stakeholders to address concerns. He suggested a voluntary approach to mercury control.

- 3.A.9. Eric Uram, Madison, representing Sierra Club, spoke to clarify the reducing mercury pollutants from coal burning plants. Mr. Uram described the mercury emissions control system, the Consol Project which involved six new projects selected by the United States Department of Energy to curb mercury emissions, and the number of coal burning power plants in 43 of our states that are emitting an estimated 98,000 pounds of mercury each year. Mr. Uram also spoke of new technology being essential, cost to the consumer, a timeline, and mercury contamination fish warnings. He presented the Board with a handout entitled "Governor McCallum and President Bush's Energy Plans".
- 3.A.10. Joe Shefchek, Madison, representing Alliant Energy, gave an informational presentation on the draft mercury rule. Mr. Shefchek stated he felt this draft would drive energy policy for the state, it would fuel switching to natural gas, would result in unintended consequences to electric reliability and costs. He further stated he felt the variance language in the proposed rule is impractical, weak and not flexible enough to accommodate potential reliability, technology, or cost issues. He further stated that mercury in the environment is a global issue, reductions made in Wisconsin will have no impact on fish advisories without reductions from sources outside the state and there are many scientific uncertainties about mercury.
- 3.A.11. Mary Jo Stack, Greendale, representing herself, regarding mercury reduction. Ms. Stack spoke on information regarding the costs of mercury. She stated that we didn't pay taxes in the State of Wisconsin to be poisoned. She reflected on her thoughts on mercury poisoning. She stated that she thinks the State of Wisconsin has become dirtier in the last five or six years. She further stated that she would like to have her grandchildren fishing and living in the State of Wisconsin for the future generations.
- 3.A.12. Caryl Terrell, Madison, representing the State Sierra Club, gave an informational presentation on the Green Tier Program. Ms. Terrell passed out a letter sent to Senators Burke and Baumgart and Representatives Gard and Kedzie containing signatures representing large and small businesses, environmental groups, municipalities, law firms, and community organizations showing support to develop an initiative entitled green tier. This proposal encourages entities subject to environmental regulations to adopt environmental management systems, achieve superior environmental performance, and obtain appropriate regulatory flexibility. Ms. Terrell presented the Board Members with a copy of the draft proposal. She also presented the Board with a handout entitled "A Sniff Test for Evaluating Environmental Regulatory Reinvention Projects".
- 3.A.13. Russ Ruhland, Milwaukee, representing the Muskie Club of Wisconsin, regarding mercury rule. Mr. Ruhland urged the Board to move ahead with mercury controls. Mr. Ruhland felt this will have an adverse affect on tourism. Mr. Ruhland stated we must be a leader in the area of mercury and urge other states and countries to follow. He stated there is technology available to accomplish the mercury rule proposed. He felt that we need to move forward with this issue now before the damage is not repairable. He stated that he felt the energy companies are not shy about passing on any increased costs they have, the public ends up paying for whatever it is, and he felt that in this case the public was willing to pay for mercury control if it involves cleaning up our water.
- 3.A.14. Keith Roepelle, Madison, representing Environmental Decad, regarding mercury rule. Mr. Roepelle spoke in favor of the proposed mercury rule. He urged the Board to authorize the mercury rule package to go out to hearing this summer. He felt the sooner that the Board would get input from stakeholders the better. He stated the staff had put together a good starting point for this debate, based on sound science, based on available technology, based on technology being developed, and based on economic analysis. He further stated that Wisconsin has

known about mercury contaminated fish for about 30 years. Mr. Roepelle stated that he felt the rule was very flexible and generous in many ways in there are a lot of options for compliance, if it is phased in over time, has evaluation checkpoints, and the exemptions which guard against problems.

- 3.A.15. Tom Soles, Fond du Lac, representing the Muskie Alliance of Wisconsin, regarding the mercury rule. Mr. Soles did not appear.
- 3.A.16. Steve Brick, Madison, representing the PG and E National Energy Group (NEG), spoke in favor of the mercury rule. Mr. Brick stated that NEG supported to adopt a national, integrated policy to reduce emissions of four important power sector pollutants; sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide. He stated that control of these emissions is critical to improving the nation's air quality and protecting the health of Americans. He further stated they support the instant petition because they believe it is consistent with a reasonable, national integrated policy. He stated that it embodies potentially achievable reduction levels and reasonable time frames; and it recognizes the need to insure the safe and permanent disposal of mercury removed from flue gases, recognizing that the need for variances may arise. Mr. Brick also stated that the mercury rule is important because it sets a model for the national debate for the coming years. He further stated that PG and E National Energy Group suggested that 70 to 90 percent is a reasonable range to establish, and a final number can be set within the context of the scheduled Department of Natural Resources review of its rule.
- 3.A.17. Ted Lind, Milwaukee, representing the WI Council of Sports Fishing Organizations, regarding mercury rule. Mr. Lind did not appear.
- 3.A.18. Bill Kordus, Menasha, representing Twin City Rod and Gun Club. Mr. Kordus spoke in favor of the mercury proposal. He stated how mercury affected him and his family personally. He further discussed the Winnebago watershed. He feels that something can be done and we cannot be waiting for other states to take action. He further stated he felt the cost will be passed onto the consumer and he was in agreement with that because it would mean cleaner air and water. He further stated that because of his work background he knows there are technologies out there that can be applied. Mr. Kordus asked for the citizens of Wisconsin that the Board do what it could to reduce mercury levels.
- 3.A.19. Steve Skavronec, Milwaukee, representing himself, regarding mercury rule. Mr. Skavronec did not appear.

Chairman Solberg called on Mr. John Antaramian, Mayor of Kenosha, to read a letter to the Board from Mr. Kevin Crawford, Mayor of the City of Manitowoc. Mayor Antaramian read the letter in its entirety from Mayor Crawford regarding mercury emissions. Mayor Crawford's letter urged the Wisconsin Department of Natural Resources Board to return this mercury rule to the Department staff with the direction to reconsider the offer made by Wisconsin's utilities to provide a voluntary 40 percent reduction strategy over 10 years.

3.B. Presentation of the John C. Brogan Environmental Awards.

Secretary Bazzell announced that 3M (Minnesota Mining and Manufacturing) Plant in Menomonee, Wisconsin and DNR employee Toni Glymph, Environmental Toxicologist, with the Water Quality Standards Section, were this year's winners of the John C. Brogan Environmental Awards.

The 3M (Minnesota Mining and Manufacturing) Plant in Menomonee employs about 475 people and manufactures high technology and state of the art product lines. It hosts the 3M Year 2000 Environmental Goals program, launched in 1996, and the 3P (Pollution Prevention Pays) program, in place since 1975. In December of 2000, the plant achieved certification in the ISO 14001 environmental management standard. Highlights of the 3M Menomonee's environmental achievements include: cutting their ratio of waste to good output (defined as finished and semi-finished product and/or recycled waste) by more than 60 percent between 1990 and the end of 2000; reducing releases to the environment by 61 percent between 1990 and the end of 2000; diverting 1.8 million pounds of solid waste from landfills through waste to energy programs; recycling 4.5 million pounds of material, through which the company recovered \$178,000; and forming an energy team which implemented 12 significant projects, saving nearly \$160,000 per year and conserving enough energy to power 600 homes for a year.

Environmental Toxicologist Toni Glymph has worked with the Department of Natural Resources since 1992. She worked as a Wastewater Specialist until May of 2001 then transferred to the Water Quality Standards Section as an Environmental Toxicologist. She has also been a member of the Diversity Team and the Department's Diversity Council for six years, serving as Chair of the latter for two years. One of Glymph's major achievements at the DNR thus far is the development of tools to streamline the wastewater permit processing procedure, reducing permitting time by 75 percent. She continues to bring innovation to the Department, currently leading the effort to simplify and automate the permit application process. Glymph has also garnered national praise for her work with wastewater treatment plant operators in training sessions and through one-on-one technical assistance. She is widely regarded as a top expert in her field, an excellent teacher, and has the ability to forge connections with audiences that may initially be unreceptive to a woman of color. She is asked many times each year to teach wastewater treatment courses for the U. S. Environmental Protection Agency (EPA) and other state and national organizations. She has also been invited to write a chapter in an international book on wastewater treatment. Her nominating party notes, "Toni's work with treatment plants results directly in improved performance of the plant, and therefore, improved water quality in our state." They add, "We knew she was special when the folks in Detroit continued to contact her and ask her to consult with them for several years after she left that position." Glymph says she is most proud of her work teaming up with Wisconsin's wastewater treatment plant operators to solve compliance problems. She says, "We have operators in this state who are as concerned about the environment as we are. They are more than the regulated community; they are our partners."

3.C. Presentation of Recognition Award to the United States Geological Survey.

Secretary Bazzell recognized the United States Geological Survey for its partnership with the Department of Natural Resources in the evaluation, protection, and restoration of Wisconsin's environmental resources. There have been many opportunities in which the USGS and the Department have worked together. Secretary Bazzell mentioned the 1980's in which the USGS Water Resources Division - Wisconsin District Office was an essential cooperator with the Department in conducting research that culminated in the passage of legislation leading to the reduction of acid rain falling in Wisconsin. In the decade of the 1990's, the Wisconsin District Office and the Upper Midwest Environmental Science Center worked closely with the Department to unravel the biogeochemical fate of mercury in Wisconsin's aquatic ecosystems. In addition, the Upper Midwest Environmental Science Center is an ongoing research partner with the Department in evaluating the risk to Wisconsin wildlife from environmental mercury exposure. During 1999, the USGS Wisconsin District Office worked with the Department to evaluate the legitimacy of dredging to remove PCB contaminated sediments from the Fox River. The study resolved a long standing debate on the efficacy of dredging PCB laden sediments from the Fox. The USGS pragmatic nonpartisan approach to solving environmental problems has always been the cornerstone of their organization. They have been an invaluable resource to the Department of Natural Resources and the citizens of Wisconsin. Secretary Bazzell presented the awards to Warren Gebert, District Chief for the USGS Water Resources Division and Dr. Leslie Holland-Bartles, Director of the Upper Midwest Environmental Science Center. Accepting for Dr. Holland-Bartles was their lead scientist for the mercury loon study, Mr. Kevin Kenow.

3.D. DONATION - \$148,768 from the Bong Naturalist Association for construction of a solarium addition to the Molinaro Visitor Center and for designing, creating new and updating educational exhibits.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, acceptance of the donation. The motion was carried unanimously by those members present.

3.E. DONATION - \$10,000 from the Wisconsin Off Road Bicycling Association (WORBA) for the maintenance of the mountain bike trails at the Southern Unit - Kettle Moraine State Forest.

Mr. Behnke MOVED, seconded by Mr. Poulson, acceptance of the donation. The motion was carried unanimously by those members present.

3.F. DONATION - \$10,000 from the Friends of Point Beach State Forest for the development of a bicycle trail within Point Beach State Forest.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, acceptance of the donation. The motion was carried unanimously by those members present.

Chairman Solberg requested permission to move into Executive Session.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler to go into Executive Session. The motion was carried unanimously by those members present.

3.G. Approval of the joint Cooperative Management Plan for the Lower St. Croix National Scenic Riverway.

This item was deferred to the September Board Meeting.

3.H. INFORMATIONAL ITEM - Removal of elemental mercury from schools.

Bill Smith, Director of Northern Region, referred to the agreement put together with Canada, United States, and the Lake Superior States in 1991 focusing on mercury and eight other toxics. Mr. Smith referred to the Native American tribes that live in this area and reflected on tourism economy in the north that depend upon the quality of the environment. Mr. Smith introduced Ms. Thompson for a presentation on elemental mercury from schools.

Diane Thompson, Safety and Pretreatment Coordinator for the City of Superior of Wastewater Program and a leader in local efforts to reduce mercury in her local community and in the Lake Superior Basin. Ms. Thompson gave an overhead presentation on mercury in the northwest Wisconsin schools. She stated this program is a toxic chemical shakedown taking place in schools across northwest Wisconsin. Local and state agencies have united to seek out and rid schools of mercury and other hazardous materials. Ms. Thompson stated that schools can sign a pledge to work at becoming mercury free. She stated that buildings must be checked for mercury and mercury containing items that can be recycled, and a phase out plan for mercury devices like thermostats and switches including labeling the items to ensure they are recycled when replaced for the schools participating. Ms. Thompson stated they target schools for two reasons, because mercury has been a problem in schools nationwide and because children are most susceptible to health problems when exposed to the chemical. She further stated that the mercury shakedown program provided technical assistance for locating mercury, information on safe alternatives, collection of mercury bearing items, and educating students and the public on the dangers of the element. The program is a joint effort among the Northwest Clean Sweep, Lake Superior Toxics Reduction Committee, Lake Superior Binational Program, UW Extension, and the Wisconsin Department of Natural Resources. She further stated that to date 30 schools from seven northwest Wisconsin counties are participating in the mercury shakedown. The counties that participated in this mercury shakedown were Ashland, Barron, Bayfield, Burnett, Douglas, Florence, Forest, Iron, Langlade, Lincoln, Oneida, Polk, Price, Rusk, Sawyer, Taylor, Vilas, and Washburn.

3.I. Authorization for hearing on revision of Chapter NR 446, Wis. Adm. Code, pertaining to proposed rule to limit mercury emissions into the ambient air to reduce atmospheric deposition for contributes to bioaccumulation of mercury in fish in Wisconsin waters.

Secretary Bazzell: What we are really embarking on today is a beginning of a process. The idea is to give the public, at this juncture, the opportunity to engage this issue in a formal way. We think that we need to begin the process now in order to achieve real reductions in mercury. As we move forward in the reduction of mercury efforts that we do so in a way that is sensitive to the cost involved with the reductions, the issue of reliability, we want to make sure that we are sensitive to those kinds of issues. We need to make sure, that as the federal government moves forward with their process, that we have an opportunity to take a look at what we are doing and give the Board the opportunity to look at the rule package and reconcile with respect to what the federal government is doing. The advantage of what we see in moving forward at this time is that it does provide Wisconsin with an opportunity to help shape the national debate. We feel that it is important for the public to have the opportunity to weigh in at this time. As we move forward, Secretary Bazzell stated that he would like to give the Board the opportunity to consider the staff proposal with respect to go to public hearing. If we are going to move forward in a meaningful way, we need to hear alternatives from others that are put on the table. One of the things that we are proposing is that the Board consider putting some additional alternatives out for comment. We would like to move forward and take a step to better understand the science of this and what technology can in fact do. We would like to appoint a technical advisory committee to work on those issues and we need a broader advisory group that would look beyond technology to help us shepherd this process to make sure we have integrity in the process.

Lloyd Eagan, Director of Bureau of Air Management, focused on the history of mercury emissions. Ms. Eagan also stated that she has been working on mercury for over 10 years. She further indicated that staff went to Sweden to learn the latest in atmospheric mercury monitoring techniques. She stated the Department has a long history of fish tissue sampling in the state and recently the Department has become amazed at the extent and levels of contamination the Department has found. Ms. Eagan spoke of the Wildlife Research recently done on loons. She stated that the Department has taken a good look at where mercury is coming from. The Department has received federal funding to work on a TMVL Project for Devil's Lake, a joint project with a site in Florida. Ms. Eagan stated the Department has had a mercury advisory group that was lead by former Secretary George Meyer and met for 18 months. Ms. Eagan assured the Board this has been an open dialog for a long time and the Department did base a lot of this proposal on previous dialog in detail with a number of stakeholders. Additionally, Ms. Eagan stated there is interest in both houses on both sides of the isle. She felt this was not an issue that would go away soon. Ms. Eagan stated that the Department has looked at sorbent technology, the rule considered that in developing the reduction levels and time frames. However, she stated that the rule does not require that any utility use sorbent technology. The rule also allows utilities to get their emission reductions from other sectors. She further stated the rule is not requiring a certain technology, it is left open for the utilities, sets a reduction level but does not say how to get there. She stated they have an evaluation step that was specifically designed to see where the technology is. Ms. Eagan further stated that it is going to be a long time before reductions have to occur, the first doesn't happen until five years out, there is an evaluation phase, that they have to set a baseline first and they have two levels that come after that. She stated that at the front of each of those levels of reduction they have an evaluation step that was specifically designed to see where the technology is now. She stated that they tried to focus on something that was dueable, a safety value, in case technology doesn't go the way they expect it will. Additionally, Ms. Eagan stated they have indicated when the federal math standard is proposed, they will do an evaluation as to how it relates to their rule and come back and report to the Board. When it is promogated they will do the same thing, do an evaluation and come back to the Board. Ms. Eagan stated their goal is not to shut down the coal but to provide a reasonable means of opening the dialog on mercury.

Jon Heinrich, Assistant to Bureau Director, gave a presentation on the rule and the alternatives that the Department would like to take to public hearing to get comments on. Mr. Heinrich reviewed the strategy used to develop the rule, what was in the resolution, the future plans for evaluation of the rule as it goes forward, and the schedule. He also stated the proposed rules contain a phased mercury reduction schedule for four major electric utilities covering a fifteen-year period. Five years after promulgation, a 30 percent reduction in baseline mercury emissions must be achieved by each major utility. A 50 percent reduction in baseline emissions is required after 10 years, and a final reduction of 90 percent is to be achieved after 15 years. With an overhead presentation, Mr. Heinrich reviewed alternatives to the mercury rule.

Discussion and questions pursued with regard to percentages, yearly time frame, and credits.

Mr. Willett MOVED, seconded by Ms. Stepp authorization for hearing on revision of Chapter NR 446, Wis. Adm. Code, pertaining to proposed rule to limit mercury emissions into the ambient air to reduce atmospheric deposition for contributes to bioaccumulation of mercury in fish in Wisconsin waters. The order was carried unanimously by those members.

**Mr. Tiefenthaler presented the following Amendment:**

NR 446.12 Variance for major utilities. (1) (c) Requests for variances shall contain relevant information on the costs and technological feasibility of meeting the reduction requirements as required by the department.

**AND**

NR 446.12 Variance for major utilities. (3) The department may grant a variance if, in consultation with the commission, the department determines that one of the following conditions preclude the major utility from meeting the baseline mercury emission requirement or an emission reduction requirement: (with the remainder of Item 3 staying the same).

**AND**

NR 446.13 Rule evaluation reports. (1)(a) The department staff shall on at least an 18-month report to the Natural Resources Board basis on scientific and technological developments which occur that affect the ability to control or reduce mercury emissions. The report shall include:

1. An evaluation of the scientific and technology developments.
2. An evaluation of whether the requirements of s. NR 446.06(3) are achievable, given scientific and technological developments.
3. Recommendations for revisions to this subchapter or other actions based on developments.

(b) The natural resources board shall review the report and if the report includes recommendations for rule revisions or other actions, determine whether the department should proceed with actions based on the recommendations. (Deleting the remainder of Section 16).

Mr. Willett MOVED, seconded by Ms. Stepp authorization for hearing on authorization for hearing on revision of Chapter NR 446, Wis. Adm. Code, pertaining to proposed rule to limit mercury emissions into the ambient air to reduce atmospheric deposition for contributes to bioaccumulation of mercury in fish in Wisconsin waters, as amended. The order was carried unanimously by those members present.

Chairman Solberg requested a motion to change the agenda to move to 6.B.4. Mr. Behnke MOVED, seconded by Mr. O'Brien to move item 6.B.4. The change was carried unanimously by those members present.

6.B.4. Adoption Order FR-11-01 - revision of Chapter NR 1.213(3)(b) and (d) and to repeal and recreate Chapter NR 1.212(1) and (2), Wis. Adm. Code, pertaining to the cooperating forester program and private forestry priorities for assistance.

Paul Pingrey, Private Forestry Specialist, presented the proposed revision of Order FR-11-01. He stated the rule has two main objectives, to make more efficient use of DNR forestry staff integrating services the DNR provides with the services that come from private enterprise and other partners. He further stated the second objective is to boost the confidence that the public has and the quality of assistance they are receiving from private foresters.

Nancy Bozek, Executive Director of the Wisconsin Owners Woodlands Association (WWOA) in Stevens Point, spoke in favor of the adoption of Order FR-11-01. Ms. Bozek described the Wisconsin Woodland Owners Association and its history. She stated the goal of the DNR private forestry program was to increase sustainable forest management on Wisconsin's private woodlands. She further stated that as a partner in designing today's proposed changes, their Association feels they are key to reaching the goal of the private forestry program. Ms. Bozek stated that in the Association's opinion, they have found a win-win situation because Wisconsin's private woodland owners, DNR, private consultant, and industrial foresters agree that clarifying the role of a cooperating forester will result in more of Wisconsin's private forests being managed sustainably. Ms. Bozek presented the Board with a WWOA pamphlet and booklet describing their Association.

Allen Waelchi, representing cooperating foresters of Shawano, spoke in favor of Order FR-11-01. Mr. Waelchi presented his history as a county forester, regional forester, and a statewide watershed forester. He stated that he has a consulting forestry service and has been Chairman of the Association for Consulting Foresters and the Wisconsin Society of American Foresters. Mr. Waelchi stated there are factors which influence this Order, including changes in the Department's policy as to how referrals are made to consulting foresters. He stated they started off with a five day limitation then went to a three day limitation, now they are down to three days plus no more than 20 acres of saw logs or 40 acres of pulp wood that can be handled by the Department. He further stated this increase reflects that consulting foresters are able to make a living providing services to landowners and there are more private landowners out there. Mr. Waelchi stated that the Association of Consulting Foresters (ACF) encourages the Board to approve the proposed changes that the DNR foresters will education, inform, and encourage private woodland owners to practice sustainable management. Mr. Waelchi further stated the Wisconsin Association for Consulting Foresters position statement, of which their members agree on, is to only participate in contributing to activities which are based on scientifically based management principles and will not partake in management activities which will degrade forest health for long term productivity of the resource. He

stated that ACF members pledge not to compromise sound forest management principles for personal gain nor for the short term monetary gain of their client. He further stated that ACF members will seek to promote the incorporation of these principles when faced with documented land use changes. Mr. Waelchi stated there are two areas the ACF has concerns with in this Order. He stated both are related to the marking of timber by DNR foresters. He stated that Item D in the proposal allows DNR foresters mandatory practices under the forest tax laws which, as long as they are not being handled by cooperating consulting foresters. Mr. Waelchi stated that they have a concern about. He urged the Department to confine these activities and to either not include them or to only as the last service when all other information and education activities have been completed. He further stated that the system does not prevent abuse of misdirected activities.

Dan Kretz, of Antigo representing himself, spoke in opposition of Order FR-11-01. Mr. Kretz stated that he is President of Kretz Lumber Company employing about 165 people in the Antigo area, owning about 12,000 acres of timberland, an employee owned company. He stated that he has been a forester for 31 years. He further stated Kretz Lumber Company applauds the activities of the Department of Natural Resources in the terms of sustainable forestry and clean up the cooperative forestry list. Mr. Kretz stated there are some concerns that Kretz Lumber has. He stated the concerns they have are dealing with a set of guidelines or standards as sideboards. Mr. Kretz presented the Board members with a handout written by Patrick Moore, one of the original founders of Greenpeace, regarding definition of sustainable forestry. Mr. Kretz further stated the second concern is private landowner rights, that this is not an infringement on private landowner rights. He stated that Kretz Lumber Company views this as a mandatory program because their vision indicates that Kretz Lumber Company is committed to the benchmark of excellence. He stated that since Kretz Lumber is committed to be the benchmark of excellence it is their sense that they need to participate in a program that basically elevates them from that of their peers. Mr. Kretz read a portion from a text by John Kotar called Approaches to Ecologically Based Forest Management on Private Lands, "The management philosophy advocated by many public agencies today has become known as ecosystem management. Under this philosophy maintenance of ecosystem structure and functions becomes a primary goal where production of commodities and services is as good as a useful byproduct. However, any effort to assure sustainability and health of American forests can be expected to succeed only if private ownerships, which comprise a majority of forest land, are included. Following this reasoning, it becomes immediately obvious that for realistic application for ecological principles to forest management on private ownerships, the owners goals and management objectives must be kept in the forefront. They cannot become secondary concerns". Mr. Waelchi stated that part of his concern in this regard is if they are using sideboards to develop perimeters, he prefers to have a proactive approach. He further stated that for the foresters of Kretz Lumber Company and for himself almost anything they deal with in the auspicious of the Department of Natural Resources has a system whereby there is a variance provision where you can approach the Department of Natural Resources and get a variance provision or some sort of system saying it is all right to proceed under these auspicious that you are working under within the sideboards on a common ground. Mr. Kretz stated that he has, all along, been lobbying for a provision on a case by case basis. Mr. Kretz gave the Board members handouts to review and an invitation for them to join their Landowners meeting on September 15 in Antigo.

Pete Wagner, of Valders representing himself, spoke in favor of Order FA-11-01. Mr. Wagner stated that his reasons for favoring this order were: to provide landowners with a list of only those private foresters who have a good record on their previous management of private lands; it would substantially upgrade the overall quality of management of private lands by giving landowners some measure of assurance that the forester suggested by the DNR practices sound forestry; he has personally observed numerous examples of mismanaged woods that were improperly managed either by industrial foresters or consultants who are on the current DNR list. He stated that this is inconsistent with the DNR mission to promote good forest management; that private landowners are often in a very poor position to judge the quality of the forestry advice they receive, they rely on the DNR to assist them in sorting out good foresters from those whose only interest is in making money for their firm; that private landowners often lack the skill and knowledge to select good foresters and rely on the DNR to recommend someone they can trust. Mr. Wagner further stated his informal discussion with the DNR field foresters indicated that this change has almost unanimous support from this group. Mr. Wagner stated that he supported this agreement both individually and on behalf of his friends in the consulting community who are members of the Wisconsin Chapter of the Association of Consulting Foresters.

Mr. Behnke MOVED, seconded by Mr. Willett, adoption Order FR-11-01 - revision of Chapter NR 1.213(3)(b) and (d) and to repeal and recreate Chapter NR 1.212(1) and (2), Wis. Adm. Code, pertaining to the cooperating

forester program and private forestry priorities for assistance, as presented. The order was carried unanimously by those members present.

3.J. Retirement resolutions.

1. Charles Busch.
2. David Hall.
3. Dale Urso.
4. William Wheeler.
5. David Zeug.

Secretary Bazzell reviewed the careers of each retiree and commended them for their excellent years of service to the Department and the State of Wisconsin. Mr. Willett MOVED, seconded by Mr. Tiefenthaler, approval of the retirement resolutions, as presented. The motion was carried unanimously by those members present.

4. Board Members' Matters.

Stephen Willett - Secretary Bazzell, we are working with Beaver Dam on the lake level?

Secretary Bazzell: For the Board's information, there is a citizen petition asking us to draw down the lake level and basically we are trying to restore that as a wetland. In our meeting with the mayor, I believe we met with him this week, we are setting up a public facultative participation process right now to get public input on this issue. Certainly, it is one that is of great interest to the people of that community. As you know, Mr. Willett, there has been a great deal of controversy regarding lake levels on that body of water for many decades. As you know, while there is a petition to draw down the lake level, there has been a strong interest by others in the community to raise the lake level. We are getting inconsistent input from folks.

Mr. Willett stated there have been some unfortunate statements as to where this petition came from.

Secretary Bazzell responded that there were three individuals who moved forward with the petition, one is in fact a department employee. We have two staff that work on that body of water and neither of them are petitioners. His understanding was that the two other petitioners have withdrawn their names from the petition.

Mr. Willett stated that he has been hearing from some property owners that do not want to live on a swamp, they want to live on a lake.

Secretary Bazzell stated they would have ample opportunity to weigh in on the issue and they are going to listen to them very carefully before the Department will do anything, if anything needs to be done.

Mr. Willett further stated there are concerns about personality conflicts there. He stated that the Department would want to look at some neutral staff in to run those meetings.

Secretary Bazzell responded the Department will be bringing in a separate facilitator, a professional whose job it is to make sure that the Department has good input in the process. He stated that Ruthe Badger personally is getting involved with this process. The Department will make sure that the process has integrity and that the Department makes a fair decision. Secretary Bazzell further stated, as the legal staff have looked at the issue, it is a valid petition and by virtue the Department is required to give it to every consideration.

Mr. Willett stated it was also his understanding there is a petition to raise the water level.

Secretary Bazzell responded there are a number of debates on both sides of the issue. The issue, in terms of the lake level, has been a number of violations on the part of the city in terms of the lake level. There are a couple of structures that go actually on top of the lake and if you actually raise the lake levels, Secretary Bazzell stated that he thought they would actually start flooding buildings in the City of Beaver Dam. He stated that he understands there is a great deal of sentiment on both sides of the issue and the Department is going to take their time and listen to the public to make sure they make sound judgment.

Jim Tiefenthaler - We all received a letter from a dentist in Tomah who lives on a small lake in Jackson County and he is really having trouble getting information on permit for dredging. I want to give it to Secretary Bazzell because he makes a point in his letter that our public relation skills at returning phone calls when things get hectic, I am talking water resources, we have to do a better job of this. I have heard this for a lot of years from time to time and I think it would be very good for us to address this because it is public relation and it is doing our job.

Secretary Bazzell responded that it is an issue that the Department takes seriously. In fact, about six months ago the Department established new Department Guidelines in terms of being responsive to the public regardless of whether they call, e-mail or write us to make sure that we are getting back to the public in a timely fashion. If we have a situation where staff are not adhering to the guidelines, certainly the Department will address those issues.

Chairman Solberg - Again, I think all the property development money has been taken out of the budget. Is that true?

Secretary Bazzell responded that what is happening, not only with development money, there is a lot of earmarking as it relates to the stewardship program. Dick Steffes can speak to this when he talks about his allocation plan, at least the GPR portion, which is primarily used for parks properties. That money has been earmarked for other purposes so the Department will have to roll back with some of the development that needs to occur within our properties. Secretary Bazzell stated that the Department is very disappointed and there is significant development and maintenance work that needs to occur on our properties and with the current budget it is going to slow down some of the work that the Department would like to engage in.

Chairman Solberg responded they are the same people that have talked to me about splitting the DNR agency and how bad things are going. This same group has taken money away. It would seem to me that development, not only in the parks but in the state forest campgrounds, is the least low cost development areas that we have in the state. They are some of our real gems or jewels that we have and we have about 5,000 campsites or more all together. We could add to that it is profitable, and can be profitable. Yet they retrieve all the money. I just don't understand that. I think we should get someone in the Department to put together a report of these areas as to what it costs to develop campsites and to increase it where needed. Whether it be state parks or state forests or what other areas there are because there is a need for it. We are filling up and yet it is the least costly thing to do and the pay back is there.

Secretary Bazzell responded that as the Board knows, the issue goes beyond park property. There was a significant debate that occurred at the time of stewardship reauthorization with regard to the Department's limited capacity to maintain properties once acquired. Certainly, the Department's efforts there are hampered by some of the current budget decisions that are being made.

Chairman Solberg stated that he would like to see a performance report put together or something, to prove that it is a good business decision for us to do this. We are only doing this because there is a need. We do have the need.

Secretary Bazzell responded that what he would like to do, not just to look at the opportunity to create additional campsites within existing park facilities but also have the answers to go along with those, total shower facilities, infrastructure, showing pay back.

Chairman Solberg: We all have the report on how the Board operates, Mr. Behnke and Mr. O'Brien, by the August meeting, with our legal staff and just make a few changes. Have it ready for our August meeting.

5. Special Committees' Reports.  
None.
6. Operating Committees.
  - 6.A. Air, Waste and Water/Enforcement Committee.
    - 6.A.1. Minutes.

Mr. O'Brien MOVED, seconded by Mr. Poulson approval of the minutes as presented. The motion was carried unanimously by those members present.

6.A.2. Adoption of Order AM-16-00 - revision of Chapter NR 415, Wis. Adm. Code, pertaining to particulate matter emissions.

Lloyd Eagan, Director of Bureau of Air Management, gave a presentation on the adoption pertaining to particulate matter emissions. Ms. Eagan stated the issue involves three areas in Wisconsin (portions of the cities of Beloit, Waukesha and Milwaukee) that were designated as particulate non-attainment areas back in the 1970's. They are now in attainment but before they can be re-designated the Department needs to make sure the requirements that were placed in these areas will remain in force when they go back to attainment status so they stay in attainment. Ms. Eagan stated she felt it is a good thing to reclassify them back to attainment. Before that can be done they need to make sure they have measures in place to make sure they stay in attainment.

Mr. Tiefenthaler questioned if we were redrawing the map and if the monitoring was changing. He questioned if they are gone, will they be replaced at some future date to re-monitor.

Ms. Eagan responded they are redrawing areas that were not attainment and making them attainment. She stated they were cleaning them up.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, adoption of Order AM-16-00 – revision of Chapter NR 415, Wis. Adm. Code, pertaining to particulate matter emissions, as presented. The order was carried unanimously by those members present.

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

6.B.1. Minutes.

Mr. O'Brien MOVED, seconded by Mr. Willett approval of the minutes as presented. The motion was carried unanimously by those members present.

6.B.2. Approval of Stewardship Land Acquisition Funding Allocations for FY 2002.

Mr. Willett MOVED, seconded by Ms. Stepp, approval of Stewardship Land Acquisition Funding Allocations for FY 2002. The motion was carried unanimously by those members present.

6.B.3. Adoption of Order FH-47-00 - revision of Chapter NR 103 and creation of Chapter NR 350, Wis. Adm. Code, pertaining to wetland water quality standards and wetland mitigation.

David Siebert, Wetland Mitigation Ecologist, presented the history of wetland mitigation. He also reviewed public hearings, letters, e-mails and comments from the public. Mr. Siebert showed an overhead presentation regarding Act 147. He stated the revisions to NR 103 and the new NR 350 are in response to the requirements of 1999 Wisconsin Act 147, which passed in May 2000. The code revisions in NR 103 provide for a process that will allow consideration of wetland compensatory mitigation in state regulatory decisions. The new NR 350 sets standards and requirements for mitigation projects and mitigation banking. Mr. Siebert discussed the areas of controversy and revisions. Mr. Siebert stated this rule package includes a new rule, NR 350, which sets state requirements for mitigation projects and banking. He further stated this rule will be the basis for new statewide guidelines for mitigation that will be the basis of the proposed memorandum of agreement with the Corps of Engineers. The goal is one set of standards for both the Department and the federal agencies. The Guidelines will be completed in accordance with the new rules in NR 350.

Mr. Willett inquired as to how we were going to make the final MOA work with the federal government. He stated that the Federal Government has a classification and then a determination of what the numbers will be. We are not consistent with the Corps of Engineering and with the Department of Transportation. His understanding was that 90 percent of the parcels fall in a small or less than a quarter of an acre mitigation situation. He further

stated that when you get into larger numbers, five acres or more, then discussion has great value as a classification of wetland and what is the appropriate amount.

Mr. Siebert responded that the Corps of Engineers does not have a standard and discussions with the Corps of Engineers revealed they will accept what we have presented and they are willing to go with the one and one-half to one. The Department of Transportation, if it is not banking, it is one and one half to one.

Mr. Tiefenthaler stated that the provision would be to add a paragraph as an amendment to offer an opportunity.

Mr. Behnke inquired if we could have variance authority.

Mr. Siebert stated that he wouldn't know how they would capture which areas would qualify for a variance.

Chairman Solberg inquired as to what was being charged for banking. He stated he didn't think five acres was enough. He stated he thought it should go higher. If they are going to put a variance in, he felt it should be a larger area.

Mr. Siebert responded to mitigation banks that there are only a few in the state right now and they are into the \$10,000 to \$15,000 acre range.

Mr. Behnke inquired if there was a process in which the variance process could be abused by inconsistent application.

Mr. Siebert responded that he was not sure when a variance would start.

Mr. Edward Wilusz, ~~Director of Government Relations Executive Director~~ representing ~~the Wisconsin Paper Council the Wisconsin Owners Woodlands Association~~ of Stevens Point spoke of concerns of the adoption of Order FH-47-00. Mr. Wilusz stated that his Association's concerns are with the large sites but are satisfied with this adoption for small sites. He stated what his Association is asking for, in terms of the compensation ratio, professional discretion that allows the Department to move off of the stated ratios giving the applicant a choice. He also stated that the Association has concerns with creation. He further stated the Association is only asking for professional discretion on the part of the Department letting the applicant choose, provide flexibility in those few cases where costs can come into play in a big way with someone that has a successful track record and they can demonstrate what they can do is as good as or better than what is there.

Chairman Solberg inquired as to what Mr. Wilusz would suggest for a size. If we don't have a size limit we may be opening the door for trouble. Chairman Solberg suggested 20 acres, cut it off there and work on a variance.

Mr. Wilusz stated that the Association suggested the cutoff of acreage should be two to five acres is a typical regulatory cutoff somewhere in the five or ten acre range.

Secretary Bazzell stated the Board should make the decision with the acreage. He stated that the Department was comfortable with 20 acres.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler, adoption of Order FH-47-00 - revision of Chapter NR 103 and creation of Chapter NR 350, Wis. Adm. Code, pertaining to wetland water quality standards and wetland mitigation, as presented. The order was carried unanimously by those members present.

Mr. Willett requested to amend the motion.

Amendment:

NR 350.06 Amount of compensatory mitigation required.

(1) The department shall determine the number of acres of compensation required based on subs. (2) and (3) and shall inform the project proponent of the determination. Except as provided in subs. (2) and (3), the compensation ratio is 1.5:1, which means 1.5 acres of compensation for each acre of impacted wetland.

(2) A compensation ration of 1:1 may apply if the project proponent demonstrates to the satisfaction of the department that the following conditions are met:

(a) Credits will be purchased from a mitigation bank.

(b) The permitted project will not impact any of the follow types:

1. Deep marsh.

2. Ridge and swale complex.

3. Wet prairie not dominated by reed canary grass (*Phalaris arundinacea*) to the exclusion of a significant population of native species.

4. Ephemeral pond in a wooded setting.

5. Sedge meadow or fresh wet meadow not dominated by reed canary grass (*Phalaris arundinacea*) to the exclusion of a significant population of native species and located south of highway 10.

6. Bog located south of highway 10.

7. Hardwood swamp located south of highway 10.

8. Conifer swamp located south of highway 10.

9. Cedar swamp located north of highway 10.

(3) The department may allow a variance from the ratio in sub. (1), but no less than a ratio 1:1, if the project will involve unavoidable loss of more than 20 acres of wetland and if the project proponent demonstrates to the satisfaction of the department that the following conditions are met:

(a) The project proponent will develop a project-specific mitigation project within the same watershed as the impacted wetland.

(b) The applicant demonstrates to the department a record of past successes with wetland mitigation projects.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler, adoption of Order FH-47-00 - revision of Chapter NR 103 and creation of Chapter NR 350, Wis. Adm. Code, pertaining to wetland water quality standards and wetland mitigation, as amended. The order was carried unanimously by those members present.

6.B.4. Adoption Order FR-11-01 - revision of Chapter NR 1.213(3)(b) and (d) and to repeal and recreate Chapter NR 1.212(1) and (2), Wis. Adm. Code, pertaining to the cooperating forester program and private forestry priorities for assistance.

This item was moved after 3.I.

6.B.5. Adoption of Order FR-14-01 - revision of Chapter NR 46, Wis. Adm. Code, pertaining to stumpage value adjustments and administration of Forest Crop and the Managed Forest Law.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler, adoption of Order FR-14-01 - revision of Chapter NR 46, Wis. Adm. Code, pertaining to stumpage value adjustments and administration of Forest Crop and the Managed Forest Law, as presented. The order was carried unanimously by those members present.

6.B.6. Authorization for hearing on creation of Chapter NR 331, Wis. Adm. Code, pertaining to fish passage and fishway construction on navigable waters.

Mr. Willett MOVED, seconded by Ms. Stepp, authorization for hearing on creation of Chapter NR 331, Wis. Adm. Code, pertaining to fish passage and fishway construction on navigable waters, as presented. The order was carried unanimously by those members present.

6.B.7. Glacial Habitat Restoration land acquisition - Winnebago County.

Mr. O'Brien MOVED, seconded by Ms. Stepp, that the Board approve the purchase of 120.08 acres from Penny Reno and Merikay Warnke for \$252,000 for the Glacial Habitat Restoration area in Winnebago County, as presented. The motion was carried unanimously by those members present.

6.B.8. Lower Chippewa River State Natural land acquisition and sale - Pepin County.

Mr. Willett MOVED, seconded by Mr. O'Brien, that the Board approve the purchase of 124 acres for the Nine Mile Island State Natural area and 23.28 acres for the Lower Chippewa River State Natural area in Pepin County from Elwyn and Lu An Fae Hubbard for \$280,000, as presented. The motion was carried unanimously by those members present.

6.B.9. Rowan Creek Fishery land acquisition and partial donation - Columbia County.

Mr. Behnke MOVED, seconded by Ms. Stepp, that the Board approve the purchase of 0.28 acre from Hickory Woods Development Company, Incorporated, for \$9,000 for the Rowan Creek Fishery area in Columbia County, as presented. The motion was carried unanimously by those members present.

6.B.10. Western Prairie Habitat Restoration land acquisition - St. Croix County.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 216 acres from James and Mary Ann Johnson for \$378,000 for the Western Prairie Habitat Restoration area in St. Croix County, as presented. The motion was carried unanimously by those members present.

6.B.11. Western Prairie Habitat Restoration land acquisition - Polk County.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 209.41 acres from Jerome Anderson for \$288,000 for the Western Prairie Habitat Restoration area in Polk County, as presented. The motion was carried unanimously by those members present.

6.B.12. Prince's Point Wildlife project boundary modification and land acquisition - Jefferson County.

Mr. O'Brien MOVED, seconded by Mr. Tiefenthaler, that the Board approve the Prince's Point Wildlife Area feasibility study and environmental assessment and increase the acreage goal by 518 acres and the purchase of 518 acres from R. S. Kincaid, Incorporated for \$220,150 for the Prince's Point Wildlife area in Jefferson County, as presented. The motion was carried by a vote of 6 to 1 by those members present.

6.B.13. Kettle Moraine State Forest-Southern Unit land acquisition - Waukesha County.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 100.95 acres from Ilya Nelson for \$569,913 for the Kettle Moraine State Forest - Southern Unit, in Waukesha County, as presented. The motion was carried by a vote of 4 to 3 by those members present.

Yes

Mr. Behnke  
Mr. O'Brien  
Chairman Solberg  
Mr. Tiefenthaler

Opposed

Mr. Poulson  
Ms. Stepp  
Mr. Willett

6.B.14. Mecan River System Fishery land acquisition - Waushara County.

Mr. Tiefenthaler MOVED, seconded by Mr. Willett, that the Board approve the purchase of 100 acres from John and Catherine Frye for \$252,000 for the Mecan River System Fishery area in Waushara County and that the Board authorize the Department to modify the project boundary to include an additional 31 acres, as presented. The motion was carried unanimously by those members present.

6.B.15. Killsnake Wildlife Area land acquisition - Calumet County.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, that the Board approve the purchase of 555.45 acres from Ploechelman Trust and Albers Trust for \$959,200 for the Killsnake Wildlife area in Calumet County, as presented. The motion was carried unanimously by those members present.

6.B.16. Mirror Lake State Park land acquisition - Sauk County.

Mr. Willett MOVED, seconded by Mr. Behnke, that the Board approve the purchase of 16.1 acres from Richard Hudzinski for \$215,000 for the Mirror Lake State Park in Sauk County, as presented. The motion was carried unanimously by those members present.

6.B.17. Ice Age Trail land acquisition - Dane County.

Mr. O'Brien MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 171 acres from Dennis Midthun and Leona Midthun for \$557,460 for the Ice Age Trail in Dane County, as presented. The motion was carried unanimously by those members present.

6.B.18. Willow Flowage/Scattered Forests land exchange - Oneida, Iron and Vilas Counties.

Ms. Stepp MOVED, seconded by Mr. Tiefenthaler, that the Board approve the purchase of 1,122.63 acres for \$1,300,000 for the Willow Flowage/Scattered Forests land exchange in Oneida, Iron and Vilas Counties. This acquisition will be accomplished by an exchange for 15.2 acres of state land valued at \$1,300,000, so there will be no cash payment by either party, as presented. The motion was carried unanimously by those members present.

6.B.19. Adoption of Emergency Order FH-28-01(E) - amending s. NR 20.20 and s. NR 25.06, Wis. Adm. Code, pertaining to fishing for yellow perch in Green Bay.

Chairman Solberg presented a letter to the Board Members from Representative John Gard with regard to concerns of fishing for yellow perch in Green Bay. The letter from Representative Gard was read in full by Chairman Solberg. The letter from Representative Gard reflected his opposition to the proposed emergency rule to control harvested yellow perch in Green Bay. Representative Gard's letter stated that DNR staff stated at his Oconto meeting that there would not be rule changes in the form of an emergency rule. He also stated his concern for commercial fishing.

Chairman Solberg stated that he requested Mr. Mike Staggs, Director of Fisheries Management and Habitat Protection, to check into Representative Gard's concerns regarding the mentioned meeting. Chairman Solberg stated this wasn't one of our meetings, John Gard called the meeting. Charlie Verhoeven, Regional Water Leader, was there and he stated that he didn't say one thing about not having an emergency rule. On April 5, after the meeting, Charlie Verhoeven wrote Representative Gard a letter responding to his and his constituents concerns. Chairman Solberg read Mr. Verhoeven's letter in full. Mr. Paul Heinen tried to call Representative Gard and Representative Gard did not return his call. Chairman Solberg stated he had another letter from Mr. Charles Henrickson, who is against the emergency rule because we have the 100,000 pound rule now and it should be honored and he proposed that the 20,000 pound commercial harvest limit is too low. Chairman Solberg wanted to make the Board aware of these letters and stated that any Department employee could not go before a meeting and promise what the Board was going to do.

Mike Staggs, Director of Fisheries Management and Habitat Protection, stated that we have been on the record repeatedly that an emergency rule was something that was on the table and there are several other written

communications that reflect this and predates Representative Gard's meeting. He also stated that at the public hearings we stated that we might go with the emergency rule if it looked like there was a lot of support to act quickly and our analysis showed that it was necessary to do this. Mr. Staggs stated that the Department is bringing the same rule for emergency that was taken to public hearings and the Department has been talking all along about this. He stated there has been a lot of public discussion on this and that the Department would not bring it as an emergency if they did not think they needed to act quickly before the major bulk of the commercial fishing starts this summer to try and protect what is left of the yellow perch population. He further stated this emergency rule only lasts for 150 days assuming the legislature doesn't take action and they do not have a companion permanent rule because they want to take advantage of the 150 days to talk about it with the constituents and to look at what this late summer early fall sampling of the perch population shows. He stated this winter they would be back with a permanent rule. Mr. Staggs presented the adoption of emergency order pertaining to fishing for yellow perch in Green Bay, stating the background of the rule. He further stated the rule would reduce the sport fishing daily bag limit for yellow perch to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch. He further stated the rule also reduces the zone one (southern Green Bay) total annual commercial harvest of yellow perch from 200,000 pounds to 20,000 pounds (the current 4,655 pound commercial harvest limit for the portion of zone one that lies in Green Bay will not be changed).

Mr. O'Brien questioned recent sampling. Mr. Staggs responded the latest data was collected in the fall of 2000 trolling. He stated they wouldn't have another update on the information until they look at the commercial fishing that is going to occur.

Mr. Behnke stated that he was under the impression that emergency rules were not subject to legislative review. Mr. Staggs responded that our attorneys believe they are not subject to legislative review but the legislators believe that it is. He stated that he communicated with Representative Gard's office on Monday, June 25 with regard to some of the concerns today to try to look into the fact that this is a public process and this is not a surprise. He further stated that the Department wrote a letter to the Assembly and Senate Environment Committees and the Chairs of the Joint Committee of Review for the Governor's office that outlines this process. A copy was sent to the Board members. The legislators feel they have the authority and they might suspend this rule.

Secretary Bazzell stated there would be a push for suspending the rule.

Mr. Willett questioned what if the biomass totally collapses, what is going to happen. Secretary Bazzell responded this is what the Department is trying to address.

Mr. Staggs stated what is getting lost here is, what happens in terms of economic loss to the northeast region if yellow perch continues to collapse, which is the worse case scenario and one that we are looking at. Secretary Bazzell has committed \$200,000 of additional money which their staff is using now to better characterize the contaminants of the white perch in Green Bay. He stated they hoped that within the next six months to a year they will understand much better about the contamination's and that they can allow, if they find something, some of the commercial fisherman can switch to white perch in some parts. He stated they don't know that yet for a fact but they are taking positive steps to try and help the situation as best they can.

Secretary Bazzell stated that the arguments out there have nothing to do with science.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, adoption of Emergency Order FH-28-01(E) - amending s. NR 20.20 and s. NR 25.06, Wis. Adm. Code, pertaining to fishing for yellow perch in Green Bay, as presented. The order was carried unanimously by those members present.

Mr. Tiefenthaler stated that he received a call from an old friend that was a commercial fisherman in the Green Bay area and there are a number of people there that are subsistence fisherman. They are very concerned that if we take the quota of 20,000 pounds for their minimum catch requirements, affecting their license would be in deep jeopardy. Chairman Solberg responded that the Board has already addressed this issue. He stated their license would not be in jeopardy. Mr. Tiefenthaler stated that it should not be with the result of the rule. The concern was creating property right with the fishing license. Because of licensing concerns, a resolution was created.

Mr. Tiefenthaler read the resolution:

"Be it resolved, that the Natural Resources Board believes that the same circumstances leading to Emergency Rule FH-28-01(E) should be viewed by the Department as "unavoidable circumstances" for any Lake Michigan zone one commercial fisher who does not make the applicable minimum annual catch during the 2001-2002 license year because of the reduced harvest limit".

Mr. Tiefenthaler MOVED, seconded by Ms. Stepp, the resolution to adoption of Emergency Order FH-28-01(E), as presented. The resolution order was carried unanimously by those members present.

7. Department Secretary's Matters.

7.A. DONATION - \$15,000 from the Windway Foundation, Incorporation of Wisconsin for the Trumpeter Swan.

Secretary Bazzell presented a donation of \$15,000 from the Windway Foundation, Incorporation of Wisconsin for the Trumpeter Swan Recovery Program to help fund summer LTE positions.

Ms. Stepp inquired as to what exactly this involved. Mr. Steve Miller stated that it is to help monitor the Trumpeter Swan Program. Ms. Stepp questioned if it is not going to be forwarding the Department's original agenda of eradicating the mutes. Chairman Solberg responded this does not involve the mutes, this is trumpeters. Ms. Stepp stated they might be tied together because in that area they are trying to introduce the trumpeters and trying to get rid of the mutes. Mr. Miller responded that actually they are not. That was the strategy and part of the whole controversy. He further stated that the mute program is still focused on the central and northern part of the state. The trumpeter program is focused in the central part of the state.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, acceptance of the donation. The motion was carried unanimously by those members present.

Secretary Bazzell introduced Mr. Steve Miller for an update on the Whooping Crane Program. Mr. Miller stated that all paperwork has been cleared in Washington D.C. for the program to go forward. There will be a celebration in Washington on Tuesday, July 3, 2001. Mr. Miller presented all Board members with Whooping Crane Program pins for endorsing this project.

Mr. Tiefenthaler requested that he would like the wetland rule green sheet going up for hearing to be at our August meeting. He stated the reason is timing because if the Board passes it and it goes out to hearing, it will be done by January and that is when all the people involved need to start or we will be missing another whole year.

Chairman Solberg stated there was no action taken at the Executive Session. Chairman Solberg extended a thank you to Catherine Stepp for the evening barbecue at her home and a thank you to Kathleen Wolski for the tour and arrangements made for this meeting.

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The meeting was adjourned: 5:57 p.m.