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NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Tuesday, August 10, 2010 in the Michigan/Ontario rooms, Barker's Island Inn, Superior, Wisconsin. The meeting was called to order at 10:00 a.m. for action on items 1 – 3.A.5. The meeting recessed at 11:55 a.m.

ORDER OF BUSINESS

Tuesday, August 10, 2010

1. Organizational Matters

1.A. Calling the roll

David Clausen – present	Preston Cole – present
Jonathan Ela – present	Gary Rohde – present
John Welter – present	Christine Thomas – present
Jane Wiley – present	

Nick Milroy, 73rd Assembly District State Representative welcomed the Board and Department to northwestern Wisconsin.

1.B. Approval of agenda for August 11, 2010

Dr. Clausen MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

1.C. Approval of minutes for June 22-23, 2010

Dr. Clausen MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

Ms. Wiley MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

3. Action Items

3.A. Air, Waste, and Water/Enforcement

3.A.1 Request Adoption of Board Order DG-24-09, revisions to ch. NR 140 Wis. Adm. Code, relating to groundwater quality standards **TABLED FROM APRIL MEETING.**

Bruce Baker, Water Administrator, stated that following a discussion on the proposed aluminum groundwater quality standards at the April 2010 Natural Resources Board meeting, the Board requested that the Department review information related to those proposed groundwater quality standards and return with recommendations for any changes to the proposed standards. The Department held a meeting on May 20, 2010 with representatives of the Wisconsin Energies Corporation - We Energies subsidiary to listen to their concerns related to the proposed groundwater standards for aluminum. We Energies' concerns focus on the methodology used by the Wisconsin Department of Health Services (DHS) to develop their recommendations for aluminum groundwater quality standards. The Department requested that DHS staff review the comments and information submitted by We Energies and provide a response to the issues raised. DHS provided a written response to the Department.

Based on meetings with We Energies and reevaluation of relevant information, with input from DHS, the Department is proposing to keep the existing proposed aluminum groundwater quality Enforcement Standard (ES) value of 200 ppb. Furthermore, based on the information provided by DHS in its *Response to Comments from We Energies* document and, considering that

a scientific case can be made for a non-carcinogen based PAL (preventive action limit) groundwater standard for aluminum, the Department is proposing a PAL of 40 ppb, 20% of the proposed ES for aluminum. He requested the Board adopt Board Order DG-24-09.

Linda Knobloch, Department of Health Services (DHS) Senior Toxicologist, reviewed the Chapter 160 Groundwater Protection Standards. She then addressed the provisional peer reviewed toxicity values and regional screening levels and the 2010 World Health Organization Risk Assessment Statement. She then discussed studies on aluminum's effects in humans. She continued with the background levels in Wisconsin and summarized the toxicity data. She concluded that the proposed ES is intended to protect our groundwater as well as the health of our citizens, which is what we are all charged with doing today. DHS encouraged the Board to support this effort. **(POWERPOINT)**

Discussion followed on what the possible sources are of aluminum levels over 200 parts per billion, whether the Department has authority to clean up contaminating sources, and the possible reasoning behind why We Energies has been the only industry or utility objecting to the proposed standard.

Dr. Clausen MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

3.A.2 Request adoption of Board Order DG-23-10, creation of NR 850 and revision to NR 142 relating to water use fees

Eric Ebersberger, Water Use Section Chief, stated that this proposed rule establishes fees for persons who withdraw more than 50,000,000 gallons per year (MGY) from the Great Lakes Basin as directed by s. 281.346(12)(c), Stats. (2009 Wisconsin Act 28, the 2009-2011 biennial budget). The new statute establishes an annual fee of \$125 for all registered withdrawals statewide and directs the Department to create rules that establish fees specific to the Great Lakes Basin. The rule establishes fees based on an increasing block rate structure. The fee rate starts at \$1.50 per million gallons and increases in tiers to a maximum of \$6.00 per million gallons. The rule establishes a cap of \$9,500 for any one facility or property. Revenue from the basin specific fee will be used for Great Lakes Compact related programs including: building a water resources inventory; developing methods to monitor groundwater and surface water quantity and to assess the impacts of the withdrawals; and implementation of the registration, reporting, permitting and all other related requirements of the Compact. He requested the Board adopt Board Order DG-23-10. **(HANDOUT)**

Discussion followed on who the 250 MGY users are, the process of changing the fee structure in the future, revenue currently available for this program, and staffing concerns.

Dr. Clausen MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

3.A.3 Request adoption of Board Order DG-24-10, creation of Chapter NR 852 related to water conservation and water use efficiency for water users

Eric Ebersberger, Water Use Section Chief, stated that the proposed rule was created to establish mandatory water conservation and efficiency measures for certain types of large withdrawals and to promote voluntary water conservation for all water users. The rule creates mandatory water conservation requirements for new and increased withdrawals in the Great Lakes Basin, diversions of Great Lakes water, and new and increased withdrawals statewide that have a water loss greater than 2,000,000 gallons per day in any 30-day period. The rule categorizes withdrawals and diversions into one of three tiers. The conservation requirements increase with each tier. The rule does not require conservation for existing facilities at their current level of withdrawal nor does it require retrofitting. All persons regulated by the rule will develop a water conservation plan and implement four basic conservation and efficiency measures. He requested the Board adopt Board Order DG-24-10. **(HANDOUT)**

Discussion followed on whether there is an impact to users of water withdrawals between tiers, whether a water conservation plan is mandatory for a municipality that is withdrawing water from the Great Lakes but is not exceeding capacity, whether this proposed rule will achieve greater efficiency and less use of water, whether the Department is aware of how much water use the state is not regulating, the definition of a water use plan, whether this rule affects the Little Plover River watershed, what percentage of capacity the major withdrawers are at along Lake Michigan, what groups were represented on the advisory committee, what would be required for a municipal water supplier subject to the proposed water conservation rule, the block rate system, the need to pay more attention to Public Service Commission (PSC) rules, whether communities are for or against a rate structure that charge proportionately more for greater useage (“flipping”), and costs to municipalities for pumping.

Secretary Frank stated this proposed rule is a major step forward. The Department will continue to work on the questions and concerns raised by the Board. The framework is based on sound data. The Department is constantly working on new ways with other states in how to manage and conserve water. Businesses depend on rates and need a balance.

Discussion followed on whether other states are dealing with grandfathering in users similar to Wisconsin.

Mr. Cole MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

3.A.4 Request adoption of Board Order DG-25-10, creation of NR 856 and revisions to NR 142 relating to water use registration and reporting

Eric Ebersberger, Water Use Section Chief, stated that the proposed rule clarifies and further defines the new statewide registration and reporting requirements for large withdrawals of water and diversions of water from the Great Lakes Basin. Any person who has the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period and persons who divert any amount of water from the Great Lakes Basin must register with the Department. The rule sets forth procedures and information required for registration. All registered withdrawers are required to measure the volume of their withdrawal on a monthly basis and annually report it to the Department if they withdraw at a level of 100,000 gallons per day or more in any 30-day period. The rule identifies a range of options for measuring withdrawals including an option that allows for the tailoring of a measurement method on a case by case basis for challenging situations like aquaculture facilities. Annual reporting for each calendar year is required by March 1 the following year. He requested the Board adopt Board Order DG-25-10. **(HANDOUT)**

Discussion followed on specific location information of and unregulated use of surface water withdrawals by cranberry growers.

Secretary Frank stated that the Department is a public agency and is subject to open records law. He questioned whether changes in the rule should be made to address domestic security concerns.

Discussion followed on the proposed rule timeline.

Mr. Cole encouraged the Board to attend the public hearings.

Dr. Clausen MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

3.A.5 Request authorization for public hearing for Board Order DG-34-10, creation of NR 860, water use permitting

Kristy Rogers, Water Supply Specialist, stated that the proposed rule defines the process and procedures for the water use permit program in the Great Lakes Basin. Starting on December 8, 2011, permits are required for withdrawals that average 100,000 gallons per day or more in any 30 day period. There are two categories of permits – general and individual. General permits cover withdrawals that average 100,000 gallons per day or more in any 30-day period but that do not

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equal at least 1,000,000 gallons per day in any 30 consecutive days. Individual permits are required for withdrawals that equal at least 1,000,000 gallons per day for any 30 consecutive days. The rule establishes a procedure for the automatic issuance of permits to existing withdrawers and application procedures for new or increased withdrawals. The rule also defines the public participation opportunities within the water use permitting program. She requested the Board authorize public hearings for Board Order DG-34-10. **(HANDOUT)**

Discussion followed on what the existing permit and approval system is and how it is changing.

Dr. Clausen MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

Discussion followed focusing on how these rules relate to the Great Lakes Compact.

Secretary Frank offered the Board a full briefing on these proposed and future rules. He stated these rules are derived from the Great Lakes Compact. In the future, the Department may need to go back and ask for rule changes.

Mr. Ela recessed the meeting until Wednesday morning.

The regular meeting of the Natural Resources Board resumed on Wednesday, August 11, 2010 in the Michigan/Ontario rooms, Barker's Island Inn, Superior, Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1, 3.A.6 – 7.B.4. The meeting adjourned at 2:50 p.m.

ORDER OF BUSINESS

Wednesday, August 11, 2010

1. Organizational Matters

Mr. Ela called the meeting to order. He thanked John Gozdziwski and the northern region staff for an excellent afternoon of tours.

Dave Ross, Mayor of Superior, welcomed the Board and Department to Superior and to their part of the state. He stated they have a great relationship with the Department and northern region staff.

3. Action Items

3.A. Air, Waste, and Water/Enforcement

3.A.6 Request adoption of Board order AM-06-09, proposed rules affecting ch. NR 433 pertaining to the implementation of Best Available Retrofit Technology (BART) requirements **MOVED FROM JUNE AGENDA**

Larry Bruss, Regional Pollutant and Mobile Source Section Chief, stated that one substantive modification proposed in this rule package is to extend the final allowed compliance date to December 31, 2015. The extended final compliance date provides additional time for sources which are undergoing significant installations of air pollution control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. The Department also proposes to clarify and to provide flexibility to the averaging provisions in the rule. The additional flexibility allows an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process. He requested the Board adopt Board Order AM-06-09.

Dr. Thomas MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

3.A.7 Request adoption of Board Order AM-13-10, proposed rules affecting NR 484 and 485 pertaining to the vehicle inspection and maintenance program

Larry Bruss, Regional Pollutant and Mobile Source Section Chief, stated that the Department is proposing to expand the coverage of the inflation-adjusted (currently \$788 as of July 1, 2010) repair cost limit to all counties subject to the Inspection/Maintenance (I/M) program, thereby raising the lower limit for Sheboygan County. The Department is also proposing to repeal the emission limitations in s. NR 485.04 for the following tests since they are poor at identifying and diagnosing emission problems in today's vehicles: evaporative system integrity (pressure) test; evaporative system purge test; and steady-state tests. He requested the Board adopt Board Order AM-13-10. **(POWERPOINT)**

Dr. Clausen MOVED approval, seconded by Dr. Thomas.

Discussion followed on how many vehicles in Sheboygan County are affected by this rule.

The motion carried unanimously.

Mr. Ela noted that Larry Bruss is retiring tomorrow. He thanked Mr. Bruss for his service to the state.

3.A.8 Request adoption of Board Order AM-06-10, proposed rules affecting NR 410.05 pertaining to the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns

Bill Baumann, Compliance, Enforcement, and Emission Inventory Section Chief, stated that the 2009-2011 Budget Bill increased the fees that support asbestos activities. Inspection fees are based on the size of project and amount of asbestos involved. The revised asbestos inspection fees proposed in the rule range from \$135 (increase of \$60 over the current fee) for small projects defined as less than 160 square feet or 260 linear feet of asbestos containing material, to \$1200 (increase of \$575 over the current fee) for extra large projects defined as more than 5000 square and linear combined feet of asbestos containing material. The proposed rule also adds a new \$100 fee for review of updated asbestos notifications, and provides for charging an additional fee, equal to the inspection fee, for projects that are begun prior to submitting the required notification to the department. Historically, over 60% of projects fall into the small category, while just over 5% of projects fall into the extra large category. He requested the Board adopt Board Order AM-06-10.

Ms. Wiley MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

3.A.9 Request adoption of Board Order AM-09-10, proposed rules affecting NR 410 pertaining to fees for reviewing applications for construction of air pollution sources

Andrew Stewart, Permit and Stationary Source Modeling Section Chief, stated that this rule proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change its present policy of not collecting fees for significant review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 185.61. The last fee increase was approved in 1999. He requested the Board adopt Board Order AM-09-10.

Discussion followed on what the general registration permit issue was, whether the new source review staff are completely funded on program revenue, and whether review staff are required to go on furlough.

Dr. Thomas MOVED approval, seconded by Ms. Wiley.

Mr. Rohde requested a report on public hearing costs.

The motion carried unanimously.

- 3.A.10 Request adoption of Board Order AM-12-10, proposed rules affecting chs. NR 405 and NR 406 pertaining to permit requirements relating to non-federal class 1 areas
Andrew Stewart, Permit and Stationary Source Modeling Section Chief, stated this proposed rule will 1) Establish the Forest County Potawatomi Community (FCPC) Class I area as a non-Federal Class I area; 2) Identify the reservation land parcels of the FCPC Class I area; and 3) Identify the requirements for air permit applicants locating within the geographic areas covered in the Final Agreement. He requested the Board adopt Board Order AM-12-10. **(POWERPOINT)**

Dr. Clausen MOVED approval, seconded by Mr. Welter.

Discussion followed on who has the right to be a non-federal participant in this class-1 area, the process of building a new source if the organization is located inside the dotted line, and what the effect is of future purchases by the Forest County Potawatomi outside of the dotted line i.e. Milwaukee County.

Secretary Frank stated this proposed rule is the result of a negotiated settlement between the state and tribe and pertains to this geographic area.

Discussion followed on the relationship between this federal program requirement and the visibility rule for class 1 areas.

The motion carried unanimously.

- 3.A.11 Request adoption of Board Order AM-16-10, proposed rules affecting chs. NR 400, 404 to 408 and 484, Wis. Adm. Code pertaining to permit requirements relating to particulate matter emissions
Andrew Stewart, Permit and Stationary Source Modeling Section Chief, stated that the proposed rule reflects changes made by the United States Environmental Protection Agency (EPA) regarding the regulation of particulate matter less than 2.5 microns in size (PM2.5). The Department needs to make this change in order to retain EPA approval of Wisconsin's air permit programs. PM2.5 is proposed to be included as a pollutant used to determine whether a facility is a major source of air pollution. Additionally, increases in PM2.5 emissions will potentially trigger the need to obtain an air pollution control construction permit, including requirements to control emissions to levels which represent best available control technology or lowest achievable emission rate.

Additionally, the rule package includes some cleanup changes to otherwise unaffected existing rules. These changes are proposed to include up-to-date test methods and definitions in these existing rules. These changes do not change the effect or intent of these rules. He requested the Board adopt Board Order AM-16-10.

Dr. Thomas MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

- 3.B. Land Management, Recreation, and Fisheries/Wildlife
3.B.1 Request adoption of Board Order FH-17-09, revisions to NR ~~19~~, 20, 21, and 22, and 24 related to commercial fishing on Wisconsin-Iowa and Wisconsin-Minnesota boundary waters **MODIFIED**
Steve Dewald, Warden Supervisor – LaCrosse, stated that the proposed rule creates several new definitions to define nets that are authorized for use in commercial fishing in Ch. 29, Wis. Stats., and in chs. NR 21 and 22, Wis. Adm. Code. These are not new types of nets, but are nets that have been licensed and legal to use for many years but simply never defined like other commercial nets have been defined. This proposed rule will also correct a number of inconsistencies between NR 21 and NR 22 so that the rules which apply to commercial fishers on the Wisconsin waters of the Mississippi river will be more consistent.
- This rule would allow the use of up to 12 setlines instead of only 8 setlines on the Wisconsin-Iowa boundary waters. This change would require the department to issue 4 additional setline tags to commercial anglers operating set lines on this part of the river. There were 135 setline licenses issued for use on the waters

of the Mississippi river in 2009. It is likely that not more than half of these licensees fish on the Wisconsin-Iowa boundary waters and that the other half fish on the Wisconsin-Minnesota boundary waters. However, since the license holders would all be allowed to fish on the Wisconsin-Iowa boundary waters, this would mean a potential of approximately 135 individuals who might request the 4 additional setline tags. He requested the Board adopt Board Order FH-17-09. **(POWERPOINT)**

Mr. Welter MOVED approval, seconded by Dr. Thomas.

Discussion followed on how many commercial fishers are on the Mississippi River and if the fish in live trucks are killed before departure to market.

The motion carried unanimously.

3.B.2 Request adoption of Board Order WM-02-10, the Wildlife Management housekeeping rules package

Tom Van Haren, Administrative Warden spoke in place of **Scott Loomans**, Regulation Policy Specialist. He stated that the intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking. These changes are outlined in the rule package. He requested the Board adopt Board Order WM-02-10. **(POWERPOINT)**

Dr. Thomas MOVED approval, seconded by Dr. Clausen.

Discussion followed on the process of group hunting with a mentor and the difference between gauge and caliber.

The motion carried unanimously.

3.B.3 Request adoption of Board Order WM-04-08 related to authorizing hunting on state ice age trail areas

Peter Biermeier, External Relations and Planning Section Chief, stated that these rule revisions would authorize hunting for deer, elk, turkeys, and small game at state Ice Age trail areas after considering several factors. The trail is managed primarily as a footpath for pedestrian use. Hunting could be allowed during all hunting seasons established by the Department or more limited opportunities could be offered. This rulemaking is needed if hunting is to occur on Department-owned Ice Age trail properties because these lands are part of the state park system, where hunting is prohibited by statute unless the Department allows it by administrative rule. He requested the Board adopt Board Order WM-04-08. **(POWERPOINT)**

Tom Hauge, Wildlife Management Bureau Director, echoed Mr. Biermeier's comments that the package attempts to address the concerns of two great partner communities the Department works with: understanding the role of hunters and anglers, the conservation of our resources, as well as Ice Age Trail areas. The Department struck a good balance in this package.

Discussion followed on adding cross bow language to the rule, whether it is legal to cross an Ice Age Trail with a loaded crossbow, how many Master Plan projects are coming before the Board within the next year, the number of anticipated purchases for the Ice Age Trail, and whether there is any provision for firing across the Ice Age Trail.

Mr. Ela requested legal staff draft language changes to NR 45.09(10) to include possession of cross bows in the corridor and that no person may discharge firearms, any bow, crossbow, or airguns across the trail corridor in areas where hunting from the trail corridor is prohibited.

Public Appearances:

1. **George Meyer**, Madison, representing WI Wildlife Federation (WWF). He stated WWF's appreciation for the modifications to the proposed rule to allow a hunter to cross a trail without

the necessity of unloading his or her firearm. This recognizes that it is safer for an individual to cross the trail with a loaded firearm than having to load and unload the firearm as part of the crossing process.

He said that he does not mind clarification in the drafting language on cocked and unloaded crossbows and not allowing the shooting down or across trail if it is closed to hunting.

(Handout)

Mr. Ela asked if it is the understanding of the WWF that the rules of the adjacent public forest or property would apply to hunting from the trail.

Mr. Meyer stated it is not appropriate to include language stating that principle in the rule, but it is important that the principle should be noted in the minutes, as a public record, in case the issue is brought up in the future.

2. **Tom Gilbert**, Middleton, representing National Park Service stated their support and concerns on the proposed rule. He urged the Department and Board to be very conservative and careful in permitting “interim” hunting options, so that, to the maximum extent possible, the outcome of the master planning process does not result in a need to withdraw a hunting activity that was permitted during the “interim” period. The Ice Age National Scenic Trail should never be put into the position of appearing to be the reason for “taking away” hunting opportunities previously permitted. They recommend a process be designed to review and evaluate after 5 or 10 years the properties that have been opened to hunting to see if those decisions have served trail users and hunters well. **(Handout)**

Discussion followed on alternatives to parcel by parcel interim hunting decisions, Department goals for future IAT purchases, and how much of the proposed trail route is expected to be part of a county or other public lands.

Ms. Wiley MOVED approval, seconded by Mr. Cole.

Mr. Lutz offered the following amendments to the Board:

(1) Section 2. 45.09(1) No person may take, catch, kill, hunt, trap or pursue any wild animal or bird, or discharge any, firearm, or airgun as defined in s. 939.22 Stats., unless it is unloaded and enclosed in a carrying case, or any bow, slingshot or spring-loaded devise designed for shooting a projectile unless the same is unstrung or enclosed in a carrying case while in any state park, fish hatchery, or within 100 yards of any state campground, picnic area or other special use area designated by the department by posted notice. No person may discharge a firearm, bow, crossbow, or airgun from, on, or across any Ice Age Trail corridor which is not open to hunting.

(2) Section 2. 45.09(10) Nothing in this section shall prohibit the possession of an uncased bow, cocked and unloaded cross bow, or uncased and loaded firearm or air gun for the purpose of crossing the travelled portion of the Ice Age Trail within State Ice Age Trail areas by the shortest route possible.

Discussion followed on whether there was any controversy to the proposed amendment.

Ms. Wiley and Mr. Cole accepted as a friendly amendment.

Discussion followed on the public hearing process and the need for local input.

Mr. Ela requested the rule making procedure for determining hunting policy at existing Ice Age Trail Areas include local input by having a public meeting at a location close to the subject properties before a proposed rule goes before the Board.

Discussion followed on whether the rule must specify a 50' distance or if a broader measurement makes more sense.

The motion as amended carried unanimously.

3.B.4 Request adoption of Board Order ER-10-10, revisions to NR 29 related to endangered resources information fees

Erin Crain, Ecological Inventory and Monitoring Section Chief, stated that the Endangered Resources (ER) Review Program is responsible for implementing the state endangered species law and providing Natural Heritage Inventory (NHI) information and data to customers and DNR staff. NHI data on rare species and high-quality natural communities in Wisconsin are provided to the public in 3 ways: ER Reviews, formal NHI Data Licenses, and generalized online printouts. The Program initiated a stakeholder review in 2008, which identified customer priorities and recommendations. Many recommendations have been or will soon be implemented, including establishment of an advisory committee to the Program. Others require changes to NR 29. The program held three public hearings on the proposed changes to NR 29 which include establishment of an expedited ER Review service, requirements for training and exams prior to accessing the NHI database, creation of a certification program, and updated fees. The hearings were lightly attended, and no opposition was expressed at the hearings or in written comments. She requested the Board adopt Board Order ER-10-10. **(POWERPOINT)**

Mr. Welter MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

3.B.5 Request adoption of Board Orders WM-21-10 and WM-22-10(E), revisions to NR 10 establishing the 2010 migratory game bird hunting seasons and regulations

Kent Van Horn, Migratory Game Bird Specialist stated that Sections 1 and 4 through 8 repeal the Collins goose management zone which will be effective February 1, 2011. Section 2 of the proposed rule establishes the season length and bag limits for the 2010 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season begins at 9:00 a.m. September 25 and continues for 60 consecutive days in the north, closing on November 23. In the South the season begins at 9:00 a.m. on October 2 and continues through October 10, followed by a 5-day split, and then reopens on October 16 and continues through December 5. The daily bag limit is 6 ducks including no more than 4 mallards, of which only 1 may be a hen, 3 wood ducks, 2 scaup, 2 redheads, 2 pintails, 1 canvasback, and 1 black duck.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins, and Exterior. Other special goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Collins Zone – 65 days to include three hunting periods September 16-October 3, October 4-24, and October 25-November 19. The Horicon zone has 92 days and two periods. The first period begins on September 16 and the second on November 1. The Exterior Zone in the northern duck zone is 85 days and runs from September 18-December 11. The Exterior Zone in the southern duck zone is 85 days from September 18-October 10 and October 16-December 16. The Mississippi River Subzone runs 85 days from October 2-October 10 and from October 16-December 30. The statewide daily bag limit for Canada geese in all zones is two birds per day during the open seasons within the zones. Section 3 establishes the youth waterfowl hunting season dates.

He also noted that Supplemental Environmental Impact Statement on hunting (SEIS) occurs once every 20 years. The Department needs to submit comment by next March. He requested the Board adopt Board Orders WM-21-10 and WM-22-10(E). **(POWERPOINT)**

Public Appearances:

- 1 **Peter A. Peshke**, Madison, representing self stated that the Department and WI waterfowlers are at a multi-generational threshold with reference to planning for future duck hunting opportunities in Wisconsin. He identified four factors which warrant a broad-based re-evaluation of the framework strategy: 1) WI is the only state bordered by two Great Lakes and the Mississippi River; 2) Invasives have created an incredibly new dynamic in the bay of Green Bay and lake Michigan; 3) Massive technological changes during the past several decades

permit greater safety and comfort as duck hunters increase the intensity and range of hunting, and 4) Global warming is a variable in all of our public policy decision making with reference to natural resources. He then requested that the long tail ducks daily bag limit be lowered to four per day; to raise the daily bag limit on redheads to three per day; to extend the southern split so that the duck season ends on December 12, 2010; and to keep the exterior goose zone closed during the southern zone duck split. **(Handout)**

Discussion followed on how the Department would identify non-traditional, younger hunters.

2. **Bernard Niemann**, Hayward, representing self, stated that the seasons should be more in sync with the climate. Climate impacts how things are going to grow. It could also affect the migration of wildlife. Someone needs to write this down. The landscape will increase in temperature by 5 degrees with more hot days over 90, a longer growing season, and plants with the ability to move from southern states to WI.
3. **Jerry Merryfield**, Drummond, representing self stated that Kent Van Horn, Department staff, and the Conservation Congress Migratory Committee have thought out the season structure correctly. He agrees with the proposed 2010 regulations. It is not easy to satisfy everyone, but northern hunters need the early season to harvest early migrating birds. This is also important economically to business establishments. He requested the Board support the Department's season proposals.
4. **Dick Koerner**, Neenah, representing WI Conservation Congress (WCC) as Migratory Committee Chair stated they voted to accept the entire 2010 migratory bird hunting season rule proposal as presented by the Department. He then stated they were going to form an ad-hoc committee to discuss zone lines and splits for 2011 and will include other water fowl groups such as Wisconsin Waterfowl Association and Wisconsin Wildlife Federation. **(Handout)**
5. **George Meyer**, Madison, representing WI Wildlife Federation stated that the Federation concurs with the Department's recommendations for a 60-day duck season and a bag limit of 6 ducks per day. They also concur with the recommendations that restrict hunters to one hen mallard and allows 3 wood ducks as well as 2 scaup, 2 pintails, and 1 canvasback for the full season.

However, they do not recommend a different season start for the Southern Zone duck season. The Federation recommended a September 25-October 3 and October 16-December 5 season. This earlier start will allow hunters to take better advantage of the early migrating blue-winged teal and wood ducks, and having a combined starting date with the Northern Zone should help alleviate some of the crowding conditions experienced along the North/South Zone boundary **(Handout)**

Discussion followed on how to get more youth involved.

Mr. Welter MOVED approval, seconded by Mr. Cole. The motion carried unanimously.

3.B.6 Request adoption of Board Order LF-05-10, revisions to Ch. 45, Wis. Adm. Code, use of department properties

Michael Lutz, Staff Attorney, stated that many of the changes under consideration are "housekeeping" items to clarify existing rules. Fee increases are being considered for certain classes of campgrounds and for commercial use permits. Fees are being proposed for special event permits and boat moorage at Lakeshore State Park. A rule is being proposed to allow uncased bows and firearms when crossing the Glacial Drumlin State Trail adjacent to lands that are part of the Lake Mills Wildlife Area. Code changes are being considered that would clarify that the issuance of permits for collection of wild edibles is for personal, rather than commercial purposes and to allow removal of invasive plant species from state property without a permit.

A rule is being proposed to establish a slow-no-wake area in the "narrows" of the Dells of Wisconsin River State Natural Area for public safety reasons. A proposal is also being considered

which would prohibit launching or removing a motorboat on state property where use of motorboats is restricted by the property's master plan. A rule is being proposed to allow the Department to designate roads within northern forests as ATV routes when the use is authorized in the property master plan. A number of individual property rules are being proposed such as those governing marina operation at Lakeshore State Park, rules required for implementing the master plan at Straight Lake State Park, prohibiting target practicing at Thornapple River Sturgeon Spawning Area, closed hours for Gibraltar Rock State Natural Area, permitting dispersed camping on state-owned sandbars on the Lower Chippewa River and limiting the number of campers at the Turtle Flambeau Flowage Scenic Waters Area's new group campsite. He requested the Board adopt Board Order LF-05-10.

Discussion followed on the use of cross bows and that there is no prohibition of having an uncased cross bow in a state park or on an Ice Age Trail.

Mr. Welter MOVED approval including amendment at Section 14: NR 45.09(10) Except as provided under s. NR 10.275, nothing in this section shall prohibit the possession of an uncased bow, cocked and unloaded cross bow, or uncased or loaded firearm or airgun for the purpose of crossing the Glacial Drumlin state trail by the shortest route possible where it is adjacent to lands that are part of the Lake Mills Wildlife Area, Jefferson County, seconded by Dr. Clausen.

The motion as amended carried unanimously.

3.B.7 Land Acquisition - Kettle Moraine State Forest - Southern Unit - Waukesha County

Mr. Cole MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

3.B.8 Land Acquisition and Project Boundary Modification - Green Bay West Shores Wildlife Area - Oconto County

Discussion followed on the Department's need at this time for approving this purchase.

Mr. Welter MOVED approval including project boundary modification, seconded by Dr. Clausen. The motion carried on a 6-1 voice vote.

3.B.9 Land Acquisition and Project Boundary Modification - Statewide Natural Area - Crawford County

Discussion followed on a recent WI State Journal article on agriculture in this area, and whether the improvements to the property will be used by the Department or removed.

Mr. Rohde MOVED approval including project boundary modification, seconded by Mr. Cole.

Discussion followed on if the Department is looking at obtaining the property to the water.

The motion carried unanimously.

3.B.10 Land Acquisition - Tiffany Wildlife Area and Lower Chippewa River Natural Area - Pepin County

Mr. Welter MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

3.B.11 Easement Acquisition - Ice Age Trail - Columbia County **DELETED**

3.B.12 Land Acquisition - Ridgeway Pines Natural Area - Iowa County

Ms. Wiley MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

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3.B.13 Land Acquisition - Willow Flowage Scenic Waters - Oneida County

Mr. Welter MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

3.B.14 Land Acquisition - Pike Wild River - Marinette County

Dr. Thomas MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

3.B.15 Land Donation - Pine Island Wildlife Area - Columbia County

Mr. Welter MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

Mr. Welter thanked Columbia County for this donation.

3.B.16 Land Acquisition, Donation, and Project Boundary Modification - McMillan Wildlife Area - Marathon County

Ms. Wiley MOVED approval including donation and project boundary modification, seconded by Dr. Clausen. The motion carried unanimously.

Ms. Wiley thanked Joan Bauman for her donation made in memory of her husband, Paul Bauman.

3.B.17 Land Acquisition and Donation - Lower Wisconsin State Riverway - Richland County

Discussion followed as to who donor Elijah Linn is.

Ms. Wiley MOVED approval including donation, seconded by Dr. Clausen. The motion carried unanimously.

Dr. Thomas thanked the Steffes family. They really believe in what the Department is doing.

Ms. Wiley thanked Dick and Laurel Steffes for their donation made in the name of their grandson Elijah Lin.

3.B.18 Land Acquisition – Statewide Habitat Area – Shawano County **ADDED**

Mr. Welter MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

4. Citizen Participation – 1:00 p.m.

4.A. Citizen Participation

Public Appearances

1. **Jim Brakken**, Cable, representing the Bayfield County Lakes Forum and the Northeast WI Waters Consortium *Topic:* The phase-out of toxic lead fishing tackle. He stated that the Wisconsin Conservation Congress approved the concept of a phase-out of small toxic fishing tackle at their May, 2010 convention. He offered suggestions about softening the negative response that may follow. He recommended that a “Toxic Tackle Exchange Program” be developed to begin in the summer of 2011 that would include partner groups.
 - DNR, UWEX and LoonWatch could prepare, print, distribute education materials.
 - Wisconsin Conservation Congress delegates could promote the concept and the exchange program to local sports clubs, community groups and lake associations, etc. These delegates could also provide a list of vendors who offer non-toxic fishing tackle.
 - Local lake associations and clubs could set up *Toxic Tackle Exchange Days*. These could be single day or several day events, one or several weekends, depending on the local needs and schedules set by the lake groups. The exchange days could be coordinated with

special activities such as county fairs, meetings, July 4th festivities, celebrations, festivals and other community events. The lake association, community group or sports club could provide volunteers who would set up a small display table that provides the education information. This table would also serve as the exchange point for anyone who wishes to exchange lead tackle for non-toxic tackle. The volunteers would monitor the exchange and place the lead items into a collection container. They would also offer to trade non-toxic tackle for an equal amount of lead tackle.

- Non-toxic sinkers and jigs in a variety of sizes would be available. This tackle would be ordered in advance by the lake association, community group or sports club from a list of vendors previously provided. **(Handout)**

Mr. Ela requested Issue Coordinator Dr. Clausen work with Mr. Brakken and Department staff to look at the possibilities of his suggestions.

2. **Stacy Craig**, Mason, representing the LoonWatch Program *Topic:* Known results of lead tackle ban legislation and recommendations. She stated that research has shown lead tackle is a serious threat to wildlife, lake, and human health. Based on the survey done by MN PCA, the passing of Question 61 at the Wisconsin Conservation Congress and WDNR Spring Hearings, and countless requests from citizens for alternatives to lead tackle to be widely available, LoonWatch believes the time and opportunity to create a strong rule to phase out the use of lead tackle in Wisconsin is now.

Many states such as Illinois, Minnesota, Washington, and Montana are currently researching lead impacts to fish and wildlife. Some of what they have learned is summarized in the handout "Known Results of Lead Tackle Ban Legislation and Recommendations." While we have been depositing lead fishing tackle in the environment for a long time, pre and post ban lead mortality studies show that mortality decreases after the ban, indicating that new deposits of lead tackle are most readily ingested by wildlife. **(Handout)**

Mr. Ela requested Ms. Craig forward Amanda Baribeau's contact information to the NRB Liaison.

Discussion followed on whether this could be included on a future legislative agenda.

Secretary Frank stated fisheries and wildlife management staff are working together on a draft plan. The Department is looking at setting aside public relations funds which would focus on outreach and voluntary actions. The Department should be leading the way. Partnering with many organizations would be something the Department would be very interested in. However, at this time support for rule making is unknown.

Mr. Rohde requested that Dr. Clausen give a background summary of his report on the toxicity of lead to the Board at a future meeting.

Ms. Craig stated that in their literature review, a decrease in necropsy is due to legislation but not to outreach and education.

Discussion followed on WI Admin. Code 45 for wildlife legislation and whether the Department could ban types of lead tackle.

3. **Tom Bridge**, Superior, representing the City of Superior *Topic:* Preservation and protection of Wisconsin Point and surrounding public lands. He stated that Wisconsin Point is a 203 acre peninsula (mostly owned by the City of Superior), located in the southeast end of the city, situated between Lake Superior and the Allouez Bay. With its twin, Minnesota Point, they make up the largest freshwater sandbar in the world. The site contains approximately three miles of open sand beach and dunes, open water, small interdunal wetlands, lowland brush, mature red and white pine forest, and young deciduous upland forest. Additional facts to Wisconsin Point: Location of the port of Superior Entry, featuring a lighthouse owned by the US Coast Guard;

Allouez Bay has been identified as the largest freshwater marsh in the Great Lakes; Protected by local ordinance prohibiting industrial, commercial, or residential development; Designated as a Watchable Wildlife Area by the Wisconsin Department of Natural Resources; Designated as an Important Bird Area by the Wisconsin Bird Conservation Initiative; Home of an Ojibwe burial site, the Point was once a primary Ojibwe settlement; Single road access: Wisconsin Point Road; Uses include bird watching, hiking, beach use, fishing, duck hunting; and has served as a scientific/educational study area for a variety of disciplines. **(Handout)**

Discussion followed on the City of Superior's intent of Wisconsin Point and their request of the Board, if local public opinion has been obtained, and whether they have been in contact with the Department and/or tribal leaders regarding this property.

Mr. Frank stated the Department wants to work with the City of Superior on this. He suggested that all stakeholders be brought to the table for planning and the possibility of identifying Stewardship grant dollars, coastal management dollars that would help that process. We need to think of what we can do to really move this project along. This is a natural resources jewel that has real potential. He thanked Mr. Bridge and Ms. Morgan for their advocacy of this project.

4. **Chuck Weier**, Two Rivers, representing WI Federation of Great Lakes Sport Fishing Clubs
Topic: Current summer trap net fishing rules and regulations in Zone 3 of Lake Michigan. He requested that the Department modify the Statutes to disallow trap net fishing in Zone 3, within an area of 5 miles north and 5 miles south of harbor pier heads of the ports of Two Rivers and Manitowoc, and from the port of Sheboygan, during a period of June 1 to August 31. Aside from this restriction, trap net fishing would be allowed in the entire remaining zone 3 area. Naturally, the current 3 nets per license restriction would remain in tact for the entire June, July, and August period.

As an alternative to the above proposal, the Federation supports the total closure of trap net use anywhere within Zone 3 during the months of June, July, and August as proposed by the WI Wildlife Federation and the Northeastern WI Great Lakes Sport Fishermen Organizations. He requested the Board act without delay in order to avoid the possibility of additional losses or fatalities. **(Handout)**

5. **Michael Rusch**, Manitowoc, representing Northeast WI Great Lakes Sport Fisherman
Topic: Current summer trap net fishing rules and regulations in Zone 3 of Lake MI. He stated that a petition with 306 signatures was given to Mike Staggs at the Department. The petition requested the Board and Department close the commercial whitefish trap net season in June, July, and August and return the whitefish trap net fishery to a spring and fall fishery like it was in the past. **(Handout)**

6. **George Meyer**, Madison, representing WI Wildlife Federation (WWF)
Topic: Trap netting regulations in Lake Michigan. He stated that the WWF, the Wisconsin Federation of Great Lakes Sportsfishing Clubs, and the Northeastern Wisconsin Great Lakes Sports Fishermen petition the Natural Resources Board pursuant to section 227.12, Wisconsin Statutes and NR 2.03, Wisconsin Administrative Code for the amendment of NR 25.09(2), Wisconsin Administrative Code, regulating the placement of trap nets in Zone 3 of Lake Michigan. The modification requested is to either 1) restore the prohibition of the use of trap nets from June 28 to Labor Day of each year in Zone 3 of Lake Michigan and move the date of the closure back to May 31 of each year; or 2) restrict the placement of trap nets in Zone 3 during June, July, and August to five or more miles from the Two Rivers, Manitowoc, and Sheboygan harbors. **(Handout)**

Mike Staggs, Fisheries Management and Habitat Bureau Director presented a background on both commercial and recreational fishing in Lake Michigan. He stated that on June 25, 2010, a small boat trolling near Sheboygan entangled their downriggers in a trap net buoy line. The boat eventually capsized and one person died of a heart attack while waiting for rescuers. The trap

net was legally set and marked with proper buoys. Going forward, additional steps will be taken to remind boaters about trap nets. The Department will obtain feedback from sport and commercial fishers at a public meeting on additional outreach or regulatory actions that might be taken. The Department will report back to the Board at an upcoming meeting. The Department has received a petition with 300+ signatures and about 500 postcards. It will be reviewed once it meets legal requirements for a petition. **(HANDOUT)**

Discussion followed on putting a moratorium on removing trap nets until after this is reviewed and that the Department needs to work through a logical process.

Mr. Cole requested the Department respond aggressively to this issue.

Secretary Frank stated this was a terrible tragedy. The Department has taken this very seriously. The matter was investigated, reviewed, and the Department is taking a number of actions as a result of the review. Public safety on water is a critical part of our mission. Unfortunately, there is no easy solution for safety on the water. The goal is to never have a fatality. The Department needs to take a look at all the options.

Mr. Ela requested the Department report back in appropriate time as to what actions are being taken, and what kinds of outreach the Department has had with sport and commercial fishing organizations and others.

7. **Don Semler**, Stone Lake, representing Whitefish Lake Property Owners Association
Topic: Emergency procedures for controlling Eurasian Water Milfoil (EWM). He is looking for updated regulations to support his approach for controlling EWM: 1) early detection of any new infestation; 2) immediate response by treating or removing the plants; 3) keeping boat traffic away from the infested area to prevent its spread; and 4) continual monitoring. He is also looking for regulatory changes for emergency procedures: a) need to take action without requesting permission; b) be able to immediately mark a suspected spot with a small marked buoy for up to two weeks until plants can be positively identified; and c) if EWM is verified, be able to immediately place an emergency buoy area around EWM for a period not to exceed three weeks to allow the EWM to be treated or removed by divers. The DNR and County AIS specialist would be notified if an area is to be buoyed and again when the buoys are removed. **(Handout)**

Mr. Ela asked staff to give consideration to Mr. Semler's suggestions.

8. **Douglas Kurtzweil**, Hayward, representing Chippewa Flowage Area Property Owners Association
Topic: Regulatory Relief. He stated the current largemouth bass regulations were imposed on the Chippewa Flowage over 20 years ago with little scientific basis. Both the size limit and the season framework are arbitrary and capricious. Department staff have invested many hours and days sampling, analyzing, researching, reviewing, and compiling. They have assembled an array of compelling evidence to support the Association's request for regulatory relief per NR 20.35, Wisconsin Administrative Code. This request was submitted to the Mike Staggs, Bureau of Fisheries Management in June. To date, no response has been received.
He asked that the Department direct Mike Staggs to approve their request for regulatory relieve. If the 2010 fall survey results yield less than the minimum sustainable fishery rate of 12/mile, he asked that the necessary procedures be implemented to open the 2011 harvest season for largemouth bass on the first Saturday of May. **(Handout)**

Discussion followed on whether this was a recent spring hearings question.

Mr. Ela suggested that fisheries staff work with Sawyer County interests, including the local Conservation Congress representatives, to see what can be worked out.

5. Board Members' Matters

Mr. Ela clarified his response to Mr. Cole from the June meeting regarding distribution of Board Member roles. Board Members need to express their interests to the Issue Coordinators Dr. Clausen and Mr. Welter. They are the appropriate leads. He suggested that as each member has these expressions of interest to email the full Board for addition to a roster.

Mr. Welter presented his findings on the Crab Lake Property Owner's (CLPOA) concerns expressed by Attorney James Olson during the June 2010 Board meeting. He had toured the property, viewed documentation, and met with numerous property owners and their private forester. It is his observation that the extent of public participation with the CLPOA has been adequate and beyond that normally seen in connection with a proposed timber sale on a state forest property. Department participation has been conducted in good faith, on a civil basis, and has resulted in a number of significant changes in this sale from the original proposal.

Differences remain about whether the proposed cut in a mixed hardwood area west of Schroeder Road will result in continued domination by mixed hardwoods or regenerating aspen. Decisions on these questions and other concerns brought forward by the CLPOA can be made by the NHAL foresters using the discretion afforded them by the parameters set by the NHAL Master Plan, as well as DNR's Silvicultural Manual and Best Management Practices Field Manual for forestry.

Discussion followed as to the bottom line of CLPOA's concerns.

Mr. Ela thanked Mr. Welter for his thoroughness in his report back to the Board.

Mr. Ela stated that following discussions he had had with Land Administrator Laurie Osterndorf and Natural Resources Foundation Executive Director Charlie Luthin, the Board might consider increasing the donation minimum from \$5,000 and the land purchase threshold from \$150,000 that trigger the need for Board action. These numbers have not changed for quite a long time. In a related issue, the Board has never been in the position of approving grants. Some of the grant monies are quite large. Should the Board set approval of grants over a certain threshold? Discussion can come at a future meeting.

6. Special Committees' Reports

None

7. Department Secretary's Matters

Secretary Frank thanked wildlife staff for their work these past few years with the U.S. Fish & Wildlife Service (US F&WS) in obtaining more flexibility on duck zones. He also thanked Department of Interior Secretary Salazar and Tom Melius who is in charge of region 3.

He then recognized the passing of DATCP Secretary Rod Nilsestuen, who was a personal friend and a great friend to the environment. His Working Lands Initiative was truly visionary. and was very active in clean and renewable energy. Rod's legacy will lead on for many years.

Both rules on point and non-point that were approved by the Board in June should become effective in Early September if there are no more curves in the road. He will keep the Board posted.

He attended the US F&WS meeting and worked on obtaining support from Midwest states in an effort to delist the Gray wolf along with MN and MI.

He responded to a letter written by Senator Bob Jauch regarding the Hayward Nursery. The Department will go ahead with seedling planting which will be harvested by 2013. He credited Forestry Administrator Paul Delong and staff by taking a long look at the forestry program. Forestry is essential to Wisconsin's future. It is important to work closely with all stakeholders in the public as we lay out plans to go forward.

He then noted that staff are doing excellent work proving comments to the U.S. Department of Agriculture (USDA) on the voluntary public access program. Our goal is to submit the best application we can for Wisconsin.

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- 7.A. Retirement Resolutions
- 7.A.1 Gregory W. Kornely
- 7.A.2 Charles R. Verhoeven
- 7.A.3 Kirstie Larsen
- 7.A.4 Calvin Glessing
- 7.A.5 David F. Beer
- 7.A.6 James R. Reyburn
- 7.A.7 Richard H. Nelson
- 7.A.8 Vance L. Rayburn **ADDED**
- 7.A.9 Larry Bruss **ADDED**

Dr. Clausen MOVED approval, seconded by Mr. Welter of the retirement resolutions. The motion carried unanimously.

- 7.B. Donations
- 7.B.1 The Johnson Family Foundation will donate \$17,000.00 to the Bureau of Endangered Resources in support of the Trumpeter Swan and Piping Plover monitoring activities

Mr. Rohde MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

- 7.B.2 The Andrew F. Bell and Edith M. Bell Charitable Trust will donate \$13,936.50 to the Endangered Resources Fund

Mr. Welter MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

- 7.B.3 Polar Bears International will donate \$12,036.56 for reforestation purposes in Wisconsin

Dr. Clausen MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

- 7.B.4 Brule Preservation will donate \$6,000.00 to the Brule River State Forest for law enforcement support and public awareness activities on the Brule River

Mr. Welter MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

- 8. Information Items
- 8.A. Air, Waste, and Water/Enforcement
- 8.A.1 None

- 8.B. Land Management, Recreation, and Fisheries/Wildlife
- 8.B.1 None

Mr. Welter MOVED, seconded by Mr. Cole to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 2:50 p.m.

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