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## WISCONSIN NATURAL RESOURCES BOARD

DRAFT BRIEF OF ACTION (rev. 03/21/18)

The regular meeting of the Wisconsin Natural Resources Board was held on Wednesday, February 28, 2018 in Room G09, State Natural Resources Building (GEF 2), Madison, Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1-2 and 5-6. The meeting adjourned at 2:35 p.m.

### ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

|                                 |                            |
|---------------------------------|----------------------------|
| William Bruins – absent/excused | Gary Zimmer – present      |
| Julie Anderson – present        | Preston Cole – present     |
| Dr. Prehn – present             | Terry Hilgenberg – present |
| Greg Kazmierski – present       |                            |

1.B. Approval of agenda for February 28, 2018

**Dan Meyer**, DNR Secretary, announced the appointments of Ed Eberle as Deputy Secretary, and Pat Stevens as Assistant Deputy Secretary.

**Chair Hilgenberg** congratulated Mr. Eberle and Mr. Stevens.

**Dr. Prehn MOVED, seconded by Mr. Zimmer, approval of the February 28, 2018 agenda. The motion carried 6-0. Mr. Bruins was absent.**

1.C. Approval of Brief of Action from January 24, 2018

**Dr. Prehn MOVED, seconded by Mr. Zimmer, approval of the January 24, 2018 Brief of Action. The motion carried unanimously.**

2. Action Items

2.A. Air, Waste, Water, and Enforcement

2.A.1. Request adoption of Board Order WT-04-17, proposed rules affecting ch. NR 152, Wis. Adm. Code, related to model ordinances for construction site erosion control and post-construction storm water management **PowerPoint**

**Ms. Anderson MOVED, seconded by Dr. Prehn, approval of the department's recommendations. The motion carried unanimously.**

- 2.B. Land Management, Recreation, Fisheries, and Wildlife  
 2.B.1. Request adoption of Board Order WM-16-17, proposed rules modifying Ch. NR 10 and 45 related to minor revisions of rules for wildlife management, hunting opportunities for the physically disabled, and deer management unit boundaries

Discussion on why item 6 on the green sheet re Lake Koshkonong concealment rule is different than all the other lakes.

**Public Appearances:**

1. **Al Shook**, Oconomowoc, representing Wisconsin Conservation Congress as Vice-Chair and Migratory Bird Committee Chair (**Handout**)

Discussion on Congress's opposition to item 6 on the green sheet re Lake Koshkonong concealment rule, whether a document exists and is enforceable regarding Lake Koshkonong's lakebed, reference to a Supreme Court ruling on raising the lake level over a three-year period, and the importance of following the process that includes all stakeholders.

**Dr. Prehn MOVED, seconded by Mr. Zimmer, to approve the department's recommendations and to strike the rule to eliminate Section 9, NR 10.12(3)(em) related to Lake Koshkonong Waterfowl Concealment Rule (Item 6 on green sheet summary).**

**Dr. Prehn** stated for the record that if the Lake Koshkonong conflict proceeds, then for reasons of merit, this should go through the Wisconsin Conservation Congress process and then back to the Board. Input is needed from all stakeholders.

**The motion carried unanimously.**

- 2.B.2. Request adoption of Emergency Board Order WM-03-18(E), proposed rules affecting chapter NR 10 related to wildlife harvest management regulations

Discussion on possession of carcass, process of gifting a carcass, registering a gifted carcass, concerns of when gifting a carcass and then person with gifted deer is stopped by a warden, and whether it is in the rule that a deer carcass cannot be gifted in the field [Yes.].

**Mr. Zimmer** asked whether the department could build into the rule that the carcass cannot be gifted until it is registered [Could be addressed in permanent rule.].

Discussion on whether the department said gifting after registration could be in the permanent rule [Yes.], that the rule does not require hunters to document registration confirmation numbers, and not wanting sportsmen to be trapped in a web of violation when trying to do what is right.

**Dr. Prehn MOVED, seconded by Mr. Cole, approval of the department's recommendations. The motion carried unanimously.**

**Mr. Zimmer** and **Mr. Kazmierski** asked the department to consider language as they work through the permanent rule that a deer carcass cannot be gifted until after it is registered.

2.B.3. **Land Exchange and Easement – John Michael Kohler State Park – Sheboygan County PowerPoint**

Discussion on the current and proposed park entrance logistics, distance of campground from main entrance [Campground is located more than one (1) mile from main entrance.], recreational opportunities in the northern part of the park, staff housing, whether the department has swapped land in the past [Yes, many times. The Board has the authority to do so.], whether the park is open for year-round camping [Only a few campsites are open year-round.], NR 45 guidelines on public use, department's reasoning as to why this access point is more environmentally accessible for permits [This access has the least impact to the operations of the park and environment.], location of the current maintenance facility, location of easement, whether there is any public easement across private land, summary of what would happen if this is approved or if this is voted down, nonexclusive ingress/egress easement, usage of road to DNR maintenance shop, current maintenance shop and whether it is over used [Yes, the DNR has outgrown it.], process of obtaining appraisals, whether land swaps have historically been like this one [Every deal is different.], whether monetarily this is a good deal for the state [This is a fair deal.], ecological value of the DNR land which is closer to the lake, how much of the Kohler property to be exchanged is located within the park boundary [3 acres are inside with the rest outside park boundaries.], whether a boundary change needs to be included in this item [No. This would be done in the master plan effort.], and that the responsibility under state statute is for the DNR to use Fair Market Value (FMV) on any properties to sell, buy, or exchange [DNR attorneys worked closed with DNR real estate staff to determine FMV.].

**Public Appearances (28):**

1. **William Sasse** spoke in place of **State Representative Tyler Vorpapel**, representing 27<sup>th</sup> Assembly District (**Handout**)
2. **Connie Coley Loden**, Two Rivers, representing New North, Inc. (**Handout**)
3. **Mike Smyth**, Sheboygan, representing self
4. ~~**Todd Erickson**, **XX**, representing **XX**~~  
Not in attendance/did not speak.
5. ~~**Lee Trotta**, Sheboygan, representing Globetrotta Productions, LLC~~  
Not in attendance/did not speak.
6. ~~**Corey Polster**, Oostburg, representing self~~ REMOVED/Could not attend.
6. **Kaitlin Knudson**, Madison, representing self
7. **Rob Jansen**, Wauwatosa, representing Wisconsin State Golf Association as Executive Director (**Handout**)

8. **Jane Mueller Ungari**, Glenview, IL, representing self

Discussion on when the department can respond to whether Kohler will have any protocols in place regarding noise barriers, fumes, gas, etc. [After citizen testimony].

9. ~~**Al Fairfield**~~, Marenisco, MI, representing self

Not in attendance/did not speak.

10. **Mary Faydash**, Sheboygan, representing self **(Handout)**

11. ~~**Dale Stenbroten**~~, ~~XX~~, representing ~~XX~~

Not in attendance/did not speak.

12. **Edward Mueller**, Ridge Park, IL, representing self **(Handout)**

**Chair Hilgenberg** asked whether Mr. Mueller could share the deeds with department staff [Mr. Mueller agreed to do so.].

Discussion on when the DNR can sit down with Mr. Mueller, clarification of maintenance road that goes across Mr. Mueller's property [Entire width of road is on his property.], and whether the DNR has a legal agreement to cross his property [They have allowed the DNR to do so.].

13. **Stuart Morton**, Brookfield, representing self

14. ~~**Gail Kerr**~~, ~~XX~~, representing ~~XX~~

Not in attendance/did not speak.

15. **Robert Reuss**, Menominee Falls, representing self

16. **Carole Trone**, Madison, representing self

17. **Lucas Vebber**, Madison, representing Wisconsin Manufacturers and Commerce (WMC) as General Counsel and Director of Environmental and Energy Policy **(Handout)**

18. **Mike Kleist**, Sheboygan, representing self

19. ~~**Kim Stevenson**~~, ~~XX~~, representing ~~XX~~

Not in attendance/did not speak.

20. **Dirk Willis**, Kohler, representing Kohler Company Hospitality & Real Estate Division

Discussion as to why Kohler's proposed maintenance shed could not be sited on their property [This location would have the least environmental impact, that it could co-exist with the existing DNR maintenance facility, and there was no space on the Kohler owned land.].

**The Board** took a 15-minute break.

21. ~~**John Hernandez**, Ozaukee, representing self~~  
Not in attendance/did not speak.

22. **Darrell Hofland**, Sheboygan, representing self

Discussion on how long Mr. Hofland has been the City of Sheboygan Administrator (two years) and whether he is a lifelong citizen of Sheboygan (No, he was raised in Iowa.)

23. **Claudia Bricks**, Sheboygan, representing Friends of the Black River Forest  
(**Handout** and binder with a petition including over 20,000 names)

24. ~~**Juliee de la Terre**, Viola, representing self~~  
She was not in attendance/did not speak. (**Handout**)

25. **Eric Liljequist**, Madison, representing self (**Handout**)

26. **Mac Robertson**, Madison, representing self

27. ~~**Heather Roach**, Madison, representing self~~  
She was not in attendance/did not speak.

28. ~~**Terry Shirrel**, Sheboygan, representing self~~ (**Handout**)  
He sent regrets/did not speak.

Discussion on whether the department is discouraging public access [No.], and whether this proposal with the new easement will reduce traffic on the road.

**Chair Hilgenberg** reminded those in attendance that the Board does not take questions from the audience.

Discussion followed on the proposed access road onto the Kohler property, the current use of the maintenance facility, why the current maintenance area was chosen to be located in that portion of the park, the size of the present maintenance area [Approximately 1-2 acres.], future expansion possibilities of the maintenance facility [No expansion plans to core maintenance facility. However, may need additional storage in the future.], whether the sand dunes referenced in Ms. Black's testimony are in the SNA (State Natural Area) [No.], conservation practices on Kohler golf courses [Adhere to strictest regulations.], and questioning on the accuracy of the map on slide 2 of the PowerPoint [Map is not to scale.].

**Mr. Kazmierski bifurcated the department's recommendation and MOVED, seconded by Dr. Prehn that the 4.59-acre parcel is no longer needed for the state's use for conservation purposes and directs that the parcel be removed from the project boundary.**

Discussion on whether the maintenance area is in an environmentally sensitive area of the park [No.], consideration of future generations, present use of property as a maintenance area, that even if the Board approves this exchange the park will still be there, and that this has been an open and transparent process.

**Mr. Cole** called the question.

**The motion carried on a voice vote of 5 – 1 with Mr. Zimmer opposed.**

**Ms. Anderson MOVED, seconded by Dr. Prehn, approval of the land exchange with Kohler authorizing the conveyance of 4.59 acres of state land and the 1.88-acre access easement in exchange for the 9.5 acre Kohler land located partially in and partially out of the project boundary.**

**Dr. Prehn MOVED to include “pursuant to Wisconsin statutes 23.15 and NR 1.47(2)” in Ms. Anderson’s Motion. Maker and seconder of the original motion agreed.**

**Ms. Anderson MOVED, seconded by Dr. Prehn, approval of the land exchange with Kohler authorizing the conveyance of 4.59 acres of state land and the 1.88-acre access easement in exchange for the 9.5 acre Kohler land located partially in and partially out of the project boundary pursuant to Wisconsin statutes 23.15 and NR 1.47(2).**

Discussion on whether this land swap sets a precedent [No. Department land exchanges follow statutes.]

**Jake Curtis**, Legal Services Bureau Director, stated that department attorneys have worked closely with staff through this process and followed specific statutes.

**The motion carried on a voice vote of 5 – 1 with Mr. Zimmer opposed.**

Discussion on the importance of environmental protection and working with environmentally conscience partners.

2.B.4. Board Order FH-21-16 and Emergency Board Order FH-05-18(E) related to Lake Michigan lake trout PowerPoint

a. Request reconsideration of Board Order’s adopted as amended at the December 13, 2017 meeting

**Dr. Prehn** requested to have this rule put back on the February meeting agenda. He thought it was important to bring this back and reconsider. The Board at their December 13, 2017 meeting amended and passed this lake trout rule from the department’s recommendation of a bag limit of five (5) down to three (3). He asked the Board to talk about this, ask questions, and hear testimony. He asked the Board to reconsider this item.

**Chair Hilgenberg** stated this item has been publicly noticed. He asked the Board to engage in conversation on Board Order FH-21-16 and Emergency Board Order FH-05-18(E).

- b. If reconsideration passes, consider request for adoption of Board Order FH-21-16 and Emergency Board Order FH-05-18(E), proposed rules affecting chapter NR 20 related to the lake trout bag limit and season for Lake Michigan

**Dr. Prehn** requested that in the interest of time, for Board Members to focus their discussion on the lake trout bag limit amendment.

Discussion on 1980 study and concerns using it was difficult to base going from a bag limit of three (3) to five (5), why that biomass study is credible, whether this information (Fall survey Metric PowerPoint slide #7) was included in the department's presentation to the Board at the December 2017 meeting [No.], and that this information should be included in future important decisions, the emergency rule and permanent rule process, the 2022 sunset provision, whether the green sheet package is the same as the December package [Yes.], the year the department will obtain data from the federally funded joint survey with Michigan, Illinois, Indiana, and Wisconsin [2020.], why the department needs to wait until 2022 and not 2020 or 2021 to sunset, whether charter captains report how many fish they catch [Yes.], whether commercial fishers report how many fish they catch [Yes.], whether they report by-catch and by-kill fish [No.], creel surveys, whether this rule package incorporates Evaluation provision (PowerPoint slide #8) [Department does not recommend putting in the 75% of quota or the seven targets identified by all the other entities throughout Lake MI – see PowerPoint Slide #5-Lake Trout Assessment Metrics.], that this is all based on 82,000 fish figures from the 1980's [Department knows that the lake trout population is healthier and increasing.], harvest trends from early 1980's, the need to include in rule a cap on harvest, appreciation of the new information and assessments from the department, mixed signals from the charter fishers of a fragile fishery on the gill net study and what the charter fishers are requesting for a bag limit.

**Public Appearances:**

1. **Jason Woda**, Oak Creek, representing Reel Sensation Charters

Discussion on clarification of a fragile fishery testimony [Silver species e.g. chinook, coho, rainbow trout, are fragile but are now doing well.], that bait fish populations are a real problem and whether Mr. Woda observes that [With acoustical technology, he and other charters he speaks with see an increase in bait fish. Trending upward.], main concern in Lake Michigan is having a Lake Huron crash which is relative to predators and bait fish, and that the bait fish population is the main trend to watch and whether bait fish population is monitored.

2. **Charlie Henriksen**, Sister Bay, representing Lake Michigan Commercial Fishing Board as Chair (**Handout**) REMOVED. He can no longer attend and submitted his testimony in writing.

**Dr. Prehn** requested this item be tabled until after closed session so department staff have time to work on a motion.

**Chair Hilgenberg** agreed. This item will return before the Board following 3.A. – Citizen Participation.

**Chair Hilgenberg** requested a motion to convene into closed session under the authority of s. 19.85(1)(e) Wisconsin Statutes to discuss the Department's competitive bargaining and negotiation position with respect to a potential real estate transaction in Southeast Wisconsin.

**Ms. Anderson MOVED, seconded by Mr. Zimmer that the Board convene into Closed Session under the authority of s. 19.85(1)(e) Wisconsin Statutes to discuss the Department's competitive bargaining and negotiation position with respect to a potential real estate transaction in Southeast Wisconsin. The motion carried on a roll call vote.**

**William Bruins – absent**

**Gary Zimmer – yes**

**Julie Anderson – yes**

**Preston Cole – yes**

**Dr. Frederick Prehn – yes**

**Terry Hilgenberg – yes**

**Greg Kazmierski – yes**

**Chair Hilgenberg** reconvened the meeting at 1:00 p.m. and reported that during the closed session, no action was taken and there was no discussion about lake trout.

**Chair Hilgenberg** then moved the meeting to agenda item 3.A. – Citizen Participation.

3. Citizen Participation – 1:00 p.m.

3.A. Public Appearances

1. **Mike Arrowood**, Oakfield, representing Walleyes for Tomorrow  
*Topic: VHS fish kill in Fond du Lac County*

2. **Mike Arrowood**, Oakfield, representing Walleyes for Tomorrow  
*Topic: Request to stock walleyes in the Milwaukee River*

**Mr. Cole** questioned whether Mr. Arrowood's two items will be referred to staff. He requested the department review for an opportunity to reestablish walleye in the Milwaukee estuary.

**Mr. Zimmer** stated there may be a communication problem in the VHS issue and asked the department to reach out this week to the two groups Mr. Arrowood mentioned.

**Chair Hilgenberg** then returned the meeting to agenda item 2.B.4. related to Lake Michigan lake trout.

2.B.4. Board Order FH-21-16 and Emergency Board Order FH-05-18(E) related to Lake Michigan lake trout – CONTINUED      PowerPoint

a. Request reconsideration of Board Order's adopted as amended at the December 13, 2017 meeting

b. If reconsideration passes, consider request for adoption of Board Order FH-21-16 and Emergency Board Order FH-05-18(E), proposed rules affecting chapter NR 20 related to the lake trout bag limit and season for Lake Michigan

**Dr. Prehn MOVED, seconded by Mr. Cole, that Board Orders FH-21-18 and FH-05-18(E) establish a continuous open season and a daily bag limit of 5 lake trout in Lake Michigan and that the permanent rule would sunset beginning in 2021 unless additional rules are promulgated.**

Discussion on whether the Board needs to take a vote on 2.B.4.a. reconsideration [No. This is action that would override Board action from December 2017. Reconsideration has a time limit which has expired.].

**Chair Hilgenberg** asked for confirmation with Attorney Curtis that this motion will effectively remove the earlier proposal.

**Attorney Curtis** responded yes. In the rulemaking process, the Governor's options are to accept or reject. He has not made a decision so it is still within the discretion of the Board to take an action on the amended rule. Dr. Prehn is approaching this in the right way in providing a new amended rule with the rule that was with the Governor.].

**The motion carried unanimously.**

**Dr. Prehn** read into the record that the Board directs department staff to continue to monitor the Lake Michigan lake trout harvest. If the department determines that both of the following have occurred: 1) harvest has exceeded 75% of the current safe allowable harvest; and 2) more than half of the targets of the Lake Michigan Lake Trout Working group for Wisconsin waters are not met in a season; then the department will present a report to the Natural Resources Board describing options to sustainably manage lake trout, including rulemaking alternatives.

**Dr. Prehn** thanked the Board for revisiting this item.

**Chair Hilgenberg** thanked the department for being responsive to the Board's request.

2.C. Scope Statements

2.C.1. Request approval of the Statement of Scope for Emergency Board Order WM-18-17(E) for proposed rules affecting chapter NR 10 related to establishing the 2018 migratory bird season framework and regulations

**Mr. Zimmer** requested locations of where public hearings will be held.

**Mr. Kazmierski** requested that the Board receive rule language before it goes out for public hearing.

**Mr. Cole MOVED, seconded by Mr. Zimmer, approval of the department's recommendations. The motion carried unanimously.**

2.D. Department Wide – None

**Chair Hilgenberg** moved the meeting to agenda item 4. – Information Items.

4. Information Items

4.A. Air, Waste, Water, and Enforcement - None

4.B. Land Management, Recreation, Fisheries, and Wildlife

4.B.1. Update on Chronic Wasting Disease (CWD) Response Plan **PowerPoint**

Discussion on recommended carcass movement to county of harvest or adjacent county, common theme of disconnect at stakeholder meetings between stakeholders and hunters with the department (Meeting notes after the fact would note from staff “already doing”), map of cumulative affected counties and messaging being misinterpreted, problem with accumulated historical maps [Department will review modifying the historical maps.], why seven (7) steps in the CWD Response Plan Implementation and Progress Summary will not move forward (I. Prevent New Introductions of CWD: H, O, P, Q, R; and III. Control Distribution and Intensity of CWD: I, J) [Reasoning would be several on the list would require statutory change to be determined by the legislature.], carcass movement and deboning, importance of updating affected county map annually, hardship to hunters for deboning (Hunter cannot get deer home, must use a butcher, etc.), that “affected” county should be called a “watch” county; changing terminology and not intent so it reflects reality.

**Mr. Kazmierski** requested that the department revise terminology by replacing the word “affected” county with “watch” or “surveillance” county for a more clarifying message and so it is not transposed as an “infected” county.

Discussion on whether there is sufficient funding for kiosks and increased number of tests [Department is sitting very good as far as operational mode.], whether funding is limiting the number of surveillance areas [No, it is informed by science and efficiency.], and the CWD test kit supply [Kit is patented. The manufacturer is aware of the need. They indicated they can meet future demand.].

**INFORMATIONAL ITEM – NO ACTION WAS TAKEN**

4.B.2. Southwest Wisconsin CWD, Deer and Predator Study Update **PowerPoint**

**Chair Hilgenberg** welcomed Daniel Storm, Deer and Elk Research Scientist, as this is his first presentation to the Board.

Discussion on the longevity of positive deer.

**INFORMATIONAL ITEM – NO ACTION WAS TAKEN**

4.C. Department-Wide – None

5. Department Secretary's Matters
- 5.A. Retirement Resolutions
- 5.A.1. Rob Grosch
- 5.A.2. Tom Hvizdak
- 5.A.3. Chris Klahn
- 5.A.4. Michael J. Lietz
- 5.A.5. Terry L. Margenau
- 5.A.6. Kathy Mather
- 5.A.7. Brian D. Spencer

**Mr. Cole MOVED, seconded by Dr. Prehn, approval of the retirement resolutions. The motion carried unanimously.**

- 5.B. Donations – None

- 5.C. Department Secretary's Matters
- 5.C.1. Acts of the Department Secretary – Real Estate Transactions

**INFORMATIONAL ITEM – NO ACTION WAS TAKEN**

- 5.C.2. Department Secretary's Matters
- 5.C.2.a. 2017 year-in-review (Video)

Due to technical difficulties, the video did not play in full and will be linked to the February agenda on the Board's agenda webpage <http://dnr.wi.gov/about/nrb/>. Direct link to posted video: <https://www.youtube.com/watch?v=KiGUC2C-Fzw>.

6. Board Members' Matters

**Dr. Prehn** shared his grandfather's first hunting license which was issued in 1922 at a cost of \$1 with an added cost of 25¢ for a deer tag. It is important to know what licensing fees go towards. **PowerPoint**

**Mr. Kazmierski** requested that the Board receive current guidance documents for CDAC's as soon as possible.

**Chair Hilgenberg** noted the next meeting of the Board will be on April 11, 2018 in Madison.

**Mr. Cole MOVED, seconded by Dr. Prehn, to adjourn the meeting. The motion carried unanimously.**

\*\*\*The meeting adjourned at 2:35 p.m.\*\*\*

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