



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

### DOCUMENT ID

WW-19-012 -C

### DOCUMENT TITLE

Watershed Assessment and Management Plan for the Koshong River Watershed

### PROGRAM/BUREAU

WATERWAYS PROGRAM

### STATUTORY AUTHORITY OR LEGAL CITATION

CH. 30, WIS. STATS.

### DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

12/2/2019

### DATE FINALIZED

12/30/19

### DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

12/23/19

Signature

Date

## Irrigation and Withdrawal Individual Permit Application Instructions

### Determine eligibility for this individual permit:

- Choose an activity decision module on web, <http://dnr.wi.gov/topic/waterways>

### To apply:

- Apply online using our online ePermitting System at <http://dnr.wi.gov/permits/water>
- Include all required attachments. Each document must be less than 15 megabytes and our online system offers a help guide to reduce file sizes
- Permit processing review times begin when all of the required application materials are received by the DNR. The department may require additional information to evaluate the project.
- If you have questions regarding your application, contact the local Water Management Specialist for your county refer to <http://dnr.wi.gov/topic/Waterways/contacts.html#county>.

### Please note, prior to starting any work at the project site, you are responsible for:

- Obtain all necessary local (e.g. city, town, village or county) permits
- Obtain U.S. Army Corps of Engineer permits or approvals
- Obtain any other applicable state permits

### Public notice newspaper posting:

- As part of the permit process, it is required to publish in the newspaper as a Class 1 public notice.
- The department will prepare the Notice
- If you would like to delegate to the Department the required task of publishing in the newspaper, please select and pay the additional fee.

To find the local Water Management Specialist for your county refer to <http://dnr.wi.gov/topic/Waterways/contacts.html#county>.

### Required attachments - Forms or documents you upload in our online ePermitting System

1. **Application form** - A complete, signed application form "Water Resources Application for Project Permits (WRAPP)" (Form 3500-053)
2. **Application fee** - Payment needs to be submitted through the ePermitting System as part of the application process. A list of fees can be found at <http://dnr.wi.gov/topic/waterways/documents/PermitDocs/feesheet.pdf>.
3. **Ownership documentation** - (i.e. copy of deed, land contract, current property tax statement/receipt)
4. **Photographs** that clearly show the on-the-ground conditions of the existing project areas. Remember that too much snow cover or vegetation may obscure important details. If possible, have another person stand near the project area for size reference. Color images are preferred.
5. **Site maps** which clearly illustrate the location and perimeter of the project site, and its relationship to nearby water resources (e.g. lakes, rivers, streams, wetlands), major landmarks and roads. Provide copies of relevant maps (e.g. wetland, soil, floodplain, or zoning maps), with the project location clearly identified. The department offers a web mapping tool to assist in creating these maps at <http://dnr.wi.gov/topic/surfacewater/swdv/>.
  - Also include map with a scale of not less than 4 inches = 1 mile, showing:
    - Exact location of all applicant's property by parcel, section, township, range
    - Exact location of waterbody (stream or lake with an outlet or flowage) as it flows through the applicant's property and the point on the waterbody where the diversion will take place.

6. **Plans and specifications** that show what you intend to do. Plan drawings should be clear and to scale. Be sure to draw all plans as accurately and detailed as possible. The department reserves the right to require additional information to evaluate the project.

7. **Narrative description** of your proposal on a separate page. Please include:

- What the project is, purpose of project, and need for the project
- How you intend to carry out the project, including methods, materials, and equipment
- Your proposed construction schedule and sequence of work
- What temporary and permanent erosion control measures will be used
- The location of any disposal area for dredged or excavated materials
- For disturbances or fill, provide a description of type, composition, and quality of materials
- How you plan to avoid, minimize and mitigate impacts to waterways
- Area (e.g. linear feet) impacted

8. **Riparian owners list** - Names and addresses of the adjacent property owners.

9. **Irrigation supplemental information**

- Proposed diversion
  - Purpose: explain the purpose of the diversion, i.e. agricultural or non-agricultural.
  - Maximum rate of diversion in gallons per minute
  - Maximum acreage to be irrigated
  - How many inches of water per application
  - Dates, from and to, between which water will be diverted
  - Type of crop to be irrigated
  - Maximum number of applications anticipated in a year
- Property to be irrigated
  - Attach an attorney's opinion showing which parcels of property are riparian to the body of water involved using the chain of title test, as described on the following pages. Also indicate parcels of property to which water will be applied which are contiguous to the riparian property. The following pages also describe the allowable use of water on contiguous or non-riparian land. Attach a copy of the deed for each parcel.
- Downstream beneficial users
  - You must obtain waivers of objection from downstream irrigators, owners of hydropower dams, and municipal or industrial waste dischargers. The department will furnish the list of users to you. If a downstream beneficial user does not grant a waiver, you must agree to leave sufficient water in the stream for that user, or the application will be dismissed and a permit will not be issued.
- Legal Description of each parcel of land involved.

Parcel	Location			Indicate number of acres in parcel that are:		
	Section	Township	Range (E/W)	Owned	Leased	Tillable
<i>Example: NE ¼ of SW ¼</i>	37	68N	40E	40	-----	23

**10. Chain of title test** - The chain of title test is used in Wisconsin to determine the acreage of riparian land. Each parcel owned by the applicant must touch the stream or lake, or must be part of a larger parcel touching the stream or lake which has come down in an unbroken chain of title from the original government patent to the present owner in order to be considered riparian under this test. Two questions must be answered for each parcel:

1. Does the applicant presently own the property?
2. Does the parcel meet the chain of title test?

A parcel, once severed in ownership, cannot be considered riparian unless it touches the stream or lake, or unless its riparian rights were expressly preserved throughout all property transactions involving the parcel. Leased lands must still meet the same requirements as non-leased land and the actual owner of the leased lands must be a co-applicant for the permit.

An attorney's opinion is required to establish that each parcel meets the chain of title test. The attorney must state that he/she has examined the abstract of the title and set forth his/her conclusion regarding the riparian status of lands to be irrigated using the chain of title test. If the attorney has any questions regarding the chain of title test, he/she should contact the Department person (<http://dnr.wi.gov/topic/Waterways/contacts.html>), processing the permit for advice.

**11. Tillable acreage** - The amount of water that can be diverted for irrigation purposes is limited to the amount reasonably necessary to irrigate the tillable riparian acreage owned by the applicant. Water may be used on contiguous land (land which touches riparian land on a line or at a point) under the applicant's ownership, but the total amount of water to be diverted is limited to that necessary to irrigate tillable riparian lands.

In order to be considered tillable:

- Land must be currently under cultivation,
- Must have been used in the past for cultivation, or
- Must have the capability to grow crops without major land alterations such as extensive grading, clearing or filling.

Land which has never been tilled, but which has proper soil and topographic characteristics to permit agricultural without clearing or other major alterations may be considered tillable land, provided it is the clear intention of the applicant to use this land for crops in the immediate future. Any permit issued may contain provisions that will require such land to be put in cultivation within a specific period of time.

To demonstrate that land is tillable, the applicant must either:

1. Attach an NRCS soils map for the area, showing on the map the outline of the lands to be irrigated, and including the soil survey interpretation sheet for each soil type
2. A statement from the local NRCS office indicating the tillable acreage in the parcels involved.
3. As an alternative, if no new lands are to be irrigated, evidence that a given acreage was under cultivation in the past (aerial photos, crop reports) may be considered sufficient.

**12. Flow metering** - In order for you to remain within your maximum flow rate and total seasonal water allotment, the Department requires that you install a flow meter in the irrigation system. This meter should show instantaneous discharge as well as cumulative volume. Department personnel will visit your site from time to time to determine whether you are complying with permit requirements. Your irrigation system installer can help you locate a supplier of a suitable meter.

**13. Endangered and threatened resources** - The applicant is not required, but is encouraged to request an endangered resources (ER) review letter before applying for the permit. Information on how to obtain a review can be found by visiting the website at <http://dnr.wi.gov/topic/ERReview/Review.html>. The applicant can also visit the NHI Public Portal, <http://dnr.wi.gov/topic/ERReview/PublicPortal.html>, to determine if a full ER Review is required. Read the 'What is an ER Preliminary Assessment and what do the results mean?' section to determine follow-up steps.

**14. Historical and cultural resources** - If you are aware there is a historical or cultural resource present, you are **required** to contact the Wisconsin State Historical Society to verify and receive documentation that the activity will not result in an adverse impact to these resources.

**Stream diversion facts** – Section 30.18, Wisconsin Statutes

Statutory requirements of Section 30.18	<ul style="list-style-type: none"> <li>• A permit is required for diversion from streams or lakes with outlet streams for purposes of irrigation or agriculture.</li> <li>• A permit <b>may</b> be issued if the diversion will not injure public rights. If non-surplus water is diverted, affected riparians must consent.</li> <li>• The department determines the amount of surplus water (water not being beneficially used) available in each case after making detailed field investigations and observations.</li> <li>• The department maintains jurisdiction and may determine when diversions must cease. The department may revoke most permits if the diversion is subsequently determined to be harmful to the lake or stream or to other riparians.</li> </ul>
Riparian land	<ul style="list-style-type: none"> <li>• Only an owner or lessee of riparian land can receive a permit to divert water. Riparian land consists of parcels of land which touch the lake or stream or are part of a larger assembly of parcels which has always been conveyed as a unit since the original purchase from the government. A riparian permittee may irrigate the land which is contiguous to his riparian land.</li> <li>• The department may transfer permits to a new owner of the property</li> <li>• Amendments to permits (requests for increased water) are treated in the same manner as new applications.</li> </ul>
Beneficial uses	Beneficial uses include water used for power generation, industrial cooling, waste assimilation, public water supply, irrigation and domestic purposes. A certain minimum amount is needed to maintain water levels on streams, lakes and flowages.
The public	The public is entitled to sufficient water for stream flow, recreation, and aesthetic enjoyment. Boating, fishing and swimming are typical recreational uses.
Preservation of aquatic life and wetlands	Water is needed to maintain sufficient water volume (living space), dissolved oxygen, over and food for various aquatic organisms, including fish. Reduced flow in streams lessens the natural cleaning and flushing action, increases temperature (which reduces the oxygen content), and reduces the available cover afforded by the banks, logs, rocks, etc. It also increases competition for living space. Lowering of water levels for a prolonged period may cause temporary drainage of adjacent wetlands.
Water use conflicts	In general, there are times of the year when the need for water nears or exceeds the available supply. Some uses are non-consumptive (water is not actually lost to the stream, such as hydro-electric dams. Other uses such as irrigation are consumptive and result in diminished streamflow. To avoid future conflicts, the rights of existing permittees have to be clearly defined before new permits can be issued.

**Stream diversion facts** – Section 30.18, Wisconsin Statutes  
 (continued)

<p>Appropriation doctrine</p>	<ul style="list-style-type: none"> <li>• A Wisconsin Supreme Court Case (Omernick v. DNR) in 1976 stressed that the rights of existing beneficial users must be given priority when new applications are considered. The case held that prior beneficial users of water in effect have a property right and that they may refuse to consent to a future irrigator if they are beneficially using the water that would be diverted. Thus, prior users of water would have a “superior” right compared to a new applicant. Protection of the rights of prior users is important for many reasons, including the substantial investment normally required for many uses.</li> <li>• In a “pure” system of prior appropriation, all users of water must obtain an appropriation permit for the use of a specific quantity of water. The oldest permit in force would have the best right. As water supplies diminish, the most recent permittees must cease their use in favor of more senior users. The “pure” system of water appropriation is used in the western states.</li> <li>• In Wisconsin, the major appropriative aspect comes in the consent requirement from existing users before a new permit can be issued. However, the relative rights of existing permittees will only be looked into when complaints are received. It is possible that after a hearing, a “junior” user could be required to modify his use of water to protect the prior rights of a “senior” user. In all cases, the public right to use water is paramount to private rights.</li> </ul>
<p>Permit procedures</p>	<ol style="list-style-type: none"> <li>a. The applicant must provide a complete application including all supporting documentation.</li> <li>b. Department staff makes a detailed field investigation.</li> <li>c. The department determines the amount of surplus water available in the stream</li> <li>d. The department issues a public notice and holds a public hearing if objections are received.</li> <li>e. A Permit is issued if no objections are received. The quantity of water authorized is based on need to irrigate a certain number of tillable riparian acres.</li> <li>f. If a hearing is required, an order is issued on the basis of the record, either denying the requested authority or approving the request with appropriate environmental safeguards.</li> <li>g. All permits issued will contain conditions and may require use reports.</li> </ol>