



Wisconsin Trout

Summer 2000

Perrier's search spurs groups to action

TU keeping tabs on permit process

By Todd Hanson

Last spring's intense TU involvement to stop the Perrier Company from tapping into the Mecan River watershed is now over, but TU is keeping tabs of Perrier's ongoing water extraction activities.

Perrier continues to pursue a water bottling operation on the Big Spring in Adams Co.

This is a less sensitive watershed in that past land use has degraded the streams and wetlands, but both

have good restoration potential.

Perrier's testing plans

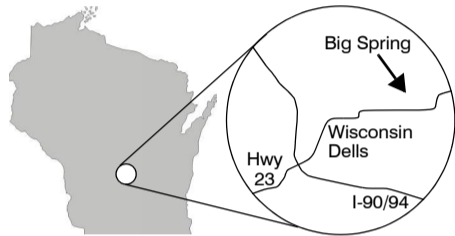
Perrier is conducting groundwater, surface water resource, and wetland testing.

The company is also monitoring for an environmental assessment.

An "environmental assessment" is not as thorough as the

rigorous environmental impact statement, but TU Midwest Conservation Director Laura Hewitt reports

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MECAN SPRINGS QUIET AMID STORM

The Mecan Springs is now out of the sights of the Perrier Company as a water source, but the company continues to explore other Wisconsin springs.

Townships vote 'no' in referendums

Two townships in Adams and Columbia counties voted against water bottling operations in non-binding referendums June 13.

The Town of New Haven in Ad-

ams County voted 290-101 to "oppose all use of water from aquifers of the town of New Haven, Adams

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Waterkeepers of Wisconsin forms to oppose unregulated water mining

By Todd Hanson

A new group opposed to large-scale water extraction in Wisconsin has been formed.

Waterkeepers of Wisconsin (WOW) formed at a meeting at the Westfield Elementary School on May 22.

Individuals attending WOW's first organizational meeting came from several smaller groups that have been individually opposing the Perrier Company's water bottling plans for two Wisconsin watersheds. These groups include:

- Central Wisconsin Trout Unlimited,
- Friends of the Mecan,
- Savin' New Haven, and
- Concerned Citizens of Newport.

WOW's adopted mission is to oppose "any taking of spring water or any other groundwater reserves that feed Wisconsin's headwaters, lakes, rivers, and streams."

The co-chairs of WOW are Jon Steinhaus from Briggsville in Columbia County and Mike Jacobi of Wautoma in Waushara County.

Dave Johnson, Wautoma, a member of Central Wisconsin TU, is on WOW's board of

directors.

- WOW's action plan includes:
- defeat Perrier's Big Spring bottling plant and water removal proposal,
 - circulate petitions opposing bottling companies from using the

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New water resources series begins this issue: Courts, trustees, and political power in Wisconsin

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Siphoning permit denial saves Sawyer Creek

By John Welter

A state administrative law judge has denied a permit which would have allowed the City of Shell Lake in Washburn County to siphon high lake water into nearby Sawyer

Creek, a Class I brook trout fishery.

The siphoning project would have been likely to ruin the stream's headwaters as a spawning ground for trout, according to an expert witness testifying on behalf of area TU chapters.

Negative effects predicted

Increased velocity was likely to scour out spawning habitat in the area where the siphoned lake water would drain into the stream, according to UW-Eau Claire Biology Prof. David Lonzarich, a salmonid specialist who studied the stream and past research data.

In addition, the comparatively heavy flows in the stream would be likely to change the shape of the stream bed to eliminate much of the vegetative cover and other structure essential for trout fry, Lonzarich testified.

The city council in Shell Lake voted to file an application for appeal in late May. According to the local weekly newspaper, city officials said the action did not mean the city will continue with the appeal, expected to cost \$3,000 to \$4,000 in attorneys' fees. The city

may try to come up with an alternate proposal, according to council members.

Shell Lake is a 2,580-acre spring-fed lake, regarded as an excellent warmwater fishery. Sawyer Creek flows from springs beginning within a quarter mile of the lake into the Yellow River, about six miles away.

The creek is a class I brook trout stream in its upper 3.6 miles, and as a mixed class II stream, with brook and brown trout, for the remaining 2.6 miles.

Much of the land adjoining the stream is publicly owned or accessible through easement, and some stream habit improvement work has been done.

Development to blame?

The lake has become almost fully developed around its nine miles of

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Wisconsin TU Directory State Council Leadership

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Northeast Region Vice-Chair: Lloyd Andrews, 8764 Brunswick Rd., Minocqua, WI 54548 (715) 356-5738

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Central Wis. Chapter (#117): Jerry Strom, 180 Cty FF, Pickett, WI 54964 (920) 235-9150 (H), (920) 589-4182 (W)

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Fox Valley Chapter (#193): Tony Treml, 318 Linwood Ln., Neenah, WI 54956 (920) 725-5925; stchnfsh@execpc.com

Frank Hornberg Chapter (#624): Jim Friedrich, 341 18th Ave. S., Wisconsin Rapids, WI 54495 (715) 423-0517; friedj@dnr.state.wi.us

Green Bay Chapter (#083): Pete Harris, 606 Night Ct., Green Bay, WI 54313 (920) 496-9556; peterharris914@cs.com

Harry & Laura Nohr Chapter (#257): Bill Wisler, 2831 Mt. Hope Rd., Dodgeville, WI 53533 (608) 623-2603; wisler@mhtc.net

Kiap-TU-Wish Chapter (#168): Brent Sittlow, 803 Kelly Rd., Hudson, WI 54016-7640 (715) 386-0820; bsittlow@presenter.com

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Wild Rivers Chapter (#415): Jeffrey Carlson, Route 1, P.O. Box 268, Mason, WI 54856-9794 (715) 765-4828

Wisconsin River Valley Chapter (#395): Herbert Hintze, 629 Hamilton St., Wausau, WI 54403 (715) 842-1365

Wolf River Chapter (#050): Herb Buettner, N4297 Buettner Rd., White Lake, WI 54491 (715) 882-8611 (W), (715) 882-8612 (H)

New chapter leader? Let TU know

Chapter leaders must inform TU National and the State Council when a new chapter president is elected. Send your name, address, phone numbers, email address, and your chapter ID number to both:

- TU National** — Wendy Reed at (703) 522-0200, or mail your information to Wendy at Trout Unlimited, 1500 Wilson Blvd., Suite 310, Arlington, VA 22209. Or email to wreed@tu.org.
- State Council** — Todd Hanson at (954) 9744, or mail your information to Todd at 819 W. Elsie St., Appleton, WI 54914-3774. Or email to thanson@vbe.com.

Visit Wis. TU on-line: www.lambcom.net/witu

Chapter meeting times and locations

Aldo Leopold: When needed or called at Beaver Dam Conservation Club, Cty. G, Beaver Dam.

Antigo: Not listed.

Blackhawk: Third Monday of the month at 7:00 p.m. at the DNR office in Janesville.

Central Wisconsin: Second Monday of the month at the Berlin Bowling Lanes, Berlin. Board meets at 6:30; program at 7:30.

Coulee Region: Every third Thursday 7 p.m. at Whitetails, 5200 Mormon Coulee Rd., La Crosse.

Fox Valley: Third Thursday of the month, 7:30 p.m., at the Gordon Bubolz Nature Preserve, 4815 N. Lynndale Dr., Appleton. No meetings June, July, and August.

Frank Hornberg Chapter: Second Thursday of the month 7 p.m. at Shooter's Supper Club, Hwy. 51 & 54, Plover. May-Sept. meetings are evening stream work events.

Green Bay: First Thursday of month (Sept.-Nov. and Jan.-May) at The Watering Hole, 2107 Velp Ave., Green Bay, 7:30 p.m. Christmas meetings/awards dinner in Dec. at site to be determined. No meetings June, July, and August.

Kiap-TU-Wish: First Wednesday of the month at JR Ranch east of Hudson on Hwy. 12 north of 1-94. Dinner at 6:30 p.m.; meeting at 8:00.

Lakeshore: Second Monday of the month, 7:30 p.m. at The Club Bil-Mar, Old Hwy. 141, Manitowoc.

Marinette County: First Tuesday of the month, 7:00 p.m., at The Dome Lanes, 751 University Drive, Marinette.

Harry & Laura Nohr Chapter: Not given.

Northwoods: Third Thursday of the month, 7:00 p.m. at Associated Bank (Community Room), Stevens at Davenport Streets, Rhinelander. No meetings June, July, and August.

Oconto River Watershed: First Wednesday of the month, 7:45 p.m., at the Lone Oak Gun Club, Hwy. 32 North, Gillett.

Ojibseau: Second Tuesday of the month, 7:00 p.m., at the Eau Claire Rod & Gun Club, Eau Claire.

Shaw-Paca: Third Thursday of the month, 7:30 p.m., alternating between Anello's Torch Lite, 1276 E. Green Bay St., Shawano, and

Mathew's Supper Club, 155 8th St., Clintonville.

Southeastern Wisconsin: Fourth Tuesday of the month. Dinner at 6:00 p.m., meeting at 7:30 p.m. at the Bavarian Wursthause, 8310 Appleton Ave., Milwaukee.

Southern Wisconsin: Second Tuesday of the month. Dinner at 6:00 p.m., meeting at 7:00 p.m. at the Maple Tree Restaurant, McFarland.

Wild Rivers: The chapter is currently in the process of changing its meeting location. Contact President Jeff Carlson for late details.

Wisconsin River Valley: First Tuesday of the month, 7:00 p.m., at the Wausau Tile Co.

Wolf River: Second Wednesday of odd-numbered months, 7:00 p.m., at the Wild Wolf Inn, Highway 55 South.

Changing addresses the correct way

The following is the proper way to inform TU of a new address.

Do not contact the State Council, your local chapter president, or *Wisconsin Trout*. Only TU National keeps a database of member addresses.

Following these procedures will ensure you don't miss any TU alerts, issues of *Wisconsin Trout*, or your chapter newsletter.

- Inform TU National.** Call, write, or email TU National. (See the contact information in the masthead below.)
- Include your ID number.** Your ID number is found on the upper left-hand corner of mailing labels attached to TROUT magazine or your chapter newsletter.
- Note new chapter affiliation.** If you are moving to a different city in Wisconsin and wish to be affiliated with the TU chapter in your area, make note of that, too. (See the chapter directory on this page for the three-digit ID numbers of Wisconsin's TU chapters.)

WISCONSIN TROUT

Vol. 12, No. 3 — July, 2000

Wisconsin Trout is the official publication of the Wisconsin Council of Trout Unlimited and is distributed to the members of Wisconsin's 21 TU chapters. Nonmember subscriptions are \$10/year. Publication and distribution dates are the first weeks of January, April, July, and October. Deadlines for articles and advertisements are the 10th of December, March, June, and September. Advertising rate sheets are available, or you may download it at www.lambcom.net/witu.

Contributions and letters to the editor are welcomed. Submit articles and returnable photos (color or b&w) to the editorial office:

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Change of Address Notices, including the member's eight-digit member ID number, must be sent directly to TU National at:

Membership Services
Trout Unlimited
1500 Wilson Blvd. — Suite 310
Arlington, VA 22209
(703) 284-9400 (fax)
wreed@tu.org

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Eau Claire, WI 54701

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1217 Cty. QQ
Mineral Point, WI 53565

John Bethke, Secretary
118 Vernon St.
Westby, WI 54667-1122

Of surveys, water, barbed hooks, and the governor's new clothes

By Todd Hanson

The past two months I've had the pleasure of helping the Wisconsin Stewardship Network conduct a survey of all Wisconsin state legislators on these two questions from last April's statewide Conservation Congress meetings:

"58. Should the Secretary of the Department of Natural Resources be appointed by the Natural Resources Board rather than the Governor?"

"59. Should the Office of the Public Intervenor be reinstated with all its powers as originally created in 1967, and with sufficient financing to allow it to carry out those powers?"

In case you didn't hear, 19 out of 20 Conservation Congress voters said "yes" to question 58. Almost 8 of 9 agreed with question 59. That's some pretty serious dissatisfaction with the status quo. If your business hired a consultant to determine customer satisfaction with one of your company's product changes and that consultant uncovered this level of customer dissatisfaction, you'd jump to react. You'd call the change a mistake, and you'd promise your customers you'll never make such a blunder again. Then you'd sit back and hope the hell everyone was still your customer next week.

Editorial

The WSN survey tried to find out how our legislators are responding to all of us "customers" now that we've had a chance to live with Governor Thompson's 1995 budget bill "product changes." Check the survey story on p. 13 of this issue and two things will strike you. First, the majority of our legislators simply refused to respond to their conservation constituents from Trout Unlimited, the River Alliance, the Audubon Society, Pheasants Forever, the Izaak Walton League, and the many other WSN member organizations.

Secondly, of the legislators who *did* respond, only six of 38 were Republicans. One wonders whether these silent Republicans are still proud of their governor's 1995 decision to politicize the DNR, or whether they would rather no one points out that they sat around a table agreeing with the governor that "New Coke" is a great idea.

I encourage you to ask your local state legislators to pay attention to their customer — you — on restoring DNR independence. The DNR employs our frontline water protection stewards, and we need to keep these folks from being leaned on by those who would take our water resources first and ask questions about the impacts later.

A good place to start would be for Rep. DuWayne Johnsrud to allow a DNR restoration bill to come up for a vote instead of blocking them. Johnsrud apparently feels that if no one in the state assembly votes, no one can tell the governor that his new clothes are invisible. Instead, Johnsrud has tailored a barbless hook bill to convince us the legislature is weaving fine cloth. But compared to giving our DNR the political insulation it needs to regulate Perrier and the others who will surely come to drain the very water out of our trout streams, worrying about barbless hooks seems downright trivial. Signed, customer.

Do not underestimate Perrier's threat

Editor,

Here are my thoughts on the Perrier situation. Since this company is primarily interested in bottling spring water, it will continue to investigate sites in Wisconsin which meet that set of criteria. Since many, if not most, significant spring water sources in Wisconsin are, not surprisingly, associated with coldwater communities, this means that the chances of a Perrier

bottling plant not affecting a trout stream are very slim indeed.

Because of this intimate relationship between spring systems and trout-bearing waters, it would seem to me that TU should be opposing any and all large-scale spring water bottling operations in the state until and unless the state establishes adequate legislation to protect these delicate resources from exploitation. Granted, Perrier has



claimed that it will operate any bottling plant in Wisconsin in an environmentally friendly manner. Nonetheless, as others have repeatedly pointed out, this company's track record is far from spotless.

Lest anyone forget, Perrier is not planning to construct a plant here for the purpose of protecting our resources. In plain terms, their goal is the removal and bottling of our state's resources for profit. Period.

It is also worth remembering that the operations Perrier has proposed would involve the transporting of spring water from a variety of sources within, as I recall, a 50-mile radius of their bottling facility. This translates into numerous impacts within a 100-mile wide circle, which is a very, very large area.

Also, there is absolutely no reason to believe that the company plans to limit their operations to a single bottling plant. If huge profits can be reaped by bottling a free resource, why would any profit-driven enterprise pass up other lucrative opportunities in Wisconsin? Anyone who doubts this possibility might ask themselves why Perrier is performing test drilling at numerous sites across the state of Wisconsin.

Another point worth considering is

Why didn't legislature act on water bill?

Editor,

State government has me puzzled. The relentless search for free Wisconsin spring water by Swiss-based Perrier Group has brought out all the ugliness of state politics at the capitol in Madison.

I've asked myself, why would we want to rob the fragile central sands region of Adams, Marquette, and Waushara counties of their priceless ground and surface water for the sake of a few relatively short-term jobs?

Moreover, why would Rep. Neal Kedzie (R), the Environment Committee chairman, refuse to hold an immediate public hearing on Senate Bill 414, thereby effectively killing this helpful piece of legislation? It was designed to give the state new authority to protect Wisconsin's water by denying high-capacity, non-agricultural well permits where certain delicate aquatic and terrestrial systems might be harmed.

Didn't SB 414 pass the Senate

that once a particular activity legally establishes itself in the state, it is extremely difficult to alter the conditions it operates under. Perrier is currently looking for a less politically sensitive area to start up operations in the state. Let's not imagine that this decision was truly based on environmental sensitivity.

Personally, I think TU should take a hard line on this issue by stating that we oppose any operation of this type on the scale proposed until Wisconsin has implemented the safeguards needed. If Perrier just can't wait — too damned bad.

Our state is not going to go belly up without some water bottling operation that promises a handful of jobs. If this company is really operating in good faith, it can wait until Wisconsin is ready. The water will still be here, or so we hope.

The new coalition, Waterkeepers of Wisconsin (WOW), has been formed as a statewide effort to address this issue. If this coalition is functioning responsibly, it should have TU as an active participant. Our claimed "victory" on the Mecan will look a bit hollow if this company runs an end play around that single minor roadblock.

Stu Grimstad
Amherst Junction, WI

unanimously on March 14? It ought to be a no-brainer for Rep. Kedzie, whose office, incidentally, answers to telephone number (888) 534-0043, and for Assembly Speaker Scott Jensen (R), whose office phone is (888) 529-0032.

And, how useful it would be if Governor Tommy Thompson broke his silence on the water extraction issue to give his full support to SB 414 and urge Perrier to find a more appropriate place for its unseemly profiteering.

Perhaps there's a message here, maybe two of them, and our leaders might do well to take note. First, they should understand clearly that our water resources are invaluable to the people of this state, and that we will not tolerate compromising them in the interests of political game-playing.

And, second, it just occurs to me that we've recently crossed the threshold of Election Year 2000.

Don Vorpahl
Hilbert, WI

Wisconsin Trout Unlimited Membership Summary											
Chapter	Number	Counties/Areas	Membership								
			1/92	1/93	1/94	1/95	1/96	1/97	1/98	1/99	1/00
Wolf River	50	Bordering Wolf River Trout Water	48	63	79	79	74	69	59	48	47
Southern Wisconsin	61	Dane & Jefferson	348	432	409	454	508	500	526	564	588
Southeast Wisconsin	78	Washington, Ozaukee, Waukesha, Milwaukee, Walworth, Racine & Kenosha	246	312	302	334	357	404	419	454	542
Green Bay	83	Brown & Door	172	189	172	177	178	166	145	174	206
Central Wisconsin	117	Adams, Waushara, Marquette, Green Lake, Fond du Lac & Winnebago	169	198	190	178	174	183	174	182	200
Kiap-TU-Wish	168	Polk, St Croix, Pierce & Pepin	126	146	128	136	153	163	177	196	201
Fox Valley	193	Outagamie	200	210	191	185	191	201	208	206	200
Ojibseau	255	Buffalo, Eau Claire, Clark, Jackson, Trempeau, Chippewa, Dunn, Barron, Rusk	104	128	111	135	121	115	134	148	179
Northwoods	256	Forest, Florence, Oneida & Vilas	48	58	59	64	73	87	104	71	91
Harry & Laura Nohr	257	Grant, Iowa, Lafayette & Crawford	41	49	35	33	27	59	73	76	95
Coulee Region	278	La Crosse, Monroe, Juneau, Vernon & Richland	51	56	44	46	64	99	114	106	114
Antigo	313	Langlade	27	44	44	40	42	34	31	30	31
Aldo Leopold	375	Columbia, Dodge & Sauk	47	51	41	34	38	48	58	51	58
Shaw-Paca	381	Shawano & Waupaca	66	67	57	66	63	61	59	67	69
Oconto River	385	Oconto River Watershed	64	79	69	75	92	111	103	88	80
Blackhawk	390	Green & Rock	93	102	83	86	91	96	112	108	130
Wisconsin River Valley	395	Lincoln, Marathon, Price, & Taylor	83	83	59	80	83	84	103	116	119
Wild Rivers	415	Douglas, Bayfield, Ashland, Iron, Burnett, Washburn & Sawyer	35	43	43	43	45	50	81	71	102
Marinette County	422	Marinette	61	70	61	60	71	71	71	64	61
Lakeshore	423	Manitowoc, Kewaunee, Sheboygan & Calumet	77	74	77	84	91	99	130	89	117
Frank Hornberg	624	Portage & Wood	27	39	53	63	82	116	112	109	133
TOTAL			2133	2493	2307	2452	2618	2816	2993	3018	3363

Grulke resigns state council treasurer post

After serving five years as treasurer of Wisconsin Trout Unlimited, Forrest Grulke of Appleton has resigned from that post.

The State Council is actively seeking an individual to contribute at the state TU level in the position of treasurer.

Interested volunteers should contact a present State Council officer to express their interest.

Forrest also acted as state banquet coordinator. He was awarded an "Unsung Hero" award for his contributions to the council at the 2000 state banquet.

Volunteers are also needed to assist with the State Council's annual banquet.

The 2001 state banquet is tentatively scheduled for February 3, 2000, at the Oshkosh Convention Center in conjunction with the annual meeting of Wisconsin Trout Unlimited.

TU national convention August 9-13

Wisconsin Trout Unlimited members are invited to attend the TU year 2000 national convention (TU2K), which will launch TU into the new millennium.

The Iroquois Chapter and the New York State Council of TU are hosting the convention with major sponsorship by the Cortland Line Company.

TU2K will take place August 9-13, 2000, in Syracuse, New York. With over 20,000 TU members within a day's drive of Syracuse, the convention is likely to attract over 400 TU members.

Syracuse and Central New York offer a wealth of vacation fun for families. Vacation and sight seeing within and around Central New York include Niagara Falls, the Baseball Hall of Fame in Cooperstown, the Finger Lakes, wineries, Adirondacks lakes and mountains, the Thousand Islands, and Lake Ontario.

In addition, many informal spouse and children activities in Onondaga County may be arranged during the convention.

Fishing opportunities in New York State are diverse and include Adirondacks lakes, central New York creeks and rivers, the Finger Lakes and Great Lakes, and the world famous BeMoc/Delaware watershed.

TU members from throughout the state will staff a fishing center to help arrange free hosted fishing trips for out-of-state visitors.

For detailed information about TU2K, consult *Trout* magazine. Or visit the Iroquois Chapter web site at www.geocities.com/Yosemite/Gorge/8232/, or visit TU National's web site at www.tu.org.

From the Chairman

Memorable moments on the water

By John Welter

It's time to go fishing. This issue, I invite you to join me on a vicarious angling trip, to share a group of relived moments and experiences from the first part of the 2000 trout season.

Reviewing my journal notes, I find those outings so far sum up what attracts me about the sport that trout provide, with one exception.

It started unseasonably warm, for me, on a sunny 69-degree afternoon the first week in March, on a stream 20 minutes from home, with Sterling Rashke, a young UW-Eau Claire student who plans on a career as a conservation warden. The trout seemed confused by the warmth of the day, as was I, and I caught a single four-inch brown on a one-and-a-half inch fly.

While the local warden checked anglers above us and ticketed two for using barbed spinners, Sterling and I alternated holes and savored the balmy day. I explored a half-mile of water upstream that I had not fished before, and found it in need of stream habitat work, possibly a future site for a chapter project.

A weekend later, my brother Joe, a TU member from Marshfield, and I explored well-known water at Seven Pines Lodge in Burnett County, the site where TU's classic film, *The Way of a Trout* was filmed in the mid-1960s. It's a lovely wooded valley with well-cared-for water. We enjoyed a weekend there with our wives, with excellent meals and hospitality and a chance to angle for a couple of hours. Joe tempted a nice brown from under a bank after surgically probing it with a Prince nymph on a score of casts, and we found brooks and rainbows as well.

Gusty winds hampered the next couple of outings, both on Chippewa County brook trout streams. The good times on those streams are when you can actually rest a fly on the water. When I have to cast four feet left of the water to land the fly on a two-foot wide channel, the trout have nothing to worry about. Still, at the end of the second trip my sister Betsy and I finally enjoyed some calmer weather, caught a number of brookies and sat and caught up with each other as a nearby herd of Holsteins headed back to the barn for milking time.

My friend Steve, a teacher, and I have developed a sort of tradition when we go fishing: We forget things. Last summer, I remembered flies, vest, and license, but forgot a rod. He loaned me his son's rod from the pile of gear in the back of his van. This spring, he remembered two rods but forgot his vest, so I kept him in flies, tippet, nontoxic shot, etc., for a day on coulee streams in Vernon County.

Two weeks later, I forgot my own vest when I traveled to Dodge County to join the Harry & Laura Nohr Chapter for their banquet and

a Saturday's fishing on a couple of their lovely meadow streams. Fortunately, one of my fly-tying teachers, Larry Meicher of the Southern Wisconsin Chapter, loaned me enough flies (Pass Lake dries, Pass Lake wets, Pass Lake nymphs, etc.) to get me through the day. He even showed how to use them as he netted a brown of over 27 inches on a Pass Lake dry (of course).

Our guide for the morning, Brian Larson of Cassville, consistently took fish in the places he knew they were and I was just certain they weren't. I guess that's why he was the guide.

New water tempts me every season, and so far this year I've explored several stretches new to me in Jackson, Trempealeau, Pierce, and Chippewa counties. Three of those waters have been the sites of stream habitat work, and a fourth is a promising candidate for both public purchase and a stream project. A fifth, sadly, was badly silted in and treacherous wading. At one point, I thought I'd leave both hip boots in the muck as I pulled myself hand-over-hand up an overhanging tree branch.

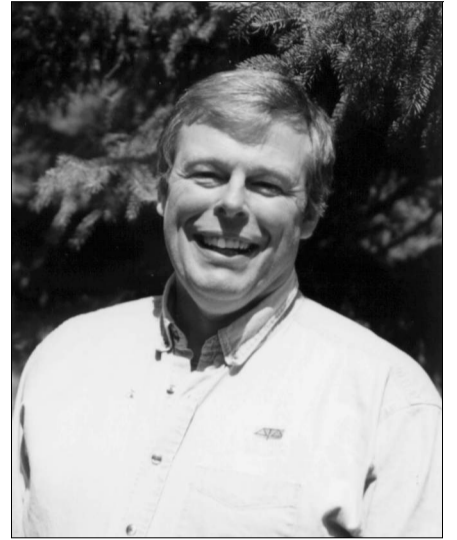
A lightning storm, at first in the distance and then, suddenly, all around me, blew me off a Chippewa County brook trout stream. A solid brookie of about 12 or 13 inches pounced from under a bank cover, installed a week before, to take a Royal Wulff on a sunny afternoon. A panicky retracing of my steps helped me retrieve a box of over 200 nymphs that had fallen out of an open vest pocket.

Two friends, John Koch of Spring Valley and Phil Odden of Barronett, gave me lessons in stream reading one evening on a well-known and hard-fished Pierce County stream, with John landing two rainbows of 16 and 17 inches and Phil hooking a brown of over 20 inches. It's instructive to fish with a partner who knows every square inch of a stream and what lives there, even when I try to throw him off by suggesting that it's not worth casting into.

And finally, on our most recent holiday afternoon, when I found a couple of hours of free time, our most local stream was very, very good to me, as the saying goes. A threatening thunderstorm had gone elsewhere, and my family found plenty with which to busy themselves, so I snuck upstream from the bridge where everybody congregates to the wild water shaped just right for a left-handed wrist caster. There, browns and brooks took sulfur emergers in every bend and riffle, and I tied on my Wisconsin favorite: Sid Gordon's Dry Fly, which I fished wet below a Sulfur Comparadun. The orange-bodied, white-hackled fly doesn't resemble either nymph or emerger, but the trout loved it for a busy hour.

There you have it: Exploration, with some places to revisit and some not to bother with. Heritage and

family. Getting nearly skunked, but in wonderful places. Humor. Good company. Finding just the right pattern at the right time, but not doing it so often that it's not appreciated. Notable fish, though no trophies. Good and memorable experiences.



John Welter

And, just think, the season is only half over. I hope to be able to share some time astream with my 17-year-old son, Karl, if his schedule permits (which would seem to rule out any morning fishing, or evening, for that matter). I hope you enjoy yours, too.

§

Wisconsin Trout Unlimited is seeking volunteers for a number of important roles in our organization. You may be the perfect person to step up to fill one of these:

State Treasurer — This individual is responsible for managing the council's budget and checkbook and reporting to the council three to four times a year. It's not a time-consuming task, but it is an important one. If you have acted as a chapter treasurer or have book-keeping skills, please consider volunteering for this role, which should demand no more than three meetings and a few hours a month.

Banquet Committee — The 2001 State Banquet is tentatively set for the Oshkosh Convention Center (same site as the last several years), for February 3, 2001. We seek 5-10 individuals who can split up the banquet organizing into manageable chunks. If you can contribute from 3 to 40 hours to work on a portion of this task, please let us know.

National Resource Board delegates (2) — These are our state's contributors to setting TU's national agenda. Through the national resource agenda, we decide where to put the organization's people and other resources to work on specific issues — dams, in-stream flows, mining, endangered species, etc. This job requires one meeting a year, an ongoing interest in salmonid conservation at the national level, and preferably a willingness to participate at the TU National Convention each August, wherever it is held. Again, please let us know if this task fits your interests.

New presidents elected

Several new local TU chapter presidents have been elected this spring by the state's 21 chapters.

New chapter leaders include:

Blackhawk — John Miller succeeds Dick Alfors. Miller can be reached at P.O. Box 893, Janesville, WI 53547 (920) 563-9085.

Central Region — Jerry Strom succeeds Jack Wahlers. Strom lives at 180 Cty FF, Pickett, WI 54964 (920) 235-9150 (H), (920) 589-4182 (W).

Fox Valley — Tony Tremml succeeds Dean Simon. Tremml's address is 318 Linwood Ln., Neenah, WI 54956 (920) 725-5925; stchnfsh@excepc.com.

Harry & Laura Nohr — Bill Wissler succeeds Charles Steudel. Wissler is at 2831 Mt. Hope Rd., Dodgeville, WI 53533 (608) 623-2603; wissler@mhtc.net.

If your chapter leadership has changed, please inform Chairman Duke Welter at (715) 831-9565.

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State Council meets at former trout hatchery

By John Bethke

The April 29 State Council meeting was held at Silver Springs Supper Club near Plymouth, WI, hosted by the Lakeshore Chapter.

Silver Springs is an interesting location. The property contains numerous springs near the headwaters of the Onion River. These springs have been connected through a series of ponds and a hatchery and rearing facility for trout.

All of Silver Springs is privately owned with limited access. The property has been sold to a buyer who wishes to restore the natural integrity of this excellent headwater area. If you wanted a good example of how to screw up trout water through privatization and commercial exploitation, this is one of the best bad examples I've seen. Thanks Lakeshore Chapter for your hospitality, and best of luck with the Silver Springs project!

The meeting was called to order at 10:15 with these announcements from Chairman John Welter:

- It was noted that Jeff Carlson (Northwoods Chapter) was not present and has been ill. Jeff has not missed a state council meeting in a long time. We wish him a rapid recovery!
- Our next state council meeting will be Sept. 9. Hosted by the Central Wisconsin Chapter near the Mecan River, the meeting will feature a spanferkel.
- A motion was made by Jim Bereza, seconded by Lyle Lange, to donate a 21.91-acre site on the Wausaukee River in Marinette Co. to the DNR to hold for public benefit. Passed unanimously.

The Treasurer's report and minutes from the last meeting were given by Treasurer Forest Grulke and Secretary John Bethke.

Discussion of our Perrier actions disclosed that the council had spent \$500 on ads and that \$7,000 remains in unpaid costs. Motion by Wahlers, seconded by Grimstad, to fund a total of \$1,500 for expenses in this action. Passed unanimously.

Conservation Congress update

John Welter made the following points about the April Conservation Congress meetings:

- The early trout season compromise passed the statewide vote 5,553 to 2,208. The barbless hook question has been changed from "illegal to possess barbed hooks" to "unlawful to fish with barbed hooks" by legislative action.
- A hearing question to simplify the trout regulations by making the limit five trout of any size on all but special regulation streams had considerable support, but did not pass (2,632 to 2,751).
- The questions to restore the office of the public intervenor and the hiring of the DNR Secretary to the DNR board got overwhelming approval, but are not expected to be acted upon by state government — a sad comment on the current state of affairs in our state.
- A question to prevent fishing for steelhead during the spawning season on the beds of the Bois Brule River passed 3,087 to 619.

It was brought up that 1,000 acres on Isabella Creek in Pierce Co. was for sale. It was mentioned that State Council may want to help purchase or get easements on it. No action taken.

It was also noted that the Wisconsin Trout Stream Bluebook has not yet been updated. This is an important publication and is late in its update by several years. All chapters

should check with their local fish managers to see if the streams in their area are properly classified and suggest any changes before the new book is published.

There was a discussion of the new stream access law, and a suggestion the State Council should issue press releases and resolutions in support of the more liberal access provided through this change.

Lunch was served courtesy of the Lakeshore Chapter. Several chapter members ably manned the grill. Thanks, guys, for all your hard work.

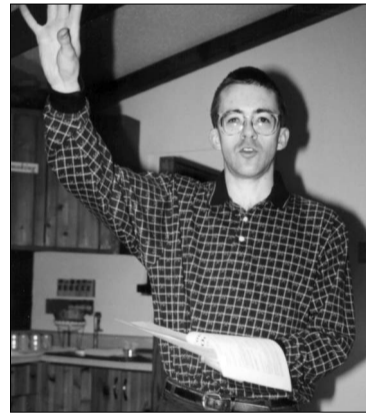
Guest speakers

After lunch, we enjoyed a presentation by John Nelson, area DNR fisheries manager. John outlined the goals and plan for the Silver Springs restoration project. These include the reduction of thermal and nonpoint pollution, restoration of spawning habitat, transplanting of wild trout stock from Timber Coulee Creek in Vernon Co., dam removal, thermal mapping, and creation of public recreational green space.

John also told us that more than 1,000 hours have been donated in 1999 by members of the Marinette County Chapter and the Helen Shaw Chapter of the FFF.

The council then enjoyed a presentation by Kevin Erb, a manure management and soil conservation specialist. Kevin informed us about a conservation on the land internship program sponsored by the Wisconsin Chapter of the Soil and Water Conservation Society.

This a flexible full- or part-time internship program in cooperation with the WDNR, UW Extension, USDA-NRCS, US Fish and Wildlife Service, and other conservation groups. Internships are available to high school seniors and college students. Contact Erb at (920) 391-



GUEST SPEAKERS

Kevin Erb (left) told State Council members how high school and college student interns often do a better job than adults in discussing conservation issues with local land owners. DNR fisheries manager John Nelson gave a presentation on the Onion River restoration project.

4652 or kevin.erb@ces.uwex.edu.

Legislative issues

The Legislative Committee report was given by Stu Grimstad:

- The stream access law in Wisconsin has been changed effective Oct., 1999. This change makes it legal to engage in recreational fishing on lands adjacent to all streams and rivers in Wisconsin up to the normal high water mark. This means that you are no longer required to keep your feet in the water. As long as you remain on the low bank of the stream, you can be on the land adjacent to the stream. This is a considerable improvement to the stream access law that we can all appreciate. (See separate story in this issue.)
- The barbless hook rule discussed earlier has been signed into law by Gov. Thompson.
- A bill to more closely regulate



CUTTING A NEW CHANNEL

The Silver Springs Supper Club stands behind this former trout pond. With the pond drained, the spring is once again cutting a channel through the gravel and feeding a lush growth of watercress. The next State Council meeting Sept. 9 will be hosted by the Central Wisconsin Chapter and feature a spanferkel.

high-capacity wells in the state has not been released from committee for action.

- SB366, a bill to modify the water



rights of cranberry growers in Wisconsin, is stuck in committee. Please address any comments or complaints to Sen. Ellis Burke.

Water resource issues

Mike Swoboda gave the Water Resources Committee report:

- Mike has asked for more people to join him on the Water Resources Committee. Anyone interested should contact Mike at the address in *Wisconsin Trout*.
- The referendum on the Bloomer Dam turned out a vote in favor of not removing the dam by a margin of 1,200 to 200. It seems the DNR did not argue in favor of removal at the public hearing.
- There is a June 24 camping and brainstorming weekend planned. Contact Mike for details.
- There have been reports of gold dredging on the Oconto River in Florence Co. Details are sketchy, but this doesn't sound good.

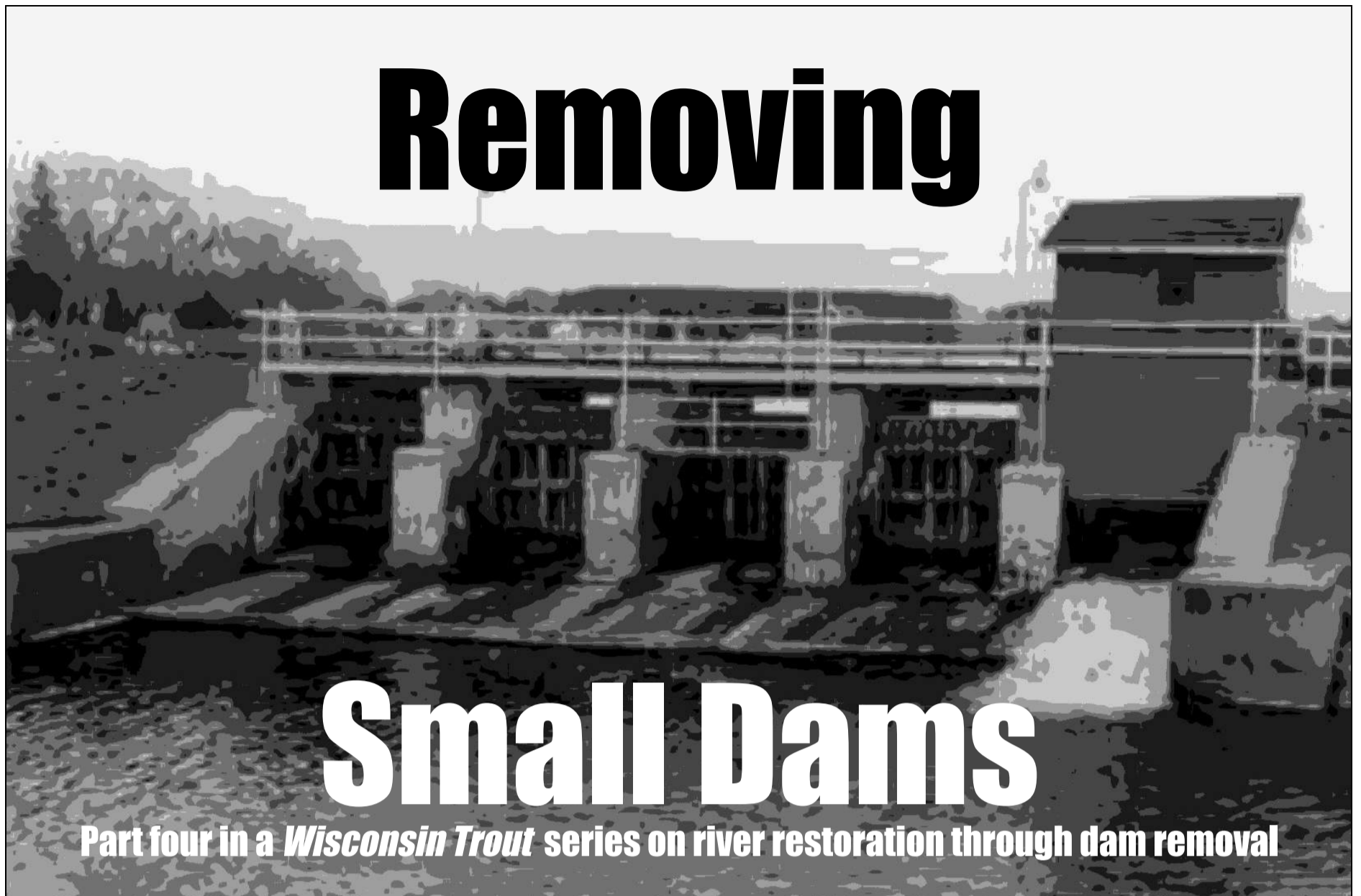
- There is a five-year limit on discharge permits issued by the DNR. Chapters are advised to see about notification as interested parties when these permits are sought or reviewed in order to see what is going on and to have input where appropriate.
- The Deerskin dam removal has been authorized. Monies for removal have not yet been found, nor has heavy equipment access been authorized.
- Mike gave a detailed report on the Perrier Company and their continuing search for a bottling plant site in Wisconsin. We have won the initial battle on this issue, but the war is not over.

The Publications Committee report was given by Todd Hanson:

- Chapters may order additional copies of *Wisconsin Trout* for distribution at events, etc. They must be ordered before publication in quantities of 100. Back issues are not available.
- Todd is always looking for articles and ideas. Feel welcome to contact him to develop either articles or ideas if you have them. He will help.
- One such idea would be an article on those state candidates seeking election this November. Where do they stand on water issues, the DNR Secretary appointment, and the restoration of the public intervenor?

The Council voted to approve the expenditure of \$6,000 of Friends of Wisconsin Trout Unlimited monies for purposes recommended by the project selection committee.

As a final note, only 12 of 21 chapters were represented. Chapters are encouraged to make an effort to send a representative to these meetings. You may get a volunteer if you pay travel expenses from the chapter treasury. Thanks!



Removing

Small Dams

Part four in a *Wisconsin Trout* series on river restoration through dam removal

Proven strategies build removal support

By Stephanie Lindloff

Considering the option of removing a dam can be a difficult and divisive issue for a community. This part suggests a process you can use to educate your community about the option of restoring a river through dam removal.

This 10-point strategy is based on many actual experiences of working to restore rivers through selective dam removal. Undoubtedly there will be steps that you'll need to take because of unique situations in a community. Consider the following process as a template for action and tailor it to your situation as needed.

Do your research

Learn about the dam, the river and the community before embarking on a campaign to restore the river (part one). Have a clear understanding of the issues involved in dam removal in general and the issues unique to the specific dam (part two).

Be prepared to encounter questions and have responses or contacts for more information ready. Understand which "tools" could be effective in your situation (part three).

All of these things will help you identify critical elements of your particular strategy, including relationships to develop, information to gather and publicize, key decision-points and other potential opportunities.

Identify allies

Develop a list of the people and groups that can help your efforts to restore the river. Don't forget potential allies for financial and safety reasons. This could include local officials, citizen groups like taxpayer alliances, property owner associations, and water safety organizations.

Increasing the diversity of people and groups willing to consider dam removal as an option will enable a better discussion of the issue.

Identify groups and individuals who could be against dam removal

Meet with some key people in these groups. Learn about their concerns and their unanswered questions, then address them directly through educational efforts. Don't forget that dam removal can be an emotional issue and, as with your allies, dam removal opponents may not be the usual suspects.

Get on record

Get your concerns and recommendations on record with local officials and the agency that regulates the dam. It is crucial that the decision-makers in your community are aware that the dam removal option exists.

It is also important that they know you are not alone in your beliefs. The constituency that you develop in support of dam removal speaks volumes.

Be prepared

Have plenty of information and references available for people that have concerns and questions about the issue. Some of the answers need to be site-specific. However, many general questions can be answered by obtaining information from elsewhere.

The River Alliance of Wisconsin has fact sheets on dam removal in general and for specific sites.

Educate and inform

Establish communication with community residents early in the process. It is especially important to communicate with property owners around or near the artificial pond/lake.

Just because someone lives on the impoundment does not mean they favor keeping the dam. They may have never entertained the idea of having a healthy river running past their property.

Be sure to talk with property owners upstream of the impoundment and downstream of the dam. They have a clear and personal interest in the health of the river — it

flows through their backyard.

Spread the word

Make the option of a revitalized river clear to the community:

- Encourage others to educate their friends and colleagues about the environmental, economic, and societal need to consider river restoration as an option.
- Write letters in support of considering dam removal as a legitimate option to local officials, the dam owner, natural resource agency personnel, potential supporters in the community, legislators, and others.
- Submit letters to the editor of the local and regional paper(s) discussing the consideration of dam removal as an option.
- Notify public radio, public television, talk radio, local cable access channels, and local television news stations about the issue and the benefits of restoring the river through dam removal.

Provide visuals

Pictures can be extremely effective. Organize a slide show or a series of photos showing the free-flowing river above the artificial pond/lake and below the dam. Compare these with pictures of the artificial pond/lake.

It is important and realistic to show pictures of the problems that are common with dams: sedimentation, poor water quality, excessive vegetation, algal growth, undesirable fish, unsafe conditions, etc.

Lead field trips on the river

Enable more people to experience the free-flowing and healthier stretches of your local river. Take the time to show them the differences between stretches of the moving river above and below the dam and the artificial pond/lake in the middle of those stretches. This can be much more tangible than reeling off facts and figures at a meeting.

Carefully choose the most effective forum for getting your ideas across

Is there a need to make a decision soon? Ask the local DNR dam safety engineer about the decision-making timeline for the dam of interest.

The timeline for action depends upon a variety of issues. When the option of dam removal is discussed throughout the decision-making process, there is a higher likelihood that the community will have the opportunity to clear up any fundamental misconceptions about dam removal.

Allowing people time to "chew on" the idea may help lessen the fear of change that tends to go along with dam removal.

Final installment in series

The decision has made and the dam will be removed...is your work over? No! In the next issue of *Wisconsin Trout*, the final part of this series helps you prepare the community for dam removal and address the important issues associated with river and land restoration at the former dam site.

(Stephanie Lindloff is the Small Dams Program Manager for the River Alliance of Wisconsin. The Small Dams Program is a collaborative effort of the River Alliance and the National Office of Trout Unlimited. Its goal is to help improve decisions regarding dams through public information and education and by encouraging citizen involvement in these important decisions. -ed.)

PART FIVE: Removal Time

The "Removing Small Dams" series concludes in the next issue of *Wisconsin Trout* by looking at preparing the community for dam removal once that decision has been reached. That segment also looks at restoration of the former dam site.

Water Resources Committee sets meeting in Stevens Point

By Mike Swoboda

Wisconsin TU's Water Resources Committee is planning a meeting at the Schmeckle Reserve Visitor's Center in Stevens Point Saturday, July 22, from 9:00 a.m. to 3:00 p.m.

The purpose of the meeting is to pull together TU members from across the state who are interested in working on conservation issues of statewide significance, encouraging people to become involved, and defining the issues we will devote resources to.

Some of the issues that will be

Water resources are a growing concern among Wisconsin TU members. The Water Resources Committee is looking for ideas on how TU can best spend its energy on these issues.

considered are:

- the Nonpoint Pollution Redesign,
- dam removals,
- urban sprawl and runoff,
- construction erosion control,
- stormwater management,
- large livestock operations,
- manure spreading practices,
- stream restoration practices,
- cranberry industry impacts,
- aquaculture industry im-

pacts,

- coaster brook trout restoration,
- mining impacts, and
- groundwater withdrawal impacts.

As you can see, there are a variety of issues. The committee invites anyone with an interest in any of these issues to attend the session. We are looking for ideas and questions.

There will be camping available nearby. Ask for details.

Fishing opportunities are also available for a variety of species in the Tomorrow/Waupaca River, the Wisconsin, Plover, and other streams and lakes.

Contact me or Stu Grimstad at the following addresses if you are interested.

Mike Swoboda
312 Ridgewood Dr.
Chippewa Falls, WI 54729
Mswob@execpc.com

Stu Grimstad
1563 Cty Road ZZ
Amherst Junction, WI 54407
sgrim@triver.com

Dam removal guide available

A new publication on dam removal will be available this summer.

Dam Removal: A Citizens' Guide to Restoring Rivers is being developed by the Small Dams Project, a collaboration of the River Alliance of Wisconsin and Trout Unlimited National.

Based upon many experiences in Wisconsin and elsewhere, this first-of-its-kind guide is a valuable resource for anyone interested in dams and river restoration.

This complete guide provides chapters on all of the topics discussed in the *Wisconsin Trout* "Removing Small Dams" series.

If you would like to be contacted when the *Citizens' Guide* is available, contact the River Alliance at 608-257-2424 or wisrivers@wisconsinrivers.org.



I'VE GOT TO FIND SOME CLASSY WATER!

Bill Heth won the State Council's wood strip canoe built by Dick Prine. The raffle drawing was held during the April State Council meeting near Plymouth.

Help sought for DU festival

By Todd Hanson

The Fox Valley Chapter of TU is looking for volunteers from other chapters to represent Trout Unlimited to visitors to this year's Duck's Unlimited Great Outdoors Festival.

The August 18-20 festival is at the Experimental Aircraft Association grounds in Oshkosh.

This is the second year the Fox Valley Chapter has sponsored a booth at the festival. Upwards of 100,000 people are expected to at-

tend this year's event.

"The festival draws people from throughout Wisconsin and the Midwest," says Jerry Unmuth of the Fox Valley Chapter. "Last year visitors asked questions about trout fishing and habitat restoration that our local members just couldn't answer."

Volunteers may be eligible for reduced admission because they are presenters. For more information, contact Unmuth at (920) 739-6953 or jerscpt@juno.com.

Top 10 most common concerns about dam removal

The River Alliance of Wisconsin suggests that you be prepared to address these concerns when suggesting dam removal as an option. Don't be afraid to answer questions to the best of your ability, and if you don't have enough information, do some more research to gather the information you need to address these most common concerns.

1. "The river will turn into a trickle of water that a person could jump across."

An easy way to predict the river's width and flow after a dam removal is to look at the river 1) before it reaches the artificial pond/lake and 2) just downstream of the dam. It is highly unlikely that the restored river segment will be significantly wider or narrower than already found at these portions of the river.

2. "We'll have more flooding problems."

This is only a legitimate concern if the dam technically provides flood control. Very few dams in Wisconsin do. Qualified personnel should explain this to the community. Many dams actually increase the risk of flooding, due to serious disrepair or misoperation during storm events.

3. "All we'll have are stinking mud flats."

Logic dictates that sediments are usually exposed when water levels are drawn down during dam removal. Depending on the time of year and type of sediments, there may be an odor of decomposing silt and vegetation for a short period of time (typically ranging from a few days to a few weeks). Years of experience shows that these newly exposed lands will "green up" within weeks during growing seasons. Many plant seeds have accumulated in the rich sediment over the years, and once exposed to sunlight and oxygen, the plants grow

very quickly, stabilizing the sediment in the process.

4. "Who will own the 'new' land?"

This is a case specific issue that needs to be addressed early in the process. Land ownership questions are usually answered by researching deeds and titles for the waterfront properties and the dam property. Failing to address this concern early in the process can unnecessarily cause alarm in the community. Answer this question as early as possible.

5. "Wildlife habitat will be lost and wildlife will suffer."

Consult the DNR for site-specific information. Healthy rivers are the lifeblood of healthy wildlife habitats. Dams alter the natural physical, biological, and chemical functions of rivers. This results in degraded conditions for a variety of aquatic and terrestrial species. According to the DNR, dams are one of the biggest threats to Wisconsin's aquatic biodiversity.

6. "Property values will plummet."

Because this impact is best measured over time and has several variables involved (e.g., real estate market, location in state, characteristics of the property, etc.), it is best to look at property values at other former dam sites with similar community attributes. Preliminary research has shown that property values near former dam sites typically have had no measurable change.

7. "Who will pay for the dam's removal?"

This varies with the site. Sometimes the dam owner pays (an individual, a municipality, etc.). Sometimes private funds are acquired. There are state funds available for dam removal, just as there are funds available for dam re-

pair. Consult your local DNR dam safety engineer for information specific to your community.

8. "The dam has historical value."

This is another site-specific issue. With the vast number of dams in the state (3,800+), very few are considered historic sites. At some dam removal sites, communities honor a dam's past contributions with interpretive displays and other information.

9. "Dam removal will introduce exotic or diseased species."

Another site-specific issue that needs to be addressed by the appropriate state or federal natural resource agency.

10. "I've heard you can get sick because of a dam removal."

We are unaware of any sites where people have gotten sick directly because of a dam's removal. In a small number of areas when saturated soils are exposed there may be increases in fungal spore production, associated with decaying wood, vegetation, or soil. Incidents of rare illnesses that are typically found near wetlands, lakes and rivers may increase slightly. Contact your state health services department to learn if your community is located in an area that may have a higher likelihood for illnesses associated with fungal spore production. This higher than normal fungal activity during dam removal decreases when the exposed sediments dry up and revegetate.

(If you have additional questions about dam removal, contact the River Alliance of Wisconsin at (608) 257-2424, wisrivers@wisconsinrivers.org or www.wisconsinrivers.org.)

Bloomer votes to repair dam on Duncan Creek

By Mike Swoboda

Following a March 29 public hearing, citizens of Bloomer voted overwhelmingly April 4 to keep their pond instead of returning a Duncan Creek to its natural condition.

The decision shows that we have a long way to go in this country in that people still consider the manipulation of natural resource without regard for the damage it does to them to be an acceptable condition.

Dismaying to many was the behavior of our local DNR and the Duncan Creek Watershed as led by Chippewa County Land Conservation. At the March 29 hearing, John Paddock and Joe Kurz of the DNR were on hand to answer questions. They did a lot of damage to the truth.

The city had a DNR grant to help fund costs of presenting people with information on the costs of the dam solution alternatives. This was misused and never challenged by the DNR.

The city used volunteer help to come up with information on the alternatives. Their report was highly biased and inaccurate.

The misinformation put out by the Bloomer Dam Committee stood unchallenged by the DNR for so long it became accepted as factual.

The response to repeated questions about whether the DNR was going to correct the misinformation

was that they would be issuing press releases "in a couple of weeks." We heard this response several times from July through November of 1999.

By the end of 1999, the Ojiblean Chapter felt compelled to act and issued a fact sheet of our own.

Two hearings were held in 2000. The first, in January, was also attended by the DNR, and they did a reasonable job of answering questions, although some of their answers simply muddled issues rather than clarifying them.

But what followed in the late March hearing left me disgusted when the DNR helped spread misinformation by not challenging assertions about the future of the waste water treatment plant. They said the impoundment would become a mudflat, and they did not give a positive, clear answer on what type of trout fishery would result if the dam were removed.

This left the impression that the stream would be unsuitable for brook trout because it was big water and it was too warm for reasons unknown. This statement was made at a dam hearing where the issue of dam removal only existed because TU pushed for it in the name of coldwater restoration.

The Chippewa County Land Conservation Department did not do their job. They were well aware of this issue during the planning

SIPHONING: lake water will not flow into Sawyer Creek

Continued from p. 1
shoreland, and many of the lakeside homes are built with permits issued by the city on historic flood plains. Since the 1980s, lake levels have risen and flooded out some structures and former "front yards" of the lakeside homes.

One explanation for the increased lake levels was the increased impermeable ground surface in the lake's drainage area due to increased development.

Lakeshore property owners pushed the city to find a way to lower the water levels. A former local newspaper editor suggested that if

DNR seeks tips on illegal gold dredging

The WDNR has received reports of people trying to mine gold from northern Wisconsin streams, spurred on in part by a television program on the Outdoor Channel and a Florence County store that is selling gold dredging equipment.

Gold prospecting is legal in Wisconsin, but it is regulated by numerous laws designed to protect the environment.

Miners are operating in headwaters and tributary streams where less sediment and rocks have settled, and are commonly dredging 4 to 6

feet below the streambed.

Such activity harms critical fish spawning areas, particularly for trout, smother fish eggs, release nutrients such as phosphorous, diminish water quality, and destroy the base of the aquatic food chain by ruining plant and insect life.

The DNR is encouraging TU members to be on the lookout for these dredgers or for signs that such dredging is occurring.

If spotted, alert your local conservation warden, or call the DNR hotline at 1-800-TIP-WDNR.

OUTDOORS
Wisconsin's Best Newspaper

catch as catch can
At the Bubolz Nature Preserve trout pond, disabled folks can enjoy hooking a big one

By Steve Wickman
The Post-Crescent Staff Writer

Disabled users do not need a license to fish at Bubolz, but the preserve has a self-imposed limit of trout fish.

Brundel says she does not need a license to fish at Bubolz, but the preserve has a self-imposed limit of trout fish.

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FOX VALLEY'S SUPPORT FOR POND RECOGNIZED

The Fox Valley Chapter's support of the handicapped-accessible pond at the Gordon Bubolz Nature Preserve in Appleton was the subject of a June 11 story in the *Post-Crescent*. Chapter member Jim Hlaban was quoted on the chapter's decade-long involvement with the pond's stocking and maintenance.

stage of the Priority Watershed. Planning was done in cooperation with the DNR, which gave Bloomer the orders to repair or remove several years before the planning of the watershed was underway.

It is the DNR that administers watersheds, and they, along with the county, should have been planning actions to educate Bloomer on the damage the dam does to the ecosystem and provided factual, neutral

information on the cost alternatives.

At this time Bloomer is in the process of selecting an engineering firm to draw up plans for the dam replacement. The current firm has proposed a scaled-down repair scenario. I have no idea if it will meet DNR requirements for safety.

Recent news stories state that they are not planning to repair the right abutment where it ties into a deteriorating block retaining wall.

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PERMIT: TU monitoring Perrier's well application

Continued from p. 1

that this is the first time an environmental assessment has been conducted for a high-capacity well application in Wisconsin.

Sources say Perrier will most likely conduct the high-rate pump testing in July. There will be additional monitoring in place by that point.

The plant site is still undecided. For their transportation plan, the company is sticking to state highways.

Perrier officials are meeting with the township every two weeks to discuss plans, progress, and concerns.

There is significant oversight of Perrier's testing plans and methodology by the DNR, UW-Extension, and the U.S. Geological Service (USGS). For each major technical area, there have been technical meetings that TU has been invited to.

Hewitt was invited to and attended one such meeting recently at the USGS office in Middleton. This meeting examined technical groundwater studies Perrier is planning for the Big Spring.

In addition to Perrier, Dame & Moore (Perrier's consulting geologists), USGS, DNR, and UW-Ex-

tension representatives, there was a sizeable contingent at the meeting from the town of New Haven, including members of the town's Water Committee, a consulting hydrogeologist for the town, and a lawyer for the Savin' New Haven citizen group.

Bob Nauta of Dame & Moore gave an overview of their work to date and their proposed plans for modeling the groundwater. Hewitt says that Perrier and D&M seemed amenable to incorporating the suggestions offered at the meeting.

Hewitt points out the following upcoming activities in Perrier's permitting process:

1. The permit application will be submitted before the high-rate, long-term pumping tests take place. D&M will develop the groundwater model first to determine optimum well location. Then they will run the high-rate tests to calibrate the model. They intend to place wells to avoid impact on sensitive resources, such as the headwater tributary to Jenson's pond, where the only quality fish habitat and trout population were found.
2. Permit approval will be granted

based a finding of "no adverse impact." Perrier has entered into an agreement with the DNR to condition the permit, and amend the permit at a later date in light of any new information gathered from their monitoring. There will be a drought contingency plan.

3. A surface water aquatic resources study will measure stream flows simultaneously with the high-rate long-term pumping test. An Incremental Flow In-

stream Habitat Model (IFIM) will help determine minimum in-stream flows.

DNR and TU expressed a concern that stream restoration activities not become a replacement for adequate stream flows. Perrier has stipulation in their work plan to amend minimum flow requirements after stream restoration takes place — whether that would be an increase, decrease, or held constant is not clear.

EPA report: mining country's top polluter

By Dean Simon

After hiding behind an exemption, the mining industry was finally included in the Environmental Protection Agency's TRI (Toxics Release Inventory) for the first time this year.

The findings magnify the concerns of Wisconsin environmentalists over the proposed Crandon Mine.

The hardrock mining industry mines nonfuel minerals such as gold, silver, copper, and zinc. The report reveals that the hardrock mining industry releases more toxic chemicals than any other industry in the U.S. Moreover, the results, which cover releases for 1998, are not even close.

The report reveals:

- In 1998 one Nevada mine released over 9,000 pounds of mercury directly into the air.
- Mining eclipsed the chemical manufacturing industry as the nation's top polluter. -Nevada alone out-polluted the entire chemical manufacturing industry.
- One mine in Arizona outpolluted the entire state of New York.

Yet even as this new information comes to light, the mining industry continues to lobby against more regulation of its industry.

A rider attached to the Department of Agriculture spending bill would block any new environmental rules that would affect mining.

Rules that have been proposed would reduce the toxic releases by mines and make the mining companies liable for cleanup costs at toxic sites. If the rider passes, such regulations will not be allowed.

When asked for comment on the EPA report, no reply was forthcoming from the Nicolet Minerals Company.

It is imperative that, as citizens, we stay informed and active in our efforts to make sure this mine does not bring similar hazardous condi-

tions to northern Wisconsin.

For more information on mining, check the Mineral Policy Center's web site at www.mineralpolicy.org.

An interesting turn of events occurred as I sought out the industry stance on this issue. I e-mailed Steve Kircher, public relations for the Nicolet Minerals Company, asking him how the industry responded to the findings of the report and why the mining company, in spite of their assurances that the Crandon Mine will be clean and safe, continues to lobby for relaxed environmental standards.

I did not get an immediate response, but I did receive this *inadvertent* e-mail from Kircher to someone named Dale, probably Dale Alberts, public affairs director for the company:

"I have the latest NMA [National Mining Association] response from General Lawson to the Toxic Release Inventory reporting. Do you want me to send that as a response to this guy or ignore him?"

There seems to be just a wee bit of contempt in this message. The company seemed perfectly comfortable dismissing someone who is asking legitimate questions of an industry that has just been unveiled as the number one polluter in our nation as "this guy."

This leads me to believe that answering the tough questions is something the mining industry doesn't really want to do.

This guy, for one, will do everything he can to let the public know what the facts are, and it is up to all of us to keep informed and vigilant so that the rivers and watersheds of Northern Wisconsin do not become a dump for toxic chemicals.

— Dean Simon

WATERKEEPERS: group forms to fight water exporting

Continued from p. 1

state's waters,

- call for a full environmental impact statement, extensive hydrogeological studies, and public hearings in the Big Spring issue,
- publish a flyer,
- urge citizens to write letters to state representatives and the press,
- involve and inform other community groups,
- boycott Perrier/Nestle products,
- have speakers available for summer events,
- lobby and educate legislators,
- compile a contact list, and
- explore legal options.

WOW plans to conduct a fundraising campaign in the coming weeks to fund these and other activities.

At the May 22 meeting, Jacobi read off a list of counties, townships,

organizations, lake associations, and other governing bodies that have passed resolutions opposing Perrier's plans to withdraw water without a full environmental impact statement and extensive hydrogeological studies and public hearings.

Jacobi said 12 counties had passed spring water extraction resolutions for bottling purposes and concerns for the human environment during last April's Conservation Congress meetings.

Jacobi said that taking 700,000 gallons of water from Big Spring per day, 12 months a year, will eventually have an adverse affect on local aquifers, lakes, streams, and the watershed.

For more information and donations can be sent to: Waterkeepers of Wisconsin, P.O. Box 66, Briggsville, WI 53920-0066 or by calling (608) 981-2534, (920) 787-4808 or (608) 253-7266.

REFERENDUMS: "no plant"

Continued from p. 1

County, Wisconsin, for commercial purposes and the building of the proposed water bottling plant in any area zoned for agriculture."

The Town of Newport in neighboring Columbia County voted 33-108 against a resolution worded, "The town would support the water bottling plant if it is located in an industrial park and the hydrogeological study showed no adverse impact on the flow, level or quality of the watershed it is located in, and trucks stay on federal/state highways."

Newport is not the site of a proposed Perrier plant, but its roads would be used as a truck route for the proposed Big Spring plant.

State Senator Robert Welch (R-Redgranite) and State Representative Joan Wade Spillner (R-Montello) encouraged Perrier and local elected officials to heed local opposition to its proposed bottling facility in the Town of New Haven.

"Elected officials seek out public office with the express intent of carrying out the wishes of their constituency," said Welch. "The local

officials in New Haven and Newport wanted to get the pulse on this issue, and I think they got their answer. It is time to pack up and go home."

"I would have liked to see the referendum vote take place after the Environmental Assessment was completed," said Spillner. "However, it was the decision of the local town board members to hold the referendum last Tuesday. Now that the votes are in, it is imperative that the town board members and county board members do what their constituents have asked them to do."

The Perrier plan was originally posed to the Department of Commerce at a location in Waushara County. Public sentiment in Waushara caused Perrier to move the proposal to Adams County.

"Basically, I think the township will listen to it," said Jon Steinhaus, co-chair of Waterkeepers of Wisconsin, a coalition of opponents. "I also think the county will listen to the wants of the people in the township. We hope they will."

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Chapter News



NOW THAT'S A LOT OF BRUSH

Members of the Green Bay Chapter joined forces with the U.S. Forest Service on May 13 to construct a brush bundle in the 1st South Branch of the Oconto River. Putting the final touches on the brush bundle are (left to right) Gary Zimmer of the USFS (wearing the hard hat), Pat Hill (bending over), Steve Schuh (swinging the sledge hammer), Gordy Kulhanek, Duke Druckery (in the far background), and Russ Heizer of the DNR.

Antigo Chapter

Our annual banquet held on March 25 had 255 people attending — the best banquet yet for us as far as net profits.

June 3 was our annual kids fishing day at the **Antigo Lake Park**. Fish are planted in the lake, plus we have a small kids fishing tank. There are prizes, a DNR casting contest, and the largest fish is mounted free. With free food and soda, it's a great day for the kids.

Summer projects include work on a 40-acre parcel on the **East Branch of the Eau Claire River** with the DNR. The project will place

wing dams, boom covers, and boulder retards along Cty. I north of Antigo.

We will be paying for fuel for the DNR dredging of **Hoglot Springs**.

Our chapter is contributing \$2,000 for land acquisition on the **DeBroux Springs** to help the DNR purchase 79 acres.

Finally, the Antigo Chapter and **Northwoods Sport Club** will be raising native brook trout from eggs into 18-month-old fingerlings. This is year four of the "Fontanellis" project.

Blackhawk Chapter

The March meeting was hosted by **Gene Van Dyck**, DNR fish manager for the Dodgeville area. Gene explained stream management and improvement.

The work day in Avalanche, which is sponsored by the **West Fork Sports Club**, was another success. Several clubs, including Blackhawk, built about 18 lunger structures. Thanks to **Roger Widner** and all who worked on the project.

The Blackhawk Chapter conser-

Central Wisconsin Chapter

I'd like to report that the Central Chapter will be **hosting the September 9 State Council meeting** at the **Richford Town Hall** building in Richford. The hall is adjacent to the **Mecan River** and will be only a short distance to our guided tour of the **Mecan Springs Fisheries Area**.

Our afternoon tour of the Mecan Springs after the meeting will give you insight into what **Perrier** was attempting to do with its drawdown of the springs. If you had any doubts about the intention of Perrier to rape the environment, I think you will change your mind.

We also take great pride in being awarded a \$2,000 grant for rehabilitation work on the **Little Pine River**. This grant from Friends of Wisconsin TU will ensure that we have enough resources to complete this project.

Our chapter's **24th Annual Fish-**

ing School, held June 2-4 and headed by **Dan Harmon III**, was a success. We had 25 students, and we consider this our capacity. The school ran from Friday night to Sunday noon.

Student received instruction in fly casting, stream ethics, identification, and other pertinent areas, plus an on-stream fishing experience with a fishing "guide." I ask you, where else can you get a weekend experience for only a modest fee of \$250?

Upcoming workdays will be held on the following Saturdays — June 24, July 22, and August 26. All run from 9-noon, with lunch following. A picnic will follow the August 26 session.

Board meetings start at 6:30 p.m., with programs starting at 7:30 p.m. The summer programs at the Berlin Bowling Lanes feature **Bob**

Hunt on June 12, **Elward Engle** on July 10, and **Al Niebur** on August 14.

Finally, our chapter is pleased to announce its new president, **Jerry Strom**.

Coulee Region Chapter

The first half the year is normally the busiest for Coulee Region TU, and the year 2000 has been no exception. Most chapter activities over this very busy period have revolved around our **Mormon Coulee** stream improvement project, which was begun two years ago.

On Feb. 29 the chapter held its annual fundraising banquet at **Pogy's Catering** in La Crosse. Over 100 people attended the banquet, and when all was said and done, the chapter had realized a net profit of approximately \$5,000. Most of these proceeds will be used to fund this year's work on the Mormon Coulee project.

On April 1 the chapter held a work day on Mormon Coulee, during which lunger structures were built and stockpiled for installation by a contractor later this summer. With this installation, the Mormon Coulee project will be fully completed.

Although three of the chapter's grant applications to fund this year's project work were denied, the chapter did receive notice in May of a \$2,000 grant for the Mormon Coulee project by **Friends of Wisconsin**

TU.

In recognition of the chapter's persistence and consistency of effort in improving Mormon Coulee Creek, the **La Crosse County Conservation Alliance** honored Coulee Region TU with its **2000 Conservation Project Award** at the Alliance's annual awards banquet April 6. (By the way, a stream survey by a DNR fishery crew on our chapter workday revealed that the project area is now home to a healthy population of wild brown trout, with a few brookies present here and there as well.)

The chapter held monthly meetings during January through May with guest presenters appearing at all but our January and May meetings. Guest speakers included author and professional fly tier **Rich Osthoff** of Mauston and attorney **Dan Flaherty** of La Crosse, a former DNR Board member and one of the founders of the trout stamp fund.

The chapter will take a three-month recess for the summer, but regular monthly meetings will resume September 19. The annual election of chapter officers will be held at the September meeting.

Fox Valley Chapter

The summer months for the Fox Valley Chapter will be spent on several projects. We are continuing work at the **Sannes Farm** and **Whitcomb Creek** sites in conjunction with the DNR and several other area chapters.

We had about eight members attend our annual work day at **Fort McCoy**. We will again host a **Fishing Day for People with Disabilities** at

the **Maine Creek Farm**.

Our work days are the 2nd Saturday of each month, and a call or e-mail to **Tony Trembl** or workday coordinator **Jim Hlaban** is much appreciated. It helps us to plan for lunch, and if the workday is canceled for some reason, you can be notified before you run out to the site.

Frank Hornberg Chapter

On the Frank Hornberg Chapter's March workday, the chapter constructed a wing deflector/overhead cover at our **Welton Road** worksite on the **Tomorrow River**. We also had an unscheduled workday to cut "cull" Christmas trees donated by chapter member **Tom Literski** — these will be used for brushmatting in our project area. (This is something other chapters may want to take note of; it's truly amazing how well Christmas trees catch silt.)

The chapter's April workday and evening were at our Welton Road worksite. We finished brushmatting an area on the Tomorrow River during the evening session. On our workday we constructed another Christmas tree brushmat and positioned rock to make a very nice run at the lower end of our current work area.

The last Saturday of the month found chapter members joining in on an **Izaak Walton League** project on **Poncho Creek**, a main tributary of the upper Tomorrow. About 30 people worked very well together to brushmat many feet of Poncho

Creek with Christmas trees -- before we were even done, silt had washed away and gravel and cobble was showing.

May started off with a very good turnout at **Stedman Creek** for a work evening. Around a dozen people turned out. We adjusted some old work that had problems and completed two brushmats that proved to work very well. By the time of our May workday, we had lots of gravel showing, where before there was only sand. This looks like it could even turn into a spawning area in a section of river that lacks much suitable spawning habitat.

We further extended our coldwater overhead sanctuary at the junction of Stedman Creek and the main Tomorrow River.

On the first Saturday of June we held our fifth annual Introduction to **Flyfishing Workshop** at the **Rising Star Mill in Nelsonville**. The weather was great and the students seemed very enthusiastic. And as I recall, every one of the students who stayed to fish that evening caught something.

Green Bay Chapter

On March 16, the Green Bay Chapter held its **Silver Anniversary Conservation Banquet** at the **Swan Club** in De Pere. The event, attended by about 450 people, raised about \$22,500 which the chapter will use to benefit trout and the coldwa-

ter resource.

Having completed Banquet 2000, the chapter has turned its attention to putting these funds to the best possible use.

Several appropriations have already been made, including a dona-

Chapter News



tion of \$1,500 to help stock rainbow trout in the **Oconto River** below **Stiles**. This stocking will provide quality trout fishing within a reasonable distance for area anglers.

The chapter has donated funds to the DNR to aid in a creel census along the **Pembonwon River** in Marinette County. This census will be used to determine how sustained beaver removal over a 10-year period has impacted the trout population in a quality trout stream.

The chapter also donated funds to the **US Forest Service** to be used for habitat improvement and beaver removal in the **Nicolet National Forest**. The chapter also hired its own beaver trapper to work on streams in Northeast Wisconsin.

The chapter also made a donation to the **Cold Water Conservation Fund**, a program sponsored by TU National that does scientific studies

of matters pertaining to the coldwater resource.

Additionally, the chapter expects to complete a habitat improvement project on the **Lower Oconto River** this fall. The project involves narrowing of the stream and placing large boulders in the streambed that will create cover for fish.

The DNR will do the construction for the project using funds provided by Trout Unlimited and the **Federation of Fly Fishers**. Besides the Green Bay Chapter, the **Southern Chapter**, the **Marinette County Chapter** and the **Oconto River Watershed Chapter** contributed funds for this project.

Finally, the chapter is planning five or six work days to perform hands-on habitat improvement projects an area streams.

Harry & Laura Nohr Chapter

It has been a busy spring in Southwest Wisconsin! On June 1 we closed on the purchase of a 240-acre parcel of land on the **Blue River**. This is our second land acquisition and is a significant achievement for the chapter. The Blue River is an important resource and must be protected for future generations.

We will hold this property until such time that the State of Wisconsin can purchase it from us. This property is located on the north side of **Boweres Rd.** about three miles east of **Castle Rock** and includes over a mile of quality trout water.

On May 5 we held our annual fund-raising banquet. Approximately 150 adults and 20 children attended. The **Scott Ladd Memorial Scholarship** was awarded to **Troy Morris**. **Dave Hartman**, a UW-Platteville student, was given a \$2,500 internship to monitor and study area streams. We recognized **Joe and Diane Thomas** with the chapter's **Stewardship Farm Family award** and **Kelly and Carol Heibel** were selected as the chapter's **Forestry Practices Farm**.

We also distributed eight \$500

Kiap-TU-Wish Chapter

Programs for April and May meetings were fly tyers and **John Sours**, WDNr trout crew habitat coordinator.

After a three-year layoff, a brushing project was initiated again on the upper **Kinnickinnic River**. One session in mid-March got the ball rolling again. We will have a more extensive winter session in 2001.

The annual **River Falls Fly-Fish-**

Lakeshore Chapter

The Lakeshore Chapter's annual banquet held in April, netted over \$10,000, which was a chapter record.

From the proceeds, the chapter recently made over \$2500 in donations to the following — **Friends of Wisconsin Trout Unlimited**, the State Council's **Perrier Legal Fund**, **Camps Sinawa and Tapawingo** in Manitowoc County, the **Onion River Project**, the **West Fork of the Kickapoo Sportsmens Club**, **Northern Kettles Turkey Federation** (charity shoot), and the **Between the Lakes Muskies**.

Chapter elections were held in May, with these results:

- Doug Leppanen** — President
- Bob Melcher** — Vice President
- Jack Gehr** — Secretary

grants to area schools to assist them in their environmental education programs. **Chuck Steudel**, our past president, was awarded the "Silver Net" award for his many years of dedication to our chapter.

On May 20 we held our second **Citizens Water Monitoring Clinic**. This was a hands-on class that was directed at area school teachers who have committed to monitoring a stream with their class. We have 18 committed and trained monitors to collect data and report their findings to the DNR.

Our annual **Youth Fly Fishing Class** was rescheduled because of high water. This event is done in cooperation with the **Chicago Orvis Store**. We anticipate having 20 youths and many parents at our class.

Our next general meeting will be on July 18 at the home of **Jayne & Bill Wisler**. We will be having a cookout as well as a streamside monitoring demonstration. Contact new chapter president Bill Wisler at (608) 623-2603 or wisler@mhtc.net for more information.

ing Clinic was held in **Glen Park** near the lower Kinnickinnic River on June 3. A complete afternoon of conservation, casting, and stream craft provides the foundation of a completely guided fishing outing on the lower Kinni for our pupils.

The goal of the clinic is to capture some local interest in fly-fishing and conservation so we can gain new friends that love the river as much as our chapter members do.

Roger Berg — Treasurer
Board of Directors-**Larry Doebert**, **Jeff Yax**, **Cameron Coleman**, and **Jeff Preiss**.

Workdays on the Onion River were held on March 18, April 1, and April 22.

Jeff Yax, **Larry Yax** and **Bob Melcher** taught flytying for two days in April at the **Manitowoc Senior Center**.

Chapter members participated in the **Sheboygan County Conservation Association's Outdoor Activity Day** held on June 3.

The chapter's annual **Family Appreciation Picnic** was held on June 12 at the **Sheboygan Marsh Park**.

NORTHWOODS CHAPTER'S STREAM WORK FEATURED

The Northwoods' Chapter's continuing work on the **Bearskin River** was highlighted by a recent story in *The Lakeland Times* of Minocqua.

Bruce Leitinger, the chapter's stream improvement coordinator, was quoted about the chapter's work.

Curtis and Olson net top prize in Spring Walleye Tournament
22-lb. tally earns them \$3,000

Trout Unlimited chapter works on river

Lake Minocqua sustains itself

ATV trails open

Northwoods Chapter

The chapter's annual conservation banquet was held on March 28 at the **Rhineland Café & Pub**. Attendance was up slightly from last year, and we thank all sponsors, merchants, and friends of Trout Unlimited who attended.

The Northwoods Chapter is maintaining a very busy schedule into the summer. We have completed two of three workdays, continuing brush bundling along a half-mile section on the **Bearskin River**.

This is the third summer we have worked on this section, and we are beginning to see sediment build up in the bundles and a deeper channel in the streambed. We even saw young-of-the-year trout in some of the bundles this spring!

Brian Leitinger, **Wayne Stevens**, and **Fred Johnson** have been doing a superb job on this project. Fred has been known to spend a few afternoons on the stream working on his own.

The chapter funded a \$1,000 scholarship for a student from the **Northland Pines School District** in Eagle River this year. Our plan is to present a scholarship to a high school student from our area each year.

The chapter will host the **Seventh Annual Northwoods Youth Conclave** on July 8 at the **North Lakeland Discovery Center** in Manitowish Waters. The chapter begun hosting

Shaw-Paca Chapter

The main focus of our spring meetings was our annual banquet held March 30. Because of membership changes, we had new people step up to help make the banquet very successful.

A special thanks to chapter members **Dave Ehrenberg**, who coordinated the door prize collection, and **John Kunzman**, who was in charge of tickets sales and distribution.

We awarded several scholarships to various students. Our college scholarship was awarded to **Joshua Pyatskowitz** of Shawano. Joshua is currently a student at the **University of Wisconsin-Stevens Point** majoring in water chemistry. Another scholarship went to a 4th grade student at the **Lincoln School** in Shawano to attend the **Timbertop Camp** near Stevens Point.

this event this year in cooperation with **Bill Sherer** of **We Tie It** in Boulder Junction. The event attracts approximately 50 kids to learn about fly-fishing. The event consists of a fly tying clinic, fly casting demonstrations, casting lessons, and an entomology lesson. Door prizes are awarded to the participants. For information contact **Wayne Parmley** at (715) 479-1131.

The chapter has also been discussing the **Deerskin River** dam removal options with the WDNr. It is anticipated that funding for the dam removal will be completed this summer, with the dam to be removed shortly thereafter.

This dam removal has created quite a bit of public comment and some controversy in the Eagle River area. The removal of the Deerskin Dam will create 5.6 miles of coldwater fishery in Vilas County. Coldwater streams cannot be created, and the opportunity to restore a coldwater fishery is a rarity.

Elections were held at the May 18 meeting with the following results:

- Brian Hegge** — President
- Wayne Parmlee** — V. President
- Ron Reupert** — Treasurer
- Mike Effinger** — Secretary

Board members elected include **Brian Leitinger** and **Victoria Houston**.

We also voted to sponsor two students to the **Natural Resources Careers Camp** at **Sunset Lake**. This camp is for high school students.

Our beaver trapping program was once again a success. We had three local trappers take 12, 23, and 21 beavers respectively from our local coldwater streams. We pay them a fee for each beaver taken.

The annual **Shaw-Paca fly tying class** was completed in March. We had about a dozen eager tiers for the six sessions.

Our officers for the next year are:

- William "Doc" Wagner** — President
- Dave Ehrenberg** — Vice-President
- Lee Kersten** — Secretary
- Joe Murphy** — Treasurer

Continued on p. 12



Chapter News

Continued from p. 11

Directors include **Jerry Weatherwax** (through 2003), **Steve Weber** (through 2003), **Dick Pamperin**

(through 2002), **Steve Schultz** (through 2002), **Floyd Pluger** (through 2001), and **John Kunzman** (through 2001).

Southeastern Wisconsin Chapter

Our membership has reached 625 strong, which is another reason we search out and help restore cold-water opportunities around the state.

We raised \$5,500 in our Year-2000 fundraiser. The money is going to the restoration and development of **Bluff Creek** in nearby Walworth County.

Members, led by **Rich Vetrano**, are helping in brush clearing and structure placement. The expected

payoff is a trout fishery of beauty near Milwaukee.

Outings to the **West Fork of the Kickapoo**, **Black Earth Creek**, and **Paradise Springs** have been part of our programing. Speakers have included DNR fish managers and biologists.

In the fall we travel to Vernon County for a weekend, and then return home and stand watch for the steelhead.

Southern Wisconsin Chapter

The March chapter meeting was the annual **March Madness Auction**. Bidding was lively for a variety of donated merchandise including a bamboo fly rod, artwork, a Leopold Bench, articles of clothing, flies, fly lines, and one pair of very well-worn waders wryly named "Aldo Leopold's Holy Waders."

Many thanks for a very successful event go to **Topf Wells**, **Larry Meicher**, **Andy Morton**, the **Bleimhls**, and **Ted and Fay Lauf**.

The feature topic for the April chapter meeting was "Stream Fishing for Smallmouth Bass." **John Lyons** from the WDNR gave an informative presentation on effective fly patterns, tips on tactics for smallmouths, equipment essentials, and where to fish. Those attending the meeting received a list of 10 recommended smallmouth rivers within a two-hour drive of Madison and five rivers more than a two hour drive from Madison.

The April meeting also included the annual election of officers and board members. Re-elected chapter officers include:

Tom Ehlert — President
Mark Maffitt — Vice-President,
Lynn Blenker — Treasurer
Fay Lauf — Secretary

Two board members were re-elected to two year terms — **John Serunian** and **Gerry Campbell**. **Paul Banas** was newly elected to the board for a two year term. **Dave Westlake** will be the chapter's State Council representative.

During the May chapter meeting **Craig Amacher** presented information about **New Zealand fly fishing**. Some of the more remote areas Craig fished can only be reached by helicopter or several days of hiking. Chapter members learned a guide is absolutely necessary to successful trout fishing in New Zealand. The May meeting ended with the annual chapter presentation of awards for distinguished service.

Approximately 40 eager-to-learn fly fishers turned out April 15 for the Southern Wisconsin Chapter's annual **Casting Clinic** at **Salmo Pond** and **Black Earth Creek**. Topics covered included knot tying, entomology, casting, and reading the water. Many thanks to **Any Davidson** for organizing this well-attended and successful event.

Members of the chapter, a boy scout troop, a backhoe and 165 to-be-planted trees met on Saturday April 29 on the **Frye Feeder** of **Deer Creek** to plant 165 trees. Trees included 100 Red Oaks, 25 Sugar Maples, 25 White Ash and 15 Tamaracks.

A well deserved refreshment break was highlighted by the arrival of a model T Ford pick-up-truck. The backhoe was operated by **Gary Greene** of the DNR. A tree planting plan was provided to **Scot Stewart** by **Dane County Parks**.

Thanks go to TU member **Clarence Olson** and his boy scout troop. Also many thanks to TU members and volunteers **Bill Pielsticker**, **Lunn Blenker**, **Henry Haugley**, **Greg Vodak**, **Mark Maffitt**, **Mark Rhinerson**, **Gerry Campbell**, **Paul Banas**, **Gayle Worf**, **Ted and Fay Lauf**, **Ted Wiessing**, **John Serunian**, and **Greg Ericson**.

On May 13 members met at **TOKEN Creek Springs** (also known as **Culver Springs**). With the use of chainsaws, axes, saws, pruners, and hardhats, they cleared fallen trees, fallen tree limbs, and brush surrounding the springs.

Once a clear path around the springs was established, drainage culverts were cleared. The water level of the springs, previously spilling over the bank and causing some erosion, was restored to normal.

Chapter members were assisted by members of the **Culver family** who have donated the springs to help ensure the vitality of this cold-water resource.

Chapter members taking part in the project included **Bill Pielsticker**, **John Hudson**, **Mike Stasko**, **Tim Cleveland**, **John Hutchinson**, **Gra-**



TU DONATES \$5,000 FOR LAND PURCHASE

TU officers (left to right) **Pete Harris** of the Green Bay Chapter, **Bill Wagner** of the Shaw-Paca Chapter, and **Mitch Bent** from the Antigo Chapter hand a check for \$5,000 to **Dave Seibel**, DNR fisheries biologist at Antigo and **Mitch Zmuda**, DNR land agent at Antigo.

Chapters help purchase frontage on Trout Springs

Three Wisconsin TU chapters recently contributed \$5,000 to help the WDNR purchase of a property adjoining Trout Springs in Langlade County.

The contribution was made by the Green Bay, Shaw-Paca, and Antigo chapters.

The Trout Springs property is located in the Town of Norwood.

The land has been purchased for public hunting and fishing. It includes wetlands, woodlands, and grasslands.

Trout Springs is a coldwater fishery that supports brook and brown trout.

The DNR plans to rehabilitate the springs by hydraulic dredging in several years.

ham and Jill Melrod, **Charles Jacobson**, **Diane Reuter**, **John**

Serunian, **Tom Thrall**, and **Henry Haugley**.

Wisconsin River Valley Chapter

The chapter ran a fly tying and fly rod casting class on May 20. It was part of the program that was held for **Women in the Outdoors** held by the **Turkey Federation**.

This summer we will be funding three projects — one on the **Plover River** and two on the **Prairie River**.

We will also be cleaning up a couple of the short spring flows into the Plover River project area.

The Prairie River project will cover about 2/3 of a mile.

The Plover River project will be about 5/8 of a mile. It will be a busy summer.

2001 trout stamp artists named

Artists from Green Lake and Lake Tomahawk will have their designs featured on the stamps anglers must buy in 2001 to fish trout on inland waters and trout and salmon on the Great Lakes.

Tim Schultz of Green Lake won the 19th annual Great Lakes Salmon and Trout Stamp Contest with his depiction of a chinook salmon breaking water after being hooked on a fishing lure.

The three judges chose Schultz's painting from a field of 16 entries.

The artist had previously won the Inland trout stamp contest in 1984, according to WDNR Coldwater Fisheries Specialist **Larry Claggett**, stamp contest coordinator.

Rod Umlauf of Lake Tomahawk won the 23rd annual Inland Trout Stamp Contest with a painting of a brown trout underwater, highlighted by the sun's rays shining from above.

The judges chose Umlauf's work from among 12 entries.

Both fish stamp contests are open to any Wisconsin artist. Artists may obtain contest rules from the DNR.

Entries are accepted in February or March, and the contest is held in April of each year.



Friends print offer great for collectors

If you collect trout stamps — or would like to start now that the stamps are becoming more rare — you still have a chance to purchase a set of framed "mint" stamps.

A few sets of 11 Wisconsin inland trout stamps (from 1990 through 2000) are still available as part of a Friends of Wisconsin TU fund-raiser. Contact **John Cantwell** for more details at (920) 865-4441.

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TU legislative agenda gets mixed outcomes

By Jeff Smith

The 1999 legislative session is over. TU's legislative program for the session was not extensive, but the outcomes ranged from good to bad to ugly.

The good

The Joint Finance Committee version of the budget contained a provision to allow fish farms to divert stream water without going through the DNR permit process — an exemption from water regulation and zoning laws enjoyed by the cranberry industry for over 100 years.

TU was instrumental in getting the Conference Committee to drop the provision.

TU, along with a variety of other conservation groups, lobbied to get the Stewardship Fund to an acceptable level. The Stewardship fund is the state's primary land conservation vehicle. It will be funded at \$46 million per year for the next 10 years, up from \$25 million a year during the 1990s.

The bad

TU was instrumental in forming the Cranberry Clean Water Coalition consisting of 15 sports and environmental organizations ranging from the Sierra Club to Walleyes for Tomorrow.

The purpose of the group was to be a force behind a bill that would remove the cranberry industry's exemption from DNR permitting requirements for diverting water.

The bill had a hearing in the Senate but never went any further. Although our expectations did not include getting a bill passed this session, it was disappointing it was so short lived. Nevertheless, the Coalition was formed and will be in place for the next legislative session.

The ugly

As we all know, TU was a major force behind resolving the Perrier/Mecan Springs issue. And we all know that the larger issue is the DNR's inability to deny high-capacity

well permits because denial is currently limited to impacting municipal wells.

A bill that would have resolved that issue readily passed the Senate. Because of the high level of citizen support and the ground swell of opposition to Mecan Springs, our level of expectations to have the bill pass the Assembly was very high, but that bill died primarily because of political bickering between the two parties and the Assembly and Senate leadership.

I have not experienced many similar political disasters since I have followed state legislation both professionally and with a TU focus.

Another defeat occurred with Senate Bill 27. This bill would have restored the DNR Board's ability to appoint the Secretary of the DNR rather than have the secretary appointed by the governor.

The bill passed the Senate, but failed to get a hearing in the Assembly and died.

Other legislative actions

For your information, the bill allowing possession of barbed hooks during the early season was signed by the Governor in mid May. TU took no position on this bill.

A provision in the budget established the "ordinary high water mark" as determining whether or not fishers are trespassing on private property. Before, the law was interpreted to mean that you had to "keep your feet wet."

Election 2000

I am asking TU members to be active during the various legislative campaigns this summer and fall. Specifically, ask candidates what their position is on the high-capacity well, cranberry, and DNR restoration issues. If they support these issues, consider supporting them.

Also, urging candidates to commit to the TU position on these issues during the campaign will lay a stronger foundation for legislative success during the next session.

Barbless hook bill passed

Governor Thompson signed a bill on May 17 that prevents the WDNR from writing a regulation that was causing many early season trout anglers heartburn.

One of legislators behind the bill, State Representative DuWayne Johnsrud, R-Eastman, called it an unusual bill for an unusual circumstance.

Johnsrud's bill prevents the DNR from making it illegal to possess barbed hooks during the early trout season.

"Right now, you just have to

pinch the barb down with a pliers before you tie it to your line," said Johnsrud. "With this bill signed into law, that's the way it will stay."

Last year the DNR tried to expand the early season regulations by writing rules that would have made it illegal for anglers to have barbed hooks in their possession.

The bill is unusual because over the 20 years that the legislature has reviewed agency rules, only 11 other bills to prevent an agency from writing a rule have been passed. More than 4,500 rules have been written by all state agencies since 1980.

CARA passes; goes to Senate

The Conservation and Reinvestment Act (CARA) passed in the U.S. House of Representatives May 11 by an overwhelming 315-102 vote.

In Wisconsin, only Republican F. James Sensenbrenner and Democrat David Obey voted against the measure.

TU National had urged members to support the legislation, which sets aside about half of the revenues from leasing off-shore oil and gas property on the Outer Continental Shelf (OSC) for conservation, parks, wildlife, coastal impact, and restoration programs.

"The act reinvests about \$2.8 bil-

lion per year in badly needed conservation and related programs that would benefit coldwater fisheries tremendously," said a TU official. "While CARA is not perfect, the approach is so good, and the political climate needed to pass such a law is so rare, that we ask you to help get it passed."

The battle for CARA passage now moves to the U.S. Senate, where opposition is expected to be stiffer, especially among western republicans who fear the act will lead to greater public land purchases.

Those wishing to find out more about how they can help pass CARA in the Senate should visit TU's web site at www.tu.org.

Few Republicans respond WSN surveys state legislators on DNR/PIO restoration

By Todd Hanson

A survey of Wisconsin legislators finds support is largely split along party lines for returning DNR independence and the office of the public intervenor.

The Wisconsin Stewardship Network (WSN) initiated the survey in response to last April's Conservation Congress meet-

ings where attendees voted overwhelmingly in support of returning these two issues to their status before Governor Thompson's 1995 budget bill.

The WSN survey asked legislators the identical Conservation Congress questions.

Only 38 legislators responding to the survey. Of these, just six were Republicans.

SURVEY QUESTIONS AND RESULTS

"58. Should the Secretary of the Department of Natural Resources be appointed by the Natural Resources Board rather than the Governor?"

"59. Should the Office of the Public Intervenor be reinstated with all its powers as originally created in 1967, and with sufficient financing to allow it to carry out those powers?"

SENATE:

Jim Baumgart (Y-Y)	Robert Cowles (Y-Y)	Jon Erpenbach (Y-Y)	Rodney Moen (Y-Y)	Kevin Shibilski (Y-Y)
Brian Burke (Y-Y)	Russell Decker (Y-Y)	Gary George (Y-Y)	Kimberly Plache (Y-Y)	Robert Wirch (Y-Y)
Chuck Chvala (Y-Y)	Gary Drzewiecki (Y-N)	Richard Grobschmidt (Y-Y)	Fred Risser (Y-Y)	
Alice Clausing (Y-Y)	Mike Ellis (N-N)		Judy Robson (Y-Y)	

ASSEMBLY:

Larry Balow (Y-Y)	David Cullen (Y-Y)	David Hutchison (Y-N)	Joe Plouff (Y-Y)	Christine Sinicki (Y-Y)
Therese Berceau (Y-Y)	Joseph Handrick (Y-N)	John La Fave (Y-Y)	Mark Pocan (Y-Y)	Tony Staskunas (Y-Und.)
Spencer Black (Y-Y)	Donald Hasenohri (Y-Y)	Julie Lassa (Y-Y)	Marty Reynolds (Y-Y)	David Travis (Y-Y)
Peter Bock (Y-Y)	Tom Hebl (Y-Y)	John Lehman (Y-Y)	Lorraine Seratti (Y-N)	Sheldon Wasserman (Y-Y)
				Sarah Waukau (Y-Y)

REFUSED TO RESPOND — SENATE:

Roger Breske	Scott Fitzgerald	Alan Lasee	Mary Panzer	Dale Schultz
Alberta Darling	Joanne Huelsman	Mary Lazich	Carol Roessler	Robert Welch
Margaret Farrow	Robert Jauch	Gwendolynne Moore	Peggy Rosenzweig	David Zien

REFUSED TO RESPOND — ASSEMBLY:

John Ainsworth	Eugene Hahn	Shirley Krug	Jerry Petrowski	Scott Suder
Sheryl Albers	Tim Hoven	Peggy Krusick	Mark Pettis	Tom Sykora
Frank Boyle	Gregory Huber	Bonnie Ladwig	Jeffrey Plale	John Townsend
David Brandmuehl	Mary Hubler	Frank Lasee	Cloyd Porter	Robert Turner
Timothy Carpenter	Michael Huebsch	Michael Lehman	Michael Powers	Gregg Underheim
Spencer Coggs	Jean Hundertmark	Joseph Leibham	Kitty Rhoades	Frank Urban
Pedro Colon	Scott Jensen	Mark Meyer	Jon Richards	Daniel Vrakas
Marc Duff	Suzanne Jeskewitz	Lee Meyerhofer	Antonio Riley	David Walker
Steven Foti	DuWayne Johnsrud	Mark Miller	John Ryba	Steve Wieckert
Stephen Freese	Dean Kaufert	Phil Montgomery	Marlin Schneider	Annette Polly Williams
John Gard	Neal Kedzie	Johnnie Morris-Tatum	Dan Schooff	Wayne Wood
Robert Goetsch	Carol Kelso	Terry Musser	Gary Sherman	Leon Young
Barbara Gronemus	Steve Kestell	Stephen Nass	Rick Skindrud	Robert Ziegelbauer
Glenn Grothman	Judith Klusman	Luther Olsen	Joan Spillner	
Scott Gunderson	Rob Kreibich	Alvin Ott	John Steinbrink	
Mark Gundrum	James Kreuser	Carol Owens	Jeff Stone	

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Wisconsin Natural Resource Board members

The following currently serve on the Natural Resource Board:

Trygve A. Solberg
P.O. Box 50

Minocqua, WI 54548
(715) 356-7711
President and owner, T.A. Solberg Company, Inc. Appointed to Board February, 1991; reappointed May, 1993 and April, 1999. Served as Vice-Chair May, 1993, to February, 1997. NRB Chair since February, 1997. Term expires May 1, 2005.

Neal W. Schneider
P.O. Box 71
Janesville, WI 53547-0071
(608) 754-4444
President, Schneider Funeral Directors, Inc. Appointed March, 1989; reappointed May, 1993. Served as Secretary May, 1993-January, 1999. Vice Chair since January, 1999. Term expired May 1, 1999.

James E. Tiefenthaler, Jr.
W228 N683 Westmound Drive
Waukesha, WI 53186
(414) 513-1111
President, Tiefenthaler Machinery Co. Appointed to Board June, 1991; reappointed April, 1999. Term expires May 1, 2003.

Herbert F. Behnke
N5960 Wolf River Road
Shawano, WI 54166
(715) 524-4423
Retired from 21st Century Genetics. Past DNR Board member (1967-1971). Appointed April, 1989, reappointed October, 1995. Served as Chair from May, 1993 to February, 1997. Term expires May 1, 2001.

Howard D. Poulson
1212 Deming Way
P.O. Box 5550
Madison, WI 53705
(608) 828-5700
President, Wisconsin Farm Bureau Federation. Appointed August, 1995. Term expires May 1, 2001.

Stephen D. Willett
P.O. Box 89
Phillips, WI 54555
(715) 339 2125
Attorney. Appointed June, 1991; reappointed April, 1999. Term expires May 1, 2003.

Catherine L. Stepp
14520 50th Road
Sturtevant, WI 53177
(262) 835-2609
Co-owner and Vice President, First Stepp Builders, Inc. Appointed April, 2000. Term expires May 1, 2005.

Gerald M. O'Brien
Box 228
Stevens Point WI 54481
(715) 344-0890
Attorney. Appointed May 1, 1999. Term expires May 1, 2005.

Air, Waste, and Water Management/Enforcement Committee

Stephen D. Willett, Chair
Catherine L. Stepp
Howard D. Poulson

Land Management, Recreation and Fisheries/Wildlife Committee

Herbert F. Behnke, Chair
Gerald M. O'Brien
James E. Tiefenthaler, Jr.

Besadny grant applications being taken

Grant applications are currently being accepted for 2001 C.D. Besadny Conservation Grants Program that is administered by the Natural Resources Foundation of Wisconsin.

The Besadny grants range from \$100 to \$1,000. Moneys are awarded upon approval of the applicant's proposal in March.

Grants provide financial support for natural resources projects and programs which support the Foundation's mission at the relatively small-scale, grassroots level.

To receive a Besadny grant, applicants must:

- Be a private nonprofit organization, an individual, or a government agency.
- Use funds for a project or program which (a) benefits the public or public resources and (b) involves management, restoration, applied research, or education pertaining to Wisconsin's natural resources.
- Use the Besadny grant to fund a definable unit of the project or program. Preference is given where this grant would significantly impact completion of the project.
- Match the requested funds on a 1:1 basis with funds or in-kind services.
- Show that any previous grant received from the Natural Resources Foundation was for a different project than the current proposed project. (First-time applicants receive priority consideration.)
- Submit a grant report summarizing the project, including how grant moneys were spent and whether objectives were met.
- Provide the NRF with copies of all publications and press releases associated with the project receiving the grant, as well as photographs or slides which document the project and its accomplishments (when practical).

To obtain application materials, contact:

Natural Resources Foundation
P.O. Box 129
Madison, WI 53701-0129

For additional information, call the NRF at (608) 266-3138. The application form is also available at the NRF web site: www.nrfwis.org.

Thompson appoints Stepp to NR Board

Governor Thompson recently appointed Catherine L. Stepp of Sturtevant to the Natural Resources Board.

"Catherine's experience as environmental monitor for First Stepp Builders will allow her to serve the board and the people of Wisconsin well," Thompson said. "I'm confident she will help build Wisconsin's reputation as a national leader in protecting our natural resources."

Stepp is co-owner and vice president of First Stepp Builders, Inc. The company has twice received recognition as Builder of the Year by the Racine-Kenosha Builders Association.

Stepp received the Outstanding Community Service Award from the city of Racine. She has also been recognized as a Breakthrough Woman by the Women's Center at UW-Parkside.

Stepp attended the UW-Milwaukee and UW-Whitewater. Her term

New river protection program awards grants

A new Wisconsin program to protect rivers has spurred requests from local governments and nonprofit organizations for three times as much grant money as the state has to award for this inaugural round of grants.

Nineteen local governments and groups will receive grants totaling \$300,000 for projects involving such waters as the Plover River in central Wisconsin, the Rock River in southeastern Wisconsin, and Raccoon Creek in south central Wisconsin where the grant will help pay for a fish passage around a dam.

"We're thrilled with the response to this program," says Mary Ellen Vollbrecht, WDNR rivers and habitat protection chief. "Local groups requested \$1 million — three times as much money as we had to give — and that shows the tremendous interest people have in protecting the rivers they love."

Lawmakers created the DNR River Protection Grants program in the 1999-2001 budget, allocating \$300,000 for the fiscal year ending June 30, 2000, and another \$300,000 for the fiscal year that begins July 1, 2000.

Next grant deadline September

The next application deadline is Sept. 1, 2000, and eligible applicants include cities, villages, towns, counties, tribal governments, other units of local government, qualified river management associations, and nonprofit conservation organizations.

The new program is intended to help citizen efforts to protect rivers as development pressure and demand for industrial, recreational, and other uses increases along rivers and riverbanks.

The river program is modeled after the popular DNR Lake Planning and Protection Grant program that annually allocates \$2.6 million and has helped communities and groups pay for more than 850 improvement projects on Wisconsin inland lakes in the last decade.

Under the river grant program, municipalities and nonprofit organizations can seek planning grants for activities including starting new organizations, conducting educational efforts, studying river conditions, and developing plans to protect the river.

River management grants can be used to implement practices to control nonpoint sources of pollution, develop local regulations and ordinances, buy land or easement acquisition to protect a river, and to restore shoreland and in-stream habitats. The grants pay up to 75 percent of eligible project costs, with applicants providing the rest, which can be cash, in-kind contributions, or donated services.

"We hope the grant program will

ends May 1, 2002. Senate confirmation is required.

Stepp replaces Betty Jo Nelson who resigned before her term was up so her successor, originally proposed to be Francis Bill Murphy, could take a seat and vote.



help build the ranks of advocates for Wisconsin rivers, and this first round of grant applications shows the ranks are strong and growing," Vollbrecht says. "That's critical because user groups need to take a

2000 River Protection Grants

Community Conservation Inc., Crawford, Vernon, Monroe, Capacity Building, \$10,000.

Golden Sands RC&D, Portage & Marathon, Plover River Water Quality Evaluation, \$10,000.

Waukesha Land Conservancy, Waukesha, Education & promotion, \$10,000.

Ozaukee Washington Land Trust, Inc., Ozaukee/Washington, Land Inventory and Education of North Branch Milwaukee River, \$9,914.

Friends of Milwaukee's Rivers, Milwaukee/Washington/Ozaukee/Waukesha, Capacity Building, \$10,000.

Rock County Land Conservation Dept., Rock, Raccoon Creek Watershed Capacity Building, \$6,566.

Southwest Badger RC&D, Grant, Rountree Branch Planning, \$10,000.

Dane County Parks Dept., Dane, Sugar River Capacity Building, \$10,000.

Friends of Pheasant Branch, Dane, The Friends of Pheasant Branch; Capacity Building, \$10,000.

Token Creek Watershed Association, Dane, Strategic Planning, \$9,900.

Rock River Coalition, Rock/Dodge/Walworth/Dane/Jefferson/Fond du Lac/Columbia, Capacity Building, \$9,769.

Inland Sea Society, Bayfield, Sioux River Watershed Council Establishment, \$9,750.

Balsam Branch Partnership, Inc., Polk, Balsam Branch Watershed Protection Strategy Development, \$10,000.

Sheboygan Area Land Trust, Sheboygan & Manitowoc, Fischer & Point Creeks Assessment & Planning Project, \$10,000.

Manitowoc County, Manitowoc, Friends of Branch River Capacity Building, \$9,400.

River Country RC&D, Eau Claire, Dunn, Chippewa, Pepin, Lower Chippewa River Basin Conservation Buffer Initiative, \$25,000.

Mississippi River Valley Conservancy, Crawford, Sugar Creek Protection, \$50,000.

Friends of Beckman Mill, Rock, Beckman Mill Fishway, \$34,280.

Ulao Creek Partnership, Ozaukee, Ulao Creek Wetland Restoration and Management Project, \$45,100.

stake in the rivers' future for efforts to protect those rivers to work. Programs to buy land or regulation programs by themselves will never be enough — they will be like Band-aids rather than the health care that is needed."



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The evolution of the public trust doctrine and the degradation of trust resources: Courts, trustees, and political power in Wisconsin

The controversy over the Perrier Company's plans to tap into the Mecan Springs has brought water issues into the consciousness of Wisconsin residents like no event in recent memory. Who owns our waterways? Which laws protect them? How are these water laws being interpreted and enforced?

Because water conflicts promise to play an increasing role in TU's efforts on behalf of the state's coldwater resources, *Wisconsin Trout* is printing a three-part series on the history and status of Wisconsin's water stewardship. This series originally appeared as a comment by Melissa Scanlan in the

Spring 2000 issue of *Ecology Law Quarterly*.

Scanlan's article is an engaging mix of historical research and investigative journalism. Readers will learn more than the events which have shaped Wisconsin's water laws. Interviews with a range of Wisconsin DNR employees give insight into how our laws are being interpreted in an increasingly political environment.

Scanlan received a law degree from the University of California at Berkeley. She is founder and legal director of Midwest Environmental Advocates, the first environmental law center in Wisconsin.

By Melissa Kwaterski Scanlan

The public trust doctrine is rooted in ancient Roman law and the Wisconsin Constitution. Ancient Roman jurists believed that the natural law concept that the waters are common to all was not subject to the changing whims of legislatures. Similarly, modern theorists assert that a constitutionally-based doctrine will be more insulated from politics. This Comment demonstrates the limits of these theories. The trust doctrine is not immutable. Based on interviews with the trustees of Wisconsin's water resources, this Comment uncovers the constraints on the trustees. It shows that trust resources are at risk due to politically-motivated decisions and lax enforcement.

Introduction

The public trust doctrine describes the state's relationship to its water resources and to the citizens of the state. In its most basic form, it is the concept that the state holds navigable waters in trust for use by the public. The contours of these relationships and the use of the doctrine to protect natural resources have evolved along with changing uses of water. Courts have continually expanded what they recognize as the public's interest in public trust resources to include everything from the right to hunt to the right to maintain pollution-free water.

The expansion of the public trust doctrine has been a focal point for hopes that the doctrine will be used to curb the degradation of water resources and wildlife. The volume of law review articles that discuss the public trust doctrine is indicative of the high level of optimism regarding the capacity of the public trust doctrine to address threats to natural resources. That optimism, however, reflects an inflated notion of the doctrine's practical potential. In fact, the public trust doctrine's capacity to protect trust resources from contemporary threats is highly dependent on the individual natural resource managers who, as trustees, have the responsibility to implement the doctrine.

The discretion exercised by those trustees significantly disconnects legal theory from implementation of the public trust doctrine. This Comment uses data from qualitative research interviews to demonstrate that natural resource managers' implementation of their public trust obligations has lagged significantly behind the courts' expansion of the legal doctrine.

Although there are similarities in the evolution of the public trust doctrine across state lines, the public trust is a state-based doctrine shaped by state institutions. Some states have relied on the public trust doctrine more heavily than others to protect navigable waters and, consequently, have a more clearly and completely developed legal doctrine. This Comment focuses on Wisconsin for several reasons. Wisconsin, a state containing over 1,200 lakes and bordered on the east and the west by Lake Michigan and the Mississippi River, respectively, has a rich 150-year history of using the public trust doctrine to protect the natural heritage of the state. Moreover, Wisconsin's public trust doctrine is grounded in the state's constitution. Advocates for creating state constitutional amendments to protect the environment argue that "a constitutional amendment, as opposed to a statute, protects policy judgments from the ebb and flow of the political tide." One would predict, based on this, that the public trust doctrine in Wisconsin is fairly insulated from political pressure. Given its history and constitutional basis, the development and implementation of Wisconsin's public trust doctrine is fertile

ground for study.

In Wisconsin, three state institutions have been instrumental in defining the scope of public rights and the responsibility of the state trustee: state courts, the legislature, and the Department of Natural Resources (DNR). The courts have both resolved concrete legal disputes concerning public trust resources and have articulated the underlying legal theory. The legislature, as the primary trustee for the public's resources, has codified part of the common law public trust doctrine. It has also delegated substantial responsibility over the trust to Wisconsin's DNR. The DNR, in turn, employs natural resource managers who make daily determinations that impact public trust resources.

In order to understand the importance of the public trust doctrine, one must understand how these institutions interact and how they have historically determined the scope of public rights. Court decisions are extensively studied, but little is known about how Wisconsin's natural resource managers view and protect the public trust. These resource managers are the trustees of the navigable waters. They are the ones who determine what activities are in the public interest. They decide whether to issue a permit to allow an activity or initiate an enforcement action to stop an activity. The dearth of analysis of the trustees can be partly explained by the fact that this information is not readily available. Yet, one must understand the trustees' perspectives to fully appreciate the impact of the public trust doctrine on contemporary water management issues.

This Comment provides a comprehensive analysis of the evolution of the public trust doctrine in Wisconsin. Based on a review of major court decisions and interviews with the DNR's natural resource managers, this Comment describes the main institutional forces defining the doctrine and its implementation. The analysis of these materials shows how the DNR actually applies the doctrine and assesses the doctrine's utility to protect natural resources from degradation.

Part I of this Comment focuses on how the courts and legislature have shaped the public trust doctrine.

Part I.A discusses the historical origins of the public trust doctrine, both generally and in Wisconsin, by tracing the changes in the conceptual framework that have influenced the definition of what waters and lands are protected by the trust. Part I.B examines the role of two state institutions in shaping the trust doctrine and protecting trust property: the courts and the legislature. First, it discusses the court's role in protecting the trust against unconstitutional actions by the legislature and other trustees, such as attempts to alienate trust property or improperly delegate authority to trustees. Second, it discusses the state's responsibility to protect public rights. It emphasizes the importance of constitutional restrictions on the legislature, such as restrictions on the state's ability to alienate trust property, issue lakebed grants of trust property, and delegate responsibility to lesser units of government.

Part I.C focuses on the expansion of public rights, the impact of the trust on riparians, the accompanying conflicts between public rights and private riparians, and the courts' resolutions of those conflicts.

Part II focuses on how the DNR trustees have implemented the public trust doctrine. This Part is based on the results of qualitative research interviews with the DNR's natural resource managers and describes how the trustees actually apply the public trust doctrine. Part II.A provides background in-

formation on the creation of Wisconsin's DNR and its role in administering the trust. It outlines the DNR's authority over key public trust issues, describes the main regulatory authority of the DNR, and identifies the primary decisionmakers who are entrusted with the duty to protect the waters of the state for the public.

Part II.B outlines the primary threats to water resources in Wisconsin and analyzes the trustees' use of the public trust doctrine to protect water resources from these threats.

Part II.C identifies the many pressures that the trustees face. It tests the strength of the argument that a legal doctrine based on a constitutional amendment is free from the ebbs and flows of political tides.

The Comment concludes that the Wisconsin court has given the trustees a tremendous amount of freedom to decide how to protect the trust and expand public rights in water. In cases where the trustee has acted to protect or further the trust, the court generally defers to the trustee's valuation of the public interest in water. This wide latitude, however, has not given rise to a vigorous regulatory and enforcement program to protect the navigable waters of the state. The laws currently in place do not adequately protect the trust from contemporary threats, such as shoreland development. Moreover, the regulators entrusted with the duty to implement the public trust doctrine are restricted from acting to the full extent allowed by the court. They are constrained by a variety of systemic and political factors, including the inability to deny permits, a perceived dependence on local district attorneys to prosecute violations, understaffing, and pressure from supervisors and politicians to allow riparians greater freedom to degrade trust resources.

I. Evolution of the Public Trust Doctrine

A. Historical Origins of the Public Trust Doctrine

The public trust doctrine in the United States originated from the English common law that the British Crown held title to the bed or soil beneath tidal waters. The Crown was thought to have ownership of waters and the beds below them in order to control the highways of commerce and navigation for the advantage of the public; thus, the sovereign held this property in trust for the people.

When the thirteen original colonies broke away from England and formed independent states, ownership of trust property passed to the sovereign governments of the states. Likewise, when the Northwest Territory was formed in 1787, trust property was reserved for all citizens of the United States. Virginia ceded the Northwest Territory, of which Wisconsin was a part, on the condition that the navigable waters would be forever free for United States citizens, and the new states would be admitted as full members of the Federal Union with the same sovereignty as the original states. Article IV of the Northwest Ordinance provided that:

The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

When Wisconsin became a state, it incorporated this language into Article IX,

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I. Evolution of the Public Trust Doctrine

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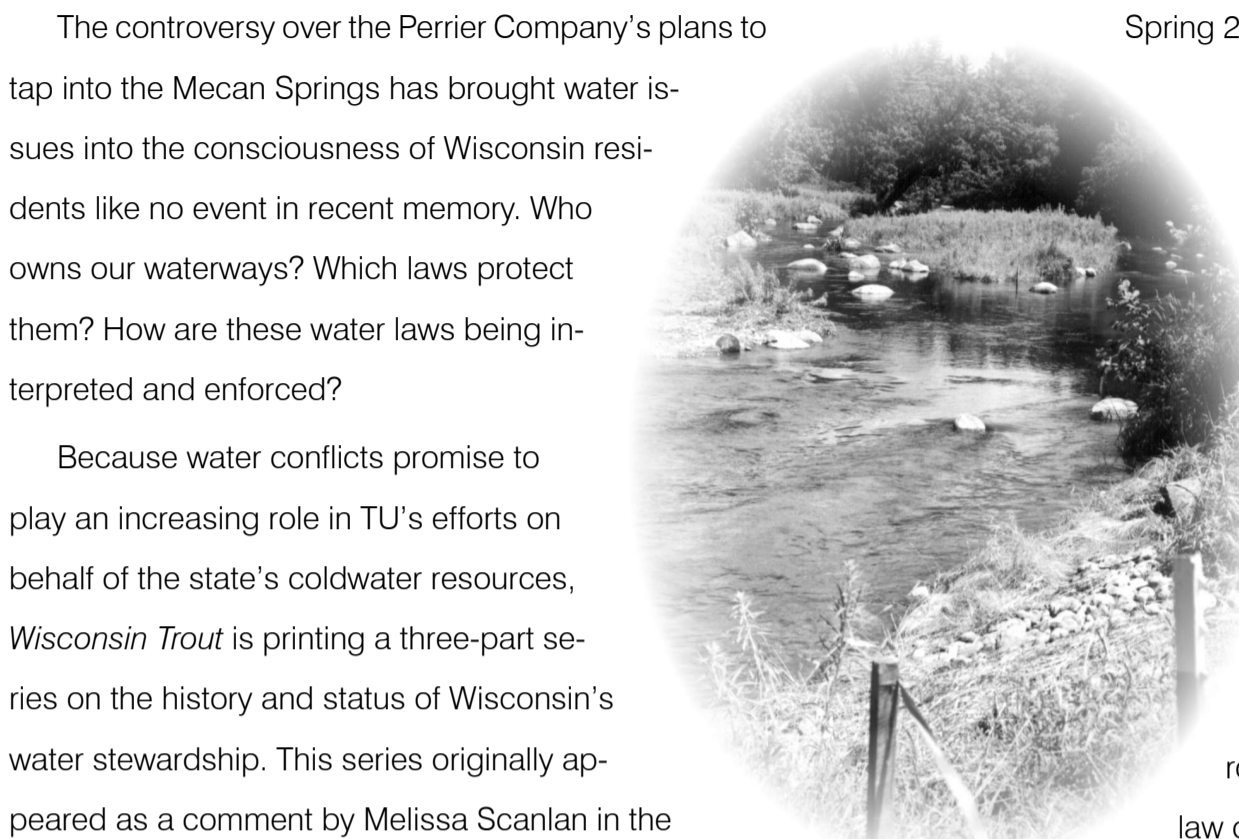
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Conclusion

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Section 1 of the Wisconsin Constitution.

The Constitution both imposes a duty on and gives authority to the state to regulate navigable waters. It requires state action to preserve and promote the trust, and it establishes public rights to use trust property.

1. The Line Between Public and Private: What Water and Land Is Protected by the Public Trust Doctrine?

a. Navigable Waters

The state of Wisconsin holds title to navigable waters and their underlying beds in trust for the free use of the public. The definition of navigability is important because it determines what bodies of water are subject to public rights. Since "change is the unchanging chronicle of water jurisprudence," throughout history, navigable waters have been redefined as having the purposes for which water is used. "New needs have always generated new doctrines and, thereby, new property rights."

In 1871, the United States Supreme Court clarified that the public trust doctrine is applicable to all navigable waters, tidal or fresh. Previously, in English common law and states that followed it, the trust had only applied to tidal waters. However, in *The Daniel Ball*, the Court held that the test for navigability is whether the waters are "navigable in fact." "[R]ivers are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

Although Wisconsin initially followed the test established in *The Daniel Ball*, Wisconsin's test for navigability has changed over time. This evolution has been accompanied by changing public uses of water and the court's conception of public use rights. In the late 1800s and early 1900s, the test was whether the water was capable of floating the products of commerce to mill or market during a certain regularly recurrent annual period, thus reflecting the primacy of water-based commerce during that time. As early as 1914, the court expanded its test of navigability to include recreational boats.

Navigability now encompasses all water bodies capable of floating any recreational boat during a certain recurrent period of the year. The test of navigability does not require any balancing of the public's rights and the project's benefits; that occurs only after the navigability determination is made and pertains only to whether or not the DNR should issue a permit for the project. As our knowledge about the interconnectedness of hydrology has increased, the public trust has been expanded to cover shoreland and wetlands adjacent to natural navigable waters. This expansion has been justified by the need to protect navigable waters. Similarly, the trust applies to artificial navigable waters that are "directly and inseparably connected with natural, navigable waters." In some circumstances the trust also applies to non-navigable streams.

Additionally, the DNR's determination that a waterbody is or is not navigable is not permanent and can be revised as conditions change. For example, in *Turkow v. DNR*, an artificial drainage way that one branch of the State had declared was not navigable in 1957 was later declared navigable in 1989. Prior to the 1989 reassessment of the drainage way's navigability, Turkow had purchased property containing a dwelling that was twenty-five feet from the drainage way. In 1994, the DNR advised Turkow that the drainage way was navigable and ordered him to remove the walkways and steel fence that covered it. The court of appeals affirmed the determination that the drainage way was navigable and held that the DNR acted within its authority when making its determination. Despite a property owner's reliance on the DNR's determination that a waterbody is not navigable, the doctrine of equitable estoppel is inapplicable. "The DNR has the authority, as well as the obligation, to determine whether the waters of the state are navigable in fact...." That authority does not end when a determination is made; rather, it can be reassessed at any future time.

b. Lands Underlying Navigable Waters

Historically, the states were free to determine who owned the land under navigable waters. Wisconsin defined its ownership to include the "beds underlying navigable waters...subject only to the qualification that a riparian owner on the bank of a navigable stream has a qualified title in the stream bed to the center thereof." The state has traditionally been the owner of the lakebeds up to the ordinary high water mark. The ordinary high-water mark is:

[T]he point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. And where the bank or shore at any particular place is of such a character that it is impossible or difficult to ascertain where the point of the ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below ordinary high-water mark.

Furthermore, the trust extends to areas below the ordinary high-water mark that are covered with aquatic vegetation and not navigable.

As early as 1965, the legislature extended its public trust jurisdiction beyond the ordinary high-water mark when it included the regulation of shorelands as part of Wisconsin's Water Quality Act of 1965. In order to fulfill the state's role as trustee of navigable

waters, the legislature extended its trust responsibility to lands beyond those covered by the common law public trust doctrine to lands "lying close to navigable waters." Application of the shorelands ordinance to lands within one thousand feet of the normal high-water elevation extends the state's trust responsibility. The court approved this extension of jurisdiction because "[l]ands adjacent to or near navigable waters exist in a special relationship to the state."

B. The Role of the Court and Legislature in Protecting the Public Trust

1. Judicial Review of the Administration of the Trust

Courts play an important role in ensuring that the trust is being administered for the public's benefit. "The final determination of whether a particular act is for a public or a private purpose must be made by the judiciary." Not only does the judiciary have a responsibility to examine whether the legislature has acted within the bounds of its regulatory power, but also to determine whether the state has acted in conformity with its "special obligation to maintain the public trust." This has been consistently acknowledged for over one hundred years. As early as the late 1800s, the court clearly articulated its role in upholding the public trust. In *Priewe v. Wisconsin State Land Improvement Co.*, the court held that it must determine whether or not the legislature acted to benefit the public, and in making that determination, it is not bound by the legislature's statement of purpose in its conveyance of public trust land. It is the role of the court to review questionable legislation to determine its constitutionality.

In public trust cases, judicial review varies based on the parties and situation before the court. The court is trying to "identify and correct those situations in which it is most likely that there has been an inequality of access to, and influence with, decision makers so that there is a grave danger that the democratic processes are not working effectively." When the court reviews an action by the legislature or DNR that appears inequitable or fails to benefit clearly the public interest, the court places the burden on the legislature or DNR to prove that it has acted for a public purpose. A court may decide that the public benefits of an act are "so inherently unclear that such projects should not be advanced unless it can be shown that they are in fact necessary or desirable from the perspective of the public interest." In Wisconsin, the courts have generally required a public interest-based justification whenever public resources are "subordinated to a more limited set of private interests."

If there is uncertainty about the impact on the public interest, courts remand the case to the appropriate entity to adduce evidence of the benefits to the public interest. The court will closely scrutinize any DNR or legislative action that appears to jeopardize the trust. Similar to the *Priewe* case, *Reuter v. DNR* involved a decision by the trustee (the DNR) to allow an incursion into trust property. Rather than simply defer to the agency's policy judgment, the *Reuter* court rejected the DNR's balancing of policy factors and remanded the decision to the DNR for additional consideration of the pollution generated by the proposed project.

By contrast, when the DNR faces challenges by riparians to its protection of the public trust, courts will generally defer to the agency's policy and scientific judgment. This type of case does not involve the danger that private interests have exerted undue influence on the administration of the trust so the court is not concerned with protecting democratic processes and thus accords greater deference to the agency's decision. For instance, in *Hixon v. Public Service Commission* the court deferred to the agency's policy judgment when the agency acted to protect the public trust by denying a permit to maintain a riparian owner's breakwall. When a trustee acts to protect the trust, the court generally finds that it is the trustee's function to weigh all the relevant policy considerations: preserving natural beauty; securing the greatest public use; and accommodating the convenience of riparian owners.

2. The Legislature's Role in Administering the Trust

The legislature, as trustee of the navigable waters of the state, has a significant role in administering the trust. As early as 1927, the Wisconsin Supreme Court clearly identified the legislature's duty as both restricting actions that might endanger the trust and requiring affirmative actions to protect the trust:

The trust reposed in the state is not a passive trust; it is governmental, active and administrative. Representing the state in its legislative capacity, the legislature is fully vested with the power of control and regulation. The equitable title to those submerged lands vests in the public at large, while the legal title vests in the state, restricted only by the trust, and the trust, being both active and administrative, requires the law-making body to act in all cases where action is necessary, not only to preserve the trust, but to promote it. As has heretofore been shown, the condition confronting the legislature was not a theory but a fact. This condition required positive action....

Moreover, the Wisconsin court has outlined criteria to analyze the state's management of the trust and has held that the trust is a matter of statewide concern and "cannot be delegated by the state legislature to any group which is less broadly based." The contours of these boundaries are discussed below in the context of the legislature's ability to issue lakebed grants and to delegate decisionmaking authority.

a. The Legislature Has a Limited Ability to Alienate Trust Property

Does the public trust doctrine prevent the legislature from alienating sovereign lands? Richard Epstein analogizes the public trust doctrine to the takings doctrine, arguing that both doctrines are based on the idea that property puts bounds on legislatures. Accordingly, one function of the public trust doctrine is to constrain the legislature's ability to diminish trust property. The Wisconsin Supreme Court recognized this over one hundred years ago. In *Priewe*, the court clearly articulated the legislature's restricted ability to alienate trust property:

The legislature has no more authority to emancipate itself from the obligation resting upon it which was assumed at the commencement of its statehood, to preserve for the benefit of all the people forever the enjoyment of the navigable waters within its boundaries, than it has to donate the school fund or the state capitol to a private purpose.

In one of the United States Supreme Court's most famous public trust cases, *Illinois Central Railroad v. Illinois*, it asserted that the state's control over lands underlying navigable waters cannot be abdicated and "cannot be relinquished by a transfer of the property." In the more recent case of *Phillips Petroleum Co. v. Mississippi*, the Court held that although Phillips Petroleum had record title to and paid taxes on land lying beneath tidal waters, the State of Mississippi continued to own the land. The Court concluded that Phillips Petroleum's expectation that it owned the trust property was unreasonable because Mississippi law had consistently recognized that the state owned the beds under tidal waters.

Although Wisconsin's legislature has made grants of public trust property, this property can only be used for public purposes and does not operate to transfer the legal title from the state. Further, any grant of property for purely private purposes will be void.

Priewe established an early test for finding a public purpose in the grant of a lakebed. *Priewe* involved an 1891 special legislative grant of the lakebeds of two lakes to John Reynolds, who was requested to drain the lakes to protect public health. The court looked past the stated legislative purpose of the grant to the actual effects and found that Mr. Reynolds had formed a land development corporation and transferred his rights to the lakebeds to the corporation so the beds could be used for development. The Wisconsin Supreme Court reaffirmed its earlier decision and held that legislative grants of trust property are void if the purpose and effect of such a grant are solely to benefit a private interest. Despite the incidental public health benefits from draining the lakes, the court found that this grant was void and ordered the defendant to restore the lakes to their former condition.

The court later refined its analysis in *State v. Public Service Commission*, a case involving a challenge to the legislature's grant of lakebed to the City of Madison. Unlike the grant in *Priewe* that benefited a private corporation, the grant to Madison was made in order to develop a lakeside public park.

The court introduced a five-factor analysis to determine whether a lakebed grant served a public purpose. After finding that the grant did serve a public purpose because it had met all five factors, the court turned to the litigants' challenge to the Public Service Commission's issuance of a permit to place fill on the bed of Lake Wingra and a nearby lagoon. The court ultimately upheld the commission's decision to allow the City of Madison to fill part of the lake and the lagoon in order to create a parking lot, enlarge a beach, and relocate a highway. The court determined that these alterations did not violate the public trust because the project would serve the public by creating a public park.

In the same year, the court determined the validity of another lakebed grant to the City of Madison that involved filling six acres of Lake Monona. The court applied the five-factor test, and added a sixth factor: if the purpose of the grant was local, it would be an improper use of state property. The court held that filling the bed of Lake Monona for a proposed auditorium and civic center, although not a public park, did not violate the public trust because it was a recreational facility that was not purely local. The issue of using trust property to serve local as opposed to statewide interests is particularly important when considering the delegation of trust responsibility from the legislature to other units of government.

b. Restrictions on the Legislature's Delegation of Its Duty to Administer the Public Trust

The legislature has the primary power of administering the public trust. In furtherance of the state's role as trustee of navigable waters, the legislature can delegate the administration of the trust to other units of government, such as agencies, counties, and municipalities. However, the delegation must be "in furtherance of the trust and...not block the advancement of paramount interests." In other words, the trust must be administered for the benefit of the public, and the state must retain control over those who are administering the trust.

Courts closely scrutinize the delegation and administration of the public trust. They are not bound by the legislature's declaration of purpose and must independently determine whether the legislature has acted to further public rights in navigable waters. In public trust cases, the court's role is to protect the public interest in the navigable waters of the state.

Accordingly, whenever public trust re-

sources are subordinated to a limited set of private interests, Wisconsin courts will require the trustees to justify their position and may invalidate the legislative action. The possibility of subordinating the trust to a limited set of interests arises when the legislature delegates authority to administer the trust to local governments. Local governments are inherently more concerned with the localized impacts of their decisions and respond to a local, rather than statewide, constituency. By holding a delegation of the trust to county boards unconstitutional, the court in *Muench v. Public Service Commission* "took the position that it must protect the legislature from itself and from its temptation to succumb to pressures of purely local interests. The court required the legislature to respond to a statewide constituency—another form of judicially imposed democratization."

Additionally, delegation of the trust to county boards of supervisors is restricted by Article IV, Section 22 of Wisconsin's Constitution. The legislature cannot delegate matters of statewide concern to county boards of supervisors. Under Article IV, Section 22, the legislature may only grant powers of a local character to counties. A power of local character is one that primarily affects the people of the locality, rather than one that affects all the people of the state. Although there are clearly local or statewide issues, many do not fit exclusively into either category. Whether a challenged legislative enactment that delegates power to a local government involves issues of local or statewide concern is for the courts to determine. In *Muench*, the court determined for the first time that the public trust was a matter of statewide concern. The court reasoned that:

The right to fish and hunt, or to enjoy scenic beauty, as an incident to the right to navigate the navigable waters of this state... is an example of the type of legislation which affects the interests of the people of the entire state, as well as those of a particular county. If a particular county is permitted to take action which will lead to the impairment or the destruction of hunting, or fishing, or the right to enjoy scenic beauty on that part of a particular navigable stream lying within the limits of the county, the interests of the people of the entire state may be adversely affected thereby.... [T]herefore...the test which ought to be applied in determining the validity of delegation of legislative power in such a case is that of paramount interest.

The court found evidence that public rights in navigable waters were of paramount interest in the 1929 amendments to the Water Power Law which declared that the enjoyment of natural scenic beauty is a public right. Thus, the court held that the power to administer the trust fits more closely in the category of matters of statewide concern because the state holds the navigable waters and the beds beneath them in trust for the public. Accordingly, the legislature cannot completely delegate power over navigable waters to counties because the state must protect its paramount interests in the water.

Two decades after the *Muench* decision, in *Menzer v. Village of Elkhart Lake* the court refined its analysis and clarified that the paramount interests doctrine established in *Muench* does not go so far as to support the contention that every local regulation of lakes is invalid because it infringes on an area of statewide concern. The legislature's purpose in delegating regulatory authority to local units of government is essential. *Village of Elkhart Lake* involved a local regulation that restricted the use of power boats on Lake Elkhart. The court distinguished *Village of Elkhart Lake* from *Muench* by highlighting the difference between the purpose of delegation in each case. There is a distinction between allowing localities to block the advancement of paramount interests and delegating to localities the limited authority to further public interests in water. While the former was rejected in *Muench*, the latter was accepted in *Village of Lake Elkhart*. When a local government regulates to promote the public trust, the danger of impairing statewide interests and favoring localized interests is greatly diminished. This rationale parallels that which determines the level of scrutiny Wisconsin courts apply to public trust cases. If the trust is not threatened, the court will be less likely to closely analyze the trustee's policy judgments.

Thus, the legislature can delegate the administration of the trust, but to promote statewide public interests in trust resources, the state must delegate in a manner that allows it to maintain preeminence in the control of navigable waters. The legislature must act to preserve and promote the trust even when it delegates authority, and the legislature has delegated substantial authority over water management to the DNR. Clearly, the legislature intended to establish the DNR as "the central unit of state government" with "general supervision and control over the waters of the state." The legislature can also delegate its trust responsibilities to local governments, but it cannot give local governments the opportunity to impact the use of trust resources in a way that favors localized interests.

The Wisconsin Supreme Court has articulated a set of rules to determine whether the legislature's delegation of the administration of the public trust is constitutional. The legislature may only delegate in the following manner: (1) it must retain substantial oversight over the delegees administration of ministerial duties; (2) its purpose must be to advance the paramount interests of the public; and (3) it must establish clear limits and definite standards for the delegee to follow.

A trustee cannot "delegate to agents

powers vested in the trustee which involve an exercise of judgment and discretion, though the trustee may delegate powers which are purely ministerial." A law which delegates ministerial powers and retains oversight by the state may be constitutional, provided that the delegation meets the other requirements as well. For instance, the legislature may be able to delegate to counties the power to establish dock or pier lines if it also requires the state administrative agency to review and approve the establishment of these lines before they are given legal effect. Oversight by the DNR is an essential component to ensure that the "paramount interest of the state is safeguarded."

In *Muench*, the legislature's attempt to delegate the trust to counties failed because the state did not retain oversight over the delegee and the state did not limit the delegation to ministerial duties. The county board law at issue in *Muench* attempted to delegate to counties the ability to permit the construction of a dam even if it violated the public right to recreation on navigable waters. This law allowed counties to impair public rights and denied the Public Service Commission the ability to intervene to protect these rights. Since this was a complete abdication of the trust, the court held that the delegation was void.

A delegation of the trust that furthers the purpose of the trust, rather than limits the public right to use trust resources, may be upheld because it is not a clear abandonment of the trust. However, the court must closely scrutinize all delegations of the trust to determine that the purpose of the delegation is, in fact, not an abdication of responsibility. In *Village of Elkhart Lake*, the court upheld the delegation, in large part, because it furthered the public interest by restricting the use of motorboats on Lake Elkhart. This regulation was characterized as one that resolved a conflict between competing uses of the lake while protecting public health and safety.

Similarly, in *Village of Menomonee Falls v. Department of Natural Resources*, the court of appeals rejected an argument that the legislature had given a blanket delegation of public trust authority to the village to alter waterways as they saw fit. The Village of Menomonee Falls argued that Sections 61.34(1) and 61.36 of the Wisconsin Statutes delegated to the village the power to manage and control village affairs, including navigable waters. Thus, the village asserted that it did not need a Chapter 30 permit to undertake its channelization project on Lilly Creek. The court in *Menomonee Falls* distinguished a delegation of "limited authority or responsibility to further proper public interests" from an "assignment of a right to block advancement of paramount interests." The court held that a blanket delegation of power would block the advancement of paramount interests and, as such, was invalid.

Any delegation must be limited and provide definite standards for the delegee to follow. The legislature neglects its duties as trustee if it does not adequately protect the public interest by providing statutory standards for administering the trust. In *Village of Elkhart Lake*, the court held that the delegation was sufficiently limited and well-defined where the statute required any local regulations of boating to conform to the state and regulate public health and safety. Although the court noted that this case presented a close question because the language of the statute was not clear and unmitigable, it held that the phrase that required regulation "in the interest of public health or safety" gave local governments a definite limit and guideline to follow.

The courts, legislature, and its delegees play important roles in protecting and administering the public trust. The Wisconsin court has developed a clear set of guidelines that set boundaries on the actions of trustees in an effort to ensure equality of access to decisionmaking concerning the trust. The court will more closely scrutinize actions and decisions that appear to threaten the public interest in trust resources, such as decisions to issue lakebed grants, issue permits to act in a way that damages the trust, and delegations to localized decisionmaking bodies. In so doing, the court shows a clear bias toward democratizing the administration of the trust.

C. Public Rights v. Private Rights: Where is the Balance?

Part I.B discussed the role of the courts and the legislature in administering the trust. It assessed the court's function of ensuring that trustees do not abdicate their responsibilities and outlined the constitutional restrictions on the legislature and other trustees. Part I.C will now turn to focus on how the courts have consistently expanded the public trust doctrine to protect greater public rights. This expansion in public rights or the public interest in water started early in the twentieth century, but gathered steam in the 1970s after the DNR and the Public Intervenor's Office were created to protect the public trust and Joseph Sax published his seminal article *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*. With the expansion of public rights, private rights of riparians and public rights have increasingly come into conflict. Part II.C focuses on the interaction between riparian rights (rights based on property ownership) and public rights (rights based on citizenship), as mediated by the courts. Resolution of these conflicts is largely dependent on how the court defines the public interest in water and the posture of the case before the court. As demonstrated in Part I.B, in cases where the trustee has acted to

uphold the trust, the court will generally defer to the agency's interpretation and valuation of the public interest.

1. Evolution of Public Rights in the Navigable Waters of Wisconsin

The public trust encompasses the idea that the public has a right to the free use of the navigable waters of the state. This right is contained in the Wisconsin Constitution and has been continually expanded and broadly interpreted by the courts. What began as a duty to promote navigation and fishing has evolved into a duty to protect and preserve Wisconsin's waters for recreation and scenic beauty.

Many of the statutes that codify the public trust doctrine restrict the DNR's ability to issue permits without first determining whether the activity is in the public interest. The amorphous "public interest" concept establishes a mechanism to consider and broaden water resources protection. As the public's use of navigable waters has changed, so too has the court's definition of the public's interest in water resources. The following discussion focuses on the expansion of the public interest in four areas: recreation, natural beauty, pollution, and shorelands.

a. Recreation

The public right to use navigable waters originated as the right to use the waters for the purpose of navigation and commerce. The changes in public rights over the twentieth century are largely due to changes in lifestyles and the economy. Due to increased leisure time and transportation, recreation on the state's water bodies has increased dramatically. At the turn of the twentieth century, the Wisconsin Supreme Court began expanding the public right to uses of water that were recreational and not just commercial. In 1898, Wisconsin, following both English common law and the United States Supreme Court, recognized that the public right also included the right to fish in navigable waters. In *Diana Shooting Club*, the Court held that the right to hunt on navigable waters is an incident to the right of navigation. "Navigable waters are public waters and as such they should inure to the benefit of the public. They should be free to all for commerce, for travel, for recreation, and also for hunting and fishing, which are now mainly certain forms of recreation." Similarly, the court recognized "the public's interest in pleasure and sports" and stated that boating for pleasure is considered navigation. Public rights are now broadly defined as encompassing all water-based recreation.

b. Natural Beauty

The public right also includes the right to enjoy natural scenic beauty. Although this right is based in common law, it has also been codified in several statutes. As early as 1929, the Wisconsin Legislature declared in an amendment to the Water Power Law that "[t]he enjoyment of natural scenic beauty is... a public right." The court in *Muench* posited that this amendment "was no more than legislative recognition of a previously existing public right which had always existed."

Two decades after *Muench*, the Wisconsin court affirmed the view that the public right to natural beauty exists regardless of statutory codification. In *Clafin v. Department of Natural Resources*, the court reviewed a statute regulating deposits or structures in navigable waters. The statute specifies that deposits or structures must not be a "material obstruction to navigation" nor "detrimental to the public interest." The court held that a structure can be detrimental to the public interest if it impairs natural beauty; thus, the public has a right to have the state's waters managed under Section 30.12(2) to protect aesthetic values. "The natural beauty of our northern lakes is one of the most precious heritages Wisconsin citizens enjoy. It is entirely proper that natural beauty should be protected as against specific structures that may be found to impair that beauty."

c. Pollution

In order for the public to exercise its rights to use the waters of the state, the waters must be managed to minimize pollution. This rule of law was first articulated in the 1969 case of *Reuter v. Department of Natural Resources*, where the court expressly limited its decision to apply only to permits for the removal of material from the beds of navigable waters. However, by 1972 pollution was fully incorporated as a factor that must be considered by the state in exercising its duty over trust waters.

In *Reuter* two citizens sued the DNR when it granted a permit to another party to dredge an area in a floating bog. The *Reuter* court held that the DNR is required to make a specific finding about the effect of a proposed project on water pollution because pollution makes the waters less useful for public purposes. The court based its decision on the finding that the legislature intended the DNR to create a comprehensive regulatory program to protect the waters of the state, including preventing and controlling water pollution. The court read this requirement in conjunction with the statutory requirement to issue permits that are consistent with the public interest, and determined that the DNR must consider the impacts of pollution on the public interest. However, the court limited its holding to permits sought to remove material from lakebeds, under Section 30.20(2)(c) of the Wisconsin Statutes. Thus, the court held that the DNR must consider pollution when granting a permit to remove material, but not when granting a permit to fill or add a structure to a navigable water.

Three years later, however, the court dissolved that distinction in *Just v. Marinette County*. The case arose out of consideration

of the state's regulatory authority over shoreland, but the court spoke in broad terms when it declared that the "state of Wisconsin under the trust doctrine has a duty to eradicate the present pollution and to prevent further pollution in its navigable waters." The shoreland regulations focus on preventing a riparian from harming public property, and the court clarified that pollution harms public trust property. Emphasizing the significance of natural systems, the court recognized the interrelationship of wetlands, swamps, and shorelands, to the quality of water, and the importance of water quality to the exercise of public rights of navigation and recreation.

Similarly, in *Wisconsin's Envtl. Decade, Inc. v. Department of Natural Resources*, the court affirmed the incorporation of preventing pollution into the bundle of public rights protected by the public trust. The court noted that as water-based recreation has increased and water quality has declined, public awareness of the need to stop the deterioration of water quality has risen. "Preventing pollution and protecting the quality of the waters of the state are... part of the state's affirmative duty under the 'public trust' doctrine."

d. Shorelands

When the legislature passed the shorelands ordinance, it created a public right to protected shorelands. The court in *Just v. Marinette County* recognized that:

The shoreland zoning ordinance preserves nature, the environment, and natural resources as they were created and to which the people have a present right. The ordinance does not create or improve the public condition but only preserves nature from the despoilage and harm resulting from the unrestricted activities of humans.

The public's interest in shoreland and navigable waters was affirmed in the recent Wisconsin Supreme Court case of *State v. Kenosha County Board of Adjustment*. The court declared that the purpose of the shoreland zoning provision requiring a uniform setback from the ordinary high-water mark was to protect the public interest.

2. Public Trust Limitations on the Rights of Riparians

Although Wisconsin allows a riparian to own the beds underlying navigable streams up to the middle of the stream, the riparian's title is limited by the public trust. This means that the riparian merely holds the title subject to the superior public easement for use. Riparian owners take title to such lands with notice of the public trust and subject to the burdens created by it. In fact, it is "beyond the power of the state to alienate [the beds of navigable waters] freed from such [public] rights." The trust responsibility of the state must continue forever. The Wisconsin Supreme Court clarified that, "[a]s long as the state secures for the people all the rights they would be entitled to if it owned the beds of navigable rivers, it fulfills the trust imposed upon it by the organic law which declares that all navigable waters shall be forever free." The public trust doctrine also allows the state to revoke the use rights of riparian owners at any time. "It cannot be denied that the riparian owners have only a qualified title to the bed of the waters. The title of the state is paramount and the rights of others are subject to revocation at the pleasure of the legislature."

Similarly, although a riparian has rights to use the water adjoining his or her property, these rights are limited by the public's right to use the water. Private property rights in water have been delineated in very limited terms: Water "rights" are subject to numerous constraints, from requirements that it be used beneficially to a recognition that the right is merely usufructuary. Riparian rights include the right to use the shoreline, to reasonably use water, and to build piers for navigation. When these riparian rights conflict with public rights that are protected by the public trust, the riparian rights are secondary. In fact, in Wisconsin the rights of the riparian have always been limited by the public right to use navigable water. One of the earliest pronouncements of this limit can be found in *Willow River Club*, where the court stated that the private riparian "has no property in the particles of water flowing in the stream, any more than it has in the air that floats over land."

3. The Court's Resolution of Conflicting Rights

Given the ever-expanding notion of the public interest in water and the restricted nature of riparian rights, there is a significant tension between the interests of the public user and the private riparian. The court is routinely called upon to resolve these conflicting interests in water and has significantly refined its analysis from the broad and sweeping statement of law given by the court in *Diana Shooting Club* a century ago that the state must keep all navigable waters free for the public.

Although the state cannot alienate trust property, it can permit limited incursions into trust property, such as dredging or filling part of a navigable water body. The Wisconsin Legislature has codified the concept of limited incursions in statutes that require the DNR to regulate enumerated activities that impact navigable waters. Most of the regulations require a showing that the activity is in the public interest or is not detrimental to the public interest before the DNR can issue a permit. The public interest in trust resources provides the basis for the state to choose among competing uses and deny or modify projects that will have significant negative impacts.

The idea of balancing interests in water was articulated in an early twentieth century

case. In *Milwaukee v. State*, the court held that the state's duty to keep the waters free did not require the state to leave the shores of Lake Michigan in the same condition they were in prior to white settlement of the territorial area of Wisconsin. The court recognized that most proposed projects on navigable waters adversely impact the public trust, but protecting the public trust does not require keeping water resources in a pristine condition. More likely, the trustees must balance the impacts of proposed projects to determine whether the impacts are so great that they are detrimental to the public interest (in recreation, natural beauty, pollution, and shorelands).

The courts have created guidelines to either filter out the cases in which there is a clear loss to the public interest or to require the administrative agencies or legislature to provide evidence that the public interest is satisfied. Some courts have required a balancing analysis by the trustee and others have not. The Wisconsin court applies a stricter standard of review to cases in which the trustee's actions appear to jeopardize the trust or show undue influence by localized or private interests over public property. In cases that involve a riparian who is contesting the denial of a permit, the court generally does not balance the competing interests, but defers to the trustee's judgment. By contrast, in cases in which the trustee's decision may threaten the public interest, courts generally require a balancing test. In these cases, however, they do not actually apply the balancing test. Rather, they remand the cases to the trustee to weigh the policy factors.

a. Cases in Which Trustees Acted to Further the Trust

Four significant cases exemplify the court's deference to the decisions of trustees when those decisions protect the public trust: *Hixon v. Public Service Commission*; *Just v. Marinette County*; *Sterlingworth Condominium Ass'n v. Department of Natural Resources*; and *State v. Deetz*. In all of these cases, the court deferred to the judgment of the agency and upheld the decision of the trustee.

In *Hixon v. Public Service Commission*, the court reviewed a controversy brought before it by an aggrieved riparian who had placed fill on the bed of Plum Lake in order to construct a breakwall. The court upheld the Public Service Commission's decision to deny a permit to maintain this breakwater. In so deciding, it upheld the commission's action of merely making a finding that the structure was detrimental to the public interest, without stating the reasons why it was detrimental. Thus, contrary to other rulings, the court in *Hixon* did not require the DNR to explicitly balance competing interests.

Similarly, in *Just v. Marinette County*, a case brought to enjoin the landowners from filling wetlands on their property without first obtaining a conditional use permit as required by the shoreland zoning ordinance, the court decidedly rejected using a test to balance harms and benefits. Although the court recognized that the state allows some changing and filling of public resources, it found that filling is only permissible when it does not harm the public. Thus, harm is not balanced against benefits to the private property owner, but rather, the existence of any harm is sufficient to reject a permit. The court deferred to the trustee's judgment that the landowners' filling activity would harm the public trust. This decision demonstrates the lengths to which the court will go to uphold decisions by the trustees to protect the public trust.

In *Sterlingworth Condominium Ass'n v. Department of Natural Resources*, Sterlingworth Condominium Association (Sterlingworth) sued the DNR to contest limitations on the number of pier slips it could place along its lakeshore. Sterlingworth was a riparian owner who converted an inn into condominiums. The conversion plan included pier development, for which Sterlingworth applied to the DNR for permits. Based on public interest considerations, the DNR issued a permit for twenty-five pier slips, nine less than Sterlingworth requested. The court of appeals in *Sterlingworth*, following *Hixon*, upheld the DNR's consideration of the cumulative impact from an additional nine pier slips. "Whether it is one, nine or ninety boat slips, each slip allows one more boat which inevitably risks further damage to the environment and impairs the public's interest in the lakes. The potential ecological impacts include direct impacts... as well as... indirect influences on flora and fauna."

Finally, the *State v. Deetz* case arose when the attorney general sued to enjoin certain construction activities that disturbed the land and caused substantial amounts of sand to run off a bluff into Lake Wisconsin. Prior to *Deetz*, Wisconsin courts applied the common enemy doctrine. In sum, this doctrine gave a land owner unlimited and unrestricted legal privilege to "deal with the surface water on his [or her] land as he [or she] pleases, regardless of the harm which he [or she] may thereby cause to others." The common enemy doctrine was developed during the mid-nineteenth and early-twentieth centuries, a time of national expansion. Recognizing that the doctrine no longer fit the social order of the 1970s, the Wisconsin Supreme Court explicitly rejected the doctrine and adopted the reasonable use rule.

Under Section 826 of the Restatement of Torts, a defendant's conduct is unreasonable only if the harm outweighs the utility of the conduct. The court found that the harm caused by *Deetz's* actions included creating

Continued on p. 18

PUBLIC TRUST: water resources in Wisconsin

Continued from p. 17

extensive deltas, making parts of the water unusable by the public, and damaging the recreational uses for which the lake is most suitable. Rather than simply finding in favor of the trustee, the court held that it would not allow an incursion into trust property if the harms outweighed the benefits, and remanded the case for findings on the benefits of the project. The court also gave the agency some guidelines for balancing the benefits, saying that residential development should continue to be recognized for its high social utility, and that the reasonable use rule favors land "improvement and development." The court tempered this with the caveat that when land development infringes on the public trust, the economic social utility of development should be given far less value.

The court's decision to remand the case to obtain more information in a situation where the trustee was acting to protect the public trust is unusual but not inexplicable. Unlike other cases that involved the trustee's attempts to protect the public trust, this one involved a significant change in legal theory where the court ultimately rejected the traditional common enemy doctrine. This court may have been uneasy about allowing the state to restrict the property owner's activities without a more in-depth analysis because the law had never before been applied to control damage from non-point source pollution. Moreover, the state's suit against the Deetz's was based on the theory that any interference with navigable waters, irrespective of the cause of the interference, is a nuisance and must be abated. The court held that the public trust doctrine only provides standing for the trustee to maintain a cause of action, but in order to prevail on the cause of action there must be a violation of a specific statute or common law right. Unlike the decisions of the trustee at issue in *Hixon*, *Just*, and *Sterlingworth*, which involved set-

tled areas of law, the non-point source pollution from the Deetz's property was not clearly a violation of any specific statute or common law right.

b. Cases in Which Trustees Appeared to Jeopardize the Trust

Two primary cases exemplify the court's hesitancy to accept a trustee's decision to allow a riparian to proceed with a project that could endanger the public interest in water: *Muench v. Public Service Commission* and *Reuter v. Department of Natural Resources*. In both of these cases, the court did not explicitly deny the ability of the riparian to proceed with his or her proposed activity, but remanded the cases back to the trustees to build a record that would more clearly show that the public interest would not be impaired.

The *Muench* controversy was brought before the court by V. J. Muench, President of the State Division of the Izaak Walton League, who sought review of the Public Service Commission's decision to authorize the Namekagon Hydro Company to construct a dam on the Namekagon River. The *Muench* Court emphasized the importance of aesthetics and remanded the case to the Public Service Commission to make specific findings about the project's impact on scenic beauty. The court required the Commission to find whether public rights to recreation outweighed public benefits from the dam. It should also be noted that the balancing of rights and benefits required by the court did not involve considering the economic benefits to the Namekagon Hydro Company but the benefits to the public.

Likewise, the controversy in *Reuter* was brought before the court when two citizens sued the DNR after it granted a permit to another party to dredge an area in a floating bog. The court rejected the DNR's finding that the permit was consistent with the public interest and directed the DNR to make a specific finding about the impacts of the proposed project on water pollution because

pollution makes the waters less useful for public purposes. The court warned the DNR that it would reject the issuance of the permit if the project negatively impacted water quality. Accordingly, the court remanded the case to the DNR to make findings on the pollution that would be generated by dredging an area of a floating bog.

From this review of the case law, it appears that public rights are continually expanding, and riparian rights are extremely limited when they come into conflict with the public interest in water. Further, the court will generally support any decision by the trustee that protects the public trust and restricts riparian's activities. When the trustee appears to jeopardize the trust, courts will generally remand the case back to the agency for further development of the evidence to prove that the project will not injure the public interest.

If one read only these cases, one would think that the DNR had broad reign to regulate riparians whose projects would adversely impact the public trust. Since the DNR rarely loses a case in which it has acted to uphold the public trust, one might assume that the DNR would take these decisions as a mandate to implement an aggressive regulatory program on navigable waters. Another hypothesis is that these decisions, which broadly favor public rights, will produce a flurry of activity by private property proponents to restrain the more political branches of government (the legislature and the DNR) from regulating riparians to the full extent of their authority to do so.

(This comment can be downloaded in its entirety at the *Midwest Environmental Advocates'* web site at www.midwest-e-advocates.org. That original contains the over 400 footnotes that have been eliminated from this reprint. -Ed.)

Member Trout Tip

Fall fishing requires different tactics

By Ray D. Larson

Our fall Wisconsin trout fishing often leaves us fishing low, clear water. Here are some tips for fishing this challenging water.

Trout spook very easily in clear water. One must use great caution, stay low (create a low profile), and hide behind large rocks in the stream that protrude above water. Overhanging bushes and small clumps of willows on little islands or gravel spits are excellent for hiding behind or blending your body outline into.

But when these obstacles aren't available to break your body's outline, in most situations all that is required is not making a false cast over the fish's holding area. Reduce the number of false casts and keep them away from the fish's view.

In low water conditions accuracy counts more than ever. Learn to read the water and know where your fly will drift, or you may not get a second cast or chance at that fish this fall.

The fall season in Wisconsin slows down the number of hatches, and this reduces the need for most early-season fly patterns. So I suggest to my clients that they make a smaller fall fly box stocked with terrestrials, bright streamers, and nymphs.

Then increase the number of strikes you get by fishing a double rig with these three groups of flies. A simple double rig that I use for fall is a small streamer tied on a #8,10, or 12 hook, usually bright, with a nymph as the dropper.

First tie the streamer to the leader tippet. Then to the bend of the streamer hook tie in another 12-16" of tippet using an improved clinch knot followed by a nymph.

The streamer will also act as strike indicator, for in most Wisconsin streams at this time of year the water is low and clear and the streamer is easily visible.

Finally, as brook trout begin to fatten up for winter, don't give up if the trout turn off to the ants, hoppers, or crickets you are fishing.

Do an about face and give them a sparkly streamer — a smelt pattern, a Mickey Fin with some Krystal flash, or a muddler tied with silver or gold Flashabou.

Sometimes this totally different approach (dries to wet streamers) will trip their trigger when they turn off or have given up taking terrestrials. The sudden appearance of a streamer fly (bait fish) is just the wake-up call that's needed to produce some nice fish.

(Ray Larson is a retired biology instructor from Sheboygan. A member of the Lakeshore Chapter, he now guides in Wisconsin and the UP. -Ed)

Do you have a "trout tip" to share with your fellow TU members? If so, contact *Wisconsin Trout*.

United States Environmental Protection Agency Office of Policy (2171) EPA-236-F-99-002 May 1999

EPA Climate Change and COLD WATER FISH

Is Trout Fishing An Endangered Sport?

What global climate change could mean for Wisconsin

WARMING TRENDS

COULD GLOBAL WARMING RUIN HALF OF OUR TROUT WATER?

The WDNR's *Wisconsin Natural Resources* magazine has published an eight-page "Warming Trends" flyer describing global warming and its impact on the badger state's water, agriculture, forests, and human health. The federal EPA's "Climate Change and Cold Water Fish" predicts that Wisconsin could lose up to half of its trout water if temperatures rise as some experts predict. Copies of these publications are available from the WDNR and the EPA.



STUFF FISH...THEN MOUTH

Assistant Chef Kimberly Briggs shows how to stuff a trout. The gourmet fish cooking program has been a big draw for the Fox Valley Chapter the past two years.

Chefs demonstrate gourmet trout cookery

By Barb Bernel

The Fox Valley Chapter hosted Chef Jeff Igel of the culinary arts program at Fox Valley Technical College at a recent meeting.

Chef Jeff brought a variety of fish and "fixins" and prepared a bounty of fish dishes for the assembled members and guests.

The evening started off with stuffed trout. Chef Jeff and his assistants, Kimberly Briggs and Craig Kwosek, showed how to stuff the fish and wrap them in parchment for baking — a quick and easy way to prepare a savory trout dish.

As the trout were baking, the group tasted sauteed alligator bites. Chef Jeff also distributed handouts with recipes, tips for making the dishes, and nutritional information on the fish.

Other dishes prepared and sampled included ocean perch fried in a sesame/flour coating and two salmon filets prepared with different coatings.

Donations from the evening went to the Culinary Arts Scholarship fund at FVTC. This is the second year the Fox Valley Chapter has presented this popular meeting program.



New access law explained

By Michael Lutz

DNR Legal Services

Where did the legislation dealing with stream access come from?

Sec. 30.134, Stats., was created by the 1999 Budget Bill (1999 Wisconsin Act 9) and became effective on October 29, 1999. The WDNR was not involved in its promulgation.

What does the legislation do?

Sec. 30.134, Stats., allows for water-related recreational activities in the exposed shore area along navigable streams, a term which also includes rivers. Water-related recreational activity is defined to mean a recreational activity that requires water and includes swimming, fishing and boating. Exposed shore area means the area beyond the water, up to the ordinary high water mark along streams. Lakes are not included.

How does this change the law?

In the past, the courts have ruled that the public's right to use navigable waterways is limited to travel in the water. (Commonly known as the "keep your feet wet" requirement). This legislation expands, under certain circumstances, the right to travel to the exposed shore area of streams.

Are swimming, fishing, and boating the only activities allowed in the near shore area?

When the Legislature uses the word "includes," it is used to provide examples of included activities, and not the complete list. Other similar activities may be subject to the right to use the exposed shore area, provided they are recreational activities that require water.

Is trapping included?

The Wisconsin Supreme Court has previously ruled that the right to trap on stream beds is not a right of navigation. There is nothing in the language of the Act which shows an intent to overrule this principle.

Is hunting included?

In some parts of the state, hunters have hunted deer and waterfowl by floating rivers and streams. However, it is questionable whether the courts will consider this an activity that requires water. The DNR recommends against the use of exposed shore areas for deer and waterfowl hunting without landowner permission, even when a boat is involved.

What is meant by ordinary high water mark?

The ordinary high water mark is the point on the bank or shore where the water is present often enough to leave a distinct mark. Erosion, destruction of or change in

vegetation, or other characteristics may indicate the mark. Determining the ordinary high water mark is often difficult, and users should respect landowners' rights and avoid trespass charges by staying in or as close to the water as possible.

Are there any other limitations on the right of the public to use the exposed shore area?

The ability to use the exposed shore area is limited to recreational activities that require a body of water. The exposed shore areas of lakes are not included in the new law, and users remain subject to the "keep your feet wet" rule. In addition, users of the exposed shore area cannot, without the landowner's permission, use motor vehicles, cut or remove vegetation, remove or damage the riparian owner's private property, camp overnight, or enter the area except from the stream or other public access point. The operation of motor vehicles on the beds of lakes and streams remains prohibited by law.

How are riparian owner affected?

Riparian owners may not prevent the public from using the exposed shore areas when done for the statutorily authorized purposes. This is the case, even if the land is posted against trespass. The owner may not charge a fee for the use of the area or obstruct access to the area from highway right-of-ways.

Are there any other exceptions?

The right of public use does not apply to the exposed shore area of an impoundment on a stream, an artificial ditch, or along portions of streams where water is not flowing.

What will be the Department's Law Enforcement role?

The Department can enforce the restrictions in the law against both recreational users and riparian owners. However, individuals either using areas outside the exposed shore areas without the landowner's permission or engaging in recreational activities that are not water related will be subject to the trespass laws, which are enforced by local police departments, not the DNR.

What does the DNR recommend?

It remains good policy to seek landowner permission before pursuing any activities on private lands. Cooperation and respect will be the key to preventing conflicts. The DNR recommends that users limit their activities to the water to the greatest extent possible, and use the shore only to portage around obstructions, such as fallen trees, or water that is too shallow for boating or too deep for wading. Do so in the least intrusive manner possible.



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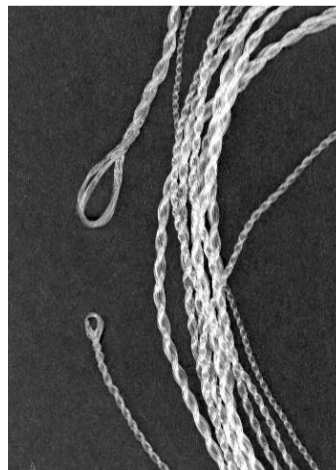
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Five new projects awarded Friends grants for 2000

By John Bethke

A committee composed of Stu Grimstad, Lloyd Andrews, Larry Meicher, and John Bethke met before the April 27 state council meeting to review requests and authorize grants for Friends of Wisconsin Trout Unlimited.

The committee awarded five grants:

1. \$1,000 granted for a request from Ed Avery toward expenses to

study the long-term effects of removing beaver dams on a northern WI brook trout stream. This is a follow-up for a five-year study on the Pemebonwon River in Marinette County. This study will be useful in planning future beaver control projects by fish management personnel.

2. \$2,000 granted for a request by Bob Hunt to help fund reprinting his book *Trout Stream Therapy*. The

book is currently out of print and is in demand as a guide for directing in-stream activities affecting trout habitat. Hunt does not receive royalties from this publication, and he will credit Friends of WITU for our assistance.

3. \$1,000 toward the expense involved in holding the Midwest Trout angling workshop in La Crosse in July, 2000. The conference will involve coldwater fish management personnel from Wisconsin, Minnesota, Michigan, and Iowa, as well as participation and input from conservation organizations and the trout fishing public.

4. \$2,000 toward funding of stream improvement work on Mormon Coulee Creek in La Crosse County. This is the Coulee Chapter's third year of work on the project, which will be completed this summer.

5. \$2,000 toward stream rehabilitation work on the Little Pine River

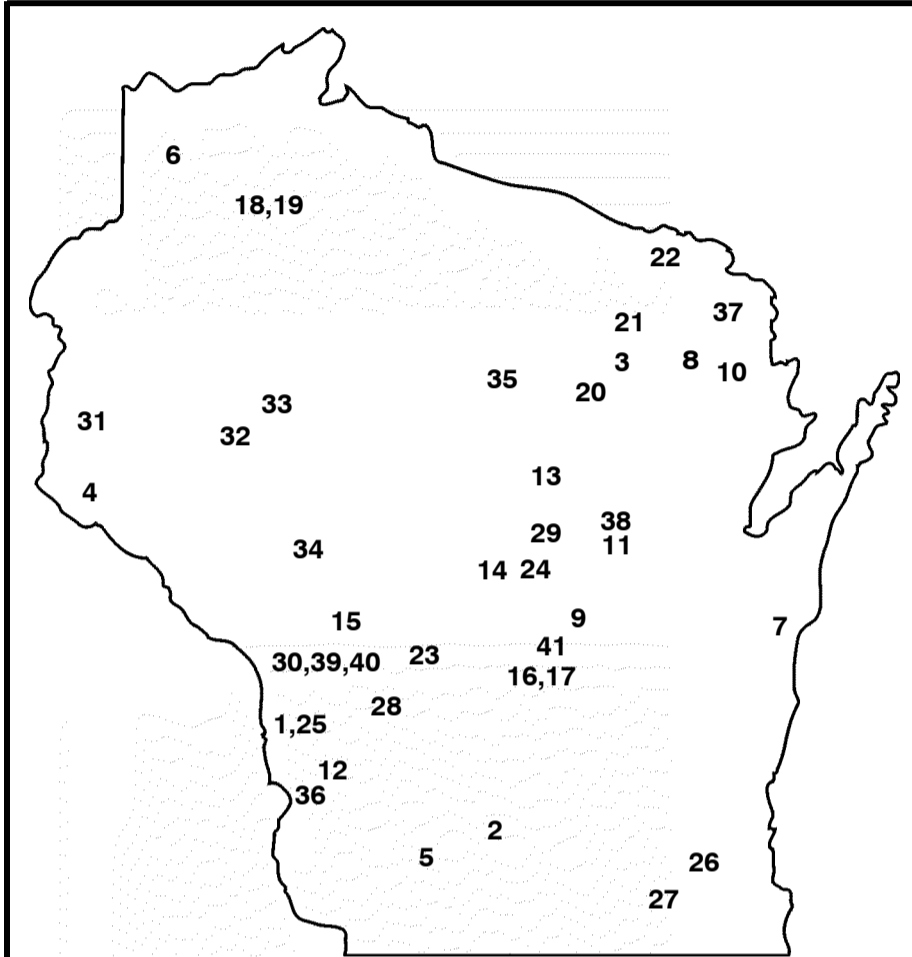
in southern Waushara County. The Little Pine project is being conducted by the Central Wisconsin Chapter of TU.

The committee did *not* fund a request for \$7,000 to Lyle Christenson, retired chief of WDNR fisheries research section.

The committee felt that Friends money could be better spent on projects having a more direct impact on the resource.

Further, the DNR itself has denied funding to complete this statewide survey of selected small headwater streams. Finally, Lyle would be needing the same level of funding for three years, and we simply cannot fund at that level without a compelling need for our investment.

There are funds remaining for other worthwhile projects. Please address any requests to Mike Swoboda, 1312 Ridgewood Dr., Chippewa Falls, WI 54729-1931.



"Friends" Project Locations

1. \$4,000 - for rip-rapping and structural improvements on the West Fork Kickapoo River (Vernon Co.)
2. \$1,500 - for placement of LUNKER structures and bank stabilization in Black Earth Creek (Dane Co.)
3. \$1,000 - for hydraulic dredging of Saul Spring Pond (Langlade Co.)
4. \$750 - for purchase of special thermometers to monitor stormwater runoff into the Kinnickinnic River (Pierce Co.)
5. \$2,000 - for rerouting and stabilizing Brewery Creek (Iowa Co.)
6. \$75 - for purchase of catch and release signs for the Bois Brule River Douglas Co.)
7. \$2,500 - for renovation of trout rearing facilities in Lincoln Park (City of Manitowoc)
8. \$500 - for bank, stabilization, and structural improvements on the North Fork Thunder River (Oconto Co.)
9. \$1,000 - for land acquisition along the White River (Waushara Co.)
10. \$1,000 - to assist with acquisition of 64+ acres of land along Upper Middle Inlet Creek (Marinette Co.)
11. \$7,000 - to purchase a Rotary Screw Fish Trap for DNR Coldwater research
12. \$3,000 - to fund stream improvements and riparian protection in and along streams of Middle Kickapoo River watershed. (Vernon and Crawford counties)
13. \$1,000 - to help fund instream habitat work in the Plover River (Marathon Co.)
14. \$551 - to help purchase recording thermographs to monitor thermal regimes in trout streams in the Buena Vista and Leola marshes (Portage, Wood, Adams counties)
15. \$3,372 - for installing bank cover and closing side channels in Sand Creek (Jackson and Monroe counties)
16. \$3,296 - to continue and extend stream bank brushing along Chaffee Creek (Marquette Co.)
17. \$1,000 - to continue population and movement studies of brown trout in the Mecan River (Marquette County) I-or potential stream reclassification
18. \$1,700 - to conduct follow-up surveys on wild brown trout in the Namekagon River (Sawyer/Bayfield counties)
19. \$2,000 - to conduct studies of fall movements and concentrations of spawning wild brood fish in the Namekagon River (Sawyer/Bayfield counties) for capture and use in raising wild trout for the river
20. \$1,000 - to assist with the third year of dredging silt and detritus from Elton Springs (Langlade Co.)
21. \$1,000 - for stream brushing, debris removal, and brush bundle installation in Swanson Creek (Forest County), a tributary to the Rat River
22. \$500 - for building a sand/sediment trap in Wisconsin Creek (Florence County), a tributary to the boundary Brule River, to enhance trout spawning potential.
23. \$2,750 - to purchase materials for fencing projects approved under the Streambank Easement Program (part of the state's Stewardship Program) for the Wisconsin Rapids Area; and for fencing materials for the Little Lemonweir River project (Monroe Co.)
24. \$350 - to conduct trout population studies in the lateral ditches listed as trout waters (Portage, Wood and Adams counties) that are under threat from agricultural/cranberry operation encroachment
25. \$250 - toward habitat work on the West Fork Kickapoo River (Vernon and Crawford counties)
26. \$2,000 - to fund dredging (silt/debris removal) from McClintock Springs in the southern unit of the Kettle Moraine State Forest (Waukesha Co.)
27. \$2,000 - to create overhead bank cover in and remove beaver dams from Whitewater/Bluff Creek (Walworth Co.)
28. \$2,000 - for stream improvements in Billings Creek (Vernon Co.)
29. \$1,500 - for materials for in-stream structures in the Tomorrow River (Portage Co.)
30. \$2,500 - for stream restoration in Mormon Coulee Creek (La Crosse Co.)
31. \$1,500 - to assist in production of an educational video on development impacts along the Kinnickinnic River (St. Croix and Pierce counties)
32. \$7,000 - stream improvement on Elk Creek (Chippewa Co.)
33. \$4,000 - rock hauling and restoration work on Duncan Creek (Chippewa Co.)
34. \$1,750 - to purchase materials for stream improvements on the North Fork Buffalo River (Jackson Co.)
35. \$2,000 - to fund backhoe work on intensive habitat improvement in the Prairie River (Lincoln Co.)
36. \$500 - for stream rehabilitation in Tainter Creek (Crawford Co.)
37. \$1,000 - for expenses to study the long-term effects on brook trout following the removal of beaver dams on the Pemebonwon River in northern Wisconsin (Marinette Co.)
38. \$2,000 - to help fund reprinting *Trout Stream Therapy* book (Waupaca Co.)
39. \$1,000 - to defray expenses involved in holding the Midwest Trout Angling Workshop in La Crosse in July, 2000 (La Crosse Co.)
40. \$2,000 - to fund stream improvement work on Mormon Coulee Creek (La Crosse Co.)
41. \$2,000 - to fund restoration work on the Little Pine River. (Waushara Co.)

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