

Date: December 4, 2017

To: Senator Rob Cowles, Senator Roger Roth, Representative Jim Steineke, Representative Rob Stafsholt

RE: Proposed Wetland Law Changes

All,

As a community of hunters, anglers, and other conservationists, we are deeply appreciative of the opportunity to provide input on the proposed changes to Wisconsin's wetland laws currently being considered. We collectively represent tens of thousands of members statewide who dedicate their time and treasure to the conservation of natural resources.

Wisconsin is home to a rich outdoor heritage of hunting, fishing, trapping and other recreation rooted in our state's robust wildlife populations and diverse habitats. In fact, the hunting and fishing economy exceeds that of many traditional "industry or development" based economies – emphasizing the importance of protecting vital fish and wildlife habitats. For this reason, careful thought and a science-based approach must be a primary component of any policy discussions related to Wisconsin natural resources, including wetlands.

In Wisconsin, it is clear that a strong economy and a strong ecology can coexist and the attached recommendations recognize this reality. The attached memo represents a targeted and strategic step towards further improvement of the wetland permit process in Wisconsin to help advance economic development throughout the state and free Wisconsinites from undue regulatory burdens, while continuing to value and conserve Wisconsin wetlands. It is the product of the good faith and collaborative effort we took, on short notice, to understand the problem(s) you seek to resolve and offer effective solutions.

It was sound science, collaborative work and deliberate conservation actions that led to the recovery of some of Wisconsin's most economically important wildlife species such as the whitetail deer, wild turkey, black bear, and Canada goose. It was robust public discourse and detailed cost-benefit analysis that led to the creation of valuable public hunting areas like Horicon Marsh, Sensiba Marsh and others. It will take similar effort to adequately conserve and restore Wisconsin's wetlands in the face of increasing development pressure and a transitioning landscape.

We believe there is room for improvement and streamlining, but make no mistake that we care deeply for the conservation and preservation of Wisconsin's wetlands. Our proposal represents a move towards refinement and compromise for Wisconsin, and we remain committed to being a resource to you and your staff as this process continues to move forward.

Sincerely,

Ducks Unlimited
Wisconsin Waterfowl Association
Wisconsin Wetlands Association
Wisconsin Trapper's Association
Wisconsin Wildlife Federation
Trout Unlimited
Gathering Waters

Outline for a policy package to address wetland regulatory bottlenecks:

1. Exemptions for artificial wetlands as per the amended Jacques/Wangaard bills (AB 388/SB 320)

Eliminates regulation of landscape features that develop wetland characteristics but either do not meet the statutory definition of a wetland or formed in areas without wetland history. This change expands the types of features classified and exempt as artificial wetlands and substantially reduces timeframes for verifying eligibility.

2. Exemptions for impacts to “incidental” wetlands that emerge as a result of grading or other hydrologic modifications on dormant or phased development sites and orphaned lots.

Wetlands that formed recently as a result of phased development generally do not have the same inherent functions or values as naturally occurring wetlands. This exemption would apply to active, stalled, or phased development on sites that were previously delineated and approved for construction, but where incidental wetlands subsequently emerged during dormancy or between phases. If no wetland history is present, these areas would be exempt as artificial wetlands. This exemption accounts for the additional circumstances where wetland history is present and:

- a) new wetlands emerged that were not present in the originally approved delineation; or,*
- b) additional wetland acreage emerged beyond what was identified and authorized for fill.*

Provided that the entire parcel was delineated and the long-term project plans were reviewed and approved in accordance with wetland laws that existed at the time of approval, the permit remains valid up to 10 years following initial approval. This should be incorporated as a condition of new permits and applied retroactively for 10 years.

Wetlands exempted under this provision will also be exempt from mitigation requirements.

**Note – Extending the valid life of the permit achieves the same goal as extending the life of the delineation, but this option may be more robust with less potential for federal conflict.*

3. Exemptions for maintenance of existing water management infrastructure that was either approved under WI wetland law or installed prior to the establishment of WI laws.

Maintenance of existing approved structures or features in non-federal wetlands is essential and expected and need not be regulated.

4. Changes to the Wetland Identification Program

The program provides important services, but program staff’s workload has increased exponentially to include new activities not authorized under Ch. 23.321. The statute requires fees and site visits for all reviews, and WDNR has applied these requirements to the authorized and new services. WDNR has also established policy that wetland boundary determinations must be verified prior to submission of wetland permit applications (i.e., needed for a complete application). These items contribute to project delays and expenses.

Legislative refinements are needed to clarify what activities are/are not to be carried out under the Wetland ID Program vs by regional permit staff, and to provide WDNR the discretion to forego site visits for artificial wetland determinations and in cases where field reports clearly indicate no wetlands are present. Administrative refinements are also needed to enable wetland boundary verification to happen as part of the permit review process.

Further, the DNR would be required to make a concurrence decision on wetland delineation submissions within 45 days or the delineation shall be considered approved.

5. Wetland Study Group and Wetland Program Evaluation

Achieving consistency and an appropriate level of flexibility in the administration of wetland laws has been a long-standing problem. This challenge has been exacerbated by the rapid pace and broad scope of changes to Wisconsin's wetland laws enacted since 2012. Program evaluation is needed to understand what elements of the program are working and not, and to identify effective and efficient legislative and administrative solutions. Input from affected interests and from qualified professionals is needed to ensure that ongoing or perceived program deficiencies are objectively evaluated and addressed. The legislature can support this goal by:

- A. Establishing a legislative study committee to investigate permit program trends and establish a better understanding of the root causes of additional program tensions.*
- B. Requiring WDNR to convene a Study Group, modeled after the Brownfields Study Group, to convene on an ongoing basis to evaluate bottlenecks or inconsistencies in the administration of existing wetland policies and to advise the Department and legislative leaders on additional changes that could be made to reduce wetland permitting timelines and expenses, while protecting important wetland resources. Participation by representatives of conservation organizations, residential and commercial developers, and wetland consultants would be essential. This solution-oriented forum could also provide an outlet for airing and addressing programmatic (i.e., not project-specific) grievances.*