

LOWER WISCONSIN STATE RIVERWAY BOARD
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MINUTES OF THE FEBRUARY 9, 2006, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, February 9, 2006, at the Kratochwill Memorial Building in Muscoda to conduct a regular monthly business meeting. The meeting was called to order at 5:00 p.m. by Chairman Bill Lundberg. All members were present. Acknowledgment that the meeting was properly noticed was provided by Mark E. Cupp, Executive Director. A motion to approve the agenda was made by Jerry Dorscheid, seconded by Ritchie Brown. **MOTION CARRIED.** A motion to approve the minutes of the January 12, 2005, regular board meeting was made by Brown, seconded by Dorscheid. **MOTION CARRIED.** A motion to approve the minutes of the January 12, 2006, special meeting on strategic planning was made by Don Greenwood, seconded by Nick Nice. **MOTION CARRIED.**

The Executive Committee report was presented by Chairman Lundberg who said the issue of drug enforcement efforts in the Riverway would be discussed. Cupp introduced Department of Natural Resources (DNR) Warden Supervisor Charles Horn. Horn then introduced the others joining him to discuss the use of canine units for drug enforcement in the Riverway, which occurred Labor Day weekend of 2005. Lt. Kevin Fults and Detective Eric Miller from the Sauk County Sheriff's Department and Kevin Calkins, Sauk County Asst. District Attorney, were present for the discussion. DNR Conservation Warden David Youngquist also was in attendance. Horn said wardens working the Riverway, particularly Warden Youngquist, had noticed an increase in drugs and drug paraphernalia on the river with Youngquist suggesting the Sauk County canine unit be utilized to address the drug issue. Detective Miller from the boat patrol unit then arranged to have two dogs each work a four hour shift on Labor Day weekend. There were 14 drug related arrests made; 13 for marijuana related violations and one for LSD. One person was taken to jail. The others were given citations and summons to appear in court. Miller compared the number of arrests to a highway patrol officer who may only see 2-3 drug related arrests during an entire week. Lt. Fults noted only passive dogs were used and said the goal is to make the river safe for all users. He said the feedback from the many public contacts was very positive.

Cupp asked if the contacts were made while recreational users were in canoes or on sand bars. Miller said contacts were made in both situations. Youngquist said he had seen a marked increase in "partiers" on the river, particularly on the upper segment, and said alcohol and drugs are routinely present. Youngquist described several contacts with canoeists who had drugs or paraphernalia in the open. He said the use of canine units for this activity had been deemed reliable and was constitutionally valid. Youngquist said most contacts were made on sand bars or canoeists were asked to pull over to the sand bars. He said control of illegal activity on the river is important and the use of the drug dogs was an effective way to address the issue. Dorscheid asked if there has been a reduction in drug use on the river since the arrests were made. Youngquist noted the sweep occurred on Labor Day weekend so it was difficult to judge because the major use season was over. Fults said he would like to see the effort repeated in 2006. Youngquist said a major frustration for him is intoxicated canoeists but said there is nothing illegal about being drunk in a canoe.

Ron Leys said he was very concerned about the constitutional implications. Leys said a person's home, in this case one's tent, should not be subject to random searches and a warrant should be required. He said the Bill of Rights requires probable cause before a search and said the sanctity of one's home should be protected. Leys said he did not believe the use of drug dogs on the river was consistent with the spirit of the Constitution. Asst. District Attorney Calkins discussed case law related to the 4th amendment, which indicated a sniff by a dog

is

not

considered an illegal search. He acknowledged that a tent may be considered one's "home" and said a search warrant would be obtained unless consent to search was provided. He noted the protection doesn't apply to open fields. Calkins said there were discussions with the officers on the do's and don'ts of using drug dogs on the river. Leys said it may be considered "legal" through a narrow interpretation of the Constitution but said use of dogs to search around one's house should not be constitutional. Leys said he is not opposed to enforcement of drug laws.

Greg Greenheck asked if the canine units were used at Devil's Lake State Park. Calkins said the park rangers make numerous arrests. Fults said his officers have assisted at both Devil's Lake and Mirror Lake State Parks. He said most drug interdiction is done on the highway. Horn said the impetus for use of the canine units was to address a safety issue on the river. He noted glass remains a problem as does alcohol abuse. Greenwood agreed that public safety on the river is important but asked what is the real safety issue: drug use or alcohol? Fults said persons using drugs on the river may put themselves in danger but also may present a danger to other river users or even to rescue personnel if something would happen. Greenwood asked if the people who were arrested over the Labor Day weekend were putting themselves in danger. Horn said law enforcement officials do their best to address safety issues wherever possible including enforcement of underage drinking or glass containers but reiterated Youngquist's statement that the department's authority is limited in regard to drunken canoeists. He noted 7 or 8 citations also were written for glass violations during the sweep. Miller said 3 of the 14 arrests involved people from Sauk County or Dane County, the rest were from outside the area. Greenwood asked if the arrests involved 14 separate groups. Miller said the citations involved 4 or 5 groups and said 5 citations were issued to one group.

Melody Moore said she was concerned about the probable cause and search warrant questions. She said a tent should be considered one's "home" because it is a home away from home, the only difference is the size. Calkins agreed and said one major difference is that a home usually has a yard around it and said the police aren't allowed to enter the property without probable cause or a warrant. A tent is simply pitched on a sand bar and a dog can walk right up to it. Cupp asked if there was a reasonable expectation that the canine units would be used again. Horn said that is likely the exercise will be repeated. He said a press release indicating the activity would occur in the summer of 2006 could be sent out but said he didn't think it would have much effect. Fred Madison agreed that any public relations or outreach are unlikely to change these behaviors and said it is important to enforce the laws. Youngquist said he is concerned that the amount of drug use on the upper segment is getting out of control and is glad to see these enforcement efforts. He said he hopes the word gets out that the drug dogs are being used on the river. Nice applauded the enforcement efforts and said no one will ever be able to tabulate the number of lives saved as a result of the enforcement efforts by the wardens and county officers.

Lundberg noted the activity is not within the board's purview but said he appreciated the discussion and detailed explanation on the drug enforcement effort. Cupp concurred and said recreational use management and enforcement clearly falls within the department's authority and is outside the board's jurisdiction to protect the scenic beauty and natural character of the Riverway. He asked Horn and Youngquist if they could keep the board posted on developments with additional sweeps. A member of the public, Timm Zumm of Spring Green, said a major safety issue is the number of drunks on the river and said a charge of drunk and disorderly should be used to arrest those folks. Fults said, if the behavior is extremely loud or boisterous, a disorderly conduct charge could be issued. Lundberg thanked the law enforcement officials for attending and providing the information on the use of canine units for drug enforcement on the river.

Lundberg then asked Cupp for an update on the strategic planning revisions. Cupp presented the final draft of the revised strategic plan. He said the draft would be posted on the board's website and a press release would be distributed seeking public comment. He said the board would consider adoption of the revised plan at the March meeting.

Correspondence was then considered. Cupp reviewed a letter sent to Jen Stewart, Sauk County Land & Conservation Department, regarding the Otter Creek watershed. Cupp said he was unable to attend a public meeting on February 4th and so the letter was sent expressing the board's concerns regarding water quality, floodplain forests and aesthetics. Madison said it was a good letter and noted there are many problems with Otter Creek. Cupp added that whatever happens upstream on Otter Creek affects everything downstream. He noted the mouth of Otter Creek is near Ferry Bluff.

A videotape clip from a news report on Town of Mazomanie and Riverway resident, Jean Clausen, was viewed. In the clip, Clausen discussed her affection for eagles and other wildlife as well as the natural beauty of the river. Cupp then reviewed a schedule of classes offered by the Woodland School in 2006. The proposed ATV trail at the Sauk County Community Forest near Lone Rock was discussed. Cupp reviewed the background of the topic noting the board had discussed the issue at the July – 2005 meeting. He said he was under impression the county was no longer pursuing the trail idea until Greenheck contacted him. Greenheck said he had received calls after a story ran on a Madison television station. The video clip was shown from the news program. The clip depicted trail proponents as continuing to advocate for location of a trail at the site while trail opponents continued to cite concerns about noise, dust and fire. Cupp noted the community forest is outside the Riverway boundary but is adjacent to the Bakken's Pond State Natural Area, which is located within the Riverway boundary.

The Operations Committee report was presented by Chairman Dorscheid. The request of Timm & Heather Zumm for an extension to a previously issued permit for construction of a house and shed in the Town of Wyoming, Iowa County, was discussed. Dorscheid said a field inspection was conducted by the Operations Committee and Cupp in July of 2001 and then again in February of 2005. Mr. & Mrs. Zumm and their architect also were present for the February - 2005 field inspection. Zumm said the shed has been constructed but the house project has not been completed. An extension has been requested. Zumm told the board he hopes to initiate construction in the spring of 2006. Dorscheid made a motion, seconded by Leys, to approve issuance of an extension for a period of one year with retention of the following permit conditions:

- The existing screening vegetation shall be maintained and replaced if damaged or destroyed;
- The height of the house shall not exceed 26 feet and shall not result in the structure being visually conspicuous from the Wisconsin River during leaf-on conditions;
- The activity shall comply with all other applicable federal, state or local regulations;
- The LWSRB shall approve of the final plans for the house and shed prior to initiation of construction and shall approve any modifications to the plans after submittal; and,
- The landowner or his/her agent shall notify the LWSRB upon initiation and completion of the activity.

MOTION CARRIED.

The request of Timm and Heather Zumm for an extension to a previously issued permit for a timber harvest in the Town of Wyoming, Iowa County, was discussed. Dorscheid said a field inspection was conducted by Mark E. Cupp, Executive Director, and the Operations Committee on September 13, 2001, in conjunction with the permit application for construction of a house and storage shed. Mr. Zumm was present for the field inspection. Plans call for the selective harvest of merchantable hardwoods with the goal of improving the wood lot. Portions of the harvest area may be visible from the Wisconsin River during leaf on conditions (Bluff & Riverview Zones); however, the bulk of the harvest area encompasses the Resource Management Zone. The harvest has not been completed and Mr. Zumm has requested an extension. The harvest plans remain the same. No new roads will be constructed. Extensions have been granted previously.

Dorscheid made a motion, seconded by Brown, to approve issuance of an extension for a period of one year with retention of the following permit conditions:

- The harvest shall comply with the basal area limits for the residual stand in the Bluff Zone and Riverview Zone as detailed in Chapter NR 37, Wisconsin Administrative Code;
- In the Bluff Zone and Riverview Zone, the harvest shall be limited to the times when the ground is frozen or dry and the leaves are off the deciduous trees;
- The LWSRB shall approve of the location and design of all small regeneration cuts, if any, in the Riverview Zone;
- The LWSRB shall approve the location and design of all new logging roads, if any, in the Bluff Zone and Riverview Zone;
- The new logging roads, if any, shall comply with the applicable performance standards regarding grade and erosion control and shall be re-seeded upon completion of the harvest;
- If necessary, the Bluff Zone, Riverview Zone and Resource Management Zone shall be delineated prior to initiation of the harvest;
- All trees selected for harvest shall be appropriately marked and approved by the LWSRB prior to initiation of the harvest;
- The landowner or his/her agent shall notify the LWSRB within 10 working days upon completion of the harvest and the LWSRB shall conduct a post-harvest field inspection; and,
- The LWSRB shall approve of any modification of the plans as submitted.

MOTION CARRIED.

A permit extension request of John McNamee, as personal representative of Helen McNamee, for a timber harvest in the Town of Boscobel, Grant County, was considered. Dorscheid said field inspections have been conducted by Cupp in conjunction with previous permit activities on the property. He said an additional field inspection will be required upon completion of the marking of trees slated for harvest. Plans call for the selective harvest of merchantable hardwoods, mainly oak and black walnut; timber stand improvement work; and, pine thinning of plantations pursuant to an MFL plan. The harvest likely will encompass the Bluff Zone, Riverview Zone and Resource Management Zone. Lundberg noted, at this time, it does not appear new roads will be constructed due to the existing network of roads on the property. The harvest has not been completed and Mr. McNamee has requested an extension. The harvest plans remain the same. No new roads will be constructed. Dorscheid made a motion, seconded by Brown, to approve issuance of a permit with the following conditions:

- The harvest shall comply with the basal area limits for the residual stand in the Bluff Zone and Riverview Zone as detailed in Chapter NR 37, Wisconsin Administrative Code;
- In the Bluff Zone and Riverview Zone, the harvest shall be limited to the times when the ground is frozen or dry and the leaves are off the deciduous trees;
- The LWSRB shall approve of the location and design of all small regeneration cuts, if any, in the Riverview Zone;
- The LWSRB shall approve the location and design of all new logging roads, if any, in the Bluff Zone and Riverview Zone;
- The new logging roads, if any, shall comply with the applicable performance standards regarding grade and erosion control and shall be re-seeded upon completion of the harvest;
- If necessary, the Bluff Zone, Riverview Zone and Resource Management Zone shall be delineated prior to initiation of the harvest;

McNamee continued:

- All trees selected for harvest shall be appropriately marked and approved by the LWSRB prior to initiation of the harvest;
- The landowner or his/her agent shall notify the LWSRB within 10 working days upon completion of the harvest and the LWSRB shall conduct a post-harvest field inspection; and,
- The LWSRB shall approve of any modification of the plans as submitted.

Leys said he did not like the language that stated the “board shall approve” various activities under the conditions of the permit because he felt it implied that the board would have no option other than approval of those activities. Leys made a motion to amend the conditions of the permit to state the board “would review the specified activities for compliance with the Riverway regulations,” seconded by Greenwood. **MOTION CARRIED.** A vote on the amended motion to extend the permit for one year was taken. **MOTION CARRIED.**

The meeting of the Riverway Forest Health Ad Hoc Committee conducted earlier in the day was reviewed. Lundberg said Brad Hutnik, DNR Riverway Forester, and Mark Guthmiller from DNR and Melody Walker from the Department of Agriculture, Trade and Consumer Protection had given presentations on the gypsy moth, emerald ash borer (EAB) and other forestry issues. Hutnik said Guthmiller and Walker had done a good job of presenting the issues within the Riverway context. He noted introduction of EAB in Wisconsin is likely to occur through tourists bringing firewood from an infected area (Michigan, Indiana, and Ohio). Hutnik said the treatment once an infected tree is found is to cut all ash trees within ½ mile of the infected tree. Lundberg noted that firewood transport should be watched carefully, especially in high use areas. Leys asked if there would be informational signage at boat landings. Lundberg said the department should consider working with canoe liveries. Hutnik said he is waiting for a media blitz on the issue of firewood transport. A motion to recommend the DNR place signage at boat landings warning people about the danger of EAB introduction through firewood transport was made by Leys, seconded by Nice. **MOTION CARRIED.**

Noise regulation on the Riverway was discussed. Cupp noted he and Greenwood had attended the January 25th Natural Resources Board meeting, pursuant to the LWSRB directive. Greenwood noted several others were in attendance including Timm Zumm of the Friends of the Lower Wisconsin (FLOW), Steve Winters of Reedsburg, George Meyer of the Wisconsin Wildlife Federation. He said the testimony from all was in favor of uniform and unilateral enforcement of noise regulations and also indicated support for providing DNR wardens with the tools necessary to enforce the regulations. He said the key statement from DNR staff was that there would not be any exempt areas, which means the Riverway won't be excluded from the regulations. Greenwood said the board still needs to follow the issue and remain vigilant but said the admission that there won't be exempt areas was an important development. Cupp said he provided the LWSRB with his written comments as well as the text of his verbal remarks.

Leys thanked Greenwood and Cupp for raising the issue. Youngquist noted the noise regulations are difficult to enforce because of inadequate testing procedures. He said the procedures need to be in line before one goes to court with a citation. Lundberg noted problems with noisy watercraft are spreading all around the state. Madison asked if new administrative rules will be required. Greenwood said the DNR claims the existing rules apply only to muffler noise and not to propeller noise so a rule change may be required but added that DNR legal staff said the process was underway and could be to the Natural Resource Board within 3 months. Zumm noted it was important that folks realized the effort is to enforce the 86 db limit and is not intended to ban any specific type of watercraft.

Cupp said he had met with Department of Transportation (DOT) – District I staff to discuss the proposed reconstruction of the USH 14 bridge near Spring Green. He said alternative aesthetic treatments to the bridge are being considered. Cupp said he is waiting for information from DOT on the options for board consideration but the timing to receive the new information is up in the air. Cupp said he expected to hear from DOT by late spring or early summer. He noted the project tentatively is slated for 2009.

The walls on STH 60 west of Boscobel in Crawford County were discussed. Cupp reviewed the history of the walls noting that the vines recommended by the consultant and intended to screen the walls, Virginia creeper, had not worked well. He said he and Hutnik had reviewed a proposal from Bob Swartz, Environmental Coordinator at DOT – District 5, for additional aesthetic treatments. A power point presentation was shown. Cupp said techniques may include using a different type of vine as well as planting of other trees and shrubs. Additional soil could be placed at key locations to enhance opportunities for vegetation to be established. Cupp said he was waiting for a response from DOT on the topic.

Cupp reviewed permits he had issued since the January meeting. A permit was amended and extended for a timber harvest on the Todd Schwingle property in the Town of Richwood, Richland County. Two permits were issued to Scenic Rivers Energy Cooperative for modifications to a distribution line in the Town of Millville, Grant County. A general permit was issued to Tom Gasner for construction of a garage in the Town of Troy, Sauk County.

The Budget & Office Committee report was presented by Chairman Nice who reviewed the status of the FY 06 budget. There was no report from the Personnel Committee. The Executive Director's report was given by Cupp who reviewed the materials in the board members' packets.

The DNR report was given by Steve Colden, DNR Riverway Manager, who noted land had been acquired from the River Valley School District in the Town of Arena, Iowa County; an easement was purchased from Roman Wachter for a parcel in the Town of Prairie du Sac, Sauk County; and, the sale of surplus land with retention of an access easement was made in the Town of Eagle, Richland County. Hutnik reported two LTEs have been hired to assist with timber reconnaissance on state owned lands in the Riverway. He said the Bottomlands Ecology Committee will meet on February 21st.

During the public comment session, Paul Brandt of Boscobel and Jerry Stram of Prairie du Chien made comments on the STH 60 walls. Zumm commented on light pollution standards recently adopted at Blue Mounds.

A motion to adjourn until March 9th when the meeting again will be held in Muscoda was made by Greenwood, seconded by Madison. **MOTION CARRIED.**

END

For further information, corrections, additions or deletions to the minutes, contact Mark Cupp, Executive Director, at (608) 739-3188 or 1-800-221-3792.

Minutes submitted by:

Mark E. Cupp, Executive Director
Lower Wisconsin State Riverway Board