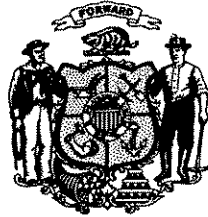


98-073-NR 191 - LAKE PROTECT.  
GRANTS

***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**CLEARINGHOUSE REPORT TO AGENCY**

---

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-073**

AN ORDER to repeal NR 191.10 (1) to (3); to renumber NR 191.03 (2), (3), (4), (6), (8), (9), (10) and (11), 191.07 (3) and (4) and 191.10 (4) to (13); to renumber and amend NR 191.03 (5), (12), (13) and (14); to amend chapter NR 191 (title), 191.01, 191.02, 191.05 (4), 191.06 (1), (2) (b) 4. and 10. and (3) and 191.07 (title) and (2); to repeal and recreate NR 191.04, 191.09 and 191.105; and to create NR 191.03 (2) and (6), 191.07 (3), 191.08 (5) and 191.10 (11) and chapter NR 192, relating to lake protection grants and lake classification technical assistance grants.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-14-98      RECEIVED BY LEGISLATIVE COUNCIL.

06-12-98      REPORT SENT TO AGENCY.

RS:MM:jt;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

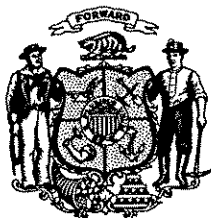
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 98-073

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 1. Statutory Authority

a. Section NR 191.03 (6) should be rewritten to specify that lake classification projects, in addition to classifying lakes by use, also implement protection activities for the lakes based on their classification. See s. 281.69 (1) (b), Stats., as created by 1997 Wisconsin Act 27.

b. Section NR 191.04 (1) should specify that any purchase of property using grant funds provided under ch. NR 191 is subject to the conditions set forth in s. 281.69 (3) (b) 1., Stats.

#### 2. Form, Style and Placement in Administrative Code

a. In the treatment clause of SECTION 1, the word "Chapter" should be inserted before the reference to "NR 191."

b. In s. NR 191.03 (7), the new material beginning with the word "Also" is an incomplete sentence.

c. The introductory material of s. NR 191.04 should be replaced by the phrase "All of the following activities are eligible for grants under this chapter:". In sub. (4) (b) (intro.), the phrase ", as defined in s. NR 191.03 (7)" should be deleted and the phrase "all of" should be inserted after the word "meets." In sub. (5), the introductory material beginning with "Lake classification" should be renumbered as par. (a) and the clause beginning with the phrase "The following factors" should be combined with the first sentence of the subsection. In sub. (5) (b),

the cross-reference should be replaced by a reference to sub. (3). In sub. (5) (c), the Note contains substantive material that should be incorporated into the body of the rule. In sub. (6) (a), a semicolon should be inserted before the phrase "and water safety patrols."

d. In s. NR 191.09 (2) (intro.), the phrase "any of the following" should be inserted after the word "include" and the semicolons following pars. (a) and (b) should be replaced by periods. In sub. (3), the first sentence should be renumbered as par. (a) and the introduction to par. (a) contained in the rule should be combined with the first sentence.

e. In SECTION 14, the repealing and renumbering actions should be treated in separate SECTIONS.

f. In s. NR 191.105 (1) (a), the material before the first period is an incomplete sentence. Perhaps the phrase "is provided" should be inserted after the phrase "sufficient information." Also, in par. (a), the phrase "lake management planning grants" is stricken through; recreated provisions should not show stricken-through or underscored material. In sub. (1) (d), the phrase "and/or" should be avoided. [See s. 1.01 (9), Manual.] In sub. (1) (f) (intro.), the phrase "all of the following" should be inserted before the colon and the semicolons concluding the subdivisions should be replaced by periods.

g. The entire rule should be reviewed for conformity with correct drafting style regarding mandatory and permissive actions. For example, in s. NR 191.105 (1) (f), "will" should be changed to "shall." [See s. 1.01 (2), Manual.]

h. In s. NR 192.02, the phrase ", as defined in this chapter," is unnecessary and should be deleted.

i. In s. NR 192.03, the introductory material should be replaced by the phrase "In this chapter;"

j. In the first sentence of s. NR 192.04 (2), "as provided for" should be deleted. In addition, that subsection should explain the difference between "priority" and "eligible" activities.

k. In s. NR 192.06, the annual list of priority activities for lake classification technical assistance grants should be promulgated as an administrative rule under ch. 227, Stats.

l. In s. NR 192.07 (1), underscoring should not be used. In sub. (3), reference is made to making an application in accordance with application instructions. The department should ensure that these instructions do not contain material that should be promulgated as administrative rules under ch. 227, Stats.

m. Chapter NR 192 should be reviewed so that the sections of the chapter follow the chronology of the application and grant process. For example, s. NR 192.05 contains provisions regarding accounting, record keeping and submission of claims. These provisions should be at, or near the end of, the chapter. The creation of priorities and the submission of applications should appear first in the chronology.

**4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the analysis to the rule, all references to s. 281.69, Stats., should be followed by the notation "as affected by 1997 Wisconsin Act 27."

b. Section NR 191.09 (2) should specify that a grant award may not exceed the maximum amount set forth in s. NR 191.07 (2).

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 191.04 (4) (intro.), what is meant by the phrase "Activities will be distinguished as follows:"?

b. It is unclear what is meant by s. NR 191.08 (5) (d). Specifically, the rule states that for lake classification projects, the "level of consistency with the provisions described in s. NR 191.04 (5)" shall be used to determine priorities. This phrase tends to imply that the provisions in s. NR 191.04 (5) are discretionary for purposes of s. NR 191.08 (5) (d). This point should be clarified.

c. Section NR 191.10 (11) should be rewritten to clarify that the use of the power of eminent domain must be related to the project for which a grant is sought in order for the use of the power of eminent domain to disqualify an applicant.

d. The title to s. NR 191.105 refers to grants for lake protection projects; however, sub. (1) (e) of that section refers to lake improvement projects. This discrepancy should be clarified.

e. Should the phrase "whichever is later" be added to the end of the first sentence in s. NR 191.105 (1) (h)?

f. Section NR 192.04 (1) is grammatically incorrect and should be rewritten as a complete sentence.

g. The last sentence of s. NR 192.05 (1) should be rewritten to clarify whether the final payment referred to is a final payment from the Department of Natural Resources or the final payment by a sponsor.

h. Under s. NR 192.05 (4), how is it to be determined what portion of the state share is to be repaid by a sponsor? Is there any procedure under which a grant recipient can appeal the department's decision that grant funds must be repaid?

i. In s. NR 192.08 (1) (intro.), "projects" should be replaced with "applications."

j. In s. NR 192.08 (1) (a) and (d), it appears that the defined terms "management unit" and "sponsor" should be used rather than the terms "local units of government" and "lake management organizations." Also, the notation "(1)" preceding the introduction in this section should be deleted and pars. (a) to (d) should be renumbered as subs. (1) to (4).

k. Section NR 192.09 (6) and (7) specify when certain portions of grants are to be disbursed. Should the rule specify the schedule under which the remaining grant funds are to be disbursed?

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING,  
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to repeal NR 191.10(1) to (3); to renumber NR 191.03(2), (3), (4), (6), (8), (9), (10), (11), 191.07(3) and (4), 191.10(4) to (13); to renumber and amend NR 191.03(5), (12), (13) and (14); to amend ch. NR 191(title), 191.01, 191.02, 191.05(4), 191.06(1), (2)(b)4., (2)(b)10. and (3), 191.07(title) and (2); to repeal and recreate NR 191.04, 191.09, 191.105; and to create NR 191.03(2) and (6), 191.07(3), 191.08(5), 191.10(11) and ch. NR 192 relating to lake protection grants and lake classification technical assistance grants

FH-40-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 281.69 and 227.11(2)(a), Stats.

Statutes interpreted: s. 281.69, Stats.

*as an imp Act 27-*

The proposed rules:

- 1) Create Lake Classification Project Grants for counties to receive 75% state funding up to \$50,000 for classifying lakes and implementing protection activities.
- 2) Define eligible activities and priorities for Lake Classification Project Grant awards;
- 3) Streamline and clarify allowable costs, local share and grant awards for all lake protection grants. Also, increases the value of donated nonskilled labor from \$5 to \$6;
- 4) Change the protection grant award deadline of September 1 to a deadline for notifying applicants of the department's decision to award a grant;
- 5) Make several housekeeping changes reflecting statute renumbering, department reorganization and clarifying the term lake restoration;
- 6) Creates NR 192 Lake Classification Technical Assistance Grants for nonprofit corporations to receive up to \$200,000 for assisting counties, other units of local government and lake organizations in lake classification projects.

*ch? 191*  
SECTION 1. NR 191 title is amended to read:

NR 191 LAKE PROTECTION AND CLASSIFICATION GRANTS

SECTION 2. NR 191.01 is amended to read:

NR 191.01 PURPOSE. The purpose of this chapter is to establish procedures for implementing a lake protection and improvement and classification grant program as provided for

*No* *No*  
*regard. classif and lake protect*

*1*  
*Ch. 191.01*  
*191.01*

in s. 281.69, Stats. Grants made under this program will assist lake protection and restoration projects. They will assist lake management organizations by helping to provide protection and improvement of critical watershed areas and lake use activities which benefit the quality of water in lakes or the natural ecosystem of lakes.

SECTION 3. NR 191.02 is amended to read:

NR 191.02 APPLICABILITY. This chapter applies to all counties, cities, towns, villages, tribes, qualified lake associations as defined in s. 281.68(1), Stats., town sanitary districts, other local governmental units as defined in s. 66.299(1)(a), Stats., which are established for the purpose of lake management, public inland lake protection and rehabilitation districts, and qualified nonprofit conservation organizations, as defined in s. 23.0955 (1), Stats., which are applying for financial assistance under s. 281.69, Stats., for a protection project for a public inland lake. The department may award lake classification grants only to counties.

SECTION 4. NR 191.03(2) to (15) are renumbered (3) to (5), (7) to (17) respectively and NR 191.03 (7),(14) and (15) as renumbered are amended to read:

NR 191.03 (7) "Lake restoration grants projects" for the purposes of this chapter and s. NR 1.91(2)(d) mean protection projects for funding in-lake improvement activities which increase the recreational or environmental values of a lake. They include funding for the following natural resource enhancement activities: aeration, aquatic plant management, alum or lime treatments, artificial circulation, biomanipulation, dilution/flushing, drawdown, fishery rehabilitation, habitat restoration, harvesting lake plants for the purpose of restoring aquatic plant beds, hypolimnetic hypolimnetic withdrawal, and sediment covers, oxidation, removal or tilling. Also, diagnostic/feasibility studies, engineering or design plans and the preparation of construction plans and specifications which are necessary to determine appropriate lake enhancement options.

(14) "~~Protection project~~ Project priority list" means a ranking by the department of eligible lake protection or classification projects in the order of their scheduled receipt of funds.

(15) "Public inland lake" or "lake" means a lake, reservoir or flowage, or millpond, or portion thereof, within the boundaries of the state that is presently accessible to the public by contiguous public lands or easements giving public access or which has been listed by the department as a public inland lake in Wisconsin Lakes, Publ-FM-800-91 95 REV

Note: Publ-FM-800-91 95 REV is available from the Department of Natural Resources, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

SECTION 5. NR 191.03(2) and (6) are created to read:

NR 191.03(2) "Cost share" means approved project costs the department will reimburse the sponsor for at the approved cost share rate.

(6) "Lake classification project" means a set of activities leading to the designation of lakes, within a particular jurisdiction, into different categories for the purpose of tailoring management actions and policy to the unique needs of the class and implement protective activities

SECTION 6. NR 191.04 is repealed and recreated to read:

NR 191.04 ELIGIBLE ACTIVITIES. Eligible activities are:

*Activities eligible for ... are:*

*Substantive*

*shd. be replaced w sect in classification*

*cross to rule section 4*

*? not a type of project referred to in stat*

*incomplete sentence*



✓ (1) The purchase of property which will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem. <sup>condition? 201.69(3)(b)</sup> ✓ ①

✓ (2) The restoration of a wetland or lands draining to a wetland which will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

✓ (3) The development of local regulations or ordinances, which will prevent degradation of a lake's water quality or its natural ecosystem, including limitations on the uses made of a lake, and the educational activities necessary for the initiation of their implementation.

(4) Activities that are recommended in a locally adopted and department-approved plan. Activities will be distinguished as follows:

(a) Protection projects that will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem. Projects may include but are not limited to watershed management, habitat protection and nonpoint source pollution prevention and control practices, diagnostic and feasibility studies, engineering or landscape design plans and the preparation of construction plans and specifications which are necessary to determine appropriate options and recommendations for lake protection ~~or~~.

(b) Lake restoration projects, ~~as defined in s. NR 191.03(7)~~ and which the department determines meets the following criteria:

1. The sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to restoration activities.

2. The proposed activities have a good likelihood of successfully meeting the project plan objectives.

(a) (5) Lake classification projects conducted by counties which classify lakes into management categories. ↗

✓ ~~(5)~~ The following factors shall be considered for each lake in all lake classification projects:

1. The size, depth and shape of the lake.
2. The size of the lake's watershed.
3. The quality of the water in the lake.
4. The lake's current use, or potential for the lake to be overused, for recreational purposes.
5. The current patterns of development or the potential for the development of land surrounding the lake.
6. The potential for the lake to suffer from nonpoint source water pollution.
7. The type and size of the fish and wildlife population and the extent of their habitats in and around the lake.

~~(b)~~ Lake classification projects shall include proposed protection activities related to each class of lakes and may include activities as described in ~~NR 191.04(3)~~.  
*sub,*

(c) Counties may classify lakes for the purposes of implementing activities for which they have existing statutory authority. Nothing in this section shall be interpreted to grant new authority to counties for managing lakes and shorelands. Classification and the resulting implementation activities can not result in lowering existing state minimum standards designed to protect lakes.

Note: Lake classification projects may be conducted to assist the department in setting lake water quality standards. The county shall consult with the department when conducting a lake classification project for this purpose. Any proposal for the classification of lakes to be used in setting lake water quality standards or for enacting requirements for the implementation of water quality standards based on new or existing classifications shall only become effective when adopted by the department as rules under s. 281.15, Stats.

*Substantive*

(6) INELIGIBLE ACTIVITIES. (a) Activities not eligible for funding under this section include: dam repair or operation or removal or the purchase of property on which a dam is located; dredging; design, installation, operation or maintenance of sanitary sewers; the routine chemical treatments or mechanical harvesting of aquatic plants, and water safety patrols.

(b) No protection or restoration projects may be approved until all the necessary permits and approvals for the project have been obtained.

SECTION 7. NR 191.05(4) is amended to read:

NR 191.05 (4) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek ~~reimbursement~~ repayment of the state share or a portion of the state share previously distributed to the sponsor.

SECTION 8. NR 191.06(1), (2)(b)4, ~~and~~ <sup>and</sup> 10. and (3) are amended to read:

NR 191.06 APPLICATIONS. (1) Applications from management units for funding of projects shall be made on forms provided by the department and shall be submitted to the ~~district~~ region director for the ~~district~~ region in which the project is located. The department shall review the application within 30 days of receipt of the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until such additional information requested by the department has been received.

Note: The DNR ~~district~~ region headquarters are located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., P.O. Box 12436, Milwaukee 53212
2. ~~Southern~~ South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. ~~Lake Michigan~~ Northeast -- 1125 N. Military Ave., P.O. Box 10448, Green Bay 54307
4. ~~North Central~~ Northern/Rhineland -- 107 Sutliff Ave., P.O. Box 818, Rhineland 54501
5. ~~Western~~ West Central -- 1300 W. Clairemont Ave., P.O. Box 4001, Eau Claire 54702

6. ~~Northwest Hwy 70 West, Box 309,~~ Northern/Spooner -- 810 W. Maple St. Spooner  
54801

(2)(b)4. A description of the availability of public access to, and public use of, the lake or lakes.

(b)10. For ~~lake improvement~~ all other lake protection projects, a locally adopted and department approved project plan.

(3) Project applications shall be received by the department by May 1 of each year to be eligible for grant awards made by September 1, that year.

SECTION 9. NR 191.07 (title) and (2) are amended to read:

NR 191.07 (title) DETERMINATION OF PROJECT ELIGIBILITY.

(2) The total state share of the cost of a protection project may not exceed \$200,000, except for the development of local regulations or ordinances under s. NR 191.04(3) which may not exceed \$50,000 per grant.

SECTION 10. NR 191.07(3) and (4) are renumbered (4) and (5) respectively.

SECTION 11. NR 191.07(3) is created to read:

NR 191.07(3) The state share of the cost of a lake classification project may not exceed \$50,000 per grant.

SECTION 12. NR 191.08(5) is created to read:

NR 191.08(5) For lake classification projects the following additional factors shall be used to determine priorities:

- (a) The geographic scope of the project and the number of lakes proposed to be classified.
- (b) The extent to which the project will integrate with, and is supported by towns, local lake management units, adjacent counties and similar projects being conducted by other management units.
- (c) The comprehensiveness of the proposed management or protection actions that will result from the project.
- (d) The level of consistency with the provisions described in s. NR 191.04(5). (?) 5  
unclear

SECTION 13. NR 191.09 is repealed and recreated to read:

NR 191.09 GRANT AWARDS FOR ALL PROJECTS (1) The department shall notify applicants of the department's decision to award a grant by September 1 of each year for projects based upon the project priority list. or delay

(2) COST SHARE. The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application. Except as provided for under s. NR 191.10,

*(add ref to 191.07(2) (4))*

estimated costs may include: <sup>any of?</sup>

(a) Labor costs required to carry out activities identified in the grant agreement provided they require additional staff or increased hours of existing staff. Work hours of additional staff may be used to offset the work hours spent by existing staff on the activities identified in the grant agreement. Costs of additional staff positions or increased staff hours shall be based on management unit rates for the position including salary, fringe benefits and other items determined to be appropriate by the department;

(b) Direct costs for construction activities, surveys, newsletters, brochures, mailings, professional services contracts and similar items; *and?*

(c) Other costs determined by the department to be necessary to carry out an adequate project.

(3) LOCAL SHARE. <sup>(R)</sup> The local share of the project cost may not be less than 25% of the eligible project costs. <sub>(S)</sub>

(a) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

1. All sources of local share donation shall be indicated when the application for a grant is submitted.
2. The maximum value of donated, non-professional, labor shall be \$6.00 per hour.
3. The value of donated equipment shall conform to the Wisconsin department of transportation highway rates for equipment.

Note: The county highway rates for equipment are formulated under s. 84.07. Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

(b) Local share may include existing <sup>?</sup> professional staff time, supported by time sheets, and valued at the sponsor's rates for the position including salary, fringe benefits and other items determined to be appropriate by the department, for the supervision and administration of the project. *1.50K*

(4) Except as provided for under s. NR 191.10, the department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(5) Upon the written request of the sponsor, the department may distribute up to 25% of the state share of the project costs for a lake classification project or for the development of local regulations and ordinances to the grant recipient following acceptance of the grant agreement by the applicant.

(6) A grant awarded under this section may be terminated by the department for violation

of any term or condition of the grant contract.

SECTION 14. NR 191.10(1),(2) and (3) are repealed and NR 191.10(4) to (13) are renumbered (1) to (10) respectively. *Sup. SECS.*

SECTION 15. NR 191.10(11) is created to read:

NR 191.10(11) No grant may be awarded where the sponsor uses the power of eminent domain. *for the project? (5)*

SECTION 16. NR 191.105 is repealed and recreated to read:

NR 191.105 GRANT AWARDS FOR LAKE PROTECTION PROJECTS RECOMMENDED IN AN APPROVED PLAN. (1) Lake restoration projects shall require the preparation of a project plan based upon a recommended alternative in a locally adopted and department-approved diagnostic/feasibility study subject to the following conditions:

*is provided?* (a) Diagnostic/feasibility studies shall follow specifications provided by the department to ensure that sufficient information for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent changes. Studies previously developed under ch. NR 190 lake management planning grants or for other purposes may qualify as feasibility studies with the written approval of the department. *not a sentence (5)*

*(5)* (b) Upon the department's written approval of the feasibility study, the sponsor may select and a proposed project plan based upon the recommended alternatives of the diagnostic/feasibility study.

(c) Following selection of the proposed lake project plan by the sponsor, the sponsor shall submit the project plan to the department for approval.

(d) The department shall provisionally indicate if the proposed plan requires the preparation of an environmental impact report (EIR) by the applicant and/or an environmental assessment (EA) by the department. If an EA is required, formal adoption of a proposed plan by sponsor resolution cannot take place until the EA has been completed, circulated, the period for public comment ended and has been certified as being in compliance with the Wisconsin environmental policy act (WEPA). *(5)?*

*spell out* (e) Upon certification by the department of compliance of the lake improvement project plan with the provisions of the WEPA, the sponsor may submit the project plan to the department for its approval.

*shall throughout* (f) The department may hold a public informational meeting on the project plan. The department will set a time and place for the public meeting in the project vicinity within 10 days after receipt of the proposed plan and convene the meeting within 90 days after notice of meeting. The meeting will be for the purpose of receiving testimony regarding: *→ all of ...*

1. The environmental assessment prepared by the department if required, and the project plan;
2. The issuance of required permits;

3. The potential for long-range environmental pollution as defined by s. 285.01(9), Stats., if the project is implemented;

4. Views of the appropriate land conservation board;

5. Views of the appropriate regional planning commission; *and?*

6. The likelihood that sources of continuing lake degradation will be substantially eliminated.

(g) If necessary to an orderly presentation, the department may receive testimony on applications for permits independently of the other issues specified in par. (f)

(h) The department shall approve, approve with modification, or disapprove the project plan within 60 days of receipt or within 60 days after the public meeting. The department shall state the reasons if a plan is disapproved and provide alternatives if modification is recommended. For approved plans, the department will concurrently issue its decision on the applications for permits. *Establish*

(i) Following department approval of a project plan, the sponsor *may* by resolution adopt the approved or modified project plan, and a copy of the plan and resolution *shall* be submitted to the department. The adopted project plan may then be implemented, subject to any conditions in the grant agreement where an offer of financial assistance has been made by the department and accepted by the sponsor.

(2) Only lake restoration project activities approved by the department shall be considered for lake protection grants.

SECTION 17. NR 192 is created to read:

Chapter NR 192  
LAKE CLASSIFICATION TECHNICAL ASSISTANCE GRANTS

NR 192.01	Purpose
NR 192.02	Applicability
NR 192.03	Definitions
NR 192.04	Eligible activities
NR 192.05	General provisions
NR 192.06	Priorities
NR 192.07	Applications
NR 192.08	Project evaluation
NR 192.09	Grant awards
NR 192.10	Variances

**NR 192.01 PURPOSE.** The purpose of this chapter is to establish procedures for implementing a lake classification technical assistance grant program as provided for in s. 281.69, Stats. Grants made under this program will go to nonprofit corporations to provide educational and technical assistance to local units of government and lake management organizations that will participate in lake classification projects as described in ch. NR 191.

**NR 192.02 APPLICABILITY.** Only nonprofit corporations, ~~as defined in this chapter,~~ are eligible to receive a lake classification technical assistance grant.

**NR 192.03 DEFINITIONS.** The following definitions are applicable to terms used in this chapter:

- (1) "Department" means the Wisconsin department of natural resources.
- (2) "Grant period" means the time period stated in the grant agreement during which the sponsor is eligible to expend program grant funds for a project.
- (3) "Lake classification project" means a set of activities leading to the designation of lakes, within a particular jurisdiction, into different categories for the purpose of tailoring management actions and policy to the unique needs of the class.
- (4) "Lake classification technical assistance project" means a set of activities which will provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.
- (5) "Management unit" means a county, town, village, city, tribe, qualified lake association as defined in s. 281.68(1), Stats., town sanitary district, and other local governmental units as defined in s. 66.299(1) (a), Stats., that are established for the purpose of lake management, and public inland lake protection and rehabilitation district.
- (6) "Nonprofit corporation" means an entity organized pursuant to ch. 181, Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the conservation or preservation of natural resources by disseminating information and assisting local units of government and lake management organizations.
- (7) "Sponsor" means the nonprofit organization that is receiving a grant under this chapter.

**NR 192.04 ELIGIBLE ACTIVITIES.** (1) Lake classification technical assistance projects conducted by nonprofit corporations to provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

(2) Only priority activities listed as provided for in s. NR 192.06 will be eligible for funding. *shall work*  
Eligible activities may include, but are not limited to: providing professional educational and technical assistance staff services; researching, producing, publishing and distributing informational and educational materials; and planning and conducting workshops and conferences.

(3) Lobbying is an ineligible activity.

**NR 192.05 GENERAL PROVISIONS.** (1) Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the sponsor in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was made. All financial records, including invoices and cancelled checks, that support all project costs claimed by the sponsor shall be kept and made available for inspection for 3 years after final payment.

(2) The sponsor shall submit to the department a claim for payment on forms provided by the department at any time but not later than 3 months after the end of the grant period. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative

to expenditures being made within the grant period, within the scope of work, and within estimated costs.

*35*

(3) The sponsor may request, for good cause, a grant agreement amendment for expenses expected to exceed those identified as estimated costs in the grant agreement prior to the end of the grant period.

(4) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek repayment of the state share or a portion of the state share previously distributed to the sponsor. *How is amt repaid determined?*

(5) All of the sponsor's records pertaining to the project are subject to audit. Claims made for payment may be adjusted by audit.

(6) Any requests for extensions of the grant period shall be made prior to the end of the grant period.

**NR 192.06 PRIORITIES.** The department in consultation with the university of Wisconsin extension, interested eligible nonprofit corporations, and representative management units shall develop an annual list of priority activities for lake classification technical assistance grants.

*24*  
*2*  
*10/2*  
*10/2*

**NR 192.07 APPLICATIONS.** (1) The department shall publish in the Wisconsin administrative register an official notice of request for applications and the list of priority activities developed under s. NR 192.06 for lake classification technical assistance grants by April 1 of each year.

(2) Nonprofit corporations interested in receiving the list of priorities and application instructions under this chapter shall contact the department in writing.

*should be first rules?*

(3) Applications for funding shall be submitted to the bureau of community financial assistance by July 1 of each year in accordance with the application instructions on forms provided by the department.

Note: The department address is Bureau of Community Financial Assistance, Environmental Grants Section - CF/8, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921.

(4) The department shall review the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until the additional information requested by the department has been received.

(5) The application shall consist of 2 parts:

(a) Organizational - Part I. This part may be submitted at any time to obtain the department's determination that the organization is a qualified applicant. It shall include:

1. Information on the sponsor's purposes and ability to manage a lake classification technical assistance project. The sponsor shall provide evidence that the nonprofit corporation meets the requirements as described in ch. 181, Stats., and s. NR 192.03(6).

2. A resolution officially adopted by the nonprofit corporation requesting that the organization be recognized as an eligible sponsor and which authorizes a representative to apply for

*Notes*  
*Public*  
*10/2*  
*10/2*



grants on its behalf and which provides the name, address and telephone number of that representative.

(b) Project - Part II. This part may be submitted any time after the list of priority activities are determined under s. NR 192.06, but prior to July 1 of each year. It shall contain the following information:

*Have app. 1-submitter to develop proposal? (5)*

1. A description of the project with a statement of how the project will implement the list of priority activities.

2. An estimate of costs of the project including labor and fringe benefits, supplies, services, informational and educational materials, sub-contracts, and a time frame for project implementation and completion.

3. Identification of any other nonprofit corporations, management units and state agencies that will be involved and their roles, and a description of the level of support from affected management units and interested nonprofit corporations.

4. A description of how the proposed project complements other lake educational and technical assistance efforts.

**NR 192.08 PROJECT EVALUATION.** (1) The department shall consider the following factors when evaluating projects for funding:

*proposed or application (2) (5)*

(a) The extent to which the nonprofit corporation has demonstrated experience in providing educational and technical assistance in the area of lake and shoreland management to local units of government and lake management organizations.

*man. units and sponsors*

(b) The degree to which the project implements the priority activities listed for the year.

(c) The degree to which the project will be conducted in a spirit of cooperation with other interested nonprofit organizations and management units.

(d) The degree to which the project will be conducted in collaboration with the department and the university of Wisconsin extension and their ongoing educational and technical assistance efforts and activities to local units of government and lake management organizations.

*or*

**NR 192.09 GRANT AWARDS.** (1) The department shall notify applicants of the department's decision to award a grant by September 1 each year.

(2) The department may provide grant funds for any part of an eligible project application. The grant award may not exceed the estimated costs of the project as set out in the grant application.

(3) The state share of the cost of a lake classification technical assistance grant may not exceed \$200,000.

(4) The state share of a grant may cover up to 100% of the eligible project costs. Eligible costs may include:

(a) Labor costs required to carry out activities identified in the grant agreement provided

they require additional staff or increased hours of existing staff. Costs of additional staff positions or increased staff hours shall be based on nonprofit corporation rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for employe travel, training and additional office support and services; research and surveys; newsletters, informational and educational materials and mailings; and professional services contracts and similar items.

(c) Other costs determined by the department to be necessary to carry out an adequate project.

(5) Ineligible costs include the sponsor's operational and administrative costs not directly associated with the lake classification technical assistance project.

*5) How is the 175% disallowed?*

(6) The department may distribute up to 25% of the state share of the project costs to the grant recipient following acceptance of the grant agreement by the grantee.

(7) The department may withhold 10% of the final payment until it has made a determination that the project and any required audits have been completed.

(8) A grant awarded may be terminated by the department for violation of any term or condition of the grant.

*Can you make a note of 140?*

**NR 192.10 VARIANCES.** The department may approve in writing a variance from a requirement of this chapter upon written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor and financial hardship. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

State of Wisconsin  
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FH-40-98

Legislative Council Rules Clearinghouse Number 98-073

Subject of Rules Lake protection grants and lake  
classification technical assistance grants

Date of Transmittal to Presiding Officers October 6, 1998

**Send a copy of any correspondence or notices pertaining to this rule to:**

**Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LC/5, 101 South Webster**

**266-1959**

REPORT TO LEGISLATURE

NR 191 and 192, Wis. Adm. Code  
Lake protection grants and lake classification technical assistance grants

Board Order No. FH-40-98  
Clearinghouse Rule No. 98-073

Statement of Need

The lake protection grants and lake classification technical assistance grants provide 75% matching state funds to lake organizations, local governments and nonprofit organizations for implementing a wide variety of lake management activities. The 1997 budget enabled two new types of lake grants to fund lake classification projects and lake classification technical assistance projects. The budget also increased the annual appropriation for lake management and classification grants from \$1.3 million to \$2 million and directs the department to develop rules in order to administer these grants.

Modifications as a Result of Public Hearings

Section NR 191.04(5)(c) was modified to add the words "or cooperating jurisdictions" to clarify that that counties may cooperate with other units of government or the department to develop regulations on the use of lakes. Section NR 191.04(1) was modified to reflect that the grants can be used for the purchase of property or conservation easements (development rights).

Appearances at the Public Hearings and Their Position

*June 16, 1998 - Spooner*

In support:

Jim Flanigan, Burnett County Zoning Administrator, 7410 Co. Road K, #102, Siren, WI 54872  
Nancy Bentz, Wis. Association of Lakes, 1830 Hines Lakeview Drive, Cumberland, WI 54829  
Beverly Stencel, UW-Extension, 850 W. Beaverbrook Avenue, Suite 1, Spooner, WI 54801

In opposition - none

As interest may appear:

Stephen Andrews, Northwest Regional Planning Commission, 1400 S. River St., Spooner, WI 54801  
Craig Conroy, Washburn Co. Zoning Administrator, P.O. Box 506, Shell Lake, WI 54871

*June 18, 1998 - Rhinelander*

In support:

Judy Jooss, Wisconsin Association of Lakes, 1154 Lucille Avenue, Twin Lakes, WI 53181

In opposition - none

As interest may appear - none

*June 24, 1998 - Waukesha*

In support:

Jeffrey A. Thornton, SE Wisconsin Regional Planning Commission, 321 Barney Street,  
Waukesha, WI 53186-2402

In opposition:

Don Hildebrandt, Wisconsin State Bass Federation, 2310 N. 6<sup>th</sup> Street, Wausau, WI 54403-3307

As interest may appear - none

Response to Legislative Council Rules Clearinghouse Report

The comments and recommendations were generally accepted. The Department is responding to the following comments:

1.c., The note as written implied this was a substantive issue. However, we feel sub. (5)(c) addresses the same issue relating to county authority and we have modified the Note to reflect the intended informational tone.

2.k., We acknowledge that eventually this list should be included in administrative code. However, as a new program we are still on a learning curve. The technical assistance needs to build off and respond to existing project needs. That makes it difficult, if not risky, to determine at this time, what priorities will exist next year or the year after. Given its funding limit and specialized nature we expect that only one grant a year will be awarded. For the time being we will proceed with the code as proposed and anticipate promulgating more detailed rules once we gain more experience with this grant program.

2.l., We acknowledge the comment and will ensure that the instructions on the application do not contain material that should be promulgated as administrative rules.

2.m., the order of the sections follows the same ordering as used in chs. NR 190 and 191, the companion lake grant programs. At this time we will leave the order as written and note the comment for subsequent code updates.

5.a., For several reasons it is important to distinguish between activities which protect lakes from external factors on mostly private lands and those that seek to remediate problems within lakes which is held in public trust. Different policies effecting approval for these activities flow from this distinction. We have made some changes to clarify this issue.

5.b., This should refer only to NR 191.04(5)(a) which lists the factors that "shall be considered". Use of the term "considered" implies some discretion is allowable. The intent is to base priorities upon the degree to which these factors are considered. The reference to par. (a) has been added to clarify this.

Final Regulatory Flexibility Analysis

Small business is not affected by this rule because grants are issued only to governmental units or nonprofit organizations.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING,  
RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING AND CREATING  
RULES

The Wisconsin Natural Resources Board adopts an order to repeal NR 191.10(1), (2) and (3), renumber NR 191.03(2),(3),(4),(6),(8),(9),(10),(11), 191.07(3) and (4), 191.10(4) to (13), renumber and amend NR 191.03(5),(12),(13) and (14), amend NR 191.01, (title), 191.01, 191.02, 191.05(4), 191.06(1), (2)(b)4., (2)(b)10. and (3), 191.07 (title), and (2), repeal and recreate NR 191.04, 191.09, 191.105 and create NR 191.03(2) and (6), 191.07(3), 191.08(5), 191.10(11) and ch. NR 192 relating to lake protection and classification grants and lake classification technical assistance grants.

FH-40-98

ANALYSIS PREPARED BY THE DEPARTMENT OF NATURAL RESOURCES

Statutory authority: ss. 281.69, as affected by 1997 Wisconsin Act 27 and 227.11(2)(a), Stats.

Statutes interpreted: s. 281.69 Stats. as affected by 1997 Wisconsin Act 27

The proposed rules:

- 1) Create Lake Classification Project Grants for counties to receive 75% state funding up to \$50,000 for classifying lakes and implementing protection activities.
- 2) Define eligible activities and priorities for Lake Classification Project Grant awards.
- 3) Streamline and clarify allowable costs, local share and grant awards for all lake protection grants. Also, increases the value of donated nonskilled labor from \$5 to \$6.
- 4) Change the protection grant award deadline of September 1 to a deadline for notifying applicants of the department's decision to award a grant.
- 5) Make several housekeeping changes reflecting statute renumbering, department reorganization and clarifying the term lake restoration.
- 6) Creates NR 192 Lake Classification Technical Assistance Grants for nonprofit corporations to receive up to \$200,000 for assisting counties, other units of local government and lake organizations in lake classification projects.

SECTION 1. NR 191 title is amended to read:

Chapter NR 191  
LAKE PROTECTION AND CLASSIFICATION GRANTS

SECTION 2. NR 191.01 is amended to read:

**NR 191.01 Purpose.** The purpose of this chapter is to establish procedures for implementing a lake protection ~~and~~, improvement and classification grant program as provided for in s. 281.69, Stats. Grants made under this program will assist lake protection and restoration projects. They will assist lake management organizations by helping to provide protection and improvement of critical watershed areas and lake use activities which benefit the quality of water in lakes or the natural ecosystem of lakes.

SECTION 3. NR 191.02 is amended to read:

**NR 191.02 Applicability.** This chapter applies to all counties, cities, towns, villages, tribes, qualified lake associations as defined in s. 281.68(1), Stats., town sanitary districts, other local governmental units as defined in s. 66.299(1)(a), Stats., which are established for the purpose of lake management, public inland lake protection and rehabilitation districts, and qualified nonprofit conservation organizations, as defined in s. 23.0955 (1), Stats., which are applying for financial assistance under s. 281.69, Stats., for a protection project for a public inland lake. The department may award lake classification grants only to counties.

SECTION 4. NR 191.03(2) to (15) are renumbered (3) to (5), (7) to (17) respectively and NR 191.03 (7),(14) and (15) as renumbered are amended to read:

NR 191.03 (7) "Lake restoration grants projects" for the purposes of this chapter and s. NR 1.91(2)(d) mean protection projects for funding in-lake improvement activities which increase the recreational or environmental values of a lake. They include funding for the planning, design and implementation of the following natural resource enhancement activities: aeration, aquatic plant management, alum or lime treatments, artificial circulation, biomanipulation, dilution/flushing, drawdown, fishery rehabilitation, habitat restoration, harvesting lake plants for the purpose of restoring aquatic plant beds, hypolimnetic withdrawal, and sediment covers, oxidation, removal, or tilling.

(14) "~~Protection project~~ Project priority list" means a ranking by the department of eligible lake protection or classification projects in the order of their scheduled receipt of funds.

(15) "Public inland lake" or "lake" means a lake, reservoir or flowage, or millpond, or portion thereof, within the boundaries of the state that is presently accessible to the public by contiguous public lands or easements giving public access or which has been listed by the department as a public inland lake in Wisconsin Lakes, Publ-FM-800-~~91~~ 95 REV

Note: Publ-FM-800-~~91~~ 95 REV is available from the Department of Natural Resources, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

SECTION 5. NR 191.03(2) and (6) are created to read:

NR 191.03(2) "Cost share" means approved project costs the department will reimburse the sponsor for at the approved cost share rate.

(6) "Lake classification project" means a set of activities leading to the classification of lakes for the purpose of implementing protection activities based on their classification.

SECTION 6. NR 191.04 is repealed and recreated to read:

**NR 191.04 Eligible activities.** All of the following activities are eligible for grants under this chapter:

(1) The purchase of land or a conservation easement, as defined in s. 700.40(1)(a), Stats., if the eligible recipient enters into a contract under s. NR 191.11 and if the purchase will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

(2) The restoration of a wetland or lands draining to a wetland which will substantially contribute to the

protection or improvement of a lake's water quality or its natural ecosystem.

(3) The development of local regulations or ordinances, which will prevent degradation of a lake's water quality or its natural ecosystem, including limitations on the uses made of a lake, and the educational activities necessary for the initiation of their implementation.

(4) Activities that are recommended in a locally adopted and department-approved plan. These activities shall be distinguished as either lake protection or lake restoration projects.

(a) Protection projects will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem. Projects may include but are not limited to watershed management, habitat protection and nonpoint source pollution prevention and control practices, diagnostic and feasibility studies, engineering or landscape design plans and the preparation of construction plans and specifications which are necessary to determine appropriate options and recommendations for lake protection.

(b) Lake restoration projects are those defined in s. NR 191.03(7) and which the department determines meets all of the following criteria:

1. The sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to restoration activities.

2. The proposed activities have a good likelihood of successfully meeting the project plan objectives.

(5)(a) Lake classification projects conducted by counties which classify lakes into management categories. The following factors shall be considered for each lake in all lake classification projects:

1. The size, depth and shape of the lake.

2. The size of the lake's watershed.

3. The quality of the water in the lake.

4. The lake's current use, or potential for the lake to be overused, for recreational purposes.

5. The current patterns of development or the potential for the development of land surrounding the lake.

6. The potential for the lake to suffer from nonpoint source water pollution.

7. The type and size of the fish and wildlife population and the extent of their habitats in and around the lake.

(b) Lake classification projects shall include proposed protection activities related to each class.

(c) Counties may classify lakes for the purposes of implementing activities for which they, or cooperating jurisdictions, have existing statutory authority. Nothing in this section shall be interpreted to grant new authority to counties for managing lakes and shorelands. Classification and the resulting implementation activities can not result in lowering existing state minimum standards designed to protect lakes.

Note: Lake classification projects may be conducted to assist the department in setting lake water quality standards. Any proposal for the classification of lakes to be used in setting lake water quality standards or for enacting requirements for the implementation of water quality standards based on new or existing classifications only become effective when adopted by the department as rules under s. 281.15, Stats.

(6) INELIGIBLE ACTIVITIES. (a) Activities not eligible for funding under this section include: dam



repair or operation or removal or the purchase of property on which a dam is located; dredging; design, installation, operation or maintenance of sanitary sewers; the routine chemical treatments or mechanical harvesting of aquatic plants; and water safety patrols.

(b) No protection or restoration projects may be approved until all the necessary permits and approvals for the project have been obtained.

SECTION 7. NR 191.05(4) is amended to read:

NR 191.05 (4) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek ~~reimbursement~~ repayment of the state share or a portion of the state share previously distributed to the sponsor.

SECTION 8. NR 191.06(1), (2)(b)4., (2)(b)10. and (3) are amended to read:

**NR 191.06 Applications.** (1) Applications from management units for funding of projects shall be made on forms provided by the department and shall be submitted to the district region director for the district region in which the project is located. The department shall review the application within 30 days of receipt of the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until such additional information requested by the department has been received.

Note: The DNR district region headquarters are located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., P.O. Box 12436, Milwaukee 53212
2. ~~Southern~~ South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. ~~Lake Michigan~~ Northeast -- 1125 N. Military Ave., P.O. Box 10448, Green Bay 54307
4. ~~North Central~~ Northern/Rhineland -- 107 Sutliff Ave., P.O. Box 818, Rhineland 54501
5. ~~Northwest~~ Hwy 70 West, Box 309, Northern/Spooner -- 810 W. Maple St., Spooner 54801
6. ~~Western~~ West Central -- 1300 W. Clairemont Ave., P.O. Box 4001, Eau Claire 54702

(2)(b)4. A description of the availability of public access to, and public use of, the lake or lakes.

(b)10. For ~~lake improvement~~ all other lake protection projects, a locally adopted and department approved project plan.

(3) Project applications shall be received by the department by May 1 of each year to be eligible for grant awards made ~~by September 1~~ that year.

SECTION 9. NR 191.07 (title) and (2) are amended to read:

**NR 191.07 (title) Determination of project eligibility.**

(2) The total state share of the cost of a protection project may not exceed \$200,000, except for the development of local regulations or ordinances under s. NR 191.04(3) which may not exceed \$50,000 per grant.

SECTION 10. NR 191.07(3) and (4) are renumbered (4) and (5) respectively.

SECTION 11. NR 191.07(3) is created to read:

NR 191.07(3) The state share of the cost of a lake classification project may not exceed \$50,000 per grant.

SECTION 12. NR 191.08(5) is created to read:

NR 191.08(5) For lake classification projects the following additional factors shall be used to determine priorities:

- (a) The geographic scope of the project and the number of lakes proposed to be classified.
- (b) The extent to which the project will integrate with, and is supported by towns, local lake management units, adjacent counties and similar projects being conducted by other management units.
- (c) The comprehensiveness of the proposed management or protection actions that will result from the project.
- (d) The level of consistency with the provisions described in s. NR 191.04(5)(a).

SECTION 13. NR 191.09 is repealed and recreated to read:

**NR 191.09 Grant awards for all projects.** (1) The department shall notify applicants of the department's decision to award a grant by September 1 of each year for projects based upon the project priority list.

(2) **COST SHARE.** The grant award may not exceed the maximum amount in s. NR 191.07(2). Except as provided for under s. NR 191.10, estimated costs may include any of the following:

(a) Labor costs required to carry out activities identified in the grant agreement provided they require additional staff or increased hours of existing staff. Work hours of additional staff may be used to offset the work hours spent by existing staff on the activities identified in the grant agreement. Costs of additional staff positions or increased staff hours shall be based on management unit rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for construction activities, surveys, newsletters, brochures, mailings, professional services contracts and similar items.

(c) Other costs determined by the department to be necessary to carry out an adequate project.

(3) **LOCAL SHARE.** (a) The local share of the project cost may not be less than 25% of the eligible project costs. The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

1. All sources of local share donation shall be indicated when the application for a grant is submitted.
2. The maximum value of donated, non-professional, labor shall be \$6.00 per hour.
3. The value of donated equipment shall conform to the Wisconsin department of transportation highway rates for equipment.

**Note:** The county highway rates for equipment are formulated under s. 84.07. Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

(b) Local share may include existing professional staff time, supported by time sheets, and valued at the sponsor's rates for the position including salary, fringe benefits and other items determined to be appropriate by the department, for the supervision and administration of the project.

(4) Except as provided for under s. NR 191.10, the department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(5) Upon the written request of the sponsor, the department may distribute up to 25% of the state share of the project costs for a lake classification project or for the development of local regulations and ordinances to the grant recipient following acceptance of the grant agreement by the applicant.

(6) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract.

SECTION 14. NR 191.10(1),(2) and (3) are repealed.

SECTION 15. NR 191.10(4) to (13) are renumbered (1) to (10) respectively.

SECTION 16. NR 191.10(11) is created to read:

NR 191.10(11) No grant may be awarded where the sponsor intends to use the power of eminent domain to implement the project for which the grant is being sought.

SECTION 17. NR 191.105 is repealed and recreated to read:

**NR 191.105 Grant awards for lake protection projects recommended in an approved plan. (1)**  
Projects shall require the preparation of a project plan based upon a recommended alternative in a locally adopted and department approved diagnostic/feasibility study subject to the following conditions:

(a) Diagnostic/feasibility studies shall follow specifications provided by the department to ensure that sufficient information is provided for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent changes. Studies previously developed under ch. NR 190 or for other purposes may qualify as feasibility studies with the written approval of the department.

(b) Upon the department's written approval of the feasibility study, the sponsor may select and a proposed project plan based upon the recommended alternatives of the diagnostic/feasibility study.

(c) Following selection of the proposed lake project plan by the sponsor, the sponsor shall submit the project plan to the department for approval.

(d) The department shall provisionally indicate if the proposed plan requires the preparation of an environmental impact report (EIR) by the applicant and an environmental assessment (EA) by the department. If an EA is required, formal adoption of a proposed plan by sponsor resolution cannot take place until the EA has been completed, circulated, the period for public comment ended and has been certified as being in compliance with the Wisconsin environmental policy act (WEPA).

(e) Upon certification by the department of compliance of the lake project plan with the provisions of the WEPA, the sponsor may submit the project plan to the department for its approval.

(f) The department may hold a public informational meeting on the project plan. The department shall set a time and place for the public meeting in the project vicinity within 10 days after receipt of the proposed plan and convene the meeting within 90 days after notice of meeting. The meeting shall be for the purpose of receiving testimony regarding all of the following:

1. The environmental assessment prepared by the department if required, and the project plan.
2. The issuance of required permits.
3. The potential for long-range environmental pollution as defined by s. 285.01(9), Stats., if the project is implemented.
4. Views of the appropriate land conservation board.
5. Views of the appropriate regional planning commission.
6. The likelihood that sources of continuing lake degradation will be substantially eliminated.

(g) If necessary to an orderly presentation, the department may receive testimony on applications for permits independently of the other issues specified in par. (f)

(h) The department shall approve, approve with modification or disapprove the project plan within 60 days of receipt or within 60 days after the public meeting whichever is later. The department shall state the reasons if a plan is disapproved and provide alternatives if modification is recommended. For approved plans, the department will concurrently issue its decision on the applications for permits.

(i) Following department approval of a project plan, the sponsor may by resolution adopt the approved or modified project plan, and a copy of the plan and resolution shall be submitted to the department. The adopted project plan may then be implemented, subject to any conditions in the grant agreement where an offer of financial assistance has been made by the department and accepted by the sponsor.

(2) Only lake restoration project activities approved by the department shall be considered for lake protection grants.

SECTION 18. Chapter NR 192 is created to read:

**Chapter NR 192**  
**LAKE CLASSIFICATION TECHNICAL ASSISTANCE GRANTS**

NR 192.01	Purpose
NR 192.02	Applicability
NR 192.03	Definitions
NR 192.04	Eligible activities

NR 192.05	General provisions
NR 192.06	Priorities
NR 192.07	Applications
NR 192.08	Project evaluation
NR 192.09	Grant awards
NR 192.10	Variations

**NR 192.01 Purpose.** The purpose of this chapter is to establish procedures for implementing a lake classification technical assistance grant program as provided in s. 281.69, Stats. Grants made under this program will go to nonprofit corporations to provide educational and technical assistance to local units of government and lake management organizations that will participate in lake classification projects as described in ch. NR 191.

**NR 192.02 Applicability.** Only nonprofit corporations are eligible to receive a lake classification technical assistance grant.

**NR 192.03 Definitions.** In this chapter;

(1) "Department" means the Wisconsin department of natural resources.

(2) "Grant period" means the time period stated in the grant agreement during which the sponsor is eligible to expend program grant funds for a project.

(3) "Lake classification project" means a set of activities leading to the designation of lakes, within a particular jurisdiction, into different classifications for the purpose of tailoring management actions and policy to the unique needs of the class.

(4) "Lake classification technical assistance project" means a set of activities which will provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

(5) "Management unit" means a county, town, village, city, tribe, qualified lake association as defined in s. 281.68(1), Stats., town sanitary district, and other local governmental units as defined in s. 66.299(1) (a), Stats., that are established for the purpose of lake management, and public inland lake protection and rehabilitation district.

(6) "Nonprofit corporation" means an entity organized pursuant to ch. 181, Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the conservation or preservation of natural resources by disseminating information and assisting local units of government and lake management organizations.

(7) "Sponsor" means the nonprofit organization that is receiving a grant under this chapter.

**NR 192.04 Eligible activities.** (1) Lake classification technical assistance projects shall be conducted by nonprofit corporations to provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

(2) Eligible activities may include, but are not limited to: providing professional educational and technical assistance staff services; researching, producing, publishing and distributing informational and educational materials; and planning and conducting workshops and conferences.

(3) Lobbying is an ineligible activity.

**NR 192.05 General provisions.** (1) Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the sponsor in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used

for the purpose for which the grant was made. All financial records, including invoices and cancelled checks, that support all project costs claimed by the sponsor shall be kept and made available for inspection for 3 years after final payment from the department.

(2) The sponsor shall submit to the department a claim for payment on forms provided by the department at any time but not later than 3 months after the end of the grant period. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative to expenditures being made within the grant period, within the scope of work, and within estimated costs.

(3) The sponsor may request, for good cause, a grant agreement amendment for expenses expected to exceed those identified as estimated costs in the grant agreement prior to the end of the grant period.

(4) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek repayment of the state share or a portion of the state share previously distributed to the sponsor.

(5) All of the sponsor's records pertaining to the project are subject to audit. Claims made for payment may be adjusted by audit.

(6) Any requests for extensions of the grant period shall be made prior to the end of the grant period.

**NR 192.06 Priorities.** The department in consultation with the university of Wisconsin extension, interested eligible nonprofit corporations, and representative management units shall develop an annual list of priority activities for lake classification technical assistance grants.

**NR 192.07 Applications.** (1) The department shall publish in the Wisconsin administrative register an official notice of request for applications and the list of priority activities developed under s. NR 192.06 for lake classification technical assistance grants by April 1 of each year.

(2) Nonprofit corporations interested in receiving the list of priorities and application instructions under this chapter shall contact the department in writing.

(3) Applications for funding shall be submitted to the bureau of community financial assistance by July 1 of each year in accordance with the application instructions on forms provided by the department.

Note: The department address is Bureau of Community Financial Assistance, Environmental Grants Section - CF/8, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921.

(4) The department shall review the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until the additional information requested by the department has been received.

(5) The application shall consist of 2 parts:

(a) *Organizational - Part I.* This part may be submitted at any time to obtain the department's determination that the organization is a qualified applicant. It shall include:

1. Information on the sponsor's purposes and ability to manage a lake classification technical assistance project. The sponsor shall provide evidence that the nonprofit corporation meets the requirements as described in ch. 181, Stats., and s. NR 192.03(6).

2. A resolution officially adopted by the nonprofit corporation requesting that the organization be recognized as an eligible sponsor and which authorizes a representative to apply for grants on its behalf and which

provides the name, address and telephone number of that representative.

(b) *Project - Part II.* This part may be submitted any time after the list of priority activities are determined under s. NR 192.06, but prior to July 1 of each year. It shall contain the following information:

1. A description of the project with a statement of how the project will implement the list of priority activities.
2. An estimate of costs of the project including labor and fringe benefits, supplies, services, informational and educational materials, sub-contracts, and a time frame for project implementation and completion.
3. Identification of any other nonprofit corporations, management units and state agencies that will be involved and their roles, and a description of the level of support from affected management units and interested nonprofit corporations.
4. A description of how the proposed project complements other lake educational and technical assistance efforts.

**NR 192.08 Project evaluation.** (1) The department shall consider the following factors when evaluating applications for funding:

(a) The extent to which the nonprofit corporation has demonstrated experience in providing educational and technical assistance in the area of lake and shoreland management to local units of government and lake management organizations.

(b) The degree to which the project implements the priority activities listed for the year.

(c) The degree to which the project will be conducted in a spirit of cooperation with other interested nonprofit organizations and management units.

(d) The degree to which the project will be conducted in collaboration with the department and the university of Wisconsin extension and their ongoing educational and technical assistance efforts and activities to local units of government and lake management organizations.

**NR 192.09 Grant awards.** (1) The department shall notify applicants by September 1 of each year the department's decision to award a grant.

(2) The department may provide grant funds for any part of an eligible project application. The grant award may not exceed the estimated costs of the project as set out in the grant application.

(3) The state share of the cost of a lake classification technical assistance grant may not exceed \$200,000.

(4) The state share of a grant may cover up to 100% of the eligible project costs. Eligible costs may include:

(a) Labor costs required to carry out activities identified in the grant agreement provided they require additional staff or increased hours of existing staff. Costs of additional staff positions or increased staff hours shall be based on nonprofit corporation rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for employe travel, training and additional office support and services; research and surveys; newsletters, informational and educational materials and mailings; and professional services contracts and similar items.

(c) Other costs determined by the department to be necessary to carry out an adequate project.

(5) Ineligible costs include the sponsor's operational and administrative costs not directly associated with the lake classification technical assistance project.

(6) The department may distribute up to 25% of the state share of the project costs to the grant recipient following acceptance of the grant agreement by the grantee.

(7) The department may withhold 10% of the final payment until it has made a determination that the project and any required audits have been completed.

(8) A grant awarded may be terminated by the department for violation of any term or condition of the grant.

**NR 192.10 Variances.** The department may approve in writing a variance from a requirement of this chapter upon written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor and financial hardship. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 23, 1998.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)