



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

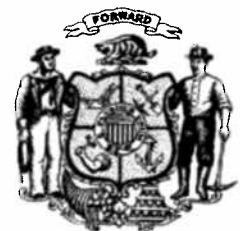
- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



WISCONSIN STATE LEGISLATURE



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**Testimony of Andrew C. Hanson, Midwest Environmental Advocates
Before the Senate Committee on Natural Resources and Transportation**

**Clearinghouse Rule 05-105
August 23, 2006**

Honorable Members of the Committee, thank you for the opportunity to testify before you today regarding the Wisconsin Department of Natural Resources' (DNR's) proposed revisions to ch. NR 102.10 and NR 102.11, as they relate to Outstanding and Exceptional Resource Waters, respectively.

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and families working for clean air, clean water, and clean government. In the interest of keeping our cleanest rivers clean, we urge you to finalize the DNR's proposal to list 45 rivers in northern Wisconsin as Exceptional or Outstanding Resource Waters.

On August 17, 2004, Midwest Environmental Advocates submitted to the DNR a formal petition for rulemaking under Wis. Stat. § 227.12 on behalf of the River Alliance of Wisconsin and 42 other state and local conservation advocates, requesting that the DNR list up to 433 river segments as Exceptional or Outstanding Resource Waters. The petitioners requested that the DNR focus on the first 100 river segments listed in the petition. The DNR's current proposal to add 82 river segments as Exceptional or Outstanding is in response to the petition.

An Outstanding or Exceptional Resource Water classification gives Wisconsin the authority to limit pollution from grading and dredging on river banks, sewage and industrial sources of pollution and depletion by high capacity groundwater wells. It is designed to keep clean waters clean.

However, it is important to note that Outstanding or Exceptional Resource Water designation does not stop economic development, and that economic development and natural resource destruction are not synonymous.

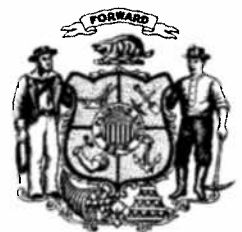
On the contrary, Outstanding or Exceptional Resource Water classification means clean rivers and strong local economies. For example, a DNR study found that tourism activities in Marinette County, which has the highest number of Outstanding and Exceptional Resource Waters in the state, generated \$42.7 million and 1,135 full time jobs. Also, Outstanding and Exceptional Resource Water designations help shape and pace development to minimize the

impacts on the healthiest rivers. This planning allows communities to make smart development decisions that produce economic development. Finally, a clean environment and a healthy place for families is priceless, and results in a high standard of living that encourages employers to keep bringing jobs to Wisconsin.

Our waters belong to all people of Wisconsin, and it is our responsibility to make sure that future generations can enjoy northern Wisconsin's rivers just as we do now. Outstanding and Exceptional Resource Waters are in need of special attention now to keep our clean water legacy alive. Again, we urge you to vote to protect these pristine rivers from pollution for future generations.



WISCONSIN STATE LEGISLATURE



Senate Natural Resources and Transportation Committee
Public Hearing
330 SW, State Capitol
August 24, 2006 10:00

Under CR 05-105

- DNR is proposing to list additional waters located in northern Wisconsin as Outstanding or Exceptional Resource Waters.
- 31 ^{ORW} waters are proposed to be listed as Outstanding Resource Waters and 10 waters are proposed to be listed as Exceptional Resource Waters. ~~ERW~~ ERW
- To date, a total of 323 waters have been designated as ORW and 1,532 waters as ERW.
- The primary difference between Outstanding and Exceptional Resource waters is whether or not a point source is present.
- Waters that did not have a current or potential point source discharge was given a recommended designation of ORW.
- Those water with point source discharges, or active facility plans considering a point source alternative, were recommended for ERW designation. *wme concerned*
- Building contractors, developers of waterfront property, and other waterfront businesses may be affected by this rule revision.

#1 (ORW) Outstanding Resource Water
 #2 (ERW) Exceptional Resource Water

Questions for the DNR

If the Senate and Assembly committees approve this rule, what specifically will riparian owners be prevented or restricted from doing on their property?

When was the last time an outside group petitioned the DNR to promulgate a specific rule, to which the DNR obliged?

When was the last time the ORW/ERW list was expanded? A, 1994

While it is true there are no new regulations being added, the list of waters to be regulated would be expanded under this rule. Is this a back-door approach to regulation, or is there truly a need to protect these particular waters? Is there an imminent threat to these waters?

While the DNR has stated in its written comments that this rule is not an attempt to circumvent Act 118, the Jobs Creation Act, is it possible the petitioners may be attempting to do so?

In fact, one individual submitted comments that reads as follows:

- "Since Act 118 was streamlined to make it unnecessary to apply for permits for over a dozen harmful alterations to our waterways, **we must find some other way to protect waterbodies...**"

The same could be said for the High Capacity Well law, in that some environmental groups wished to make the 1200 foot buffer zone much larger. However, DNR disagreed and maintained the 1200 feet. But, expanding the ORW and ERW list would be another way to get at their concerns of high cap wells.

There is also a concern that adding more ORW and ERW waters to the list could preclude some economic development in Northern Wisconsin, where it may be needed most. Would you care to comment on that concern?

Is this addition to the ORW and ERW list a slippery slope, of sorts, to more regulations?

USE TIME

Took out Lake & Tributaries

Used on DNR for DWA & 9000 w/ some standards

River Alliance, Midwest Environmental Advocates

recognizes need for growth

ERW 776 mi
 302
 ORW 474

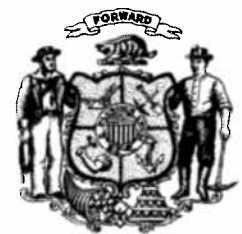
Without one new Total miles 7075
 ERW 7075
 ORW 7075

3661 mi

3661
 2925
 5736 mi



WISCONSIN STATE LEGISLATURE





RIVER ALLIANCE

of Wisconsin

Support

August 24, 2006

Senator Neal Kedzie
Chair, Senate Natural Resources and Transportation Committee
Room 313 South
State Capitol
Madison, WI 53707

Re: Clearinghouse Rule 05-105 – Relating to the designation of waters as outstanding or exceptional resource waters

Dear Senator Kedzie and Committeemembers:

The River Alliance is a non-partisan, non-profit organization with over 2700 members and over 160 affiliated local watershed groups statewide. We advocate for strong state policies and regulations to protect and restore rivers. We are one of the 44 conservation groups (attached) that petitioned DNR to classify up to 433 of northern Wisconsin's most pristine rivers as Exceptional or Outstanding Resource Waters, with a focus on the top 100 rivers.

For the record, fourteen of the petitioners are statewide organizations such as ours, representing thousands of Wisconsin citizens. ~~Twenty-nine~~ of the petitioners are local and regional groups from throughout the state, representing 11,000 individuals, and of those twenty-nine groups, seventeen are based in Northern Wisconsin, comprising 70% of those 11,000 individuals. Since the petition was submitted in August, 2004, the Friends of St. Croix Headwaters formed in Douglas County and have officially joined the quest. The mutual goal of all the petitioners, whether they be a statewide conservation organization or a local northern Wisconsin river group, is simply to increase protections for our most pristine rivers.

The Outstanding and **Exceptional Resource Waters** classification is our state's codified method of implementing the antidegradation element of the Federal Clean Water Act, which requires each state to:

- Limit degradation of "high quality waters"
- Strictly protect "outstanding waters"

Everyone deserves healthy rivers

The biological and water quality data available today clearly identifies the forty-five rivers before you today as "high quality waters" and as "outstanding waters." With this knowledge, these rivers must be classified as Exceptional and Outstanding in order for Wisconsin to fully comply with the Clean Water Act.

In addition to meeting Clean Water Act mandates, maintaining the high quality of these forty-five rivers translates directly into strengthening the economy of the northwoods and the state as a whole. Tourism is the economic engine of the North, and clean, natural rivers and lakes the drivers. A 1995 DNR study conducted in Marinette County, with 161 river segments totaling more than 471 river miles classified as Exceptional and Outstanding, found that 70% of surveyed property owners said they were more likely to buy recreational property in areas with rivers classified as Exceptional or Outstanding.

We commend the DNR for carefully considering the top **100 rivers in our petition**, for compiling and analyzing the data that clearly justifies classification of forty-five rivers as Exceptional and Outstanding, and we urge you to approve the proposal, unchanged, today.

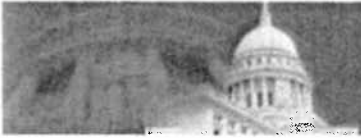
Sincerely,

A handwritten signature in black ink, appearing to read "Lori Grant", with a long horizontal flourish extending to the right.

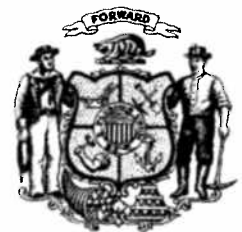
Lori Grant
Water Policy Program Manager

Petitioners

River Alliance of Wisconsin
Midwest Environmental Advocates, Inc.
Friends of the Jump River Alliance of Wisconsin
Vilas County Lakes Association
Douglas County Association of Lakes and Streams
Burnett County Lakes and Rivers Association
Bayfield County Lakes Forum, Inc.
Washburn County Lakes and Rivers Association
Rusk County Waters Alliance
Price County Waterways Association
Protect Our Wolf River
Lake Superior Alliance
Wolf River Chapter of Trout Unlimited
Environmentally Concerned Citizens of the Lakeland Area
Balsam Branch Partnership
Friends of the Prairie River
Lake Superior Greens
Northern Thunder
Save Our Unique Lands
Upper Chippewa River Basin Partner Team
Lower Chippewa River Basin Partner Team
Wisconsin Resources Protection Council
Wisconsin Wildlife Federation
Nature Conservancy
Wisconsin Association of Lakes
Wisconsin Wetlands Association



WISCONSIN STATE LEGISLATURE





SUPPORT ✓

August 24, 2006

8045 Crystal Lake Rd.
Lodi, WI 53555-9539
Ph: 608.592.4718
billpiel@merr.com

To: Senate Committee on Natural Resources
Re: CR 05-105 Relating to the designation of waters as outstanding or exceptional

Chairman Kedzie and Committee Members:

Speaking for the Wisconsin Council of Trout Unlimited and our 4500 members statewide, I request that you approve CR 05-105, adding a number of important streams and stream reaches to the state's lists of Outstanding or Exceptional waters.

We supported the petition to add up to 100 streams to these two classifications. The DNR reviewed that petition and has included in their proposal a subset of those streams, as well as some that were not on the original petition. While we feel all of the streams on the original petition merit ORW or ERW classification, nonetheless we support the rule as presented here.

These two classifications will help ensure that these waters are not degraded, thereby maintaining their attractiveness for the ever-growing recreation and tourism trade, of which trout angling is but one feature.

Thank you for your consideration.

Sincerely,

William J. Pielsticker, Chair
Wisconsin Council of Trout Unlimited

Pielsticker

Trout Unlimited is committed to preserving, protecting, and restoring trout and salmon habitat and their watershed.

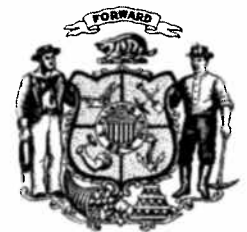
Jim Hlaban, Vice-Chair
N5967 Murray Rd.,
Ogdensburg, WI 54962

Jeff Ware, Secretary
14092 Spring Valley Rd.
Fennimore, WI 53809

Larry Meicher, Treasurer
5258 Salisbury Rd.
Rio, WI 53960



WISCONSIN STATE LEGISLATURE





WISCONSIN ASSOCIATION OF LAKES, INC.

is a nonprofit group of citizens, organizations, and businesses working for clean, safe, healthy lakes for everyone.

One Point Place, Suite 101 • Madison, WI 53719-2809
608-662-0923 • 800-542-5253 (in WI) • FAX 608-833-7179
wal@wisconsinlakes.org • www.wisconsinlakes.org

Support

August 24, 2006

To: Senator Neal Kedzie
Chair, Senate Natural Resources and Transportation Committee

Re: Clearinghouse Rule 05-105 – Relating to the designation of waters as outstanding or exceptional resource waters.

More than 100,000 riparian property owners, businesses, and individuals throughout Wisconsin are a part of the Wisconsin Association of Lakes membership. The Wisconsin Association of Lakes is the only state wide organization working exclusively to protect and enhance the quality of Wisconsin's more than 15,000 lakes. We recognize the interrelationships and interdependencies among all Wisconsin's waters – lakes, rivers, streams, wetlands, and groundwater.

Wisconsin's waters are important to the health of Wisconsin – to our physical health, to our economic health and to our spiritual health. The designation of these stream segments as outstanding or exceptional resource waters will continue the legacy of Wisconsin to protect what belongs to all citizens, while allowing these resources to be utilized for business and recreation.

Why do we need this designation? Because these river segments are outstanding or exceptional water resources, and we all need to work together to keep them that way. Wisconsin's tourism industry – the third largest industry in Wisconsin will benefit. Property owners that live on the river's edge will benefit. People that use these rivers for recreation will benefit. Local governments and school districts that rely on property taxes will benefit. And, our future generations will benefit.

Who will be harmed by these designations? Those that want to pollute these waters to make a profit for themselves will be inconvenienced. An industrial plant or factory that would discharge wash water from their facility in to an ORW or ERW would have to clean the discharged water to a quality similar to what already exists in the river. That seems not only reasonable, but desirable and necessary. Even existing businesses would not be able to increase their pollutant flow without seeking authorization. That also seems to be reasonable, desirable and necessary to protect these valuable resources. Without the designation of ORW and ERW, a few businesses and other polluters will be allowed to exploit our waters at a tremendous cost to all of us.

Let's keep "the North" "the North" as we now know it, and let's keep tourism alive. Let's keep our high quality water resources high quality. We strongly recommend that the river segments on the designated list be classified as Outstanding or Exceptional Resource Waters.

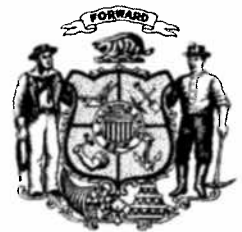
We thank you for your consideration.

Sincerely,

Peter T. Murray
Executive Director



WISCONSIN STATE LEGISLATURE



no date

Support

Senator Kedzie
Natural Resource and Transportation Committee

Dear Senator Kedzie and Committee members:

Please support the DNR's proposal to classify 45 northern rivers as Outstanding and Exceptional Resource Waters. This is a wonderful opportunity to protect these pristine waterways. If this protection is not put in place now they are more likely to become degraded and lose the benefits associated with pristine natural areas.

One reason to support this legislation is economic. Economic studies suggest that pristine natural areas tend to draw a higher than average number of well educated higher income people to an area. They are attracted to the tranquility and enjoy silent, low environmental impact outdoor recreation such as canoeing and kayaking. Because they are quiet they and their economic impact may not be noticed. A study done in 2000 by the Wilderness Society cites an average of \$42 per person per day being spent in adjacent communities by people enjoying these special wild areas. When they find a pristine, undeveloped area that they like, they tend to return. They also tell their equally well-heeled friends.

As these special places become fewer and fewer, the remaining pristine areas become more and more valuable. This increase in value is economic not just environmental.

Protecting natural environments can increase the property values of adjacent private lands, sometimes significantly. One case study cited by the Wilderness Society indicated an increase of 13% in the value of private property adjacent to some wild and natural areas.

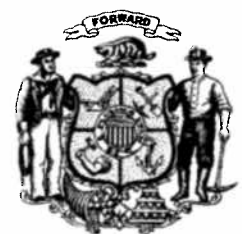
Many people in the surrounding community who do not regularly visit pristine areas still value protection of such areas to maintain the opportunity. People benefit simply from knowing that natural areas exist and that their protection today sustains them for future generations. They want these areas preserved for the benefit of their children and grandchildren.

Please look toward the future and support this effort to preserve some very special parts of the WI landscape. Fewer and fewer of these tranquil, untouched areas are left. Let's save what we have while we still can.

Sincerely,
Helen Emslander
Jump River, WI



WISCONSIN STATE LEGISLATURE



Clearinghouse Rule 05-105

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

The Wisconsin Natural Resources Board proposes an order to renumber NR 102.10(1)(f)1.; amend NR 102.10(1)(f)1m., 3., 13., 18., 20., 22. and 23., 102.11(1)(d)1., 25., 29.; and to create NR 102.10(1)(f)1., 5m., 7m., 10m., 10s., 15m., 20m., 21m., 26m., 26s., 102.11(1)(d)31m., 31s., 35m. and 38m. relating to the designation of waters as outstanding or exceptional resource waters.

WT-44-05

Analysis Prepared by Department of Natural Resources

Statutory Authority and Explanation: The statute that authorizes the promulgation of this order is s. 281.15, Stats. This section grants rule-making authority to the Department to set standards of water quality applicable to waters of the state.

Statutes Interpreted: Section 281.15, Stats., directs the Department to establish water quality standards for all waters of the state. Section 281.11, Stats., directs that water quality standards for those rivers emptying into Lake Superior and Michigan and Green Bay shall be as high as practicable.

Related Statute or Rule: Chapter NR 102 contains water quality standards for Wisconsin surface waters. This chapter identifies an antidegradation policy that states that waters of the state shall not be lowered in quality, unless appropriately justified. Outstanding and Exceptional Resource waters are identified as categories within the antidegradation policy.

Plain Language Rule Analysis: In 1989, a new antidegradation policy was adopted in Wisconsin, in response to federal Clean Water Act requirements. These requirements complied with federal guidelines for surface waters that exceeded water quality necessary for protection of fish and aquatic life and recreation in/on the water, as well as waters that constituted outstanding national resources. By assigning classifications of "outstanding resource water" (ORW) and "exceptional resource water," (ERW) designated high quality waters receive additional protection from point sources of pollution.¹ ~~To date, a total of 323 water have been designated as ORW, and 1,532 waters as ERW.²~~

~~In response to an August 2004 petition received from Midwest Environmental Advocates, River Alliance of Wisconsin, and various other conservation groups, the Department is proposing to list additional waters located in northern Wisconsin as Outstanding or Exceptional Resource Waters. These changes would be made in ss. NR 102.10 and 102.11. Specifically, 31 waters are proposed to be listed as Outstanding Resource Waters in NR 102.10 and 10 waters are proposed to be listed as Exceptional Resource Waters in NR 102.11.~~

Federal Regulatory Analysis

The proposed revision is related to water quality standards, which the federal government requires states to adopt.

¹ Wisconsin Department of Natural Resources. September 1995. *Outstanding and Exceptional Resource Waters: Analysis of Effects on Marinette County, WI.*

² Wisconsin Department of Natural Resources. 2004. Wisconsin Water Quality Assessment Report to Congress. PUB-WT-798-2004.

State Regulatory Analysis

Iowa: Iowa classifies waters as High Quality Waters and High Quality Resource Waters. They have a codified petition process that details how to propose a water for designation to the Environmental Protection Commission.

Illinois: Illinois has a placeholder in their administrative code that specifies the petition process to list waters as Outstanding Resource Waters (ORW). To date, Illinois does not have any waters listed as ORW.

Michigan: Michigan has classified specific waters as Outstanding State Resource Waters, and also has provisions for classifying Outstanding International Resource Waters.

Minnesota: Minnesota has designated waters as tier II High Quality Waters and tier III Very High Quality Waters (also known as Outstanding Resource Value Waters).

Summary of Factual Data and Analytical Methodologies: The 2004 petition to the Department requesting that 100 waters be listed as Outstanding or Exceptional Resource waters was initiated when petitioners reviewed a 1997 Department project known as the Northern Rivers Initiative (NRI). The goal of the NRI was to identify valuable waters in northern Wisconsin, that could benefit from additional protection from shoreland development. The NRI ranked nearly 1,500 streams and rivers according to their ecological, recreation, and cultural values. Using these NRI rankings, the petitioners identified NRI ranked waters that are currently designated as ORW or ERW in NR 102.10 or NR 102.11. They identified 433 stream segments that had an NRI rank that was higher than the lowest ranked ERW. Of those 433 segments, the petitioners chose a subset of 100 segments which they felt were deserving of the increased regulatory protection that an ORW/ERW designation could provide.

A Department workgroup compiled available data to look at biological and social aspects of each waterbody. Because NR 102.11 defines an ERW as a surface water that provides “valuable fisheries, hydrologically or geologically unique features, outstanding recreational opportunities, unique environmental settings...” it seemed most appropriate to utilize biological and social data when evaluating the segments. Segments that had high quality biological communities and were deemed socially important within the NRI were recommended for listing, provided that there were not other water quality concerns that would preclude their designation. Segments that did not have adequate data to move forward, but that were known locations for State endangered or threatened species, were also recommended for designation.

~~The primary difference between Outstanding and Exceptional Resource waters is whether or not a point source is present.~~ For purposes of addressing the petition, waters that ~~did not~~ have a current or potential point source discharge was given a recommended designation of ORW. Those water ~~with point source~~ discharges, or active facility plans considering a point source alternative, were recommended ~~for ERW~~ designation.

Analysis and Documents Supporting Determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: Any fees associated with the preparation of application materials in support of Ch. 30 permits would be borne by the private party seeking a permit for activities in the riparian zone of waters designated as Outstanding or Exceptional Resource waters.

Effects on Small Businesses: ~~Building contractors, developers of waterfront property, and other waterfront businesses may be affected by this rule revision.~~

Agency Contact Person: Russ Rasmussen, WT/2, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921. (608) 267-7651. russell.rasmussen@dnr.state.wi.us

Comments: Comments should be submitted to Laura Bub, WT/2, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921. (608) 261-4385. laura.bub@dnr.state.wi.us. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>. The deadline for written comments is January 31, 2006.

SECTION 1. NR 102.10(1)(f)1. is renumbered NR 102.10(1)(f)1m.

SECTION 2. NR 102.10(1)(f)1. is created to read:

NR 102.10(1)(f)

- | | | | |
|----|---------|------------------------|--|
| 1. | Ashland | E. Fork Chippewa River | T42N R1E S17-18 line to Pelican Lake to Chippewa Flowage |
|----|---------|------------------------|--|

SECTION 3. NR 102.10(1)(f)1m., as renumbered, and 3. are amended to read:

NR 102.10(1)(f)

- | | | | |
|-----|---------|--|---|
| 1m. | Barron | Engle Creek
Hickey Creek
<u>Rock Creek</u>
Upper Pine Creek | Class I & II Portions
Class I & II Portions
<u>All within Barron county</u>
Above Dallas Flowage |
| 3. | Burnett | <u>Clam River</u>
<u>N. Fork Clam River</u>
Tributaries to the
N. and S. Forks of
the Clam River | <u>Clam Falls flowage dam to St. Croix River</u>
<u>Clam River to CTH H</u>
All—Class I & II Portions |

SECTION 4. NR 102.10(1)(f)5m., 7m., 10m. and 10s. are created to read:

NR 102.10(1)(f)

- | | | | |
|-----|---------|---|--|
| 5m. | Douglas | Amnicon River
Moose River
Spruce River
St. Croix River | All
All
All
Origin to St. Croix flowage |
| 7m. | Iron | Flambeau River | Turtle-Flambeau flowage to
Upper Park Falls flowage |

10m.	Langlade & Forest	Swamp Creek	Segment below Mole Lake reservation boundary
10s.	Lincoln	New Wood River Spirit River Wisconsin River	All All Grandfather Dam to Lake Alexander

SECTION 5. NR 102.10(1)(f)13. is amended to read:

NR 102.10(1)(f)

13.	Oneida	Noisy Creek <u>Squirrel River</u> <u>Tomahawk River</u>	Class II Portion <u>All</u> <u>Origin to Willow Flowage</u>
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SECTION 6. NR 102.10(1)(f)15m. is created to read:

NR 102.10(1)(f)

15m.	Price	Elk River	Headwaters to Mustard Lake
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SECTION 7. NR 102.10(1)(f)18. and 20. are amended to read:

NR 102.10(1)(f)

18	Rusk	Devils Creek <u>Jump River</u> <u>Soft Maple Creek</u> So. Fork Main Creek <u>Swift Creek</u> <u>Thornapple River</u>	All-Class I & II Portions <u>Headwaters downstream to village of Jump River</u> <u>All</u> Class I & II Portions (T35N R3W S28 downstream to T34N R4W S11) <u>All</u> <u>Origin to CTH J</u>
20.	Sawyer	Benson Creek Eddy Creek Grindstone Creek <u>Knuteson Creek</u> Little Weirgor Creek & Tribs McDermott Creek Mosquito Brook <u>Teal River</u> <u>W. Fork Chippewa River</u>	All—Class I Portion All—Class I Portion All—Class I Portion <u>Below Wise L. in T38N R9W S36</u> All—Class I & II Portions All All—Class I Portion <u>All</u> <u>All</u>

SECTION 8. NR 102.10(1)(f)20m., 20s., and 21m. are created to read:

NR 102.10(1)(f)

20m.	Sawyer, Bayfield, Douglas, Burnett, Washburn	Totagatic River	All
21m.	Taylor	Yellow River	All

SECTION 9. NR 102.10(f)22. and 23. are amended to read:

NR 102.10(1)(f)

22.	Vilas	Allequash Springs Brule Creek East Br. Blackjack Cr. Elvoy Creek & Springs <u>Manitowish River</u> Mishonagon Creek Siphon Creek Spring Meadow Creek Tamarack Creek <u>Trout River</u> <u>Wisconsin River</u>	Class I & II Portions All All Class I & II Portions <u>Origin to Island Lake</u> Class I & II Portions All Class I Portion All <u>From Trout Lake to Reservation boundary</u> <u>Origin to Watersmeet Lake</u>
23.	Washburn	<u>Bear Creek</u> Beaver Brook Sawyer Creek So. Fork Bean Brook <u>Stuntz Brook</u>	All All—Class I Portion All—Class I & II Portions All—Class I Portion All

SECTION 10. NR 102.11(1)(d)1. and 25. are amended to read

NR 102.11(1)(d)

1.	Barron	Brill River <u>Red Cedar River</u>	All—Class II Portion <u>Origin to Barron</u>
25.	Oneida	Bearskin Creek <u>Tomahawk River</u>	From Tomahawk River to Little Bearskin Lake <u>From Willow Flowage to Mouth</u>

SECTION 11. NR 102.11(1)(d)26m. and 26s. are created to read

NR 102.11(1)(d)

- | | | | |
|------|---------------------------|--|-------------------------------------|
| 26m. | Price | N. Fork Jump River
S. Fork Jump River | All
All |
| 26s. | Price,
Sawyer,
Rusk | Flambeau River | Crowley dam to Big Falls
Flowage |

SECTION 12. NR 102.11(1)(d)29. is amended to read

NR 102.11(1)(d)

- | | | | |
|-----|------|---|--|
| 29. | Rusk | Big Weirgor Creek
<u>Flambeau River</u>

<u>Main Creek</u> | All—Class II Portion
<u>Ladysmith Dam to Chippewa
River</u>
<u>All</u> |
|-----|------|---|--|

SECTION 13. NR 102.11(1)(d)31m., 31s., 35m. and 38m. are created to read

NR 102.11(1)(d)

- | | | | |
|------|-------------------|----------------------------|--|
| 31m. | Sawyer | Couderay River | Swift Creek confluence in
T38N R8W S9 to confluence
with Chippewa River. |
| 31s. | Sawyer
& Rusk | Chippewa River | Chippewa Flowage Dam to
Confluence with Couderay
River |
| 35m. | Taylor | Jump River
Silver Creek | All
All |
| 38m. | Vilas &
Oneida | Wisconsin River | Watersmeet Lake to
Rhineland Flowage |

SECTION 14. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 15. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)

Report to
Legislative Council Rules Clearinghouse
NR 102.10 and 102.11, Wis. Adm. Code
Natural Resources Board Order No. WT-44-05

Wisconsin Statutory Authority

s. 281.15, Stats., interpreting ss. 281.11 and 218.15, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Outstanding and Exceptional Resource Waters (O/ERW) are listed in ss. NR 102.10 and 102.11, respectively, and are waters which are characterized as being valuable or unique from various standpoints including fisheries, hydrology, geology and recreation. The initial listing of O/ERW segments was established in 1988 and updates to the list were made in 1989, 1993 and 1998.

This revision to Outstanding and Exceptional Resource Waters was prompted by an August 2004 petition received by the Department from various conservation organizations. The petition requested that the Department designate 100 water segments as Outstanding or Exceptional. Department staff have evaluated available information pertaining to the segments in question, and recommend that 30 segments be added to the existing list of Outstanding Resource Waters in s. NR 102.10 and 12 segments be added as Exceptional Resource Waters in s. NR 102.11. The proposed changes to the list of O/ERWs addressed the request of the petitioners.

~~The waters are located in Ashland, Barron, Bayfield, Burnett, Douglas, Forest, Iron, Langlade, Lincoln, Oneida, Price, Rusk, Sawyer, Taylor, Vilas and Washburn counties.~~

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

Laura Bub, Bureau of Watershed Management – 261-4385
Charles Hammer, Bureau of Legal Services – 266-0911
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on November 10, 2005

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
WT-44-05

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2)(a) and 281.15, Stats., interpreting ss. 281.11 and 281.15, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 102.10 and 102.11, Wis. Adm. Code, relating to listing additional waters as Outstanding or Exceptional Resource Waters. Outstanding and Exceptional Resource Waters (O/ERW) are waters which are characterized as being valuable or unique from various standpoints including fisheries, hydrology, geology and recreation.

In August 2004 the Department received a petition from various conservation organizations requesting that the Department designate 100 water segments as Outstanding or Exceptional. Department staff have evaluated available information pertaining to the segments in question, and recommend that 30 segments be added to the existing list of Outstanding Resource Waters in s. NR 102.10 and 12 segments be added as Exceptional Resource Waters in s. NR 102.11. The waters are located in Ashland, Barron, Bayfield, Burnett, Douglas, Forest, Iron, Langlade, Lincoln, Oneida, Price, Rusk, Sawyer, Taylor, Vilas and Washburn counties.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold a public information session for one-half hour prior to each hearing. Department staff will be available to answer questions regarding the proposed rule.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<u>January 4, 2006</u> Wednesday	Holiday Inn Express, 668 W. Kemp Street, Rhinelander at 6:30 p.m.
<u>January 5, 2006</u> Thursday	Room G09, GEF #2, 101 South Webster Street, Madison at 1:30 p.m.
<u>January 11, 2006</u> Wednesday	Northern Great Lakes Visitor Center, 29270 County Highway G, Ashland at 6:30 p.m.
<u>January 12, 2006</u> Thursday	Gov. Tommy Thompson Hatchery, 951 W. Maple Street, Spooner at 6:30 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Laura Bub at (608)

261-4385 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Laura Bub, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until January 31, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Bub.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

Stream Segments Proposed For Listing O/ERW



Stream Segments Proposed For Listing O/ERW

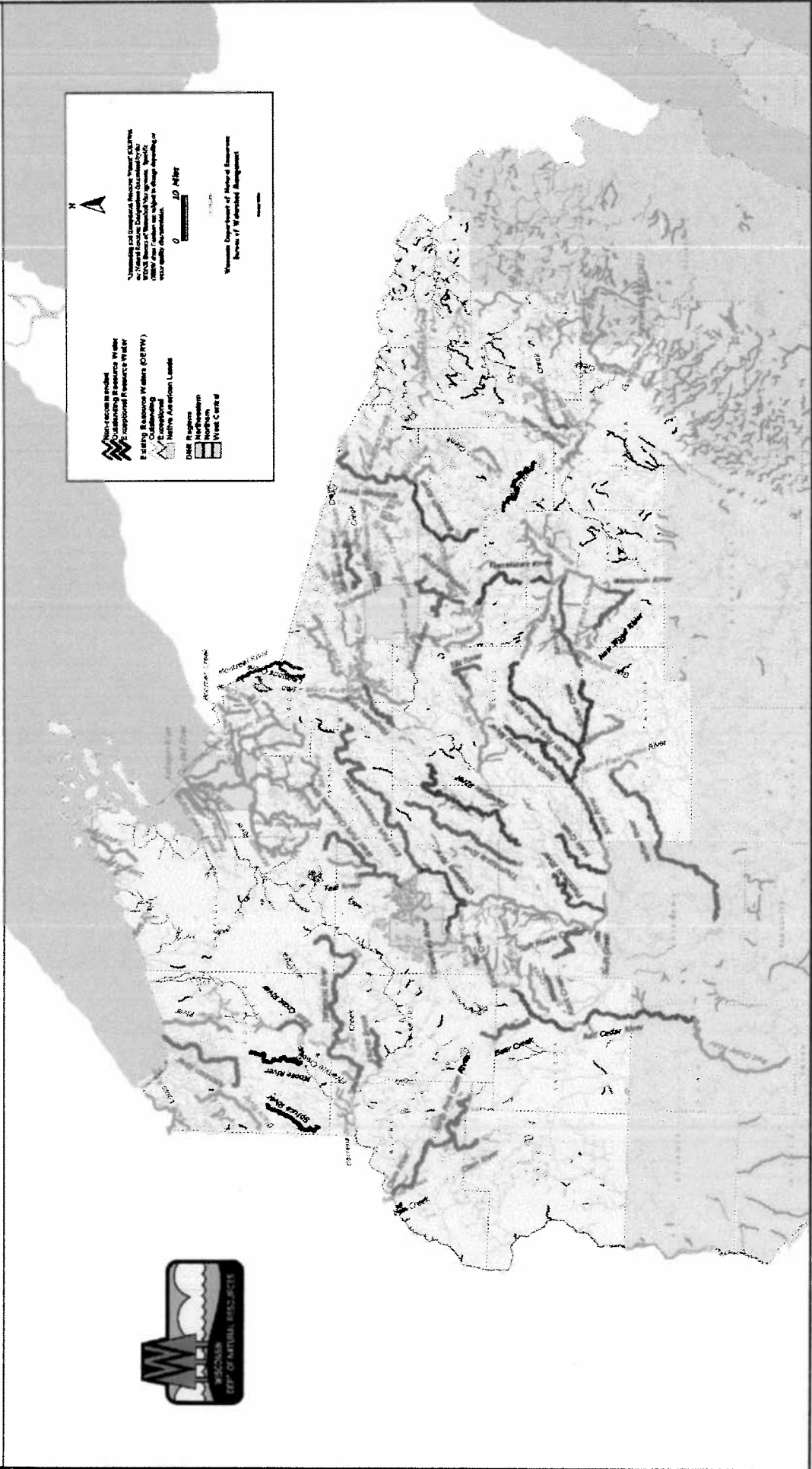
Map Legend:

- Stream Segments Proposed for Listing O/ERW (indicated by thick black lines)
- Stream Segments with Historical Impairment (indicated by dashed lines)
- Stream Segments with Significant Degradation (indicated by thin solid lines)
- Stream Segments with Other Issues (indicated by dotted lines)
- Stream Segments with No Data (indicated by white space)

Map Scale: 1:100,000

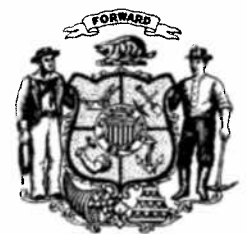
North Arrow: N

Source: Wisconsin Department of Natural Resources, Bureau of Watershed Management

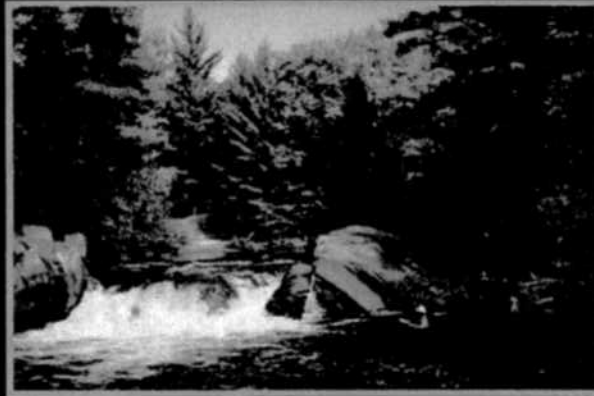




WISCONSIN STATE LEGISLATURE



Revisions to Chapter NR 102 Outstanding & Exceptional Resource Waters



Pike River (DNR Photo)

Outstanding & Exceptional Resource Water Characteristics

- **Outstanding
Recreational
Opportunities**
- **Valuable Fishery**
- **Not Significantly
Impacted by Humans**
- **Excellent Water Quality**



Brule River (DNR Photo)

What Prompted this Effort?

- August 2004 - Citizen Petition Presented to Natural Resources Board from 44 Conservation Groups
- 25 Local Groups Representing Affected Counties
- 10 Statewide Groups including, Rivers Alliance of Wisconsin, Wisconsin Wildlife Federation, Trout Unlimited, Wisconsin Waterfowl Association
- Request asked for addition of 433 waterbody segments to list of ORWs and ERWs.
- Request Based on the Northern Rivers Initiative (NRI)



Wisconsin River (DNR Photo)

What was the Decision Process?

- Department staff convened internal workgroup.
- Reviewed available fish & macro-invertebrate data and other water quality data collected since 1989 (Top 100).
- Selected waters had data indicating high water quality and biotic integrity



Public Hearing Summary

Hearing Location	# Appearance Slips	# Indicating Support	# Indicating Opposition
Ashland	29	22	0
Madison	10	10	0
Rhineland	21	4	12
Spooner	23	11	3
Total:	83	47	15

Written Comment Summary

Source of Comment	# In Favor	# Opposed	# Neutral/Undecided
Individual Citizens	34	9	3
Advocacy Groups	16	0	1
Industry	0	3	0
Municipal Government	3	4	1
Other: (Tribes & Federal Govt.)	3	0	0
Total:	56	16	5

Per Source - Wtr. Treatment plants
ERW description

What is the Impact? *Ecotourism*

- Tourism Dollars Spent in 2005 in Affected Counties:
 ~\$1.7 Billion*
- Ecotourism Dollars = 1/3 of Tourism Dollars Spent:
 ~\$600 Million*



Namekagon River (DNR Photo)

* Source: Wisconsin Department of Tourism

What is the Impact? *Wastewater Discharges*

Designation	Wastewater Effluent Limitations	
	New Discharger	Existing Discharger
Outstanding	Must be equivalent to background water quality.	Rare – Increases must be equivalent to background water quality.
Exceptional	Must be equivalent to background water quality unless correction or prevention of public health problem.	Increases allowed if <u>need</u> is adequately demonstrated.

Flambeau River Papers

- SMART Papers Closed Operation in Spring 2006
- Mill Re-Opened on August 7th
- First New Roll of Paper Produced on August 9th
- No Impact Related to Proposed ERW Classification for Downstream Segment

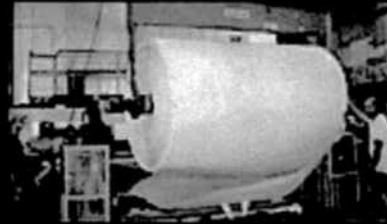


Photo Courtesy of Park Falls Herald

What is the Impact? *High Capacity Wells*

Act 310 passed by the Wisconsin Legislature in 2005 resulted in the following:

1. Identified land within 1,200 feet of ORWs & ERWs as Groundwater Protection Areas.
2. Required environmental review of all high capacity wells proposed within a Groundwater Protection Area.
3. Allowed special consideration of public benefit along with environmental impact for public utility wells.

70 gal/min
OR more
Must consider
impacts if well
1200 ft.

What is the Impact? *Riparian Activities*

Act 118 passed by the Wisconsin Legislature in 2005 resulted in the following:

1. Provided exemptions from obtaining permits for certain riparian activities.
2. Identified ORWs & ERWs as Areas of Special Natural Resource Interest.
3. Required general or individual permits for certain activities in or near ASNRI's.

← Special habitat

Department Recommendation



Totagatic River (Rivers Alliance)

Public Hearing Proposal

- 40 waters

Final Proposal

- 44 Waters
 - Removed 5 Previously Proposed
 - Added 9 Tribal Waters

NOT Proposed

- 53 Waters
- 3 Waters already listed

~~400 proposed~~

40 of 100 waters

Post-Public Hearing Changes

- **Removed Lakes & Flowages:**
 - Different Biological Data Needed
 - Resulted in More Discrete River Segments
- **Included Streams in Bad River Watershed Based on Tribal Data.**
- **Removed portions of Red Cedar River, Tomahawk River, Yellow River, and Flambeau River due to data re-evaluation.**

Proposed Waters by County (Selected Counties)

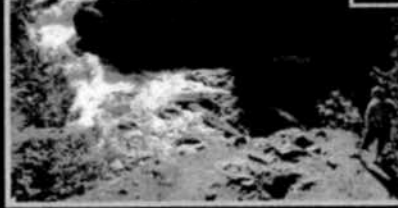
County	Outstanding		Exceptional	
	Current	Proposed	Current	Proposed
Ashland	1	7	11	2
Bayfield	23	4	34	0
Oneida	2	2	30	1
Rusk	3	3	20	3
Vilas	10	3	14	1

Questions?

Upper St. Croix River (DNR Photo)



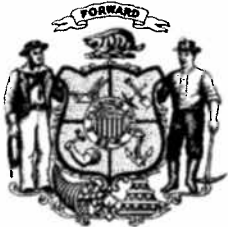
Jump River
(River Alliance)



Potato River (DNR Photo)



WISCONSIN STATE LEGISLATURE



Waters proposed for designation as Outstanding Resource Waters

The following specific river and stream segments are proposed for designation as Outstanding Resource Waters. They are alphabetized by name:

- **Amnicon River** in **Douglas County**
 - from outlet of Amnicon Lake to inlet of Lyman Lake
 - from outlet of Lyman Lake to mouth at Lake Superior, including the waters of Lake Superior within a ¼ mile semi-circular arc centered at the middle of the river mouth.
- **Bad River** in **Ashland County**
 - from origin to outfall in Mellen at NW1/4 SW1/4 S6 T44N R2W
- **Bear Creek** in **Washburn and Barron counties**
 - from outlet of Kekegamā Lake to inlet of Bear Lake
 - from outlet of Bear Lake to inlet at Stump Lake
- **Beartrap Creek** in **Bayfield and Ashland counties**
 - from its origin to Bad River Indian Reservation boundary
- **Brunsweller River** in **Ashland County**
 - from origin to inlet of Spider Lake
 - from outlet of Moquah Lake to inlet of Mineral Lake
 - from outlet of Mineral Lake to inlet of Beaverdam Lake
 - from outlet of Beaverdam Lake (at dam) to Bad River Indian Reservation boundary
- **Chippewa River** in **Sawyer and Rusk counties**
 - from the dam at Chippewa Flowage to inlet of Radisson Flowage
- **E. Fork of the Chippewa River** in **Ashland and Sawyer counties**
 - from T42N R1E S17/18 Line to Ashland County Highway N in Glidden
 - from outlet of Pelican Lake to inlet of Blaisdell Lake
 - from outlet of Blaisdell Lake to inlet of Hunter Lake
 - from outlet of Hunter Lake to inlet of Barker Lake
 - from outlet of Barker Lake to confluence with Chippewa Flowage
- **W. Fork of the Chippewa River** in **Bayfield, Ashland and Sawyer counties**
 - from outlet of Chippewa Lake to inlet of Day Lake
 - from outlet of Day Lake to Inlet of Upper Clam Lake
 - from outlet of Upper Clam Lake to Inlet of Lower Clam Lake
 - from outlet of Lower Clam Lake to Inlet of Cattail Lake
 - from outlet of Cattail Lake to Inlet of Meadow Lake
 - from outlet of Meadow Lake to Inlet of Partridge Crop Lake
 - from outlet of Partridge Crop Lake to Inlet of Moose Lake
 - from outlet of Moose Lake to Sawyer County Highway B
- **Clam River** in **Polk and Burnett counties**
 - from outlet of Clam Falls Flowage to inlet of Clam Lake
 - from outlet of Lower Clam Lake to Section Line at T39N R16W S21/22
- **N. Fork of the Clam River** in **Burnett County**
 - from County Highway H to confluence with Clam River
- **Couderay River** in **Sawyer county** from
 - from origin at outlet of Billy Boy Flowage to Inlet of Grimh Flowage (including waters within Lac Courte Oreilles Indian Reservation)
- **Elk River** in Price County
 - from the headwaters to inlet of Musser Lake
- **Knuteson Creek** in **Sawyer County**
 - from outlet of Wise Lake to inlet of Knuteson Lake
 - from outlet of Knuteson Lake to inlet of Lake Chetek

- **Manitowish River** in Vilas County
 - from adjacent to Dam Road downstream to inlet of Boulder Lake
 - from outlet of Boulder Lake to inlet of Island Lake
- **Marengo River** in Ashland, Bayfield counties
 - from origin to inlet of Marengo Lake
 - from outlet of Marengo Lake to Bad River Indian Reservation Boundary
- **Moose River** in Douglas County
- **New Wood River** in Lincoln County
 - from origin at T33N R4E S14 to confluence with the Wisconsin River
- **Potato River** in Iron and Ashland counties
 - from origin to Bad River Indian Reservation Boundary
- **Red Cedar River** in Barron County
 - from outlet of Red Cedar Lake to inlet of Rice Lake.
- **Rock Creek** in Barron County
- **St. Croix River** in Douglas County
 - from the outlet of Upper St. Croix Lake to inlet of St. Croix Flowage
- **Silver Creek** in Taylor and Price counties
 - from origin to Westboro Sanitary District Outfall
- **Soft Maple Creek** in Rusk County
 - from origin to Rusk County Highway F
- **Spruce River** in Douglas County
- **Squirrel River** in Oneida County
 - from the outlet of Squirrel Lake to confluence with Tomahawk River
- **Stuntz Brook** in Washburn County
 - from origin to confluence with Namekagon River
- **Swamp Creek** in Forest and Langlade counties
 - from outlet of Lake Lucerne to Mole Lake Indian Reservation Boundary
 - from Below Mole Lake Indian Reservation Boundary to confluence with the Wolf River
- **Swift Creek** in Rusk County from outlet of Island Lake to inlet of Fireside Lake
- **Totagatic River** segments in Bayfield, Sawyer, Washburn, Douglas and Burnett counties
 - from confluence of W. Fork and E. Fork of Totagatic River to inlet of Nelson Lake
 - from outlet of Totagatic Flowage to inlet of Colton Flowage
 - from outlet of Colton Flowage to inlet of Minong Flowage
 - from outlet of Minong Flowage to confluence with Namekagon River
- **Teal River** in Sawyer County
 - from the outlet of Teal Lake to confluence with W. Fork Chippewa River.
- **Thornapple River** in Sawyer and Rusk counties
 - from origin to Rusk County Highway J
- **Tomahawk River** in Oneida County
 - from the outlet of the Willow Flowage Dam to the inlet of Lake Nokomis
- **Trout River** in Vilas County
 - from outlet of Trout Lake to Lac Du Flambeau Indian Reservation eastern boundary
- **Tyler Forks** in Iron and Ashland counties
 - from origin in Iron County to Bad River Indian Reservation eastern boundary in Ashland County
 - from Bad River Indian Reservation southern boundary to confluence with Bad River
- **Wisconsin River** in Vilas and Oneida counties
 - from outlet of Lac Vieux Desert to inlet of Watersmeet Lake
- **Yellow River** in Taylor and Chippewa counties
 - From confluence with South Fork Yellow River to Inlet of Chequamegon Waters Flowage
 - From outlet of Chequamegon Waters Flowage (at Miller Dam) to State Highway 64/73

Waters Proposed for Designation as Exceptional Resource Waters

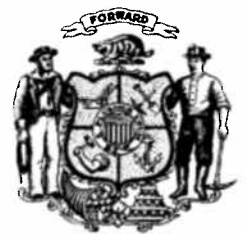
The following specific segments on northern Wisconsin rivers and streams are proposed for designation as Exceptional Resource Waters.

- **Bad River** in Ashland County
from outfall in Mellen at NW ¼ SW1/4 S6 T44N R2W to Bad River Indian Reservation boundary
- **E. Fork of the Chippewa River** from Ashland County Highway "N" to Confluence of Rocky Run Creek (includes Glidden POTW)
- **Clam River** in Polk and Burnett counties
from section line at T39N R16W S21/22 to Inlet of Clam River Flowage
from outlet of Clam River Flowage to Confluence with St. Croix River
- **Couderay River**
from Grimh Flowage to confluence with Chippewa River
- **Flambeau River** in Price, Rusk and Sawyer counties
from the Crowley Dam to the inlet of Big Falls Flowage
- **Jump River**
from the confluence of the N. Fork and S. Fork Jump river to the Village of Jump River
- **N. Fork Jump River** in Price County
from outlet of Cranberry Lake to Inlet of Spring Creek Flowage
from outlet of Spring Creek Flowage to confluence with South Fork Jump River
- **S. Fork of the Jump River** in Price and Taylor counties
from the origin to the confluence with N. Fork Jump River
- **Main Creek** in Rusk County
from County Highway P to inlet of Holcombe Flowage
- **Soft Maple Creek** in Rusk County
from Highway 1* to confluence with Chippewa River
- **Silver Creek** in Taylor and Price counties
from Westboro Sanitary District Outfall to confluence with S. fork Jump River
- **Vaughn Creek** in Iron and Ashland counties
from origin to Bad River Indian Reservation Boundary
- **Wisconsin River**
from Hat Rapids Dam to Lincoln County A crossing
from Grandfather Dam to inlet of Alexander Lake
from State Highway 70 to inlet at Rainbow Flowage (Oneida County Line)
from outlet of Rainbow Flowage (Oneida County Highway "D" to inlet of Rhinelander Flowage (T37N R8E S8 SE/NE)





WISCONSIN STATE LEGISLATURE



433 High ~~frequency~~
river.

Top 100

Thin narrow

- Since Hi-Cap Well
Bill passed.

- Of 44 ~~water~~

41 are already ~~stagnant~~
not ~~renewable~~ water.

WMC: Registered Against

but hard core but concerned.

Concerns:

① Pts. of Industrial discharge

- ERW sets a high bar for
discharges. With. must be clean
or cleaner than water being
discharged into. Costly for
equipment.

- ERW:

Bus. must petition for needs base
to get permission. Future industrial
are locked out

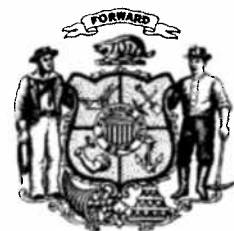
- There are 1800+ ERW's

River Alliance: Support

- Clean Wf (formerly Environmental
Support Decade) ?



WISCONSIN STATE LEGISLATURE



Dan,

Just FYI.

I was at the Lasee Comm hearing, the same day, as the ORW/ERW hearing - which was 1 hour after Lasee's hearing ended.

The committee, ex-Rep Seratti & Handrick organized the DNR opposition to all run down to Rhinelanders to, and I heard them say it "Stop this new regulation that DNR is proposing to stop development"

I watched them leave together.
Paul H