

Senate Committee on Environment
29 September 2010
411 South
State Capitol

WDNR Statement re: Clearinghouse Rules 10-059, 10-060, and 10-061

Thank you for the opportunity to be here. My name is Eric Ebersberger and I am the Section Chief of the Water Use Section in the DNR's Bureau of Drinking Water & Groundwater. The Water Use Section is coordinating Great Lakes Compact implementation for the DNR.

Clearinghouse Rules 10-059, 10-060, and 10-061 relate to implementing the Great Lakes Compact—and associated state water use legislation in Wisconsin.

Wisconsin's Compact implementing legislation (2007 Wisconsin Act 227) specifically directed the DNR to promulgate rules related to water use registration and reporting (the subject of Clearinghouse Rule 10-059—or NR 856) and Water Conservation & Efficiency (the subject of Clearinghouse Rule 10-060—or NR 852). The 2009-11 Biennial Budget Bill (2009 Wisconsin Act 28) directed the DNR to promulgate a rule specifying a water use fee in the Great Lakes basin on withdrawals exceeding 50 million gallons per year (the subject of Clearinghouse Rule 10-061—or NR 850).

The Natural Resources Board unanimously adopted each of these three rules at its August 2010 meeting in Superior, Wisconsin.

Public Hearings: The department held five joint hearings on these rules between June 28th and June 30th, 2010—in Milwaukee, Ashland, Green Bay, Wausau and Madison. A combined total of 24 people attended the five hearings, and 3 people provided oral comments.

Great Lakes Compact Rulemaking Update: These rules are 3 of 7 Great Lakes Compact-related rules that the DNR will promulgate. Other Compact-related rules in development include:

- Water Use Permitting;
- Water Loss from Consumptive Use
- Water Supply Service Area Planning; and
- A Public Participation rule related to Diversion Proposals.

All these rules relate to implementing the Great Lakes Compact—and we have been specifically directed—in legislation—to promulgate these rules.

The Great Lakes Compact requires that states have parallel water quantity management programs—and these rules fill gaps in Wisconsin's water management program.

I'll now discuss the Compact related Clearinghouse rules before you today.

Clearinghouse Rule 10-059 NR 856 Registration & Reporting

The purpose of the rule is to clarify and further define new registration and reporting requirements for large water withdrawals—statewide.

Registration

Under the statute, any person with a water supply system with the *capacity to withdraw* water in amounts averaging 100,000 GPD or more in any 30-day period must register the withdrawal with the DNR.

The rule sets forth the procedures and requirements for registration.

The DNR has received questions re: what a “withdrawal” is. The statute broadly defines it as “the taking of water from surface water or groundwater”. We interpret this to include any method of taking or redirecting water from its natural course making it unavailable for other purposes, even if only temporarily. For example, we consider that operations that redirect water from its natural stream course “withdraw” the water. However, in-stream uses of water, where water may be temporarily impounded but is not redirected, is not considered a withdrawal. We have worked with—and will continue to work with persons to offer compliance assistance regarding whether their operation constitutes a “withdrawal”.

Measuring

The rule also requires persons with registered withdrawals to measure the volume of water withdrawn—at least on a monthly basis. The rule identifies a range of options for measuring withdrawals including an option that allows for tailoring a measurement process on a case-by-case basis for challenging situations. The rule does not require anyone to purchase new measuring devices.

Reporting

Under the statute, any person who actually *withdraws* an average of 100,000 GPD or more in any 30-day period—or who diverts any amount of water from the Great Lakes basin—must annually report their monthly volumes of withdrawal or diversion.

(Registration is triggered by *capacity*; reporting is triggered by actual withdrawal).
Reporting for a calendar year is required by March 1st of the following calendar year.
The DNR is developing an on-line water use registration and reporting system to facilitate compliance.

Comment Summary: The department received comments from 17 individuals and organizations related to NR 856. They included:

- Questions related to the definition of withdrawal and measurement. As referenced earlier, the DNR has worked with various groups to clarify whether their particular water use is a withdrawal, to allow flexibility in the measurement of withdrawals; and to avoid double counting when water withdrawn is reused in a process.

- Comments related to the release of information gathered through the registration and reporting process—particularly specific locational information. Some of the comments requested further protection for this information. However, we also received comments encouraging sufficient access to locational information to allow sufficient assessment of impacts of withdrawals.

The statute provides that the department may consider domestic security concerns when determining whether information regarding the locations of withdrawals may be released to the public. On the other hand, Wisconsin's Open Records law contains a strong presumption that records are open to public inspection.

The DNR worked to balance the competing statutory provisions and the concerns expressed in the comments. The rule allows for the protection of information that may impact domestic security while preserving the state's public policy in favor of the release of public information.

Clearinghouse Rule 10-060

NR 852 Water Conservation & Water Use Efficiency

Advisory Committee: As directed in statute, the DNR drafted NR 852 with the help of the Public Service Commission and the Department of Commerce. In addition, we convened a 30+ member advisory committee—with representatives from each water use sector—to help us draft a water conservation & efficiency rule.

NR 852 establishes mandatory water conservation and efficiency measures for:

- New and increased withdrawals in the Great Lakes basin that exceed an average of 100,000 GPD in any 30-day period;
- New and increased diversions of Great Lakes water; and
- Persons applying for water loss approvals under §281.35, Stats., associated with withdrawals that result in a water loss averaging 2 MGD or more in any 30-day period.

Conservation and efficiency measures are not mandatory for:

- Pre-existing withdrawals in the Great Lakes basin (i.e. those in effect on 12/8/2008—the effective date of the Great Lakes Compact)

Persons subject to the provisions of NR 852 are categorized into one of three tiers, with specific conservation & efficiency measures prescribed within each tier.

The conservation & efficiency measures are focused on understanding current water use and exploring opportunities to reduce use or gain efficiencies.

The measures in Tier 1, which are considered to be cost-effective for persons in all sectors, include, e.g.:

- Conducting a water audit (examine & document water use from point of entry into the distribution system to the end use);

- Developing a leak detection and repair program;

The conservation & efficiency measures are broken down by water use sector. There are 7 water use sectors: Public water supply; commercial & institutional; irrigation; livestock watering; industrial; power production; and “other”.

The rules do not require retrofitting. (The enabling legislation specifically prevents the department from requiring retrofitting.)

Comment Summary: We received comments from 29 individuals and organizations on the proposed NR 852, and we made several changes in response to those comments.

Also, our statutory authority to impose mandatory conservation measures statewide on withdrawals resulting in a water loss exceeding an average of 2 MGD of more in any 30-day period was questioned. Those withdrawals require a water loss approval under s. 281.35 of the Statutes—which is not part of the Great Lakes Compact. However, s. 281.35 specifies that the DNR cannot issue a water loss approval unless the applicant incorporates “reasonable conservation practices”; and the DNR is proposing the measures in NR 852 as a common and consistent standard to determine what “reasonable conservation practices” are for purposes of issuing water loss approvals.

We intend that NR 852 serve as a guideline for water conservation measures for other DNR program activities.

Clearinghouse Rule 10-061 NR 850 Water Use Fees

Origin of Fees The 2009-11 biennial budget (2009 Wisconsin Act 28)—contained fee authorization and spending authority for Great Lakes Compact implementation.

- **There are 2 Compact-related Fees**
 1. **Statutory Base Fee (\$125)** imposed statewide on owners of water supply systems with the capacity to withdraw 100,000 gallons per day.
 - This rule clarifies that one \$125 fee will cover all water supply systems on one contiguous property – or one public water supply system (e.g. 5 high capacity wells on one contiguous property = one \$125 base fee; Madison water utility = one \$125 fee)
 2. **Fee on Great Lakes basin withdrawals exceeding 50 million gallons per year (MGY).**
 - Includes surface water and groundwater withdrawals from anywhere within the Lake Michigan or Lake Superior basins.
 - The fee is structured in blocks of 50 million gallons (MG) and the fee per MG increases in each block e.g.

- A fee of \$1.50 is assessed on each MG withdrawn from 50 to 100 MG;
 - A fee of \$2 is assessed on each MG withdrawn from 100 to 150 MG
 - The fee increases by \$0.50 per MG in each block up to the point where persons pay \$6 for each MG withdrawn over 500 MGY.
 - The fee is capped at \$9,500 per year. Persons withdrawing just over 1.8 billion gallons per year will hit the cap. (approx. 9 public water systems hit the cap based on 2009 data. Also includes most power companies and some large industrial facilities, e.g. paper mills).
 - Some examples of fees paid:
 - Large Ag Irrigator withdrawing 130 MGY = \$135
 - Large dairying operation withdrawing 75 MGY = \$38
 - City of approx. 13,000 withdrawing 400 MGY = \$1,050
- **What the Fee Funds:** The fee revenue will fund all aspects of Great Lakes Compact implementation in the state, including:
- Water use registration & reporting, water use permitting, water supply service area planning; and water conservation & efficiency. Duties include technical assistance, outreach and training for registrants and permittees. (4 FTE; 2 LTE);
 - Database development and maintenance, including expenditures for a water use database; on-line registration and reporting systems; and geographic information systems (GIS) tools to help analyze water use throughout the state to help us sustainably manage the state's water resources;
 - Development of a statewide water use inventory—as directed by the Compact—that consists of information about the waters of the state including information about the location, type, quantity, and uses of the state's water resources.
 - Groundwater & surface water monitoring and mapping to provide continuous data for the water resources inventory and statewide water use management decisions.

Comment Summary: (We received 6 comments on the Water Use fee rule.)

- **Fee Cap:** We had comments on both sides of the fee cap: some argued that the cap should be raised; others argue that it should be no higher than what it is (\$9,500).

The fee was set @ \$9,500 in an attempt to balance concerns on both sides of the issue and to help avoid an undue economic impact on any individual withdrawer. We tried to be mindful of the impact on the different types of entities within the various water use sectors that would be subject to the fee.



CHR 10-0001

JIM HOLPERIN
STATE SENATOR

Testimony for Senate Environment Committee
Senator Jim Holperin, September 29, 2010

Thank you for this opportunity to comment on NR 850 on behalf of a small aquaculture operation in Elton, WI in Langlade County...Silver Moon Springs. You will hear from owner Tim Winkel shortly.

By accidents of geography and design that occurred some 60 years ago, Silver Moon Springs now finds itself the victim of an Administrative Rule which imposes fees that could well drive it out of business.

I hope this Committee will recommend a rule amendment that prevents Silver Moon Springs and perhaps other small aquaculture operations from becoming collateral damage in an otherwise laudatory rule that implements the Great Lakes Compact in Wisconsin.

Several rearing ponds at Silver Moon Springs are fed by Elton Creek which flows north to south through the property. If the original owners had built those ponds only a few yards west of their current location and directly in the stream channel, there would be no problem and Silver Moon Springs would be completely exempted from this rule.

However, the rearing ponds were built perhaps 200 feet east of the stream channel, so creek water must be diverted into the ponds by a small concrete dam. The water flows in from the north and out to the south, exactly as it

would if the ponds were constructed directly in the stream channel, but because the ponds are just a few feet away from the stream channel we have a “withdrawal” subject to \$9,500 annually in state fees, rather than a “temporary impoundment” which is fee exempt.

Unfortunately, the way it is designed, Silver Moon Springs cannot control the flow of Elton Creek. If it rains a lot, as it did this past summer, Tim Winkel will probably owe the state the maximum annual fee of \$9,500. If it’s a little dryer, like last summer, the fee may be only \$7,500 or so.

The point is that, unlike almost every other entity which “withdraws” water under this rule, Mr. Winkel has no control over the volume of water that flows through his operation. He must take, and pay for, whatever Elton Creek sends him.

I would urge the Committee to recommend that the Department reconsider its definition of “withdrawal” to see if what Silver Moon springs is doing is really “temporarily impounding” Elton Creek.

If federal rules make this impossible, I would urge the Committee to recommend that the Department review the fiscal impact of this rule on small aquaculture operations and incorporate some sort of relief based on gross revenues.

Thank you for considering this request.

CHR 6-61

Senate Committee on Environment -Water Use Hearing 9-29-10

Wisconsin Aquaculture is a small but an important family farm orientated agriculture Industry with a sound environmental history dating back to 1856, which follows sustainable best management practices. Wisconsin Aquaculture is diverse - raising fish for food, stocking and baitfish.

- Over 2300 DATCP registered fish farms, these include over 1900 farm ponds, nearly 100 DNR facilities and about 125 business farms
- Public and Private aquaculture has equivalent \$14.1 million in farm gate sales
- Wisconsin Aquaculture contributes \$21 million in economic activity to the state
- 117 fish farms have under \$50,000 in sales

The Wisconsin Aquaculture Industry agrees that water conservation and water use in the state is an important issue because aquaculture, as defined, is water dependent. The first rule of fish farming is to keep you product wet - the livestock lives in water and because of the industry's dependency on water, fish farmers are good stewards of the watersheds in which the farms are located. Wisconsin Aquaculture uses water, it does not take water and therefore is not a consumptive user - the water is not withdrawn and it remains within the watershed.

The administrative rules relating to the water use program implementing the Great Lakes Compact are very comprehensive, complex and will have a devastating effect on the Wisconsin Aquaculture Industry. The fee structure in NR 850, which is capped at \$9500, places an enormous burden on small businesses; they would be paying a very high percentage of their business income in fees.

- Milwaukee with a population of nearly 1 million pays the same fee at its cap (\$9500) as an individual fish farmer. That's less than 1 penny per person for Milwaukee residents.
- The majority of fish farmers in Wisconsin have less than \$50,000 in sales which means the fees could represent 19-30% or higher of gross sales.
- Eight of the DNR hatchery facilities have estimated total fees of \$13,676, three of their facilities within the GLB will pay no fees - but one fish farmer by the department's estimation, may pay between \$7500 and \$9500. One fish farm could pay nearly 70% of what all the DNR hatcheries pay and uses less water than most of them.

A new study entitled "Economic Impacts of Private Sector Aquaculture-Based Recreational Fishing in the Western USA", authored by Dr. Craig Bond and Daniel Deisenroth, has found that for every dollar sold of fish for recreational use resulted in \$36 generated in the region. The fees of \$9500 if paid would put the fish farmer out of business because he cannot pass on those fees on and stay competitive. If the farmer sold \$9500 in fish for recreation it could mean \$342,000 in economic activity generated for the State of Wisconsin or in other words there would be a loss of \$342,000 to the State if the water fees are paid.

Wisconsin Aquaculture is an important agriculture industry for the State, and is a partner in sustainably managing our resources – please consider the economic impact these fees impose - find a way to lessen the impact on small business.

NR 850 Water Use Fees for
Known Aquaculture Facilities in the Great Lakes Basin

Company Name	Withdrawal Baseline in Millions of Gallons per Year	Estimated Fees Based on Baseline*	Estimated Fees Based on 2009 Reporting
Artesian Trout Farm	551.88	\$1,886	\$993
Brown County	105.12	\$85	**
CD Smith Inc	210.24	\$331	\$0
Cedar Island Conservancy Ltd.	1011.05	\$4,641	\$1,023
Diamond Lake Campground	78.84	\$43	**
Fond du Lac County (Rolling Meadows GC)	109.5	\$94	**
Hayward Bait and Tackle	262.8	\$495	\$0
Kenosha County Golf Division	105.12	\$85	**
Kenosha County Golf Division	183.96	\$260	**
Northern Aquaculture Demonstration Facility	52.56	\$4	**
Pristine Waters Fish Farm	105.12	\$85	**
RENCO Machine - Fish-O-Matic	79.059	\$44	**
Romeo Springs Trout Farm	684.01	\$2,679	\$1,888
Silver Moon Springs LLC	31.39	\$0	**
Silver Moon Springs LLC	2744.07	\$9,500	\$7,500
The Club at Strawberry Creek LLC	525.6	\$1,729	\$0
The Trout Farm LLC	323.39	\$719	\$192
U. S. Fish & Wildlife Service	3679.2	\$9,500	\$9,500

*The baseline was identified by the applicant and is the maximum capacity of the water supply system's most restrictive component.

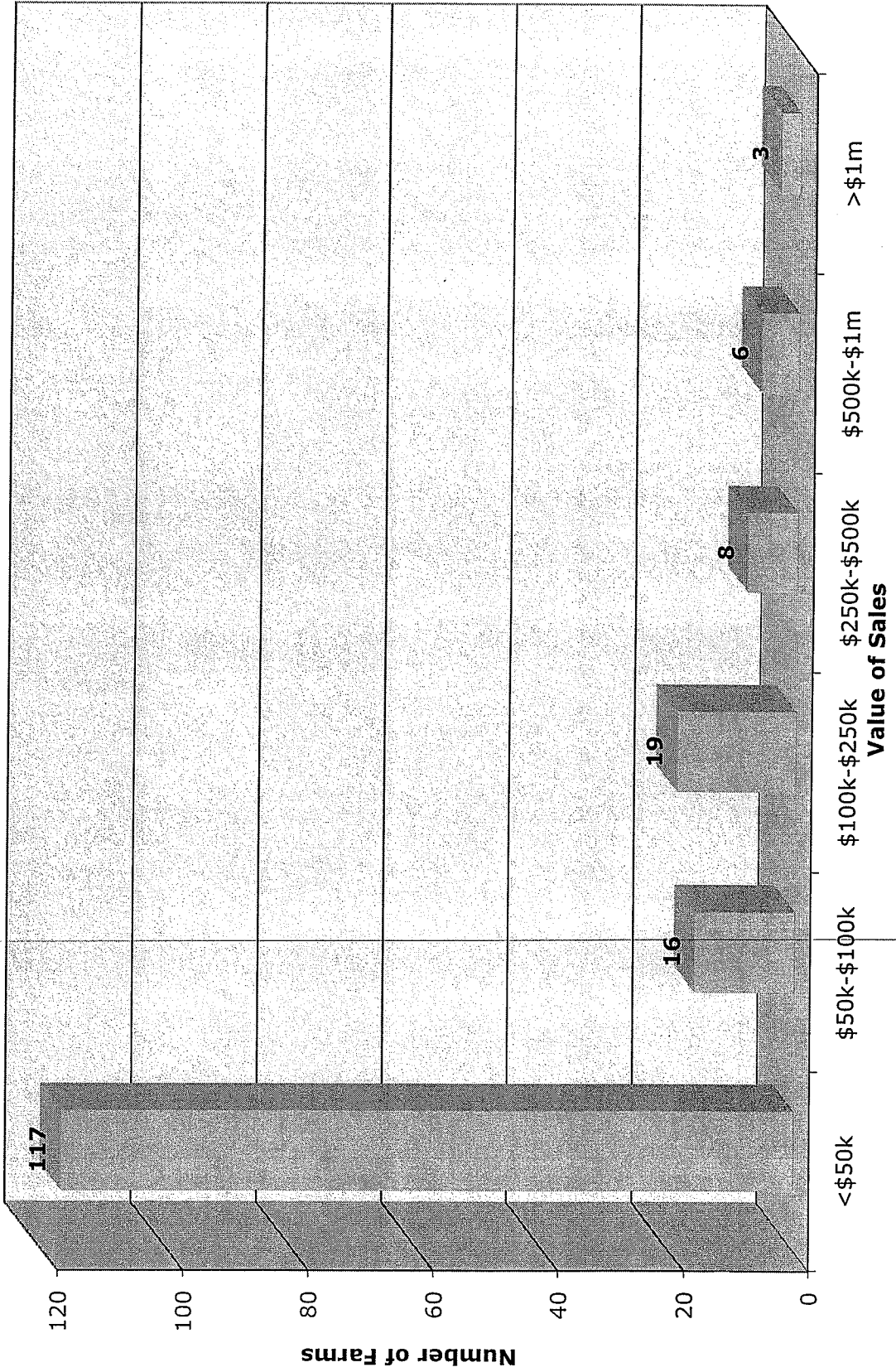
**No aquaculture withdrawal volume was reported.

NR 850 Water Use Fees for
DNR Facilities in the Great Lakes Basin

DNR Facility Name	Withdrawal Baseline in Millions of Gallons per Year	Estimated Fees Based on Facility Plan or 2009 Reporting
Les Voight (Bayfield)	552	\$1,887
Besadny	693.8	\$2,738
Kettle Moraine Springs	515.1	\$1,666
Kettle Moraine Springs Annex	236.5	\$410
Root River	163.9	\$210
Strawberry Creek	121	\$117
Thunder River	336.6	\$771
Wild Rose	1217	\$5,877

The following DNR facilities are not considered a withdrawal - Brule, Lakewood, Langlade.

Wisconsin Aquaculture Farm Sales





Wisconsin Aquaculture Association

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July 6, 2010

Dear Ms. Rogers;

This letter will serve as written comments to NR 850, NR 852 and NR 856 which are currently open to public comments. The Wisconsin Aquaculture Association (WAA) is the voice of the Wisconsin aquaculture industry, 100% industry led and producer centered to promote, educate and advocate for the economic viability and environmental sustainability of fish farming in Wisconsin. WAA agrees that water conservation and water use in the state is an important issue because aquaculture, as defined, is water dependent - our member's products are grown in water, and because of our dependency on water, we are good stewards of the watersheds in which our farms are located. We use water responsibly and but are not consumers of water – the water goes right back into the watershed. WAA members practice best management practices and our organization is currently in the process of writing and adopting Water Efficiency Practices for Wisconsin Aquaculture. Following are our comments:

NR 850 –

WAA is concerned with the water use fees in the Great Lakes Basin (GLB) which are set up for "Withdrawals" for users of more than 50 Million Gallons of Water per year. The concern is that some fish farms located in the GLB could be charged the annual fee for artesian flow of water which occurs naturally on their farms. NR 850 bases "withdraw" and "withdrawal" on State Statute 281.346 (y) and (z) which states: (y) *"Withdraw" means to take water from surface water or groundwater.* And (z) *"Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.* The activity of aquaculture occurs within the water, it does not "take" nor does the process of "taking" occur. The activity of raising aquaculture products within the water is the same for private fish farms and the state's public fish hatcheries. We are suggesting a provision in NR 850 that clearly defines that aquaculture does not "withdraw" water, does not engage in the "withdrawal" of water and therefore is not subject to the annual fees. Additionally, a fish farm property may also have artesian flow, springs and surface water that is not utilized and simply flows through the location and but could be subject to the fee structure. The effect of these fees, if applied to the aquaculture activities, artesian flow, springs or surface water, would make their facilities economically unfeasible and therefore they would close their businesses. The administrative rule would put out of business those facilities that are currently good stewards of the watershed.

NR 852, NR 856 –

WAA recognizes that NR 852 and NR 856 are rules for increased or new water use within the GLB and is required for water conservation and water use efficiency. However, as presented at the Water Conservation & Water Use Efficiency Rule Development Advisory Committee Meetings held on March 9 and 17, 2010 - aquaculture does not easily fit into the categories and outlined activities of Table 1 and Table 2. We refer to the letter to Eric Ebersberger

sent by Ron Johnson, Aquaculture Outreach Specialist, and who is also a member of the committee representing the aquaculture industry (which is attached). As outlined in the letter to Mr. Ebersberger, WAA is concerned that the basis of the criteria was for terrestrial animals and that aquaculture does not fit into several of the measures asked for. This could lead to confusion and possibly an incomplete plan or rejection of Conservation Efficiency Measures (CEM). Wisconsin Aquaculture is diverse and farms utilize ponds, raceways, and recirculation aquaculture systems (RAS), many farms use very little water on an annual basis. And as far as regarding source metering - artesian flow is not pumped and therefore is not metered and does not have a pump to maintain. WAA suggests that wording in the Mandatory Conservation and Efficiency Measures and the requirements to Analyze Conservation and Efficiency measures incorporate language that exempts aquaculture when it does not apply or includes language that more clearly delineates aquaculture activities so CEM's can be maintained.

WAA is also concerned that although NR 852 and NR 856 are measures to conserve and prevent diversion of water from the Great Lakes Basin, these measures will be adopted statewide or even by other governmental bodies such as counties, cities or villages and the ambiguity in wording for aquaculture will be carried out statewide, causing confusion and frustration between farmers and governmental entities.

WAA has a joint Regulatory Policy Committee with the Wisconsin Aquaculture Industry Advisory Council (WAIAC) and has members who are willing to assist the department with wording that satisfies the requirements of the administrative rules and also allows aquaculture, as an industry, to fit into the required measures.

Sincerely,

Jeff Taylor

Jeff Taylor, President WAA
