



# On The Waterfront

A newsletter promoting The Environmental Protection & Responsible Use of Washburn County Waters, Shorelands and Wildlife Resources

Fall/Winter 2016/17  
#39 Newsletter

President's  
Comments.....1

Enbridge/WCLRA  
Interactions.....2

Invasive Buckthorn  
Workshop.....2

WCLRA Activities.....3

Shoreland  
Zoning.....4

Navigable  
Waters.....6

Wisconsin Lakes  
Trivia.....6

Lake Advocacy.....7

Spring Plant/Tree/Shrub  
Sale.....7



## PRESIDENT'S COMMENTS

What an interesting year for weather this has been Up North. We returned from our winter trip to Texas last May only to find out that our kayak, the short separate dock it sits on, and two wood sections of our main dock were missing. While we were gone between October and May, our lake had risen 2.2 ft. This was the largest winter increase we had ever witnessed. This occurred in spite of so little snow last winter. We did find our kayak, its dock, and the main dock sections floating in our bay and retrieved them. Many other seasonal people on our lake weren't so lucky in finding their shore goods.

Continuing this weird weather trend, our lake rose an additional 2 ft. this summer. My long-time neighbor says that we are finally normal after the seven year drought in Washburn County. Our lake is still rising and I have raised our floating dock four times this season. All the lakes up on the Birchwood Fire Lane are full and healthy again.

But, it gets weirder yet. On July 11, my clock radio "wake up alarm call" announced that Washburn County had been declared a disaster area. **THAT GETS YOUR ATTENTION IN THE MORNING!** A look outside showed tranquility. However, after a few phone calls, I learned from one of our board members that they probably got over 12 inches of rainfall the night before in the Minong area. We only had roughly four inches in our gauge. Not much weather-wise surprises me now.

Whether you believe in climate change or not, it sure has been an interesting weather year. Earlier this fall my wife mentioned that the caterpillars seem shorter and less woolly – mild winter maybe? However, our loon family, adults and chick, left before the end of August – cold winter maybe?

As I said, not much weather-wise surprises me anymore.

Craig Walkey, President

## ENBRIDGE/WCLRA INTERACTIONS

By Fred Blake

Almost two years ago, WCLRA set out to establish a constructive interface with Enbridge Energy Company with the goal of participating in pipelines efforts to make the traversing our area as safe as possible for our water resources. Those northwest Wisconsin pipelines cross four major tributaries of the "National Wild and Scenic" St. Croix River system. Enbridge responded positively to our overtures.

Our basic premise was that Enbridge and WCLRA share a common goal... bringing the incidence of pipeline failures, and the resulting potential environmental damage, as close to zero as can be achieved.

Our participation would require that we have an understanding of the construction and operation of oil pipelines at a technical level and we asked Enbridge to help educate us. We had a series of technical meetings with Enbridge personnel over a period of about a year and a number of our directors visited the Stone lake pumping station before it went on line. Several of our WCLRA directors have training or experience in technical areas and, consequently, are equipped to understand the fundamental technical aspects of pipeline construction and operation.

During the early months of 2016, our communications with Enbridge lagged but were re-established late this summer at a higher corporate level through Trent Wetmore, Enbridge Director of Superior Region Operations.

In mid-August, we sent Mr. Wetmore a letter based on what we had gleaned from our earlier technical meetings. The letter restated our goal of creating a constructive interface with Enbridge and asked them to consider certain actions directed at improving pipeline safety or minimizing potential environmental damage in the event of a failure. The response again was positive and Enbridge is currently considering our requested changes. The general content of that letter was initially laid out for our members

in an article entitled "Can oil and water mix?" in our Fall/Winter 2015/2016 newsletter issue.

Since that time, communication channels have continued to reopen and we have scheduled a meeting involving Mr. Wetmore, several of his colleagues and five of our WCLRA directors. The meeting will take place On October 27, 2016 at the Enbridge Superior Wisconsin facility. *Since copy for this edition of our newsletter must be in before that date, look for a report on that meeting either later this fall ([www.wclra.org](http://www.wclra.org)) or in our spring 2017 newsletter issue.*

We expect the discussions to be broad ranging and to encompass reactions to our August 2016 letter. We are looking forward to additional discussions and technical meetings with Enbridge staff. Consistent with WCLRA's philosophy since its inception in 1999, whatever comments or requests we may take to Enbridge over time will be based on sound science, accurate information and common sense. We have every hope that the open communication interface that we have been seeking between Enbridge and WCLRA will become reality.

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### Save the Date Invasive Buckthorn Workshop April 15, 2017

By Lisa Burns,  
Washburn Co. Land and  
Water Conservation Department

Buckthorn is an invasive shrub that crowds out our native species of woodland trees, shrubs and flowers. Both common and glossy buckthorn can grow up to 20' tall with many sprouting stems. The female plant of both species produces small black berries. Birds eat these berries leading to its dispersal over the landscape. You surely don't want this on your property because IT WILL TAKE OVER!

On April 15, 2017, an educational workshop will be held at Hunt Hill Audubon Sanctuary from 9:00am-12:00pm. You can learn about the shrub's history, environmental impacts, and control methods. There is no cost or registration needed for this event. Dress for the weather and be prepared to spend time outdoors!

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#### Citizen Lake Monitoring (DNR)

Kris Larsen

#### Conservation Wardens

Dave Swanson

Jon Hagen

#### Zoning Administration

Web Macomber

## WCLRA Activities and Accomplishments 2015-2016

- Northwest Wisconsin Lakes Conference held in Spooner, June 24, with WCLRA participation in planning and implementation.
- Attended all county Zoning Committee and Board of Adjustment meetings. WCLRA representatives on the boards of The St. Croix River Association and Wisconsin Lakes coordinated our programs.
- Published four *On the Waterfront* newsletters.
- Continued to co-sponsor the Youth Environmental Stewardship (YES) program at Hunt Hill.
- Stocked beetles on the Yellow River to control purple loosestrife.
- Initiated a monthly column, *Water Wise*, and distributed it to three area newspapers.
- Distributed an educational newsletter to Washburn County shoreland owners with partial funding from a DNR Grant.
- Helped purchase snorkeling equipment for the 4-H youth camps program.
- Promoted water protection with a WCLRA booth at the Hunt Hill Prairie Fling, the Wisconsin Canoe Heritage Festival, and the Northwest Lakes Conference.
- Sponsored one board member to the Wisconsin Lake Leaders Institute.
- Contributed to legislative efforts of affiliate organizations.
- Monitored pipeline expansion and rail and pipeline transportation of crude oil through Washburn County.
- Pursued constructive interaction with Enbridge Energy Company.
- Met with residents of Deep Lake and the Wisconsin Cranberry Growers Association to discuss possibilities to reduce phosphorus input into the lake.
- Sent two WCLRA Board members to the 38th Annual Wisconsin Lakes Partnership Convention in Stevens Point.

WCLRA has long supported regional and statewide organizations that have missions similar to ours and assist us in accomplishing our goals. They are Wisconsin Lakes, River Alliance of Wisconsin, and Wisconsin Wetlands Association. In 2016, we increased our contributions to those groups and added the St. Croix River Association to the list. In addition, WCLRA supported Wisconsin Shoreland Initiative (WSI) in its lobbying efforts to reverse the loss of county authority over lake protection.

All of the above organizations routinely testify in Madison on proposed state legislation and encourage individual citizens to do so as well. In the 2016 legislative session they advocated strongly but unsuccessfully for the return of local control of shoreland zoning. However, they were successful in altering or blocking some measures that would have further threatened water quality in Wisconsin. WCLRA occasionally sends letters or emails to legislators stating our positions on proposed legislation. We would welcome any members who wish to participate in that effort by joining our Government & Environment Committee.

### Meet WCLRA's Newest Board Member - Kevin Campbell

I have been coming to Washburn County with my wife for 40 years. Her family came here in the 1880s (father's side) and 1930s (mother's side). I have always enjoyed the flora and fauna that was available for respite from the CITY a few weeks a year. We recently built a cabin on the south end of Long Lake near the RUT (at the corner of M&D). We have been supporters of Hunt Hill Audubon and the Long Lake Preservation Association for almost the entire time. We retired from our paid positions in 2015 and are looking forward to unpaid work for the lakes and rivers of the area.



## Shoreland Law Growing (or shrinking) Pains

By Web Macomber, Zoning Administrator, Washburn County

You may have heard that laws governing zoning around lakes and rivers have changed. If so, you may realize that some “change” is no surprise since Wisconsin DNR began the process of amending the 1998 shoreland regulations in NR 115 about 13 years ago. [*State regulations that cover shorelands are classified in Chapter 115 of the Natural Resources portion of our Administrative Code, referred to as NR 115. Counties also have shoreland zoning provisions in their county zoning ordinances.*] The Wisconsin Legislature passed the newest NR 115 code in October of 2014 and counties were given until October of 2016 to adopt the new code, which Washburn County did on September 20, 2016. Plain and simple, right? Well, here is the rest of the story.

In the summer of 2015, while that process was still underway, the legislature passed Act 55, the biennial budget. An amendment to this bill prior to passage made sweeping changes affecting shorelands. In short, the 2015 Act 55 mandated that no county shoreland ordinance could be stricter than the state’s minimum standards found in NR 115. Further, Act 55 weakened specific state standards governing nonconforming structures and shoreline vegetation. Counties with progressive and effective shoreland ordinances were set back 30 years to a time when development could occur with little protection for aquatic resources. As a result Washburn county and others across the state were forced to adopt a shoreland ordinance that is less protective of natural resources and more cumbersome to administer.

Before I discuss the specific changes to our ordinance, allow me to remind the reader just what a shoreland ordinance is, or is not. Shoreland zoning is an overlay district that is not

parcel specific. It is an area that extends 1000 feet from all lakes, ponds, and flowages and 300 feet from all rivers, creeks and streams. Shoreland zoning does not regulate “uses” like other typical zoning districts; rather it simply prescribes specific standards that are designed to further regulate and protect aquatic resources. In the case of NR 115, which has been adopted by this county and others, there are seven standards. As specified in Act 55, no county can alter these standards to be more restrictive. The standards are setbacks, lot size, vegetation, filling/grading, height, impervious surfaces and nonconforming structures.

Now, I will conclude with some discussion on what is new and “what does this mean to me”. Act 55 caused some changes to the above standards that are reflected in the new county Shoreland ordinance. One change, however, does not deal directly with one of the standards. Act 55 specifically defined what a “structure” is. Now, things that we all build require permits when they did not in the past. Now, permits are required for walkways, sidewalks, cement slabs, foundations (even below grade), fire pits and gravel paths. If you want to build or construct ANYTHING within the 75’ setback, you may want to give us a call before you do it! Finally, I will quickly touch on each of the seven standards and note any changes of interest.

1. **Setbacks** -There are no more lake classes. All setbacks for navigable waterways are 75’ from the OHWM. In some cases setbacks can now be averaged to be less than or more than 75’. There is also now an allowance for the construction of boathouses, which are exempt from any setback; other restrictions do apply however.
2. **Lot size** - Again, there are no lake classes governing lot size. The minimum size for a shoreland lot is 100’ wide with 20,000 square feet of area. It has been qualified that underlying zoning district requirements can require larger lot sizes.
3. **Vegetation** - The primary buffer depth

remains at 35' from the OHWM but now the viewing corridor can be completely cleared (not down to bare soil) and may be 35' wide for every 100' of frontage. Viewing corridors may also be combined (35% of total frontage).

4. **Filling and grading** - there is no major change here. Basically, grading within 300' of the shoreline does require a permit if the disturbed area exceeds normal grading associated with home construction. Again, if you are not sure on this, contact us with questions.
5. **Height** - This standard was weakened somewhat. The maximum height for any structure within 75' of the OHWM is 35'.
6. **Impervious surfaces** - We now have to regulate the amount of impervious surface on a waterfront parcel. One is allowed to develop up to 15% of their parcel with impervious surfaces and up to 30% with mitigation. Mitigation does not have to involve a shoreline buffer. The percentage is calculated by the total square footage of all impervious surfaces within 300' of the OHWM divided by the square footage of the entire lot.
7. **Nonconforming structures** - The major changes here deal with additional allowances for structures less than 35' from the OHWM. Any structure in that zone can now be rebuilt in the same footprint and expanded vertically. There is also a provision for a principal structure greater than 35' from the OHWM. In this case, one can develop 200 square feet within the 75' setback.

Well, I think that is a fairly complete summary of the changes that have taken place. One can now certainly "do more" on their waterfront parcel than in the recent past. That is great in some respects. On the other hand, I hope that one, waterfront property owners recognize the positive effects that prior ordinances have had on the health of lakes in this region and two, that not everyone takes advantage of the new allowances; just sayin'.



## Fond Farewell

It is with both great appreciation and regret that the Board of Washburn County Lakes & Rivers Association announces the retirement of two board members, Wayne Sabatke and Barbara Robinson. Both have made valuable contributions to the organization as it pursues its mission of advocating for and protecting our county waters.

**Wayne Sabatke** has been a board member since 2004. It is largely due to Wayne's vision and determination that almost 400 acres of land adjoining county rivers is now protected. His "we can do this" enthusiasm and strategic networking encouraged WCLRA to undertake a demanding fund-raising effort that resulted in the acquisition of over 260 acres of land adjoining the Totogatic wild river. This land, now called Totogan Pines, is part of a DNR-managed corridor along this special river. Then he negotiated the sale of 125 acres on Potato Creek to the county. This win-win project allowed the county to acquire other valuable forestland and provided a reserve fund that WCLRA can use for future protection efforts. Wayne continues to work for the environment by serving on the boards of the Long Lake Preservation Association and Hunt Hill Sanctuary.

**Barbara Robinson** joined the WCLRA board in 2009. In the intervening years she has edited the newsletter, our major vehicle for communicating with our members and public officials about the issues affecting our lakes and rivers. This has been a huge time commitment as she worked to identify and solicit content, lay out the material in an attractive manner, and work with the printer to produce the final publications. In addition she and her husband Russ have been active in the Gilmore Lake Association and the Minong Town Lakes Committee. Barbara and Russ are leaving the area for their homes in North Carolina and Colorado. We guess that environmental advocates in those states will benefit from their participation.

## Navigable Waters in Wisconsin

By Larry Damman

After the revolutionary war, Britain ceded its claim to the lands east of the Mississippi to the 13 colonies. That meant the “precursor” government of the United States had title to a huge block of wilderness subject only to the claims of native peoples. Once tribal claims were purchased, ceded or taken by conquest, the government had absolute title to the land and water.

In the Northwest Ordinance of 1787, the federal government decided not to transfer all of its ownership rights with the first deed or government patent. It retained outright ownership of navigable lakes and ponds and easement type rights to navigable streams. The government retained these rights regardless of whether or not the water bodies were specifically identified on the patent description. Wisconsin accepted trusteeship for navigable waters in our state constitution, as required, to enter the Union.

The Northwest Ordinance doesn’t say what a “navigable” water is in terms like acreage, depth or flow. It also doesn’t define what acceptable types of navigation are. Since the Northwest Ordinance did not limit what navigable is, the courts don’t either. The phrase “navigable in fact for any purpose whatsoever” sums up the legal interpretation. If you can float somebody or some product, it’s navigable.

A stream does not have to be navigable on a year round basis, just during regularly reoccurring events like spring runoff. A navigability test like floating a saw log or recreational craft like a canoe can determine whether a stream is public.

Some people say court that decisions over time have expanded the definition of navigability to smaller waters. In reality, long before the NW Ordinance was written, our forefathers understood trappers and explorers

were wading small streams, dragging their gear behind them in whatever canoe or raft they could make. While we may no longer use



these small waters in the original ways, they still remain public.

Because we are talking about

property, there do have to be recognizable boundaries. A navigable water must have a defined bed and bank. A permit to dredge or place structures on or over the bed of navigable water is needed because the government has public trust ownership there. However, navigation depends on where the water is at the time. You don’t have to stay within the normal banks during a flood. On the other hand, the riparian (shoreline) owner has the exclusive right to access the water from his property. You must stay in or on the water when navigating through private property. The public does not have the right to go on dry lake or streambed. About the only exception to the stay in the water rule is manmade obstructions like culverts, fences or dams that may be portaged. Just don’t do other stuff than what is reasonably necessary to get around or over.

### Wisconsin Lakes Trivia

1. *Riparian Zone* is another term for what part of the lake?
2. What percentage of endangered or threatened species spends all or part of their lives in shoreland areas? 80%, 40%, or 20%
3. Approximately how many more animals live in shoreland areas than in adjacent upland areas? 100%, 250%, 500%

1. Shoreland area, 2. 80%, 3. 500%

## Lake Advocacy Workshops

By Cathie Erickson

Here in Washburn County, we were lucky to participate in one of the first presentations of a new workshop called Lakes In Action Advocacy Workshop. The program was developed by Wisconsin Lakes and the River Alliance of Wisconsin to help individuals and water protection groups become more effective in influencing government actions that impact our water.

More than 20 people, including a majority of WCLRA's Board of Directors, attended the Lake Advocacy workshop in Spooner on Sept. 23. The session began with an overview of Wisconsin's legislative and rulemaking process. That was followed by a discussion of what 501(c)(3) organizations can and cannot do during legislative processes and political elections. Other topics included how to communicate with elected officials and how to build a consensus within your own organization.

WCLRA has in the past, and will continue to, speak out on behalf of our waters. We do so on a non-partisan, positive basis after learning as much as possible about the issues and facts. If you wish to participate in this effort, please contact one of our Board members. You may wish to join our Government & Environment Committee.

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## Minong Town Lakes Committee

By Russ Robinson

Again, this year, the Minong Town Lakes Committee (MTLC) has managed the Clean Boats Clean Water (CBCW) inspection program at boat ramps throughout the Town of Minong. The program was ably managed by Amy Wandel (of Gilmore Lake) and financially supported by Gilmore Lake Association (GLA), Nancy Lake Association, Horseshoe Lake Association, Kimball Lake Association and a grant from the Wisconsin Department of Natural Resources. John Ney, past GLA president has continued to successfully win grants to support this work. Has the investment

in resources been successful in reducing the spread of Aquatic Invasive Species (AIS) such as Eurasian Water Milfoil (EWM)? A recent study may shed some light on the success of these inspections. The MTLC sponsored a study of Aquatic plants on four of the major lakes in the Town that have not recorded EWM in the past. Each of these lakes continues to be free of infection since the last study conducted five years ago. The data collected during this study will be reported in a separate newsletter next spring.

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## Think Spring! Trees/Shrub/ Wildflower Sale

By Lisa Burns, Land and Water Conservation Dept.

Although fall is here, it's never too late to "think spring". Think about the emerging wildlife, birds, frogs and other critters looking for some additional habitat to settle into. Perhaps you've lost some trees or other vegetation to the fierce July storm event or maybe you just want to add more variety to your property? What about your shoreline? Would you like to add to or improve it?

Well, you're in luck! The Washburn County Land and Water Conservation Department has an annual tree, shrub and wildflower sale. We have a variety of evergreens (spruce and pine), shrubs, and wildflower flats.



### Prices:

*Evergreens*-\$25.00 per bundle of 25  
*Shrubs*-\$20.00 per bundle of 10  
*Wildflowers*- \$44.00 per flat (up to 48 plants)

Order forms are mailed out in late November. Tree/shrub pick-up is late April. Wildflower pick-up is early June. You do not need to be a resident of Washburn County to order.

For more information or to request an order form, please call the department at 715-468-4654 or send an email to [landwtr@co.washburn.wi.us](mailto:landwtr@co.washburn.wi.us). Order forms will also be on the Land and Water Conservation website in November.

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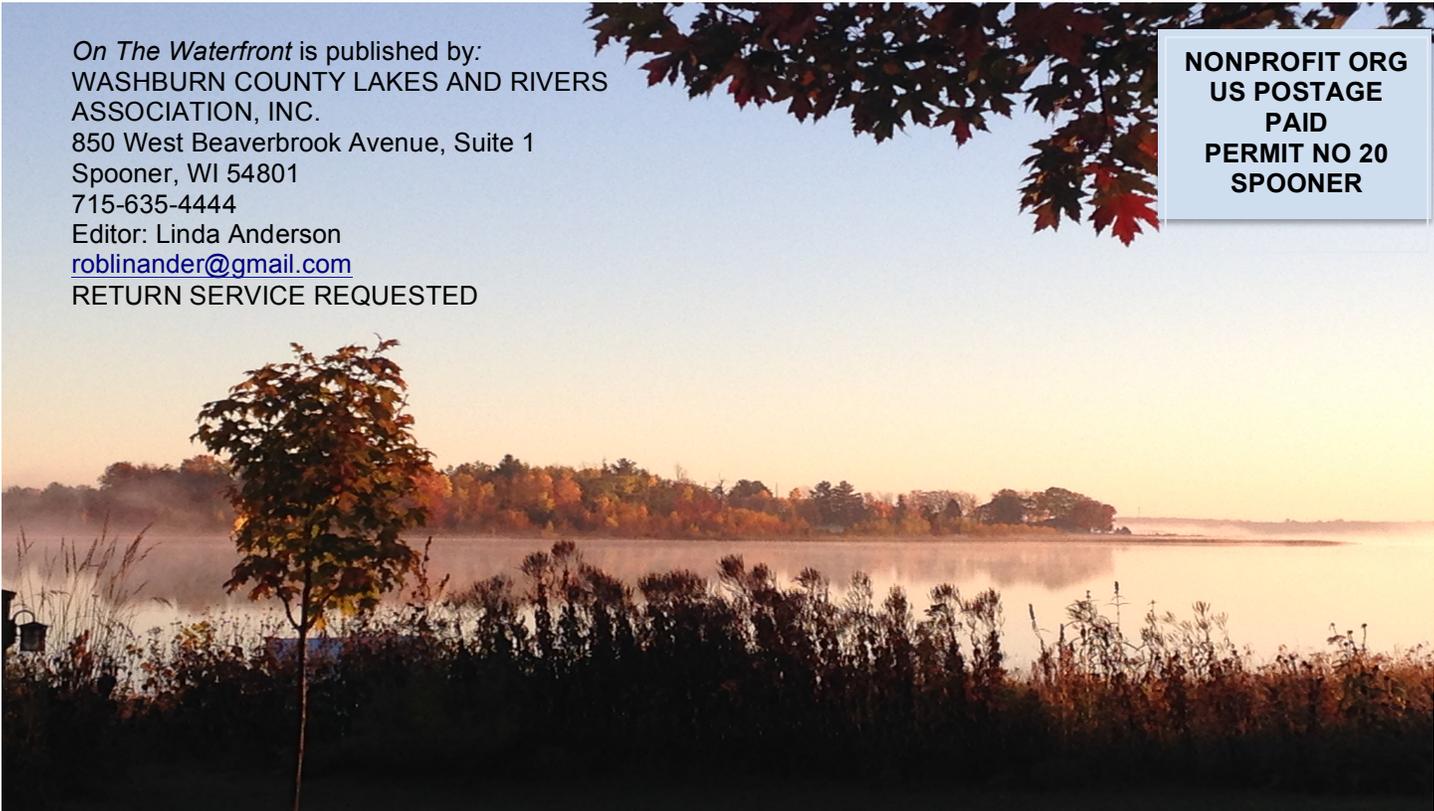


Photo by Linda Anderson

### Contacts to protect lakes and rivers

We need more than ever to provide what help we can to protect our lakes and rivers from environmentally damaging activities. Keep your eyes open! We are the last line of defense! **Do not trespass** to obtain information. Let those in authority investigate any suspected violations.

#### **DNR Water Regulation Violations and Information:**

**Dan Harrington** (Water Management Specialist Spooner Office).....715-635-4097

**Jon Hagen** (Conservation Warden for Southern Washburn County).....715-635-4099

**Dave Swanson** (Conservation Warden for Northern Washburn County).....715-466-5428

If wardens are in the field, messages can be relayed to them through the Washburn County Sheriff's Department at 715-468-4720 or at the DNR's toll-free tip line.....1-800-TIP-WDNR (1-800-847-9367)

#### **County Shoreland Zoning Questions or Violations:**

Web Macomber (Zoning Administrator).....715-468-4690

#### **County Planning, Land/Water Resource Management:**

Lisa Burns.....715-468-4654