

September 1<sup>st</sup>, 2017

Mr. Dan Helsel, Natural Resources Manager  
Wisconsin Department of Natural Resources – Black River Falls  
910 Highway 54 E  
Black River Falls, WI 54615

Re: Sturgeon Bay Declaratory Ruling Hearing

Dear Mr. Helsel,

I am a 1976 graduate of the University of Wisconsin Law School and was a member of the State Bar of Wisconsin until 2016. I continue to do work with interested citizen groups and on issues related to Wisconsin's public trust waters.

I began work as a staff attorney with the Wisconsin Department of Natural Resources' Bureau of Legal Services in 1977. In 1978 I was assigned responsibility to serve as the Department's principal lawyer providing counsel to the agency's water regulation program, which administers, among other laws, Chapter 30 of the Wisconsin Statutes (Navigable Waters, Harbors and Navigation).

I served as the Department's primary attorney in the area of water regulation until my retirement in 2008. Following my retirement I was hired back by the Department later in 2008 to continue my work supporting the new legal staff and the Water Regulation Program and continued that work with the Department until 2010. Subsequent to 2010, I was periodically called upon by the Department and the staff of the Commissioners of Public Lands to review documents and historic cases which I had worked on to assure continuity in the administration of these laws.

Among other duties under Chapter 30, the Department of Natural Resources is responsible to determine the extent of navigable and public waters in Wisconsin under Section 30.10 of the Wisconsin Statutes. These duties include responsibility to determine the boundaries of lands adjoining waters and the rights of the State and of individuals with respect to all such land and waters.

Over the course of my career with the Department, the agency was required to determine the boundaries of filled lakebeds in approximately 3 to 10 cases per year when such navigable waters boundaries were in dispute. In those cases the Department undertook to determine such boundaries in conformity with the common law, as required under Wis. Stat. Section 30.10(4)(b). In accord with common law, the Department sought to identify the location of the natural and historic shoreline of the affected lake or stream at the time of statehood. This process was conducted through a review of cartographic, documentary and physical evidence of the location of the natural and historic shoreline.

Lakebed boundary determinations were initiated by agency staff who routinely sought and collected available historic maps, surveys, plats and aerial photographs, including the U.S.

Public Lands Survey and other cartographic records on file with the U.S. Department of the Army, the Corps of Engineers, the Wisconsin Department of Transportation, the Wisconsin Public Service Commission, the Wisconsin Railroad Commission, the Board of Commissioners of Public Lands, County surveyors, municipalities, the Wisconsin State Historical Society, local historical societies and other sources.

In many cases additional documentary evidence pertaining to the location of the natural and historic shoreline and modifications to the shoreline since Statehood was obtained through review of archived newspapers and other historical materials maintained by the Wisconsin Historical Society, local historical societies and other institutions.

In some cases, especially in urban areas, soil borings were available, particularly where construction of buildings, roads and other structures had taken place on filled lakebed areas. In other cases the Department required project developers to obtain soil borings in order to provide physical evidence in an affected area to determine the location of the original and historic shoreline. These soil borings were analyzed by soil scientists, hydrogeologists and other specialists in order to determine the boundary of the natural and historic shoreline and to determine whether filled areas located waterward from that boundary resulted from accretion or as a result of legal or illegal filling. In some cases these analyses included the evaluation of the physics of soil movement including consideration of prevailing currents and other site characteristics.

I am not able to attend the hearing on this matter since I am leaving the country for a trip on September 6, 2017.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. J. Cain". The signature is fluid and cursive, with a distinct loop at the end.

Michael J. Cain  
Madison, Wisconsin