



## Protecting the Public Trust in Wisconsin's Lakes and Streams

The **Public Trust Doctrine** is simply the idea that no one person can claim ownership over the bounty of the lakes and streams... that these are gifts to be enjoyed and cherished by all.

You may be surprised to learn that the early settlers in Wisconsin adopted a concept of common water resource stewardship very similar to the traditions of the native people. The European settlers learned the idea from British law which had roots in ancient Roman laws of water. They appreciated the benefits of the Public Trust Doctrine and so declared the navigable waters and the carrying places between them to "be common highways and forever free" for the use of all citizens.

Wisconsin's constitution carries the same promise of shared rights for all people in the waters of the state. Wisconsin statutes and common law describe the rights to use lakes and streams for all types of boating, swimming, fishing and hunting, including protecting fish and wildlife, and importantly the habitat and water quality and quantity sufficient to support all of these uses. Wisconsin laws have consistently held that it's the responsibility of

the state to maintain this public trust for its citizens.

Since statehood, Wisconsin citizens have had a say in setting the types and amount of uses of their shared waters. Initially, they had to go to court to do so. Civil War veteran Frank Wade went fishing in a stream claimed by the private Willow River Club, was arrested, and won in court to ensure that everyone could fish in all streams. The legislature took on many decisions about individual uses as settlements grew and lumbering, milling and transportation began to intersect. By the early 1900's, the pace of development and increasing number of decisions needed about water use led to the creation of administrative agencies. The Railroad Commission was assigned water duties because many of the decisions still involved dams for milling proposed in waters also used for boat transportation. In 1968, the Department of Natural Resources was established and assigned to manage the uses of water resources, including physical modifications, hunting, fishing, water diversion, and disposal of wastes through discharges to waterways.

While the concept of shared public rights and responsibilities is simple, carrying it out in practice is a challenge. From streams you can step across to lakes you can't

see across, Wisconsin's waters are diverse. Water uses ranging from tankers and barges moving cargo, to recreational motorboats, jet skis, canoes and kayaks, fishing boats and hunting skiffs... from pristine natural shorelines to bustling urban waterfronts, makes for a complicated picture. Scientific knowledge about water and land use interactions, fish and wildlife ecology is constantly improving the basis for decisions. The Public Trust Doctrine provides a consistent set of factors for science-based evaluation of water use proposals and ensures participation opportunities for all users.

Wisconsin's Green Fire helps increase awareness of citizens' rights and responsibilities as participants in this public trust. Its natural resource scientists and professionals want to assure that the people of the state and its decision makers have access to current science and practical solutions as they develop and carry out natural resource policy. Wisconsin's Green Fire is committed to the public trust in Wisconsin's waters, the idea that no one person can claim ownership over the bounty of the lakes and streams... that these are gifts to be enjoyed and cherished by all.



## Protecting the Public Trust in Wisconsin's Lakes and Streams

### Wetlands and the Public Trust

Marshes, bogs, bottomlands... all types of wetlands are crucial to the health of Wisconsin's lakes and streams. Many of Wisconsin's fish and wildlife species depend on wetlands for food and for places to rest, nest and raise their young. Wetlands can be sponges that release waters slowly to maintain stream flows or groundwater levels. They can hold floodwaters and slow water flows to settle out sediments and absorb pollutants.

The importance of wetlands wasn't recognized until many wetlands had been drained or filled and the impacts on water quantity, quality, fish and wildlife became noticeable.

Today, Wisconsinites generally recognize that protecting remaining wetlands is essential not only to reduce flood risk and maintain water supplies, but also ensure habitat and water quality and quantity sufficient to protect swimming, fishing, hunting and other public uses. Whether they are part of or adjacent to lakes and streams, or self-contained, wetlands are essential to the benefits and uses we enjoy in Wisconsin lakes and streams.

### What about private landowner rights?

Wisconsin's waterways can't be bought or sold by anyone, but waterfront landowners do have rights to use some adjacent water for actions like placing a pier, irrigating agricultural crops, or protecting against erosion. Private uses must be "reasonable," that is, small in space or time in proportion to the lake or stream itself, and they can't harm or destroy public rights in the waterway. Similarly, standards for private commercial water uses like industrial discharges, water withdrawals, and commercial harvest of fish or wildlife must be reasonable to ensure that public rights are protected.

### Want to know more?

Visit Wisconsin's Green Fire website to read papers by the Public Trust and Wetlands Work Group.

Invite a speaker to visit your group.

Wisconsin's Green Fire  
PO Box 1206  
Rhineland, WI 54501  
Info@WIGreenFire.org

<https://wigreenfire.org/>

### WISCONSIN GREEN FIRE

#### MISSION

Wisconsin's Green Fire supports the conservation legacy of Wisconsin by promoting science-based management of Wisconsin's natural resources.

#### VISION

Wisconsin's citizens understand and support scientific and thoughtful long-term management of natural resources, and value the many benefits of clean water, clean air, and healthy ecosystems.

#### WHO WE ARE

Wisconsin's Green Fire is nonpartisan and independent. Our members represent extensive experience in natural resource management, environmental law and policy, scientific research, and education.

#### HOW WE WORK

- Connecting the public, media, and legislators to science
- Supporting a healthy and protected Wisconsin
- Supporting conservation in Wisconsin and beyond
- Engaging the next generation of conservationists

#### WORK GROUPS

- Air Quality
- Climate Change
- Environmental Rules / Water Resources
- Environmental Education
- Fisheries
- Forestry and Public Lands
- Public Trust and Wetlands
- Wildlife

