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To: Wisconsin State Legislature Committee on Regulatory Licensing Reform

From: Wisconsin Chapter of the Society for Conservation Biology

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Subject: **Assembly Bill 547**

The Wisconsin Chapter of the Society for Conservation Biology (WSCB) is the state chapter of an international professional organization committed to advancing the science and practice of conservation biology. On behalf of WSCB and the Society for Conservation Biology's North America Section (SCB-NA), we submit the following comments on the proposed Assembly Bill 547.

Wisconsin's wetlands are directly threatened by Assembly Bill 547. Wisconsin has already lost over half of its original wetland area. This raises the worth of those we have left and makes it important to recognize the distinct values that different wetlands provide. Not all wetlands are the same. Freshwater marshes are among the most diverse ecosystems in the world. They absorb and filter agricultural runoff and regulate the flow of streams, providing ecological and economic benefit (Weller, 1994). In contrast, bogs receive water primarily from precipitation, creating a low-nutrient environment where layers of peat moss build up to form an acidic, waterlogged environment: their value is held mostly in carbon storage (Damman et al., 1987). Wetlands provide significant ecosystem services to all of society, in forms that include erosion and flood control, nutrient cycling, water quality maintenance, and provision of habitat. Individual wetland owners, however, often do not incur the full potential of these social and ecological benefits. This means that wetlands require careful regulation to retain critical ecological and economic benefits in the face of short-term economic incentives. The public trust must not be devalued or ignored. If this bill were accepted, landowners may feel their previous contributions to wetland maintenance are not valued. This could cause further erosion of incentives to maintain these areas, leading to more destruction and loss of value in wetland areas.

The proposed bill betrays the careful stewardship of Wisconsin resources. The Clean Water Act of 1972 is the primary federal law for protecting wetlands. Wetland permits are issued or denied by the Wisconsin Department of Natural Resources (WDNR) based on the functional values of the wetland and the impacts of a proposed activity. Some cases require additional federal permits. In 2001, the U.S. Supreme Court issued a decision that limits federal wetland regulations to wetlands contiguous with navigable waterways. This decision removed all

“isolated wetlands” from federal protection under the Clean Water Act - leaving about 20% of Wisconsin’s total wetlands vulnerable to development. To fill that gap, within five months, the Wisconsin Legislature unanimously passed a bill that gave the WDNR the authority to regulate non-federal wetlands, restoring protection to isolated Wisconsin wetlands. Assembly Bill 547 would eliminate the state protection of isolated wetlands, exposing them to unregulated development. AB547 proposes further to shift wetland protection entirely from federal to state jurisdiction. Rather than being weakened, wetland regulations need to be upheld, federally and locally, to protect long-term ecological assets from short-term economic gain.

Wetlands are virtually irreplaceable. Most wetland restoration sites *rarely* develop the structural complexity (in species composition or hydrology) of the original wetlands they are meant to replace. For applicants that have demonstrated unavoidable damage, compensatory mitigation is an option. However, mitigation has been criticized nation-wide for its objective failure (Turner et al., 2001). For example, in a survey of 76 compensatory mitigation wetlands constructed in Illinois between 1991 and 2002, 67% of projects failed to restore their minimum required area (Matthews and Endress, 2008). In addition, most were unable to establish necessary hydrologic conditions. The WDNR surveyed 20 mitigation sites in 2009 and found them dominated by invasive species: reed canary grass (*Phalaris arundinacea*) and narrow-leaved cattail (*Typha angustifolia*) were the two most abundant plant species (Wilcox, 2009). From a scientific standpoint, we recommend improving mitigation strategies by requiring: a higher replacement ratio (for a more realistic success rate); higher standards of maintenance; preference for in-kind replacements, and a watershed approach to displacement. The clearest solution to failures in mitigated wetlands is a careful, evaluative permit process to prevent the necessity of mitigation in the first place. These actions would maximize chances of success for those that gain approval. For this to happen, Wisconsin must maintain permitting standards at both the state and federal level.

If Wisconsin is authorized to administer its own permitting program in place of the federal regulatory program it will still be subject to the same level of regulation that is currently mandated by the federal government. However, without federal collaboration, Wisconsin would be subject to additional burdens of its wetland management. A strong federal/state partnership provides support for permit review, management resources and sufficient funding for incentive programs, such as the Conservation Reserve Program (Reyer et al., 2009). Federal regulation provides broad resource protection that Wisconsin should not presume to reject. In 2001, the USDA and state of Wisconsin launched a \$243 million Conservation Reserve Enhancement Program to protect the state’s water quality and wildlife habitat. The Conservation Reserve Program exists to diffuse the cost of wetland protection and is made possible by federal support. Sacrificing federal regulation jeopardizes this support. State support alone is insufficient to maintain proper protection of Wisconsin wetland resources.

The state of Wisconsin must remain firm on its commitment to protect *all* wetlands. If nonfederal wetlands are exempted from state regulation, the exposure of isolated wetlands would form a massive gap in wetland protection. Isolated wetlands hold significant ecological

value. It may appear that ecosystems such as bogs exist in hydrological isolation, but as John Muir said, "When we try to pick out anything by itself, we find it hitched to everything else in the Universe." By sacrificing isolated wetlands, a great expense would be placed on society, both now and in the future. Wisconsin legislators unanimously voted to protect isolated wetlands in 2001. We must continue responsible resource stewardship and leadership today. We, the community of conservation scientists represented by WSCB and SCBNA, ask you to oppose this bill.

Sources:

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