

## Full Biography of Lewis Albert Posekany.

Lewis was born on 21 April 1916 in Milwaukee. He was the only child born to Lewis Albert Posekany, Sr., a naturalized immigrant printer from Czechoslovakia who came to the United States in 1881, and Jane Emily Holesovsky Posekany, a native-born citizen of the United States. At 14, Lew moved with his family to a cutover area farm in Big Falls Township near Ladysmith during the Depression, where they contended with numerous stumps that had to be removed with dynamite. From 1934 to 1936, he helped rebuild the Big Falls Dam on the Flambeau River. August of 1936 was hot and dry, with several days in a row having temperatures over 100°F. In early August 1936, Lew helped the Wisconsin Conservation Department fight a fire in the Rusk County cutover land. He even walked ahead in the night carrying a lantern to guide a bulldozer to the fire. The fire breached a fire break and jumped the Flambeau River but was eventually put out after it rained for two weeks. By then, it had burned 10,240 acres. The going pay at the time was 15¢/hr. for a firefighter. It rained solid for 3 days and nights, causing severe flooding and erosion. The devastation from the forest fires in the aftermath of logging the pinery, flash flooding, and erosion was a turning point for Lew, giving meaning to Supreme Court Justice Oliver Wendell Holmes' remark, "A river is more than an amenity—it is a treasure that offers a necessity of life that must be rationed among those who have the power over it." From then on, Lew realized rivers needed an advocate to counterbalance the threats rivers faced.

In 1939, Lew enrolled in UW-Madison, majoring in pre-med. He wanted to study aquatic parasites, so he took coursework in limnology under Dr. Chauncey Juday, zoology under Dr. Lowell Evan Noland, parasitology, bacteriology, and geology, receiving a well-rounded education, qualifying him to study for a PhD. He also studied French and was on the fencing team. During the summers, he worked for Dr. John Bordner on the economic land survey of Wisconsin. This survey, sometimes called the Bordner survey, was a depression-era project undertaken in the 1930s and 1940s to map the state's land use features for data to support future development. The survey was undertaken in transects to set foot in each 40-acre parcel. Hand-drawn maps were compared to aerial photos to map the land use. This was the second major awakening for Lew when he could see how little of the original Wisconsin landscape was left, the consequences of indiscriminate logging, the effects of the many dams on Wisconsin's rivers, and

how few unaltered rivers remained. Lew used these observations later to formulate the first action plan for saving Wisconsin's rivers from future dams and development. This first plan was used to determine which rivers to include in the federal and state wild rivers programs, the statewide surface waters inventory, and, eventually, today's modern river basin management system. The compiled maps and data served as a benchmark for land use change over time. While working on the Bordner Survey, Lew covered the entire state except for a few counties in the Northeastern corner. He camped or stayed in various Wisconsin Conservation Department facilities like fish hatcheries, ranger stations, or state parks to save money. During this time, he was asked to help with disease control at the Wisconsin Conservation Department and United States Fish and Wildlife Service fish hatcheries. His advice was so useful that in 1941, Dr. Edward Schneeberger, Director of the Conservation Department's Bureau of Fisheries, and Dr. John Bordner decided Lew should be transferred to the Conservation Department.

Lew went to work for the Wisconsin Conservation Department as a fisheries biologist at Woodruff in September 1941, three months before Pearl Harbor was bombed. He enlisted in the United States Navy on February 20, 1942, because they promised him a medical research assignment. On April 17, 1942, he married the love of his life, Katherine McCardle, in Cook County, Illinois. After studying infectious diseases at Stanford, he entered active Navy duty, earning the highest rank of petty officer chief pharmacy mate serving in the South Pacific Theater, including combat zones in Guadalcanal, Bougainville, the Solomon Islands, New Hebrides, and Okinawa. His laboratory station was Guam, but he spent most of his time in the field accompanied by Fiji Island scouts or Marine guards before invasions. His duties included investigating and maintaining the health of troops and surveying the landing areas before an invasion to determine if there were any health risks, such as typhus, the landing forces should be concerned about. On Guadalcanal, he planned the disposal of Japanese dead to ensure the scant natural fresh water supply was not contaminated and tested captured Japanese food for safety. That was all the Marines had to eat until the island was secured. On October 31, 1945, Lew was discharged, returning to work for DNR as a fisheries biologist in Spooner. In 1947, Lew's career took a historically momentous change when he sought the assistance of the Isaak Walton League and Virgil

Muench, A.D. Sutherland, and Dr. Jacob Reigel, who would later be appointed to the Wisconsin Conservation Commission, to confront the threats to rivers. From Spooner, he was transferred to Black River Falls and then, in 1955, to Madison.

Lew's early career in DNR as a fisheries biologist centered around advising fish hatcheries on disease control, hatchery sanitation, establishing rearing ponds, investigating pollution, and stocking fish, including experimenting with aerial fish stocking. In 1947, the legislature passed the County Board Law requiring the Public Service Commission to issue permits for hydroelectric dams if they were economical and did not jeopardize other dams. The County Board Law prevented the Wisconsin Conservation Department from raising conservation and public interest concerns in Public Service Commission regulatory proceedings. Also, in 1947, the Public Service Commission held hearings on a Dairyland Power Cooperative dam application on the Flambeau River in the township of Dewey. Most farms in the area were not electrified. Farmers were having trouble getting electrical service through the power company, so they backed the cooperative since they would own the hydropower dam and its electricity. Dr. John Bordner from the Economic Land Survey, Lew's former supervisor, testified at the hearing that the growth of farming in the area indicated three times as much electricity was needed than was available. The unholy combination of the County Board Law and Public Service Commission decision granting the hydropower license to Dairyland on the Flambeau River indicated to Lew that the deck was stacked against him having a viable way to oppose the proposed Dahlberg Dam on the Namekagon. Lew knew that to have any chance at stopping this dam, he would have to have an outside interested group to raise objections to it, so he solicited help from the Isaak Walton League. This was risky since Governor Rennebohm did not favor state agencies fighting between themselves in the public eye. A firebrand surgeon and Isaak Walton League member from St. Croix Falls, Dr. Riegel, was concerned with the "epidemic" of hydroelectric dams being built on the state's wild rivers and was opposed to the Flambeau River dam, as was a handful of other people. However, most of the 1,000 people at the hearing, and a few sportsmen, supported the dam. The Wisconsin Conservation Department witness, Dr. Edward Schneeberger, director of the Fisheries Bureau, vacillated on the impact of the dam on the Flambeau River, angering Dr. Riegel, who had been recently appointed but not confirmed as a conservation commissioner by

Governor Goodland. Some sports groups contested Dr. Reigel's confirmation in the senate because of his outspoken opposition to dams and the person he was replacing on the conservation commission. Dr. Reigel's opposition also tried to have his appointment withdrawn by acting governor Rennebohm, but ultimately, Dr. Riegel was confirmed. Once appointed to the Wisconsin Conservation Commission, Dr. Reigel handpicked Lew to become the newly created Wisconsin Conservation Department's Chief of Rivers Survey and designated environmental advocate for protecting the state's rivers in future Public Service Commission and Federal Power Commission (FPC) regulatory proceedings.

Dr. Reigel had a fire in his belly to lead the charge against damming the state's wild rivers. As commissioner, he leveraged a budget of \$35,000 (about \$400,000 today) in 1948 to complete a statewide survey of Wisconsin's remaining undammed rivers needing protection. Shortly after, Lew started to prepare the survey of rivers needing protection from dams and development based on what he had seen and observed working on the Bordner survey. In 1950, several members of the Izaak Walton League met for their annual convention at the Foeste Hotel in Sheboygan. Among the members were conservation luminaries, including the Wisconsin Conservation Department and Izaak Walton League members Virgil Muench, A.D. Sutherland, and Dr. Jacob Reigel. Dr. Reigel delivered an impassioned speech on the state of rivers in the state, expressing urgency that: "... public apathy and growing abuses and practices by the past public service commission have foredoomed every river in the state.... If you and I do not act promptly every resource of this kind will be totally destroyed in the very near future."

While the river survey was started by Lew in 1948, it was only completed due to other priorities, including fighting forest fires, once Lew submitted a draft to the conservation commission in 1951. This survey was the official notice of rivers the Wisconsin Conservation Department would protect. The conservation commission promptly approved it. With the Public Service Commission decision on the Flambeau River, Lew could see the handwriting on the wall for the Namekagon River. The County Board Law could obviate anything he would say or submit in opposition to the permit passed in 1947. There was a question about whether the WCD should even participate in what appeared to be a futile hearing where the hydropower project would be granted on the Namekagon as a fait accompli. Lew cared enough about the Namekagon River that "he stuck his neck out" by

encouraging the Isaak Walton League to participate in the proceedings. Virgil Muench fished the Namekagon, but he was not an aggrieved party as it was defined at the time since he had no pecuniary interests in the Namekagon River. The Supreme Court Muench decision changed that. Lew's role in the Muench case was to actively elicit Muench's help and tactically steer a Department of Justice lawyer by advising him when to object to the opposition counsel's questioning. After the permit was granted and its appeal wended its way through the district and appellate courts, the Public Service Commission's granting of a permit for Dahlberg to build a hydropower dam on the Namekagon River was appealed by Muench to the Wisconsin Supreme Court. The Supreme Court overturned the Public Service Commission's permit decision in 1952 for three reasons. 1. The County Board Law was unconstitutional because it could not supersede state law. Therefore, the Public Service Commission could not defer to the county board. 2. Virgil Muench was an aggrieved party and did not have to have a pecuniary interest in the Namekagon River. It was enough that he had a public interest in the Namekagon. 3. The State had an obligation to protect the public interest, so it had an obligation to sue another state agency to protect the public interest. That portion of the Muench decision later served as the basis for the Public Intervenor in the Justice Department.

The river survey had a profound national impact later in the FPC decision denying Dahlberg a license for a dam on the Namekagon. There was great concern that the FPC would license the dam and override the State's objections under the doctrine of federal supremacy. Fortunately, that did not happen. In addition, the Public Service Commission Muench decision was determined to be unconstitutional and gave the state the right to sue another state agency and broadened the definition of a party of interest.

At the federal level, the FPC held a lengthy hearing in Spooner that was continued in Washington. The hearing examiner recommended granting the license, but the full FPC overruled him and went on with a long discussion about how the "unique recreational value" of preservation to not just the local citizens but tourists from Illinois and Minnesota outweighed the economic and recreational benefits of an otherwise good power dam (cheaper power at a profit) that could have been licensed under the Federal Power Act. The FPC specifically referenced the Wisconsin Conservation Department's preservation plan described in the rivers

survey prepared by Lew and approved by the Conservation Commission in 1951 as being dispositive evidence requiring denial of the license. In addition, there was considerable discussion on smallmouth fishing and canoeing on the Namekagon and how the new impoundment would just be another lake in an area with plenty of lakes.

The federal cases are Namekagon Hydro Company, Project No. 2097, 12 FPC 203(1953), Opinion No. 257. It was affirmed by the 7th Circuit Court of Appeals in Chicago, again discussing the evidence of unique value from the State as critical to the validity of the FPC decision—Namekagon Hydro Company v. FPC, 216 F. 2d 509 (7th Cir., 1954).

That decision is widely cited as the first time the FPC had decided conservation and recreational values outweighed commercial values and as support for later important environmental decisions like Scenic Hudson. In 1935, some conservation-oriented congressmen got amendments to the FPA that allowed the FPC to balance conservation and economic interests. Still, Namekagon was the first time they did it, implying this was the first opportunity they had a clear enough evidentiary case to deny a permit for any other reason than economic. Later, the National Environmental Policy Act and the Wisconsin Environmental Policy Act would reflect a similar logic. In 1970, Buzz Besadny and Lew formed the Bureau of Environmental Impact, which was included in the Office of the Secretary of the DNR to ensure compliance with the Wisconsin Environmental Policy Act and National Environmental Policy Act. They implemented the first procedures for implementing both acts in Wisconsin.

This was a lot of legal work for a small staff: a state hearing, two state court appeals, and three federal hearings- two in Washington, a rare oral argument before the full FPC, and a federal court appeal. After the 7th Circuit decision, Dahlberg withdrew the state proceeding. The River Survey was a one-man band then, and the Isaak Walton League did not have a lot of legal and technical resources either; however, Lew's technical competence and the state's legal resources combined with the Isaak Walton League created a well-balanced team.

Along with C.D. Buzz Besadny, Lew was responsible for establishing an interdepartmental DOT/DNR liaison cooperative agreement for balancing responsible environmental stewardship with transportation infrastructure needs.

This liaison process was first established by Lew in 1952. It has worked well for over 70 years, allowing the entire interstate highway system, federal and state highways, and airports to be built and improved in an environmentally responsible way. They also continued coordinating activities under the highway liaison agreement.

In 1967, the state Legislature approved the report of the Kellett Commission, established by Gov. Warren Knowles, to study the reorganization of state government. A year later, the Kellett Reorganization Bill merged the departments of Conservation, which included wildlife, fisheries, and forestry management, and Resource Development, whose Water Resources Division was responsible for environmental protection functions. Since the old Public Service Commission's regulatory duties were transferred to DNR, Lew's functions changed from representing the Wisconsin Conservation Department's interests at PSC hearings to mentoring employees who would have to learn how to determine navigability and ordinary high-water marks. Over the years, Lew established a reputation as an expert on both determinations. There was a concern that natural resources and the public interest would no longer have Lew's independent voice to protect them under the new DNR arrangement. Consequently, the Office of the Public Intervenor was established in the Department of Justice to perform Lew's previous duties as an environmental advocate in the Wisconsin Conservation Department.

Over the years, Lew was presented with several awards, including The first John Brogan Award for outstanding achievements in environmental protection, the Trout Unlimited Conservation Award, and the Wisconsin Chapter of the Soil Conservation Society certificate of recognition.

After retirement, Lew continued to help protect Wisconsin's natural resources heritage as a member of the Wisconsin Rivers Alliance and advisor to the Wisconsin Public Television program "Keepers of the Public Trust."

Lew's contributions were professional in establishing enduring conservation policy and setting legal precedents in the Wisconsin Supreme Court and at the federal level with the FPC. His many accomplishments would not have been possible without leveraging the river survey's small staff of himself and an assistant by collaborating with other Conservation Department staff so Lew could focus his

limited resources on where he could do the most good. Lew was careful and strategic in which projects he picked to make a difference. He was right in focusing on the Namekagon River hydropower project. Lew got help with the fieldwork from many unrecognized yet fully committed game wardens, fish managers, foresters, and wildlife managers who worked behind the scenes in addition to their regular jobs to support him. In addition, Lew benefited from the full, unconditional support of the Conservation Department administration and the Conservation Commission.

Lew's survey of rivers needing protection served as the basis for Wisconsin's state and federal wild and scenic river system. It was a readymade list of the state's candidate rivers for designation of the Pine and Popple Rivers as State of Wisconsin wild rivers in 1965 and the St. Croix and Namekagon as the first entries in the Wild and Scenic Rivers Act System in 1968. His efforts and those of Virgil Muench and Southerland in protecting the Namekagon River allowed it to be included alongside the St. Croix River as the first wild and scenic river in Wisconsin as a tribute to Senator Gaylord Nelson. The Muench decision and the FPC denial of the Dahlberg Dam on the Namekagon had far-reaching impacts on water law in the state and nation, including being the first to justify denying a permit for environmental reasons.

Lew Posekany sacrificed much, serving as the State of Wisconsin's environmental conscience. Lew became the Department of Natural Resources' moral conscience and institutional memory, influencing thousands of employees for over 45 years as a tireless, dedicated advocate and defender of the state's natural resources.

Lew worked alongside Virgil Mensch and Southerland to protect the Namekagon River from a hydropower dam. Their efforts led to the Namekagon and St. Croix Rivers being the first rivers to be included in the Federal Wild and Scenic Rivers System to honor Senator Gaylord Nelson. Lew also worked with C.D. Besadny in developing the procedures for implementing the Wisconsin and National Environmental Policy Acts in Wisconsin and carrying out the DOT/DNR highway liaison process. Lew's efforts to protect the Flambeau River complemented Sigurd Olson's interest in preserving the forested corridor of the Flambeau River State Forest alongside the Flambeau River.



Lew led the effort to preserve the Namekagon River from a hydroelectric project. Because of his work, it is a high-quality stream and a federally designated wild and scenic river. The Namekagon River Supreme Court case results, referred to as the Muench decision, authorized state agencies to challenge each other in the courts. Furthermore, it established the tradition of the environmental advocate, a task Lew carried out long before environmental advocacy was popular. He often acted as his legal counsel, preparing arguments and cross-examining witnesses because the Wisconsin Conservation Department only had one attorney. Consequently, Lew was respected among lawyers for his knowledge of the law, legal procedure, the public trust doctrine, ordinary high-water mark and navigability determinations, aquatic biology, engineering, and hydrology. He was recognized as the leading expert in ordinary highwater mark determinations by the Wisconsin Supreme Court. Lew effectively translated his encyclopedic knowledge into the most far-reaching, progressive, and long-lasting decisions the courts have rendered on environmental matters in Wisconsin's and the Nation's history. Those cases were the foundation for landmark decisions such as *Just v. Marinette County* upholding Wisconsin's shoreland zoning ordinance restrictions on a landowner's right to alter private lands near navigable waters. The precedence set in these court decisions has been cited in other cases, leading to environmentally sounder and more balanced jurisprudence and the legal basis for protecting the Lower Wisconsin River. The tradition of the environmental advocate Lew used to perform was incorporated into the Department of Justice as the Public Intervenor by the Kellett Reorganization Bill in 1967, where full-time attorneys staffed it.