

LAWRENCE. M. KRIESE FOR  
WISCONSIN COUNCIL OF TROUT UNLIMITED  
2762 White Pine Road  
Green Bay, WI 54313,

THE ANTIGO CHAPTER OF TROUT UNLIMITED  
213 Mary Street  
Antigo, WI 54409,

THE WOLF RIVER CHAPTER OF TROUT UNLIMITED  
N4297 Buettner Road  
White Lake, WI 54491,

THE GREEN BAY CHAPTER OF TROUT UNLIMITED  
1531 Lost Dauphin Road  
De Pere, WI 54115,

LORI J. REGNI FOR  
THE LANGLADE COUNTY WATERWAYS ASSOCIATION  
121 Kilma Road  
Elcho, WI 54428,

PAUL J. MONGIN  
1151 Delray Drive  
Green Bay, WI 54304,

PAUL AND BETTY WOCHINSKI  
N11560 Post Lake Drive  
Elcho, WI 54428,

Case No.:  
Case Codes: 30607, Administrative  
Agency Review; 30701, Declaratory  
Judgment

MITCHELL G. BENT  
716 Eastview Drive  
Antigo, WI 54409,

LLOYD M. ANDREWS  
8764 Brunswick Road  
Minocqua, WI 54548, and

THE MENOMINEE INDIAN TRIBE  
W2908 Tribal Office Loop Road  
Kenosha, WI 54135,

Petitioners,

v.

DEPARTMENT OF NATURAL RESOURCES  
SCOTT HASSETT, SECRETARY  
101 S. Webster Street  
Madison, WI 53705-7912,

Respondent.

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**PETITION FOR JUDICIAL REVIEW and DECLARATORY JUDGMENT**

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The above-named Petitioners (collectively, “Petitioners”), by their attorneys, Garvey & Stoddard, S.C., Midwest Environmental Advocates, Inc., and John Wilhelmi, petition the Court for judicial review of a series of determinations of the Department of Natural Resources (“DNR”) pursuant to Wis. Stat. § 227.52 *et seq.* and declaratory judgment pursuant to Wis. Stat. § 227.40(2)(e) (2001-02). The final agency decisions for review are: 1) the DNR’s decision to approve a high capacity well permit application for the purposes of producing bottled water; 2) the DNR’s related decision to approve the permit application without requiring an environmental impact statement (“EIS”) or environmental assessment (“EA”) under Wis. Stat. § 1.11; and 3) the DNR’s decision to deny Petitioners a contested case hearing. The underlying well permit application was submitted on behalf of Dennis Hose, d/b/a Polar Ice Water (“Polar Ice”). In support of this petition, Petitioners state:

**PETITIONERS**

1. Petitioner Lawrence M. Kriese appears on behalf of the Wisconsin Council of Trout Unlimited (“Trout Unlimited”), a statewide conservation organization dedicated to the preservation and protection of Wisconsin’s coldwater resources. Its address is 2762 White Pine Road, Green Bay, WI 54313. The DNR’s decision to allow

construction and operation of the Polar Ice high capacity wells will harm the substantial interests of the members of Trout Unlimited, who use and in some cases live near the coldwater resources that will be negatively impacted by the wells. Specifically, the members of Trout Unlimited allege that the removal of significant quantities of ground water that directly contribute to the quantity and environmental quality of connecting surface waters will cause irreparable harm to these waters. The surface waters that will be affected by the Polar Ice wells include Rabe Pond, Rabe Creek, the Garski Flowage, the Wolf River, and surrounding wetlands. Reduced spring flow into these waters will negatively impact the coldwater fisheries they contain and the Petitioners' abilities to use the fisheries. The interests of the members of Trout Unlimited are therefore harmed by the DNR's decision to grant the high capacity well permit, and by the DNR's failure to prepare an EIS or EA. The Trout Unlimited members are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed the members' concerns regarding the well approval.

2. The Antigo Chapter of Trout Unlimited ("the Antigo Chapter") has been organized to carry out the mission of Trout Unlimited to protect, restore and maintain the state's coldwater resources. Its address is 213 Mary Street, Antigo, WI 54409. Members of the Antigo Chapter use Rabe Pond, Rabe Creek, the Garski Flowage, and the Wolf River for fishing and other recreation, and in some cases live near these areas. They allege that the DNR's decision to grant the Polar Ice high capacity well permit will negatively affect their ability to use these waters for the same reasons stated in Paragraph 1, *supra*. The interests of the members of the Antigo Chapter are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to

prepare an EIS or EA. The Antigo Chapter members are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed the members' concerns regarding the well approval.

3. The Wolf River Chapter of Trout Unlimited ("the Wolf River chapter") has been organized to carry out the mission of Trout Unlimited to protect, restore and maintain the state's coldwater resources. Its address is N4297 Buettner Road, White Lake, WI 54491. Members of the Wolf River Chapter use Rabe Pond, Rabe Creek, the Garski Flowage, and the Wolf River for fishing and other recreation, and in some cases live near these areas. They allege that the DNR's decision to grant the Polar Ice high capacity well permit will negatively affect their ability to use these waters for the same reasons stated in Paragraph 1, *supra*. The interests of the members of the Wolf River Chapter are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. The Wolf River Chapter members are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed the members' concerns regarding the well approval.

4. The Green Bay Chapter of Trout Unlimited ("the Green Bay Chapter") has been organized to carry out the mission of Trout Unlimited to protect, restore and maintain the state's coldwater resources. Its address is 1531 Lost Dauphin Road, De Pere, WI 54115. Members of the Green Bay Chapter use Rabe Pond, Rabe Creek, the Garski Flowage, and the Wolf River for fishing and other recreation, and in some cases live near these areas. They allege that the DNR's decision to grant the Polar Ice high capacity well permit will negatively affect their ability to use these waters for the same

reasons stated in Paragraph 1, *supra*. The interests of the members of the Green Bay Chapter are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. The Green Bay Chapter members are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed the members' concerns regarding the well approval.

5. Lori J. Regni appears on behalf of the Langlade County Waterways Association ("LCWA"), an organization comprised of individual volunteers and volunteers from various government bodies and lake and river organizations. Its address is 121 Kilma Road, Elcho, WI 54428. The LCWA's mission includes advocacy for the protection of the state's groundwater, and its members recreate in the areas that will be affected by the Polar Ice wells, including the Wolf River watershed. LCWA's members allege that the DNR's decision to grant the Polar Ice high capacity well permit will negatively affect their ability to use nearby surface waters for the reasons stated in Paragraph 1, *supra*. The members of LCWA are also concerned that the DNR did not adequately quantify the volume of water the applicant will remove from and transfer out of the aquifer. The interests of the members of LCWA are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. LCWA's members are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed the members' concerns regarding the well approval.

6. Paul J. Mongin is an adult resident of Wisconsin residing at 1151 Delray Drive, Green Bay, WI 54304. His substantial interests are injured or threatened by the

DNR's decision to permit the Polar Ice wells in that the operation and construction of these wells would impact the surface water in the vicinity of the wells. Mr. Mongin actively fishes in the areas that would be affected, including Rabe Pond, Rabe Creek, and Garski Flowage. He is concerned that the removal of spring water from the aquifer will impact spring flow into Rabe Pond and threaten the trout fishery there. Mr. Mongin's interests are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. Mr. Mongin is further aggrieved by the DNR's decision to deny him a contested case hearing in this matter, which would have addressed his concerns regarding the well approval.

7. Paul and Betty Wochinski are adult residents of Wisconsin residing at N11560 Post Lake Drive, Elcho, WI 54428. They recreate in and enjoy the aesthetics of the natural resources in the vicinity of the Polar Ice wells. Their recreational and aesthetic interests will be threatened or injured if the wells are constructed and operated because the wells would have adverse ecological impacts on the natural resources in that vicinity. Mr. and Ms. Wochinski are primarily concerned that their substantial interests in enjoying the natural resources in the area will be threatened or injured because Rabe Pond, Rabe Creek and the Wolf River water basin will be adversely impacted by the Polar Ice wells. Mr. and Ms. Wochinski's interests are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. Mr. and Ms. Wochinski are further aggrieved by the DNR's decision to deny them a contested case hearing in this matter, which would have addressed their concerns regarding the well approval.

8. Mitchell G. Bent is an adult resident of Wisconsin residing at 716 Eastview Drive, Antigo, WI 54409. Mr. Bent is a trout angler who fishes Rabe Pond and Rabe Creek as well as Garski Flowage, which receives part of its flow from Rabe Creek. He is concerned that his substantial interest in fishing in those waters will be injured or threatened with injury by the removal and transfer of spring water from the aquifer supplying the waters, thus adversely affecting the coldwater trout fishery he uses. Mr. Bent's interests are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. Mr. Bent is further aggrieved by the DNR's decision to deny him a contested case hearing in this matter, which would have addressed his concerns regarding the well approval.

9. Lloyd M. Andrews is an adult resident of Wisconsin residing at 8764 Brunswick Road, Minocqua, WI 54548. Mr. Andrews is a conservationist and a trout angler who fishes in the vicinity of the proposed wells and who is concerned about the diversion of groundwater out of the watershed to the proposed Polar Ice wells. Mr. Andrews' substantial interests in using the waters in the vicinity of the proposed wells would be injured or threatened with injury by the negative impacts on the wild brook trout fishery in the stream and the springs that depend on the aquifer. Drawdowns resulting from the operation of the proposed wells could reduce the quality of the brook trout in the fishery. Additionally, Mr. Andrews is concerned that the bottling operation will permanently remove water from the watershed, thus negatively impacting the watershed's ability to support brook trout and other biota in the Rabe Springs waters. Mr. Andrews' interests are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. Mr. Andrews is

further aggrieved by the DNR's decision to deny him a contested case hearing in this matter, which would have addressed his concerns regarding the well approval.

10. The Menominee Indian Tribe of Wisconsin ("the Tribe"), a federally-recognized Indian Tribe, is concerned about the quantity of spring water that Polar Ice would pump and remove from the aquifer that delivers water to Rabe Creek, thereby adversely affecting the Little West Branch of the Wolf River and West Branch of the Wolf River, which flow to and through the Menominee Indian Reservation. Its address is W2908 Tribal Office Loop Road, Kenosha, WI 54135. The Tribe is concerned that removal and transfer of spring water from the aquifer and out of the watershed will result in reduced spring flow into the Rabe Creek system, thus negatively affecting the coldwater fishery on the Menominee Indian Reservation. Additionally, the Tribe has treaty rights in the use of the ground and surface waters flowing to and through the Reservation. The Tribe's interests are therefore harmed by the DNR's decision to grant the high capacity well permit and by the DNR's failure to prepare an EIS or EA. The Tribe is further aggrieved by the DNR's decision to deny it a contested case hearing in this matter, which would have addressed its concerns regarding the well approval.

### **RESPONDENT**

11. The DNR is a state agency whose Secretary is Scott Hassett, and whose address is 101 S. Webster Street, Madison, WI 53705-7912. The DNR's duties with respect to the State's water resources are as follows: "to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private." Wis. Stat. § 281.11. The DNR is empowered to carry out these duties by Chapter 281 of the Wisconsin Statutes, which is to be liberally construed in favor of the

policies stated in that Chapter. Id. The DNR's duties include reviewing and making determinations for high capacity well applications, Wis. Stat. § 281.17, and carrying out the requirements of Wisconsin's Environmental Policy Act, Wis. Stat. § 1.11 *et seq.*

### **FACTS**

12. On July 9, 2003, the DNR received an application for a high capacity well for purposes of producing bottled water in the Town of Polar, Langlade County.

13. The application was submitted by Dean Funk of Rhinelander on behalf of Dennis Hose, N3360 Polar Road, Polar, Wisconsin, d/b/a Polar Ice Water ("Polar Ice").

14. The above-referenced application included a request for **a new high-capacity well** with a proposed maximum daily pumpage rate of 180,000 gallons. It also requested continued operation of **two existing high capacity wells** on the property (DNR well numbers 81405 and 81406), each with an approved maximum daily pumpage rate of 1,393,000 gallons, plus **one existing low-capacity well**.

15. The existing wells had been used for a trout farming business on the property. Most water pumped from the existing wells had not previously been removed from the watershed, but rather had been returned to Rabe Springs.

16. In a letter dated July 25, 2003, the DNR granted Polar Ice its requested high capacity well approval. The DNR stated that the two existing high capacity wells on-site would not be allowed to operate simultaneously, and that the approved combined daily maximum pumpage rate from all four wells would be 1,573,000 gallons.

17. Public statements made by Mr. Hose indicated that *actual* (not approved) daily pumpage levels at the fish farm were around 1.080 to 1.152 million gallons, which

is substantially less than the projected 1.573 gallon daily pumpage rate for the bottling operation.

18. In the July 25, 2003 letter, the DNR also found that the new well would be fitted with a 300 gallon per minute pump (432,000 gallons per day), rather than the 180,000 gallons per day requested in the application. A true and correct copy of the July 25, 2003, letter is attached as **Exhibit A**.

19. In the July 25, 2003 letter, the DNR found that there would be a decrease of 958,000 gallons of water withdrawn on the property per day as compared with the property's prior use based on *approved* maximum daily pumpage levels.

20. The DNR also found that the water pumped for bottling would be transported by truck off-site for bottling facilities.

21. The DNR concluded the July 25, 2003 letter by stating it was granting the Polar Ice application because the high capacity wells were not expected to significantly reduce groundwater availability to the nearest public utility well. The DNR also stated that the approval was based on information provided to it by the well owner or agent.

22. The DNR did not prepare an EIS or EA prior to approving the high capacity well application.

23. The July 25, 2003, letter did not account for the fact that although most water withdrawn for the fish farming operation was returned to the Rabe Springs area, most water withdrawn for the bottling operation would be removed from this area and exported out of the watershed.

24. Likewise, the July 25, 2003 letter did not assess or discuss the impacts that the high capacity wells would have on public trust surface water resources.

25. On August 22, 2003, the Petitioners filed a request for a contested case hearing pursuant to Wis. Stat. § 227.42 with the DNR regarding the Polar Ice high capacity well approval. The bases for the request were the DNR's failure to prepare an EIS, and the DNR's allegedly erroneous finding that more water would be available for Rabe Springs. The August 22, 2003 request also stated Petitioners' substantial interests in the DNR's decision. A true and correct copy of the August 22, 2003 Petition for a Contested Case is attached as **Exhibit B**.

26. In a letter dated September 2, 2003, the DNR granted in part and denied in part the Petitioners' request for a contested case hearing. It granted the request based on the DNR's action of issuing a high capacity well approval to Polar Ice, finding that the Petitioners had met statutory requirements for that issue.

27. The DNR denied the contested case hearing request as to whether an EIS was required because, according to the DNR, approval of a high capacity well application was a Type IV action under Chapter NR 150 of the Wisconsin Administrative Code. The DNR asserted that by administrative rule, approval of Type IV actions do not require an EIS. A true and correct copy of the September 2, 2003 letter is attached as **Exhibit C**.

28. In a letter dated September 19, 2003, Polar Ice asked the DNR to reconsider its grant of a contested case hearing on the high capacity well approval. Polar Ice asserted that Petitioners did not meet two of the four standing requirements under Wis. Stat. § 227.42(1): whether there was legislative intent to protect Petitioners' interests, and whether there was a dispute of material fact. Wis. Stat. § 227.42(1)(b), (d).

29. After September 19, 2003, Petitioners and Polar Ice sent a number of letters to the DNR advocating their respective positions. In a letter dated October 22,

2003, Attorney William P. O'Connor, writing on his own behalf, advised the DNR that he believed Petitioners' interests were intended to be protected by law and that impact to public waters was a material fact in high capacity well permit decision-making. A true and correct copy of Attorney O'Connor's letter is attached as **Exhibit D**.

30. In a letter dated October 23, 2003, DNR Secretary Scott Hassett stated that the DNR had reconsidered its position and was denying Petitioners the contested case hearing on all issues. This letter states that the reasons for denying the contested case on the well permit approval were that Petitioners failed to meet the two standing requirements identified in Polar Ice's letter of September 19, 2003. The October 23, 2003 letter is attached as **Exhibit E**.

31. This petition is timely as it is being filed and served within 30 days after service of the DNR's October 23, 2003 decision, and because there has not been a contested case hearing on any of the DNR's decisions in this matter.

### **CLAIMS & GROUNDS FOR REVIEW**

#### **CLAIM ONE: THE DNR VIOLATED ITS DUTY TO PROTECT THE PUBLIC TRUST**

32. Petitioners reallege and incorporate each of the preceding paragraphs, and further allege as follows:

33. Article IX, Section I of the Wisconsin Constitution, state statutes, and common law establish the "Public Trust Doctrine" in Wisconsin and require the State to hold the navigable waters of the State in trust for all citizens.

34. The Wisconsin Legislature delegated authority to the DNR to act as a trustee of the Public's resources and to protect the State's navigable waters.

35. The DNR has the authority and the responsibility to protect the waters of

the State under Article IX, Section I of the Wisconsin Constitution, Wisconsin's common law, Wis. Stat. Ch. 281, Wis. Stat. Chs. 30 and 31, Wis. Stat. Ch. 1, Wis. Admin. Code Ch. NR 150, and Wis. Admin. Code Ch. NR 812.

36. The areas affected by Polar Ice's proposed water extraction operations include constitutionally protected navigable waters, including Rabe Pond, Rabe Creek, the Garski Flowage, the Wolf River, and surrounding wetlands.

37. In approving the Polar Ice high capacity well application, the DNR cursorily determined that the bottling operation would withdraw less ground water and have less impact on surface waters than the fish farming operation.

38. This determination, made without a hearing, was not supported by substantial evidence in the record, but was based on conjecture and warranted further examination.

39. By allowing Polar Ice to extract water without first preparing an EA or EIS or without otherwise developing sufficient evidence to make a reasonable finding of no significant impact to public trust resources, the DNR breached its statutory, common law, and constitutional duties to protect public trust resources, including fish, wildlife, aquatic plants, and associated wetlands.

40. The DNR breached its duties as trustee by its overly narrow review of the Polar Ice proposal under Wis. Admin. Code Ch. NR 150 and Wis. Stat. § 1.11, and by erroneously restricting its review to the impact of the high capacity wells on public utilities.

41. Because the DNR has approved the high capacity wells without protecting

public trust resources, and because its limited factual determinations were not supported by substantial evidence, this Court should set aside the approval, pursuant to Wis. Stat. § 227.57(5) to (8).

**CLAIM TWO: THE DNR'S CLASSIFICATION OF HIGH CAPACITY WELLS AS A TYPE FOUR ACTION VIOLATES WEPA AND THE PUBLIC TRUST DOCTRINE.**

42. Petitioners reallege and incorporate each of the preceding paragraphs, and further allege as follows:

43. The Wisconsin Environmental Policy Act ("WEPA"), Wis. Stat. § 1.11, requires an environmental statement for major actions significantly affecting the quality of the human environment, which the DNR has interpreted in Wis. Admin. Code Ch. NR 150.

44. High capacity wells have the potential to significantly reduce available ground and surface water, actions which have serious consequences for the ecosystems in which those wells are located and for connecting waterways. See Environmental Assessment, Perrier Proposed High Capacity Well, 9/18/00, a true and correct copy of which is attached as **Exhibit F**; see also Concerned Citizens of Newport, Inc. v. DNR, Columbia County Case No. 00-CV-304, Final Order for Judgment and Judgment, 4/17/02, a true and correct copy of which is attached as **Exhibit G**.

45. Permitting a high capacity well is a major action significantly affecting the quality of the human environment, including waters protected by the body of law that comprises the Public Trust Doctrine.

46. Ch. NR 150.03(8)(h)1. violates WEPA, Wis. Stat. § 1.11 *et seq.* and the

body of law that comprises the public trust doctrine by classifying high capacity well approvals as Type IV actions, which are presumed to have no significant environmental impact. NR §§ 150.03(4)(e).

47. The conflict between NR § 150.03(8)(h)1. and WEPA, Wis. Stat. § 1.11 *et seq.* and the body of law that comprises the Public Trust Doctrine warrants a Declaratory Judgment under Wis. Stat. § 227.40(2)(e) and § 227.40(4) that this section of Ch. NR 150 is invalid.

**CLAIM THREE: THE DNR ERRED IN APPROVING THE POLAR ICE HIGH CAPACITY WELLS WITHOUT PERFORMING AN EIS OR EA.**

48. Petitioners reallege and incorporate each of the preceding paragraphs, and further allege as follows:

49. High capacity wells have the potential to affect public trust resources.

50. Public trust resources are critical resources under NR § 150.20(1)(a).

51. The DNR erred in failing to exercise its authority to conduct an EA on the Polar Ice application when critical resources are affected by the high capacity well. Its failure to do so is grounds for review for this Court to set aside and remand the high capacity well approval and order the DNR to conduct an EIS or EA, under Wis. Stat. § 227.57(7) and (8).

**CLAIM FOUR: THE DNR ERRED IN DENYING PETITIONERS A CONTESTED CASE HEARING REGARDING ITS APPROVAL OF THE POLAR ICE HIGH CAPACITY WELL PERMIT.**

52. Petitioners reallege and incorporate each of the preceding paragraphs, and further allege as follows:

53. In overturning its prior approval of Petitioners' request for a contested

case hearing on the Polar Ice wells, the DNR stated that Wis. Stat. § 281.17 did not allow it to consider impacts to public trust waters. The DNR thus tacitly asserted that there was evidence of legislative intent that the Petitioners' interests were not to be protected by law. The DNR also found that impact to public trust waters was not a material fact under Wis. Stat. § 227.42(1)(d).

54. The DNR erroneously interpreted Wis. Stat. § 281.17, neglecting to acknowledge the public's right in State waters as established in state law, e.g., Wis. Stat. § 281.11, and the Public Trust Doctrine, and its duty to protect that right. Based upon these provisions, the DNR erred in finding evidence of legislative intent that Petitioners' interests were not protected and that an impact to public trust waters was not a material fact.

55. Because there is no evidence that the legislature intended to restrict the interests of the beneficiaries of the public trust, including the Petitioners, the DNR erred in denying the contested case hearing under Wis. Stat. § 227.42(1)(b).

56. Because the DNR should have considered the impact to public trust waters, the Polar Ice wells' impact on public trust waters was a material fact, the DNR erred in denying the contested case hearing under Wis. Stat. § 227.42(1)(d).

57. The DNR erroneously interpreted the law and violated state and constitutional provisions in overruling its decision to grant Petitioners a contested case hearing on the permit approval, warranting the court's reversal of the DNR's decision to deny a contested case hearing, pursuant to Wis. Stat. § 227.57(5) and (8).

**CLAIM FIVE: THE DNR ERRED IN DENYING PETITIONER MENOMINEE INDIAN TRIBE A CONTESTED CASE HEARING REGARDING ITS APPROVAL OF THE POLAR ICE HIGH CAPACITY WELL PERMIT.**

58. Petitioners reallege and incorporate each of the preceding paragraphs, and further allege as follows:

59. In addition to the preceding claim, Petitioner Menominee Indian Tribe of Wisconsin's ("the Tribe's") interests are protected by law because it has treaty rights in the waters flowing through the Menominee Indian Reservation which could be affected by the Polar Ice wells. There is no evidence of legislative intent that the rights of the Tribe are not to be protected and that the impact on these rights is not a material fact.

60. The DNR did not consider Petitioner Tribe's treaty rights in the waters in question prior to denying it a contested case hearing.

61. The DNR erroneously interpreted the law and violated state and constitutional provisions in overruling its decision to grant Petitioner Tribe a contested case hearing on the permit approval, warranting the court's reversal of the DNR's decision to deny a contested case hearing, pursuant to Wis. Stat. § 227.57(5) and (8).

### **RELIEF REQUESTED**

WHEREFORE, Petitioners ask the Court for the following relief:

- 1) Set aside, reverse, remand, or modify the DNR's decision to grant the Polar Ice high capacity well permit;
- 2) Declare NR 150.03(8)(h)1. invalid as a violation of Wis. Stat. § 1.11 *et seq.* and the Public Trust Doctrine;
- 3) Set aside, reverse, remand, or modify the DNR's decision to not conduct an EA prior to approving the high capacity well for Polar Ice;
- 4) Set aside, reverse, remand, or modify the DNR's decision to deny Petitioners a contested case hearing;

- 5) Award Petitioners' attorneys fees and costs; and
- 6) Such other relief as the Court deems just and equitable.

Dated this 21st day of November, 2003.

Respectfully Submitted,  
Counsel for Petitioners

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