FILED 04-11-2019 CIRCUIT COURT DANE COUNTY, WI 2016CV001564

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY BRANCH 3

JAMES COORS, et al.,

Petitioners,

v.

Case No. 16-CV-1564

WISCONSIN DEPARTMENT OF NATURAL RESOURCES, et al.,

Respondents.

## NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OR RELIEF FROM ORDER

TO: Christa O. Westerberg 122 W. Washington Ave., Suite 900 Madison, WI 53701

> Alf E. Sivertson 1465 Arcade Street Saint Paul, MN 55106

Dyllan Linehan 13394 W. Trepania Road Hayward, WI 54843

PLEASE TAKE NOTICE that the Respondents Wisconsin Department of Natural Resources (DNR) and Natural Resources Board, by their attorneys, Wisconsin Attorney General Joshua L. Kaul and Assistant Attorney General Lorraine C. Stoltzfus, will move the Court, the Honorable Valerie Bailey-Rihn presiding, on a date and at a time to be set by the Court, and hereby moves the Court, pursuant to Wis. Stat. § 805.17(3), to reconsider its ruling from the bench made on March 7, 2019 and the

subsequent Order signed by the Court on March 22, 2019, or pursuant to Wis. Stat. § 806.07(1) to grant relief from the Order, that ordered DNR to propose a site-specific phosphorus criterion (SSC) for Lac Courte Oreilles (LCO). Specifically, Respondents request that the Court find that DNR made a good faith effort to develop a phosphorus SSC for LCO but was unable to do so because the facts and the law do not support such a criterion; to find that to the extent that any part of the Stipulation may require DNR to take an action that is not authorized under Wis. Stat. § 281.15(2)(c) and Wis. Admin. Code § NR 102.06(7), that part of the Stipulation is void; and to determine that DNR complied with the Stipulation to the extent that it was able to do so under Wis. Stat. § 281.15(2)(c) and Wis. Admin. Code § NR 102.06(7).

The grounds for this Motion are that the Court in its ruling questioned the effect of contract law on the case, but the parties had not briefed that issue. When the principles of contract law are applied to the questions before the Court, a different outcome is indicated, as described in the brief that accompanies this Motion.

Based on the above grounds, and as supported in the accompanying brief, Respondents request that the Court find that DNR made a good faith effort to develop a phosphorus SSC for LCO but was unable to do so because the facts and the law do not support such a criterion; to find that to the extent that any part of the Stipulation may require DNR to take an action that is not authorized under Wis. Stat. § 281.15(2)(c) and Wis. Admin. Code § NR 102.06(7), that part of the Stipulation is void; and to determine that DNR complied with the Stipulation to the extent that it was able to do so under Wis. Stat. § 281.15(2)(c) and Wis. Admin. Code § NR 102.06(7).

Dated this 11th day of April, 2019.

JOSHUA L. KAUL Attorney General of Wisconsin

Electronically signed by:
Lorraine C. Stoltzfus
LORRAINE C. STOLTZFUS
Assistant Attorney General
State Bar #1003676

Attorneys for Respondents Wisconsin Department of Natural Resources, et al.

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