IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SIERRA CLUB IOWA CHAPTER, Petitioner, and **IOWA STATE COUNCIL OF TROUT UNLIMITED,** I v. **IOWA DEPARTMENT OF NATURAL RESOURCES**, Respondent and **SUPREME BEEF LLC**, Indispensable Party,	Case No. CVCV062713 **RULING ON MOTION TO DISMISS**

A contested hearing on the respondent's motion to dismiss was held before the undersigned on January 6, 2022 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

I. BACKGROUND

The Sierra Club challenges IDNR's approval of Supreme Beef's nutrient management plan (NMP). Pet. ¶1. IDNR is a government agency authorized to regulate animal feeding operations (AFOs) in Iowa. According to the Sierra Club, IDNR's approval of Supreme Beef's NMP will imperil Bloody Run Creek and other waterways that its members enjoy. Id. Petitioner is suing to remove IDNR's approval of Supreme Beef's NMP.

Sierra Club claims standing through its members who use Bloody Run Creek and other affected waterways. It filed concurrently with its Petition the declarations of Steve Veysey, Larry Stone, Laurel Klosterboer, and Faith Blaskovich, which it refers to as attachments on the petition. Id. at ¶5. The declarants use Bloody Run Creek and other waterways affected by the AFO for aesthetic and recreational activities like fishing, hiking, and photography.

Sierra Club avers that Supreme Beef's AFO would generate one of the largest animal feeding operations in Iowa. It asserts that Supreme Beef's growing number of AFOs and increased density of animals will increase the risk of manure runoff into surface water and groundwater. Id. at ¶8. Supreme Beef's operations are located in the watershed of Bloody Run Creek, and it has other proposed applications that would affect a series of other watersheds. Those streams support a variety of aquatic life.

Under Iowa Code section 459A.208 and 567 Iowa Administrative Code section 65.112, Supreme Beef's NMP must be approved by IDNR. Petitioner asserts that IDNR only has the statutory authority to approve or deny an NMP, and not to allow amendments. Petitioner claims IDNR erred when it allowed Supreme Beef to submit a revised NMP on October 7, 2020, after its initial July 27, 2020 NMP was not fully approved. Id. at ¶10. Furthermore, petitioner claims that IDNR did not follow Iowa law when it did not publish the revised NMP or allowed for public comments. Id. at ¶11.

Petitioner asserts that Steve Veysey reviewed the revised NMP and found a "glaring mistake" on the calculation of sediment delivery ratio (SDR) values, which should disqualify more proposed fields. Petitioner alleges that IDNR has internal e-mails that admit Veysey's analysis was correct, but nevertheless did nothing about it. Id. Petitioner claims that Supreme Beef submitted a manure management plan instead of an NMP in violation of Iowa Code section

459A.208. NMPs have the purpose to prevent over application of manure on crop fields and avoid discharge of pollutants into the waters. Iowa Code §§ 459A.401, 459A.410 (2021). Petitioner avers that the Supreme Beef NMP did not make the correct calculations. Pet. at ¶13.

Petitioner also contends that Supreme Beef's earthen lagoon plan did not follow the appropriate rate of manure application for nitrogen (N) and phosphorous (P). This earthen lagoon, which is designed to contain cow manure does not follow proper calculations and will create runoff into Bloody Run Creek and other streams. Id. at ¶16.

Additionally Sierra Club claims that the proposed manure application sites are located in highly erodible land as defined in 567 Iowa Administrative Code rule 65.3(5)(f). Id. at ¶25. Supreme Beef's feedlot operation is allegedly located in karst terrain, in contravention of the law. 567 Iowa Admin. Code r. 109(4), 65.15(8)(a). Petitioner points to testimony by Robert Libra, a retired geologist that avers the karst terrain increases the likelihood that seepage occurs, and pollutants are discharged in the water. Id. at ¶28.

Petitioner claims that IDNR's approval of Supreme Beef's NMP was based on a determination of fact that is not supported by substantial evidence, inconsistent with the rules of the agency, based on an "irrational, illogical, or wholly unjustifiable" application and interpretation of law to fact among other things. Id. at ¶31.

STANDARD OF REVIEW

"A motion to dismiss tests the legal sufficiency of a plaintiff's petition." Schaffer v. Frank Moyer Constr., Inc., 563 N.W.2d 605, 607 (Iowa 1997); Iowa R. Civ. P. 88(a), (f). "A motion to dismiss admits the allegations of the petition and waives any ambiguity or uncertainty in the petition." Leuchtenmacher v. Farm Bureau Mutual Ins., 460 N.W.2d 858, 861 (Iowa 1990). The petition should be construed in a light most favorable to the plaintiff with doubts resolved in that

party's favor in ruling on the motion. Haupt v. Miller, 514 N.W.2d 905, 911 (Iowa 1994). However, "[w]e have held that a motion to dismiss can neither rely on facts not alleged in the petition (except those of which judicial notice may be taken) nor be aided by an evidentiary hearing." Rieff v. Evans, 630 N.W.2d 278, 284 (Iowa 2001).

A motion to dismiss is sustainable only when it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted. Haupt, 514 N.W.2d at 911(citing Bindel v. Iowa Manufacturing Co., 197 N.W.2d 552, 555 (Iowa 1972)). Therefore, a motion to dismiss must be on legal grounds. Robbins v. Heritage Acres, 578 N.W.2d 262, 264 (Iowa. Ct. App. 1998).

DISCUSSION

IDNR claims dismissal is appropriate because Sierra Club lacks standing. Standing requires that a plaintiff must "show (1) a specific, personal, and legal interest in the litigation, and (2) injury." Rieff, 630 N.W.2d at 284. This question is separate from, and precedes the merits of a case. Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 452 (Iowa 2013).

To satisfy the first element, "we require the litigant to allege some type of injury different from the population in general." Alons v. Iowa Dist. Ct., 698 N.W.2d 858, 867-68 (Iowa 2005). The United States Supreme Court held that plaintiffs who "aver they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity" have a legal interest. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 183 (2000) (cited with approval in Bushby v. Washington Co. Conservation Bd., 654 N.W.2d 494, 497 (Iowa 2002)). Under the second element, the injury cannot be conjectural or hypothetical; rather it must be concrete and actual or imminent. Alons, 698 N.W.2d at 867-68.

In regards to the first prong, IDNR takes issue with the member declarations as lacking injury in fact. As established in Bushby, persons who use the challenged area for aesthetic and recreational values have a sufficient legal interest. Each of the four declarants in the Petition averred that they use Bloody Run Creek and other affected areas for activities like fishing, hiking and photography. The Petition referred to the declarations as attachments. Additionally, Sierra Club submitted the declarations simultaneously on EDMS. Exhibits attached to a petition may be regarded as part of the pleadings for purposes of evaluating a pre-answer motion to dismiss. Mormann v. Iowa Workforce Development, 913 N.W.2d 554, 565 (Iowa 2018). An organization can assert the interests of its members for standing purposes. See Citizens for Wash. Square v. City of Davenport, 277 N.W.2d 882, 889 (Iowa 1979). The legal interest averred in the Petition is sufficient to meet the first prong of standing. Based on the attachments to the petition, Sierra Club has demonstrated that it has at least four members who have a legal interest, thus satisfying the first prong for standing.

With regard to the second prong, the Iowa Supreme Court has accepted evidence of other pipeline accidents that created millions of dollars in clean up damages. Puntenney v. Iowa Utilities Board, 928 N.W.2d 829, 837. In that case, the petitioners were able to gain standing even though a pipeline accident had not yet occurred. Id. at 836. In addition, the plaintiffs in Bushby had standing to challenge a proposed tree cutting operation that had not yet occurred. Bushby, 654 N.W.2d at 496. Sierra Club mentions in its petition that lagoons like those that the one Supreme Beef proposed may cause seepage and drainage into the bedrock, as "has occurred in Iowa and geologically similar areas." Pet. at ¶28. Like Puntenney and Bushby, petitioner has articulated enough facts that made its alleged impending injury actual as opposed to speculative. The second prong for standing has likewise been met.

HOLDING

In conclusion, Sierra Club has asserted sufficient facts for both legal standing and injury in fact. Under a motion to dismiss, "[t]he petition should be construed in a light most favorable to the plaintiff with doubts resolved in that party's favor in ruling on the motion." Haupt, 514 N.W.2d at 911. Accordingly, IDNR's motion to dismiss is **DENIED**. The respondent shall have ten (10) days in which to answer, pursuant to Iowa Rule of Civil Procedure 1.441(3).

State of Iowa Courts

Case Number	**Case Title**
CVCV062713	SIERRA CLUB IOWA CHAPTER VS IOWA DNR ET AL
Type:	OTHER ORDER

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

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