



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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August 11, 2020

Ms. Sheila T. Reiff
Clerk of Wisconsin Supreme Court
Post Office Box 1688
Madison, WI 53701

Re: *Clean Wisconsin, Inc., et al. v. DNR, et al.*
Case No. 2018AP0059

Dear Ms. Reiff:

I write on behalf of the Wisconsin Department of Natural Resources (DNR) in response to this Court's recent order calling for updates on "the status of the certified appeal and the impact of the [*SEIU v.*] *Vos* decision, if any, on the appeal and pending motion" in this case. (Order 2, July 28, 2020.)

First, regarding the status of the certified appeal, DNR does not currently have any updates; the appeal remains pending in much the same manner as when it was filed.

Second, as to any impact of the *SEIU* decision, the Legislature's request to intervene remains foreclosed after *SEIU* for the reasons set forth in DNR's opening and responsive memoranda.¹ As explained in those filings, the Legislature may not intervene in this appeal because (1) its request does not come within the language of the intervention statute, Wis. Stat. § 803.09(2m); and (2) even if its request did come within Wis. Stat. § 803.09(2m), the Legislature still fails to meet the requirements for intervention under the controlling procedure for intervention in

¹ See DNR Mem. Regarding Wis. Legislature's Pet. to Intervene, June 19, 2019; DNR Responsive Mem. Opposing Wis. Legislature's Pet. to Intervene, July 9, 2019.

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administrative-review proceedings like this, *see* Wis. Stat. § 227.53. Nothing in *SEIU* excused the Legislature from these statutory requirements for intervention.

If the *SEIU* decision has any bearing on legislative intervention under Wis. Stat. § 803.09(2m), it is that there are additional constitutional reasons why the Legislature should not be able to intervene here, although those reasons need not be reached given the flaws summarized above. *See Serv. Emps.' Int'l Union, Local 1 v. Vos*, 2020 WI 67, ¶¶ 71–72, 946 N.W.2d 35. The cases in which *SEIU* suggested intervention potentially is permissible are those “where a legislative official, employee, or body is represented by the attorney general” or “a legislative body is the principal authorizing the prosecution of a case,” as well as cases in which the Legislature would need to make a new “appropriation.” *SEIU*, 2020 WI 67, ¶¶ 67–68, 71. This case includes none of those limited scenarios, and instead involves only the legal question of whether DNR erred in its decisions to grant the high capacity well approvals at issue here.

This Court need not reach the question of what impact the *SEIU* decision has on the Legislature’s current request. Instead, this Court should deny the Legislature’s intervention request because it fails under both Wis. Stat. §§ 803.09(2m) and 227.53, for reasons previously explained.

Sincerely,



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