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## **CONSERVATIONISTS CLAIM VICTORY IN DNR DECISION TO “STAY” PERMIT AND HOLD CONTESTED CASE HEARING ON ARROWHEAD-WESTON TRANSMISSION LINE PROJECT**

On Friday, February 18, 2005, the Wisconsin Department of Natural Resources (“DNR”) approved a request to hold a contested case hearing and to “stay” a major environmental permit, under Chapter 30 of the Wisconsin Statutes, which is needed by the American Transmission Company (“ATC”) and the two other utilities proposing to develop the controversial Arrowhead-Weston High Voltage Transmission Line Project (“Arrowhead-Weston Project”) in northern Wisconsin.

The request for the contested case hearing and Chapter 30 permit stay was filed with the DNR on January 24<sup>th</sup> by two of Wisconsin’s largest grass-roots conservation organizations, Save Our Unique Lands, Inc. (“SOUL”) and Clean Wisconsin, Inc. (“Clean Wisconsin”), along with seven individual citizens. The request challenged the most recent decisions of the DNR concerning the proposed 210-mile Arrowhead-Weston Project. The seven individual citizens filing the request were: Thomas and Margaret Kreager of Marathon County, Sandy Lyon and Nick Vander Puy of Washburn County, Mark Liebaert of Douglas County, and Ward Winton and Kay Brown Winton of Sawyer County.

The challenge was filed with the DNR to request a contested case hearing (which is like a trial) and to “stay” the DNR’s December 22, 2004, Chapter 30 and Wetland Water Quality Certification decisions relating to the proposed Arrowhead-Weston

Project. The stay acts like a temporary injunction that prevents the utilities from being able to do any construction in wetlands or across water bodies while it remains in effect.

Attorney Glenn Stoddard, who represents the conservationists, said: “We commend the DNR for granting our request. As a result, the Arrowhead-Weston Project cannot be built as planned until a final decision is made by an administrative law judge appointed to hear the case. This is a welcome ‘kick in the teeth’ to ATC and the other two big utilities behind the project by the DNR. It should stop the Arrowhead-Weston project for now and prevent any adverse impacts to wetlands and water resources from this project for another year if not forever.”

According to Sandy Lyon, one of the individuals who requested the hearing and stay, “This is really good news because despite their misleading public relations campaign, ATC has absolutely no experience developing large transmission lines in northern Wisconsin’s environmentally sensitive deep-marsh wetlands. That means they can’t be trusted by the DNR or the public to protect our environment or to follow the law.”

Tom Kreager, President of SOUL, said: “This is a major victory for SOUL. After Douglas County’s recent decision against building the Arrowhead-Weston Project on publicly-owned county forest lands, we are hopeful that ATC and the other utilities will now decide to abandon this project because it cannot be justified from any standpoint, be it economic, environmental or otherwise.”

Katie Nekola, energy program director at Clean Wisconsin, said: “We are very pleased with this development. Although we were disappointed with the DNR’s earlier decision to approve the Chapter 30 permit for the Arrowhead-Weston Project, DNR’s recent decision to stay that permit and grant a contested case hearing indicates that the DNR understands that this project may cause significant adverse impacts to wetlands, water resources and our environment if it is allowed to proceed. Clean Wisconsin has opposed the Arrowhead-Weston Project from the beginning and we will continue to do so in the hope that it can be stopped once and for all through legal action.”

The Chapter 30 permit and Wetland Water Quality Certifications are being sought for the Arrowhead-Weston Project by ATC and Wisconsin Public Service Corporation (“WPSC”). Both utilities, along with a third partner in the State of Minnesota, Minnesota Power, are expected to make huge profits from the Arrowhead-Weston Project if it is

ever built because they would be able to use it to wheel power through Wisconsin from other states and from Manitoba, Canada.

The DNR decisions that are at issue would allow the utilities to construct temporary bridges and structures in or near publicly owned navigable waters, conduct dredging in or near such waters, and allow filling and grading of many sensitive wetlands associated with public waterways and on private lands.

Stoddard said such activities would “be highly destructive to wetlands and waterways, and to the plants and animals that live there.” The request that was filed by the conservation groups and individuals and approved by the DNR alleged that the DNR has a legal duty under state law to prohibit such destructive activities.

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**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

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Scott Hassett, Secretary

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February 18, 2005

Attorney Glenn M. Stoddard  
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Subject: Request for Hearing- Arrowhead Weston Transmission Line Project

Dear Mr. Stoddard:

The Department has received and reviewed the request for a contested case hearing relating to the Chapter 30 Permit and the Water Quality Certification decision for the Arrowhead-Weston transmission line that you submitted on behalf of Save Our Unique Lands, Inc. et al. You have also requested a stay of the permit pursuant to Section 30.209(1m), Stats.

The Department also received submissions from American Transmission Company, on February 3, 2005, and Wisconsin Public Service Corporation, on February 4, 2005, pursuant to subsection 30.209(1m)(e), Stats.

We have determined that your petition meets the requirements of ss. 30.209 and 227.42, Stats., and we are therefore granting your request for a contested case hearing.

**Sufficiency of Petition under ss. 30.209 and 227.42. Stats.**

Section 30.209(1m) (b), Stats., provides that a petition for administrative hearing filed by other than the permit applicant shall describe the objection in enough specificity to allow DNR to determine which provisions of Chapter 30 may be violated if the project is allowed to proceed. Your petition must also describe the facts supporting the petition with enough specificity to determine how you believe the project may violate Chapter 30. The responses of the applicants assert that the petition is deficient because it does not contain sufficient factual information to allow the Department to "determine which provisions of this subchapter may be violated" if the project is allowed to proceed. Because the permit involves approval of bridge locations and site-specific protective measures after submission of the Construction and Mitigation Plans, we have determined that you have supplied sufficient allegations to meet the requirements of section 30.209, Stats.

Similarly, we have determined that you have submitted sufficient information to meet the standards of NR 299.05(5), Wisconsin Administrative Code and Section 227.42, Stats., to obtain a hearing relating to the Department's water quality certification for this project.

## Stay Request

Section 30.209(1m)(c), Stats., provides that a permitted project shall be stayed pending an administrative hearing if the petition contains a request for a stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. You allege that a stay is necessary to prevent significant adverse impacts to wetland and waterway resources. The subject permit for this project involves both the permits for temporary clear span bridges and the water quality certification for proposed wetland impacts. The water quality certification decision is not final until the contested case hearing is completed (per our notice, decision and rules), thus none of the wetland work can begin at this time. The request for stay is specifically related to the bridge aspect of the project.

The permit and water quality certification are based on the department's review of the proposed construction and access plan. The bridges are part of the access necessary to construct the project through wetlands and uplands. The waterway crossings and wetland crossings are, as a practical matter on the ground, not separable activities. The placement of the temporary bridges will, in many instances, involve impacts to wetlands. We recommend granting your request for a 30 day stay of the permit decision pursuant to s. 30.209(1m)(c), Stats., advising the permit holder by copy of this letter that the permit is stayed pending review by the administrative law judge. Under subs. 30.209(2)(b), Stats., the administrative law judge shall, within 30 days of the receipt of the referral, determine whether continuation of the stay is necessary.

Pursuant to s. 30.209(1m)(g), Stats., we are required to refer this matter to the Division of Hearings and Appeals (DHA) of the Department of Administration within 15 days after granting your petition. We will refer this matter during the week of February 21, 2005. DHA will assign the file to an administrative law judge (ALJ) for hearing.

If you have any questions regarding the hearing, please contact Attorney Michael Cain at (608) 266-2177.

Sincerely,



Scott Hassett  
Secretary

Cc: David Siebert-WT/7  
Todd Ambs-AD/5  
Attorney Donald Bach  
John Gozdziwski-NOR

Amy Smith-AD/5  
Michael Cain-LS/5  
Attorney Bartholomew Reuter  
Attorney David Ludwig-PSC