



**Circuit Court
Door County, Wisconsin**

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June 9, 2015

**VIA FACSIMILE TRANSMISSION TO
(608-283-2275) AND REGULAR US MAIL**

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✓ **VIA FACSMILE TRANSMISSION TO
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**RE: Kinnard Farms, Inc. vs. Wisconsin Department of
Natural Resources
Kewaunee Co. Case No.: 2014CV73**

Dear Counsel:

This letter will serve as my decision on the Petitioner's request that I reconsider that portion of my Decision on Respondent-Wisconsin Department of Natural Resources' Motion to Dismiss filed in this case on April 30, 2015, to hold this case in abeyance rather than dismissing it outright. Attorney Hemaïdan made that request on the Petitioner's behalf in a letter to me dated May 11, 2015.

My Decision on Respondent-Wisconsin Department of Natural Resources' Motion to Dismiss was filed in this matter on April 30, 2015. At page 6 of that Decision after finding that this matter was not yet ripe for judicial review, I adopted the WDNR's suggestion for a stay of these proceedings and remand back to the Division of Hearings and Appeals. It is that portion of my Decision, namely, to hold this matter in abeyance versus dismissing it outright, that the Petitioner now seeks that I reconsider.

Since the Petitioner's May 11, 2015, letter I have received numerous additional correspondence and pleadings from the parties. Those include a letter from Attorney Milligan on May 12, 2015, another letter from Attorney Hemaïdan on May 13, 2015, a letter from Attorney Williams on May 21, 2015, a Response Brief in Opposition to Kinnard Farms, Inc.'s Motion for Reconsideration from the WDNR filed on May 22, 2015 and Petitioner Kinnard Farms, Inc.'s Reply in Support of its Motion for Reconsideration filed on May 29, 2015.

I have now had an opportunity to review all of the correspondence and pleadings I referenced in the preceding paragraph. As I have already indicated in this letter, I am now prepared to rule on the Petitioner's motion for reconsideration of a portion of my April 30th Decision.

There is no dispute between the parties that I have the authority and ability to reconsider my April 30th Decision or portions of it at this juncture. Attorney Hemaïdan lays out that authority at pages 2 and 3 of his May 29th Reply. An additional bolster to my authority to reconsider a portion of my April 30th Decision is the fact that an order adopting the findings and rulings that I made in that Decision has not yet been entered by me. Attorney Milligan forwarded a proposed Order for Stay and Remand to me in a letter dated May 1, 2015.

After having reviewed the parties' arguments and proposed authorities for their respective positions, I now conclude that under current statutory and case law it is appropriate that I dismiss the Petitioner's Petition for Judicial Review outright. That conclusion is based upon my finding that the Petitioner's Petition for Judicial Review in this matter filed on November 26, 2014, was premature and was from a non-final decision. I am not convinced there is authority for the proposition that I may hold a petition for review under Wisconsin Statutes Chapter 227 in abeyance once I have concluded that the decision appealed from is non-final. There appears to be authority directly on point that requires dismissal. I conclude that I do not have subject matter jurisdiction to proceed on the Petitioner's current Petition.

As such, I grant the Petitioner's motion for reconsideration challenging that portion of my April 30th Decision to hold this matter in abeyance and will dismiss the Petitioner's Petition for

Judicial Review outright. Attorney Hemaïdan along with his May 11th letter to me included a proposed Order for Dismissal which I have now executed and forwarded to the Kewaunee County Clerk of Court. I enclose an executed copy of that Order for Dismissal with each of your letters.

Yours truly,

A handwritten signature in black ink, appearing to read "D. Todd Ehlers". The signature is written in a cursive style with a long horizontal stroke at the end.

D. Todd Ehlers
Acting Circuit Court Judge for
Kewaunee County

DTE/sar - Enclosure

pc: Ms. Rebecca Deterville,
Kewaunee County Clerk of Court

STATE OF WISCONSIN

CIRCUIT COURT

KEWAUNEE COUNTY

KINNARD FARMS, INC.,

Petitioner,

Case No. 14-CV-73

Code No.: 30607

v.

Administrative Agency Review

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

ORDER FOR DISMISSAL

Upon consideration of the Respondent Wisconsin Department of Natural Resources' ("DNR") Motion to Dismiss Petitioner Kinnard Farms, Inc.'s ("Kinnard Farms") Petition, and based upon all records, files, pleadings and proceedings herein,

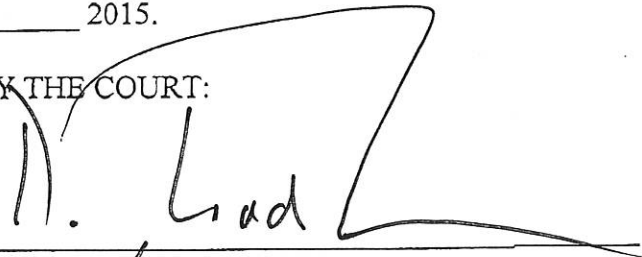
IT IS HEREBY ORDERED THAT:

1. DNR's Motion to Dismiss is GRANTED, and Kinnard Farms' Petition is hereby dismissed.
2. Kinnard Farms' Motion for a Stay is DENIED as moot.
3. DNR's Motion to Stay Production of the Record is DENIED as moot.

This is a final Order for purposes of appeal.

Dated this 9 day of JUNE 2015.

BY THE COURT:



Honorable T. Todd Ehlers
Circuit Court Judge