IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

IOWA CITIZENS FOR COMMUNITY IMPROVEMENT, a nonprofit corporation, and FOOD & WATER WATCH, a nonprofit corporation, Plaintiffs, vs. STATE OF IOWA; DEPARTMENT OF NATURAL RESOURCES,; BRUCE TRAUTMAN, in his official capacity as Acting Director of the Department of Natural Resources,; ENVIRONMENTAL PROTECTION COMMISSION; MARY BOOTE, NANCY COUSER, LISA GOCHENOUR, REBECCA GUINN, HOWARD HILL, RALPH LENTS, BOB SINCLAIR, JOE RIDING, in their official capacities as Commissioners of the Environmental Protection Commission; NATURAL RESOURCE COMMISSION; MARCUS BRANSTAD, RICHARD FRANCISCO, LAURA HOMMEL, TOM PRICKETT, PHYLLIS REIMER, DENNIS SCHEMMEL, and MARGO UNDERWOOD, in their official capacities as Commissioners of the Natural Resource Commission; DEPARTMENT OF AGRICULTURAL AND LAND STEWARDSHIP; and MICHAEL NAIG, in his official capacity as Secretary of Agriculture, Defendants.	**Case No. EQCE084330** **RULING ON MOTION TO DISMISS**

I. FACTS

This matter came before the court on June 19, 2019, for hearing on Defendants' Motion to Dismiss. Plaintiffs, Iowa Citizens for Community Involvement and Food & Water Watch,

were represented by lead counsel Roxanne Conlin. Defendants were represented by the Assistant Iowa Attorney General Jacob Larson.

The State of Iowa is the United States' leader in corn and pork production as well as one of the leaders in soybean production. In order to grow such prodigious amounts of crops, Iowa farmers apply vast amounts of fertilizer in order to maximize their crop yields. This fertilizer commonly contains nitrogen and phosphorus. When nitrogen is applied to soil, it is converted into several byproducts, including water soluble nitrate, which eventually enters surface water from farm operations through the precipitation cycle. This creates storm water runoff into surface water systems, introducing nitrate to the water supply. As a consequence, the nitrate-tainted water enters Iowa's waterways, including sources of potable drinking water. The Environmental Protection Agency (henceforth "EPA") has set a standard of 10 mg/l for the amount of nitrate in primary drinking water. This standard is identical to the Iowa Class C water quality drinking water standard for drinking water.

As nitrate enters the drinking water via precipitation events, greater and greater quantities of nitrate continue to be cycled through Iowa's waterways. At least one section of the Raccoon River has been classified as 'impaired for nitrate' as the amount of nitrate in the drinking water does not meet the Class C drinking water standard for nitrate at the Des Moines Water Works intake. The Raccoon River serves as a source of recreation and drinking water for approximately 500,000 Iowans.

In 2008, the Iowa Department of Natural Resources implemented a cleanup plan, known as Total Maximum Daily Load ("TMDL"), to determine the origin of nitrate pollution and pollution reductions necessary to reach the Class C drinking water standard for primary drinking water. Since the 2008 TMDL, on various occasions the Raccoon River has exceeded the TMDL

for nitrate pollution. Exposure to potentially impure drinking water can have adverse effects on the health of Iowans. Plaintiffs allege such risks will increase as precipitation cycles increase due to climate change.

Plaintiffs bring this action for injunctive and declaratory relief before the Court in a Petition filed March 27, 2019. Plaintiffs claim a right and property interest in Iowa's navigable waterways. They allege that Defendants have not done enough to protect Iowa's navigable waterways from various pollutants entering the drinking water supply obtained from the Raccoon River. They further claim that polluted run-off from various improperly managed animal feeding operations have steadily caused the average monthly nitrate concentration in the Raccoon River to rise above EPA mandated levels. They further allege that the State of Iowa has not set numeric stream and lake quality standards sufficient to minimize the harms of nitrates entering Iowa's waterways.

Plaintiffs seek a remedial plan aimed at implementing mandatory agricultural water pollution controls, an order prohibiting construction and operation of new and expanding animal feeding operations on the Raccoon River, and an order prohibiting the State from taking any further action that would violate Plaintiffs' rights under the public trust doctrine and the Iowa Constitution.

Defendants filed this Motion to Dismiss on April 29, 2019. They allege that Plaintiffs lack standing to bring this action in equity, that Plaintiffs' claims are not justiciable, and that Plaintiffs have not exhausted their remedies per the Iowa Administrative Procedure Act. Having entertained the arguments of counsel, having reviewed the court file and the applicable law, and being otherwise fully advised in the premises, the court rules on Defendants' motion and, for the reasons stated herein, DENIES same.

II. STANDARD OF REVIEW

"A motion to dismiss tests the legal sufficiency of the challenged pleading." Southard v. Visa U.S.A. Inc., 734 N.W.2d 192, 194 (Iowa 2007). A motion to dismiss may be granted only when the allegations of the non-moving party, taken as true, fail to state any claim upon which any relief may be granted. Mueller v. Wellmark Inc., 818 N.W.2d 244, 253 (Iowa 2012) (citing Geisler v. City Council of Cedar Falls, 769 N.W.2d 162, 165 (Iowa 2009); see also Sanchez v. State, 692 N.W.2d 812, 816 (Iowa 2005). "Well-pled facts in the pleading assailed are deemed admitted." Southard, at 194. When considering a motion to dismiss, all facts alleged in the petition are taken as true, and the non-moving party is entitled to all favorable inferences raised by those facts. Hornby v. State, 559 N.W.2d 23, 24 (Iowa 1997); Wilson v. Nepstad, 282 N.W.2d 664, 666 (Iowa 1979). In addition, the petition is assessed in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in the plaintiffs' favor. Southard, at 194.

III. MERITS

i. Do the Plaintiffs have Standing to Bring Suit?

Defendants claim that Plaintiffs cannot meet the requirements for standing. They argue that Plaintiffs' claims are merely speculative in nature and that the links in the chain between the harms Plaintiffs allege and Defendants' conduct are too tenuous to connect. Additionally, Defendants argue that Plaintiffs' petition actually shows the many ways Defendants have attempted to mitigate the harms to the waterway Plaintiffs allege in their petition. As such, Defendants allege Plaintiffs cannot meet the standing requirements.

Defendants allege that Plaintiffs must meet Article III requirements for standing while Plaintiffs resist, claiming they only need to meet Iowa's public trust doctrine requirements. In Iowa public trust doctrine cases, the requirements for standing are 1) a specific, personal, and

legal interest in the litigation, and 2) injury. In addition, in cases involving environmental concerns, the United States Supreme Court has held that plaintiffs can establish standing if they aver that 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. See Bushby v. Wash. County Conservation Bd., 654 N.W.2d 494, 496 (Iowa 2002).

Here, Plaintiffs claim standing to sue Defendants under a public trust doctrine theory. Under a public trust doctrine theory, Plaintiffs allege that the public possesses certain inviolable rights to certain natural resources. These rights, Plaintiffs claim, include access and use of Iowa public waterways. Plaintiffs allege that their members suffer directly from aesthetic and recreational injury, actual injury and fear of injury from treated water, and injury from paying additional costs necessary to treat the water. Assuming all facts and making all inferences in favor of the non-moving party, Plaintiffs will suffer from the claimed harms should the Court not grant the declaratory and injunctive relief requested by the Plaintiffs. They will suffer injury as a result the untreated water of the Raccoon River being too polluted to enjoy either recreationally or aesthetically. The Raccoon River is arguably in such a poor state due to the State's inaction in enforcing the State's pollution requirements without restriction. They are likely to be unable to use the Raccoon River in any reasonable, functional manner, without heavy water treatment.

ii. Article III Standing

Defendants claim Plaintiffs must also meet Article III standing requirements described in Alons v. Iowa District Court in order to prove standing to sue. Article III standing requires that the plaintiff show three elements: 1) injury in fact – an invasion of a legally protected interest which is a) concrete and particularized, and b) actual or imminent, not conjectural or hypothetical; 2) a causal connection between the injury and the conduct complained or, and 3) it

must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Alons v. Iowa Dist. Court, 698 N.W.2d 858, 867-68 (Iowa 2005) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Defendants note that the Iowa Supreme Court has "cited with approval" the federal Article III standard. Plaintiffs respond, noting that the Iowa Supreme Court has only applied the Article III standard in so-called 'injury-in-fact' cases. See Alons at 867-868. This court agrees with Plaintiffs that the Article III standard has only been adopted by the Iowa Supreme Court for injury-in-fact, not concerning causation and redressability. The case currently before the court does involve causation and redressability. As such, it is inappropriate to apply Alons to these facts.

iii. Justiciability of Plaintiffs' Injunctive Relief Claims

The parties disagree as to whether Plaintiffs' claims are in the nature of a political question. If the claims are determined to be political questions, it would be inappropriate for Plaintiffs to seek relief from the courts. A long-standing facet of our system of government is that courts will not intervene or adjudicate challenges that involve political questions. King v. State, 818 B.W.2d. 1, 16 (Iowa 2012). If this court finds that Plaintiffs' claims do present political questions, it would be appropriate to dismiss Plaintiffs' case on the basis of separation of powers.

Defendants claim that Plaintiffs' requests for injunctive and declaratory relief would require the court to take on the role of the legislative and executive branches in contravention of government separation of powers. Defendants argue that imposition of the "mandatory remedial plan" requested by the Plaintiffs would force the State to develop a complex regulatory scheme, run a cost-benefit analysis, balance important public interests, and resolve difficult social,

economic, and environmental interests. Defendants claim that these considerations by the court would require the court to invade the provinces of the executive and legal branches.

Plaintiffs reply that the Defendants' political question claims are not a part of the resolution of Plaintiffs' claims. They argue that, while this is a public trust doctrine question, their claims do not simply transform into political question concerns because the State says they do or because it is convenient for the State, and that asking the State to develop their "mandatory remedial plan" is not enough to turn Plaintiffs' claims into a political question.

Plaintiffs note that the Iowa Supreme Court has held that the federal political question doctrine is not applicable to state courts. Freeman v. Grain Processing Corp., 848 N.W.2d 58, 91 (Iowa 2014). Whether or not the political question doctrine is extended to state courts appears to be a matter of state choice. Defendants note multiple climate change cases from other jurisdictions where claims similar to Plaintiffs' have been considered political questions by those state courts. Those cases are distinguished in that they make broad, overarching statewide climate change claims. Here, the parties are disputing the impact of pollution and state action or inaction on a discrete part of Iowa's waterways.

Assuming the facts in Plaintiffs' petition are true, and drawing all necessary inferences therefrom, Defendants' argument cannot prevail where the federal government has failed to extend the political question doctrine to the courts and the State has not acted to apply it on its own. Accepting and evaluating the well-pled facts of the petition, Plaintiffs' claims for injunctive relief do not rise to the level of a political question. The United States Supreme Court has already determined that the political question doctrine does not apply to state courts. However, even if the political question doctrine is found to apply to state courts, this Court declines to find that

Plaintiffs' claims represent a political question for the purposes of Defendants' motion to dismiss.

However, even if the State does acknowledge the political question doctrine as applying to state courts, which is questionable, the doctrine likely does not apply here. State courts still maintain the power to interpret the Iowa constitution. King v. State, 818 N.W.2d 1, 16 (Iowa 2012). The heart of Plaintiffs' claim is a challenge to the constitutionality of Section 20 of Senate File 512, codified as Iowa Code § 455B.177(3). Defendants argue that to allow this action to proceed would upset the careful balancing of powers between the three branches of government. This court acknowledges that both the legislative and executive branches have attempted to address the water quality issue through both legislative and regulatory efforts. Plaintiffs' request, though, would mandate that those branches enact and enforce a mandatory remedial plan in line with EPA standards. Plaintiffs allege in their petition that the EPA has established a primary drinking water standard for nitrate of 10 mg/l, the same as the Iowa Class C water quality standard for drinking water. Plaintiffs' requested relief is not for the judicial branch to act in the stead of the other branches of government. They seek a declaration of the public's right in the recreational and functional use of the meandered section of the Raccoon River, declaration of Section 20 of Senate File 512 as null and void, and injunction of the mandatory remedial plan/construction and operation of certain new types of animal feeding operations. None of the proposed remedies encroach upon the powers of the other branches of government.

iv. Justiciability of Plaintiffs' Declaratory Relief Claims and Exhaustion of Remedies under the Iowa Administrative Procedure Act

The State argues that Plaintiffs' requested declaratory relief will not provide effective relief as the only remedy available to Plaintiffs exists under the Iowa Administrative Procedure

Act. The Iowa Administrative Procedure Act provides that judicial review under Chapter 17A is the "exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action". Iowa Code § 17A.19. Under Chapter 17A, litigants affected by the actions of state agencies are required to follow the rules in order to obtain proper access to the district court for judicial review. IES Utilities Inc. v. Iowa Dep't of Revenue & Finance, 545 N.W.2d 536, 538 (Iowa 1996). Defendants further allege that Plaintiffs failed to exhaust their administrative remedies by failing to follow the provisions of 17A. They allege that by filing for injunctive and declaratory relief directly with the Court, the Plaintiffs have effectively 'skipped a step' and have not exhausted their administrative remedies under 17A.

Plaintiffs respond that their justiciable declaratory relief claims plead sufficient facts to create a live controversy concerning the rights and duties of the State. They claim that their claims are not governed by the Iowa Administrative Procedure Act because Iowa administrative agencies have no authority over the levels of nitrogen and phosphorous in Iowa's waterways. Rather, Plaintiffs claim, the Iowa Legislature's actions and inactions determine the amount of nitrogen and phosphorous. Per the Plaintiffs' petition, the Iowa Legislature made the voluntary Iowa Nutrient Reduction Strategy the State's official policy for nutrients. Additionally, Plaintiffs claim that part of the legislature's responsibility is the protection of the public trust for future use. Plaintiffs seek review of the legislature's actions and inactions related to policy. Raising these issues before various administrative agencies would provide an insufficient remedy as the agencies themselves do not set policy. Rather, they receive their policy mandates from the legislature. According to Plaintiffs, only the legislature has the authority to require mandatory pollution controls.

In adjudicating a motion to dismiss, the Court accepts the well-pled facts as admitted. On the facts as included in the petition, the only reason administrative agencies are involved in the State's voluntary agricultural water pollution controls for nutrients is due to the action or inaction of the legislature. The legislature was responsible for enacting the voluntary Iowa Nutrient Reduction Strategy and making it the State's official policy for nutrients. Plaintiffs allege in their petition that the voluntary Iowa Nutrient Reduction Strategy represents the minimum of state action, but the duty of the legislature is the enactment of laws that preserve the subject of the public trust and its beneficial use in the future by citizens of the State. Plaintiffs' theory is that it is the legislature that is ultimately beholden to enforce the public trust and has the authority to delegate that authority, not the various administrative agencies that enforce the voluntary Iowa Nutrient Reduction Strategy. Even though the Department of Natural Resources has authority over manure land application and concentrated animal feeding operations, that authority is limited and does not include the authority to limit nitrogen and phosphorous runoff. State law also prohibits the DNR from imposing concentrated animal feeding operations rules that are stricter than federal regulations; so the ultimate authority runs back to the State. The pleadings, taken on their face, do appear to indicate that pursuing relief via administrative remedies would be fruitless. As such, at least for purposes of dismissal, there is no need to exhaust the administrative remedies of the Iowa Administrative Procedure Act before proceeding to suit in the district court.

IV. CONCLUSION

Defendants' Motion to Dismiss is **DENIED**.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCE084330	IOWA CITIZENS FOR COMMUNITY IMPROVEMENT VS STATE OF IOWA

So Ordered

Robert B. Hanson

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa