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CLERK OF WISCONSIN
SUPREME COURT

SUPREME COURT OF WISCONSIN
Appeal No. 2023AP002020 - OA

Tony Evers, Governor of Wisconsin, Department of Natural Resources, Board of Regents of the University of Wisconsin System, Department of Safety and Professional Services and Marriage and Family Therapy Board, Professional Counseling and Social Work Examining Board,

Petitioners,

v.

Senator Howard Marklein, Representative Mark Born, in their official capacities as chairs of the joint committee on finance; Senator Chris Kapenga, Representative Robin Vos, in their official capacities as chairs of the joint committee on employment relations; Senator Steve Nass and Representative Adam Neylon, in their official capacities as co-chairs of the joint committee for review of administrative rules,

Respondents.

AFFIDAVIT OF MICHAEL CARLSON IN SUPPORT OF GATHERING WATERS INC.'S MOTION TO INTERVENE

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

I, Michael Carlson, being first duly sworn on oath, states as follows:

1. I am the Executive Director of Gathering Waters, Inc. ("Gathering Waters").

2. I have personal knowledge and belief as to the matters set forth below.

3. I make this affidavit in support of Gathering Waters' motion to intervene.

4. I started working for Gathering Waters in 2008 and have served as its Government Relations Director, External Relations Director, Interim Executive Director, and Executive Director. I have served as Executive Director since 2016.

5. I am an active member of the State Bar of Wisconsin.

6. Gathering Waters, a 501(c)(3) tax-exempt organization, is Wisconsin's statewide alliance for land trusts. Land trusts are community-based, nonprofit organizations that work to permanently conserve land.

7. Gathering Waters' principal office is located at 211 S. Paterson Street, Suite 270 in Madison, Wisconsin.

8. The Knowles-Nelson Stewardship Program was created by Governor Tommy Thompson and the Wisconsin Legislature in 1989.

9. In 1994, the Department of Natural Resources' Secretary, George Meyer, established the Stewardship Advisory Council and solicited membership from a wide range of organizations with an interest in the Knowles-Nelson Stewardship Program. The Council periodically met to advise DNR on policy and administrative issues relating to the implementation of the Program. Gathering Waters was involved with the Advisory Council from its inception until around 2017, when the DNR, under former Secretary Cathy Stepp, stopped convening the Advisory Council.

10. Gathering Waters was founded in 1994 to support and grow a statewide network of land trusts. At the time of its founding there were approximately a dozen land trusts working in Wisconsin; today Gathering Waters has more than forty land trust member organizations.

11. Around 1994, Wisconsin passed legislation providing a grant for an organization that would assist "nonprofit conservation organizations" (NCOs) across the state. Land trusts are a subset of "nonprofit conservation organizations," as statutorily defined in Wis. Stat. § 23.0955. Gathering Waters received this annual

grant from the Department of Natural Resources from 1994 through 2015 (when it was eliminated by a partial veto in the state budget).

12. Each land trust is an independent 501(c)(3) tax-exempt organization. Each of Gathering Waters' land trust members, and their missions, are unique, as are the landscapes they work within. Some focus on conserving high-quality prairies, forests, and wetlands, while others protect family farms or support the development of urban parks and trails. No matter their size or scope, they all play a vital role in the protection of land, water, and wildlife throughout Wisconsin.

13. Land trusts generally work in their communities to protect and preserve natural spaces forever. They work with voluntary private land owners to purchase land in fee simple or to secure conservation easements.

14. Land trusts vary in their mission and focus. Some land trusts have paid professional staff, while others operate entirely thanks to the efforts of volunteers. Land trusts operate within both rural and urban areas in Wisconsin, and the land they protect includes a range of geographies from the shores of Lake Michigan, to the Northwoods, to the Driftless Area.

15. Each of Gathering Waters' member land trusts has its own board of directors, typically consisting of local community leaders who are passionate about conservation efforts.

16. Land trusts often work in public-private partnerships with local, state, and federal government agencies to pursue land conservation priorities.

17. Land trusts in Wisconsin hold property interests in nearly 1,900 parcels and have helped to protect more than 550,000 acres as of February 2024.

18. A portion of funding through the Knowles-Nelson Stewardship Program is allocated specifically to "nonprofit conservation organizations" (a.k.a., land trusts).

19. The Knowles-Nelson Stewardship Program has been at the heart of Gathering Waters' organizational mission since our founding 30 years ago, as the

Program is the most significant source of funding for land trusts to acquire land for conservation, recreation, and public enjoyment in Wisconsin.

20. Gathering Waters' Articles of Incorporation expressly recognize the central role of the Program, providing not only that Gathering Waters is organized to "preserve, maintain and enhance the ecological integrity of the lands and waters" of Wisconsin, but also that the organization will work to "protect lands with conservation and open space values for the benefit of the public, including lands designated under the Warren Knowles and Gaylord Nelson Stewardship Fund Program of the State of Wisconsin."

21. Gathering Waters is focused on helping land trusts, landowners, and communities protect the places that make Wisconsin special.

22. Gathering Waters provides technical assistance, training, and continuing education to its member land trusts to make sure they are sustainable organizations.

23. Gathering Waters provides tools, resources, education opportunities, and a network of peers for land-trust staff and board members.

24. Gathering Waters advocates for state and federal funding and for public policies that support and strengthen Wisconsin's land and water protection and conservation efforts.

25. Gathering Waters increases statewide awareness of the opportunities and benefits land trusts bring to the communities that they serve.

26. Gathering Waters' member land trusts pay yearly membership dues.

27. Gathering Waters also has an active base of supporters of over 1,000 people who contribute regularly, as well as institutional donors.

28. As a statewide alliance for Wisconsin's land trusts, Gathering Waters is not typically involved in the transactional details of individual land-conservation

projects. Rather, Gathering Waters supports land trusts that apply for Knowles-Nelson funding through regular contact with DNR grant and program staff, the Governor's office, and members of the Legislature on behalf of land trusts and other Knowles-Nelson Stewardship Program applicants and interested parties.

29. Many of Gathering Waters' member land trusts do not have the capacity or expertise to do government relations work, so they rely on Gathering Waters' experience in Madison for advice about the Knowles-Nelson Stewardship Program as well as both legislative and administrative processes.

30. Traditionally, Gathering Waters' role has been to educate lawmakers about the Knowles-Nelson Stewardship Program and the work of land trusts. In recent years, Gathering Waters has more often shifted to helping individual land trusts and their partners navigate the increasingly onerous and unpredictable review process of the Legislature's Joint Committee on Finance (JCF).

31. Gathering Waters has repeatedly taken a lead role in rallying support for the Knowles-Nelson Stewardship Program's reauthorization and has created a statewide grassroots network called "Team Knowles-Nelson" to educate Wisconsinites on the Knowles-Nelson Stewardship Program and to support constituents in their communication with elected officials.

32. Gathering Waters stays abreast of DNR's administration of the Knowles-Nelson Stewardship Program, the projects DNR approves, and how those projects fare on review by the JCF.

33. During Governor Walker's second term in office (2015-2019), JCF lodged a total of 17 objections against Knowles-Nelson Stewardship Program projects, including against grants to our member land trusts. One Knowles-Nelson Stewardship Program grant was denied by JCF.

34. The number of JCF objections to Knowles-Nelson Stewardship Program projects has accelerated during Governor Evers's administration. Since

Governor Evers took office in January 2019, there have been 28 objections lodged by JCF against Knowles-Nelson Stewardship Program projects, including grants to our member land trusts.

35. The number of Knowles-Nelson Stewardship Program projects affected by JCF interference has increased during Governor Evers's administration. This is often due to no action being taken by JCF after an objection has been issued. To illustrate, during the first two years of Governor Evers's administration, there were at least 18 objections issued (more than the number of objections during the entirety of Governor Walker's administration), with only six of those grants later being approved. These periods of limbo caused some grantees to withdraw their grant applications and has deterred other applications being submitted in the first place.

36. To the best of my knowledge, Exhibit A to the Petition for Original Action is an accurate list of 27 Knowles-Nelson Stewardship Program projects and JCFs' objections to those projects. Additional objections have been lodged since Exhibit A was filed with the Court.

37. I am familiar with many of the projects (and JCF objections) listed on Exhibit A.

38. I have witnessed a cooling effect on demand for funds from the Knowles-Nelson Stewardship Program as a result of JCF's interference with DNR-approved projects during Governor Evers's administration. In fact, due to a combination of funding cuts and JCF objections, Knowles-Nelson expenditures have declined more than 80% since their 2007 peak.

39. I am aware of several land trusts that have, over the past five years, decided to apply for less than 50% matching funding in light of JCF's increased micromanaging of projects approved by DNR under the Knowles-Nelson

Stewardship Program and the uncertain and arbitrary nature of the JCF review process.

40. I am aware of several land trusts that have, in the past five years, stopped applying for Knowles-Nelson Stewardship Program funding in excess of the $250,000 passive review threshold (even if the project costs are significantly greater) due to JCF's increased micromanaging of Knowles-Nelson projects and the uncertain and arbitrary nature of the JCF review process.

41. In the past five years, I have witnessed a reduced usage of the Knowles-Nelson Stewardship Program grant funding and an increased reliance on private philanthropy among our land trust members. I have more frequently encountered land trusts that have chosen not to apply for Knowles-Nelson Stewardship Program grants because the Program is increasingly seen as highly unpredictable, and therefore not an efficient use of staff time or resources. Instead, these organizations have found that their staff time and resources may be better utilized finding alternative sources of funding for their conservation projects, separate and apart from the Knowles-Nelson Stewardship Program, so as to ensure timely completion of the projects.

42. Throughout my tenure at Gathering Waters, I have seen grants get held up in JCF on account of anonymous objections, sometimes resulting in the withdrawal of applications and a reliance upon funding from sources other than Knowles-Nelson Stewardship Program to ensure projects can be brought to timely and successful completion.

43. For example, the Ozaukee Washington Land Trust, a member land trust, was originally awarded $2.3 million from the Knowles-Nelson Stewardship Program by the DNR to support their acquisition of Cedar Gorge-Clay Bluffs project along the Lake Michigan shoreline. The project was an important conservation initiative because it was an effort to preserve one of the last reasonably large undeveloped properties along Wisconsin's portion of the Lake Michigan

shoreline. The project was submitted to JCF in June 2021, and an anonymous member of JCF objected to the grant. The project never received a hearing nor a vote in JCF and the delay caused the status of the project to become increasingly tenuous. The Ozaukee Washington Land Trust mobilized their supporters to raise additional private funds. They also received replacement funding from Governor Evers with one-time American Rescue Plan Act funds in August 2022, which allowed the successful completion of the project.

44. Throughout my tenure at Gathering Waters, I have also seen land trusts downsize their projects as a result of JCF's actions. The West Wisconsin Land Trust (now named Landmark Conservancy), a member land trust, was originally awarded over $1.1 million to support their acquisition of a property in Dunn County, also knowns as the "Meridian Barrens property." The project was an important conservation initiative because it is located in the Lower Chippewa Important Bird Area and the largest floodplain forest in the Midwest, the Tiffany Bottoms. It was granted by the DNR in 2018 (during the Walker Administration) and submitted to JCF, where an anonymous member of the committee objected to the grant. The project never received a hearing nor a vote. Eventually, three years later in 2021, the project was reworked and downsized from more than 1,000 acres to just 365 acres. The land trust applied for only $244,795 in Knowles-Nelson funding in order stay under the JCF review threshold despite the fact that project costs, even for the downsized project, were reported to be $910,969.

45. Throughout my tenure at Gathering Waters, I have seen Knowles-Nelson Stewardship Program projects outright denied by JCF, with Pelican River Forest being the most recent, high-profile example. This was a DNR acquisition intended to help finance the purchase of a conservation easement from one of our land trust members, The Conservation Fund (which owns the property). The project was an important economic and conservation initiative as it would ensure a stable land base for timber production and would provide habitat connectivity by linking National

Forest land to County Forest land. It was submitted to JCF in November 2022, where an anonymous objection was raised. JCF voted to reject the project entirely in April 2023. Interested parties had to scramble to find different funding to ensure the project would move forward.

46. Throughout my tenure, I have seen DNR-approved Knowles-Nelson grants reduced through JCF action. The Door County Land Trust, a member organization, was involved in fundraising for the Village of Sister Bay's acquisition of Pebble Beach. The project was an important conservation initiative because it would protect 600 feet of shoreline and guarantee public access to the shores of Green Bay. JCF ultimately approved approximately half of what was originally requested after an anonymous objection. Additionally, the Town of Grand Chute had requested approval of a Knowles-Nelson grant for the Arrowhead Park trail and boardwalk rehabilitation project to the tune of $663,737, but JCF approved only $400,000 in funding—a nearly 40% decrease from the initial grant.

47. I am aware of land trusts that have chosen not to apply for funding through the Knowles-Nelson Stewardship Program at all in light of JCF's behavior during Governor Evers's administration.

48. Gathering Waters' day-to-day work started to change in 2018, based upon the experience of the Meridian Barrens project, referenced in Paragraph 45 above. When that DNR-approved project faced extensive delays due to an anonymous objection, Gathering Waters met with several members of the JCF on behalf of the member land trust in an attempt to find solutions and a middle ground. Unfortunately, these meetings were unproductive; no explanation was provided as to specifically who objected or why, and the land trust was not offered any options or potential fixes to move the project forward. As referenced above in Paragraph 44, the project was downsized to necessitate funding below an amount implicating JCF review.

49. As a result of increased JCF interference with the Knowles-Nelson Stewardship Program, Gathering Waters also started working with individual JCF members in an attempt to see if the organization could help address specific concerns by committee members and figure out what might trigger objections in the future. Gathering Waters also met with members of JCF trying to determine if there was a path forward for certain projects to receive Knowles-Nelson Stewardship Program funds, even at a reduced level.

50. As a result of increased JCF interference with the Knowles-Nelson Stewardship Program, Gathering Waters started to advise land trusts and other partners to be more proactive with their outreach to JCF when grants were in the passive-review window.

51. As a result of increased JCF interference with the Knowles-Nelson Stewardship Program, Gathering Waters worked with offices of certain JCF members to offer tours of potential Knowles-Nelson Stewardship Program project sites to see if legislators had any questions or concerns. For example, Gathering Waters worked with Ozaukee Washington Land Trust in September of 2020 to host a tour for Senator Duey Stroebel of the Cedar Gorge Clay Bluffs project, mentioned above. This project was in Senator Stroebel's district, and he was serving on JCF. Months later, the grant for the Cedar Gorge Clay Bluffs project faced an anonymous objection from JCF with no clear explanation or rationale.

52. As a result of increased JCF interference with the Knowles-Nelson Stewardship Program, Gathering Waters' advocacy efforts have shifted and become far more burdensome. Gathering Waters' advocacy and organizing efforts have had to take on a more public-facing and more resource-intensive role in the last five years.

53. The Pelican River Forest required an entirely new level of involvement on Gathering Waters' part. Gathering Waters helped to form a local Friends of Pelican River Forest group, created a standalone website for the project

(pelicanriver.org), worked extensively with The Conservation Fund to help connect them with DNR leadership, the Governor's office, and legislative offices, and helped to recruit volunteers to attend scores of local government meetings. This was no small expenditure on Gathering Waters' behalf—it involved hundreds of hours of staff time and countless hours by volunteers.

54. Gathering Waters has helped land trusts identify and secure alternative funding sources for blocked projects, such as the Pelican River and Cedar Gorge Projects mentioned above.

55. Gathering Waters also helped attract media coverage to raise additional private funds to cover costs, especially with regard to the Cedar Gorge project. This resulted in a significant investment of staff time and resources for both Gathering Waters and Ozaukee Washington Land Trust, a member land trust.

56. Gathering Waters has shifted its focus to educate individual Wisconsin residents on developments with the Knowles-Nelson Stewardship Program and facilitate their communication with legislators. Gathering Waters is now also focused on educating members of the media to ensure the Knowles-Nelson Stewardship Program story is told to the public.

57. In the past several years, a large swatch of Gathering Waters' staff time has been devoted to Knowles-Nelson Stewardship Program advocacy. This equates to hundreds of thousands of dollars per year spent on dealing with the consequences of JCF's interference. Those are resources Gathering Waters would otherwise invest elsewhere and that land trusts could devote to additional conservation work if the Knowles-Nelson Stewardship Program were operating more functionally.

58. Gathering Waters is aware that the scope of the original action petition in this case was narrowed by the Court so that this case is now focused on JCF's use

of its veto power to block conservation projects selected by DNR for funding under the Knowles-Nelson Stewardship Program.

59. Gathering Waters is aware that Petitioners in this case are alleging that the legislative committee veto provisions in Wis. Stat. §§ 23.0917(6m) and (8)(g)3. violate the Wisconsin Constitution's separation of powers and the bicameralism and presentment requirements.

60. Gathering Waters is aware that Petitioners in this case are alleging that JCF is intruding on DNR's lawful authority to administer the Knowles-Nelson Stewardship Program.

61. The functioning and success of the Knowles-Nelson Stewardship Program is of paramount concern to Gathering Waters and its members.

62. Gathering Waters' members have firsthand experience with the Knowles-Nelson Stewardship Program and the onerous process involved in applying for a grant.

63. Gathering Waters' members have firsthand experience with the Knowles-Nelson Stewardship Program and JCF's recent, increased objections and interference with DNR-approved grants under the program.

64. Gathering Waters and its members are particularly concerned with the troubling trend of anonymous, and seemingly arbitrary, objections to worthy conservation projects that would benefit Wisconsin. This process lacks transparency and accountability for lawmakers.

65. Gathering Waters and its members are frustrated by the manner in which the JCF will notify the DNR of an objection but will fail to schedule a meeting regarding the proposal, effectively holding a proposal in limbo until such time it chooses to schedule a hearing or an applicant withdraws.

66. Gathering Waters and its members are particularly concerned with the troubling trend of JCF's increased delay, objections, and cuts to funding for projects

approved by DNR for funding under the Knowles-Nelson Stewardship Program. DNR's approval cannot be obtained without an extensive application and review process that ensures projects meet all of the statutory requirements imposed by the Legislature and the regulatory guidelines imposed by DNR.

67. Gathering Waters and its members have come to see the Knowles-Nelson Stewardship Program as a less reliable source of funding in light of JCF's interference.

68. Gathering Waters and its members are deeply committed to the Knowles-Nelson Stewardship Program and protecting Wisconsin's special places.

69. Gathering Waters and its members have an interest in, and are reliant upon, the orderly functioning of the Knowles-Nelson Stewardship Program to ensure state grant funding gets to lands across the state that need it most and meet all Program criteria.

70. Gathering Waters and its members have an interest in, and are reliant upon, the orderly functioning of the Knowles-Nelson Stewardship Program to ensure its members do not have to unnecessarily tap other philanthropic resources.

71. JCF's interference in the Knowles-Nelson Stewardship Program is causing harm to Gathering Waters' land trust members and individual donors in Wisconsin who care about conservation and are being blocked from using established Wisconsin law to accomplish the impact that they want in their local communities.

72. Land trusts, landowners, and communities need certainty about the functioning and success of the Knowles-Nelson Stewardship Program in order for projects to be as strategic and successful as possible.

73. Gathering Waters believes that the Court's intervention is urgently needed to get the Knowles-Nelson Stewardship Program back on the right track and operating in a timely, effective manner as intended by its original architects, Governor

Thompson who signed it into law, and the Legislature that adopted the Program and has repeatedly reauthorized and funded it.

74. Gathering Waters believes that its participation in this lawsuit would provide the Court with a more complete, cohesive view of the case and offer the perspective and experience of Knowles-Nelson Stewardship Program applicants, interested citizens, and organizations directly affected by the Knowles-Nelson Stewardship Program and JCF's interference.

Further affiant sayeth not.

Dated this 21st day February, 2024.

By: Michael Carlson
Michael Carlson

Subscribed and sworn to before me
this 21 day of February, 2024.

Cynthia A Birkett
Notary Public, State of Wisconsin
My commission expires: 9/22/26

