IN THE COURT OF APPEALS OF IOWA

No. 2-713 / 11-1979
Filed October 31, 2012

SIERRA CLUB IOWA CHAPTER, LINDA BIEDERMAN, and ELWOOD GARLOCK,
Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner, Judge.

Petitioners appeal from the dismissal of their petition for judicial review. **AFFIRMED.**

Wallace L. Taylor, Cedar Rapids, for appellants.

Thomas J. Miller, Attorney General, Richard E. Mull, Assistant Attorney General, Jerry Vander Sanden, County Attorney, for appellee.

Heard by Vogel, P.J., and Mullins and Bower, JJ.

VOGEL, P.J.

Sierra Club Iowa Chapter, Linda Biederman, and Elwood Garlock (hereinafter referred to collectively as Sierra Club) appeal the dismissal of their petition for judicial review of the action of the Iowa Department of Transportation (IDOT) in planning the construction of a highway through a county nature preserve and adjacent to a state nature preserve. Sierra Club claims it was not first required to seek a declaratory order under Iowa Code section 17A.9 (2011) and that the issue is ripe for judicial review. IDOT counters that the appeal was not timely due to the Sierra Club's reliance on an improper rule 1.904(2) motion, and we therefore have no appellate jurisdiction. Alternatively, it urges us to affirm the district's decision that it lacked jurisdiction as Sierra Club failed to exhaust its administrative remedies and the issue is not ripe for review. We affirm.

I. Background Facts and Proceedings

As this is a review of an order granting a motion to dismiss, the following facts alleged in Sierra Club's petition will be taken as true:

> The [IDOT] has proposed to construct a highway, referred to as Highway 100, west of the City of Cedar Rapids, Linn County, Iowa. The proposed Highway 100 project would go through the Rock Island County Preserve and adjacent to the Rock Island State Preserve. These Preserves are a rare specimen of native Iowa sand prairie. The Preserves provide habitat for many native species of plants and animals, some of which are classified as endangered or threatened.
>
> Sections 314.23 and 314.24 of the Iowa Code require agencies undertaking highway projects to preserve and protect natural and historic features and to avoid destruction or damage to natural areas if reasonable alternatives are available at no significantly greater cost. The [IDOT] has not complied with these statutes with respect to this highway project.

The petition sought a permanent injunction prohibiting the IDOT from taking any further action to acquire property, let bids or contract, or carry out any construction work to implement the highway project as "presently contemplated." The petition also requested the court to enter an order requiring the IDOT to comply with sections 314.23 and 314.24.

On June 30, 2011, the IDOT filed a preanswer motion to dismiss or strike the petition alleging that Sierra Club had not exhausted all available administrative remedies because it had not sought or obtained a final declaratory order from the IDOT, as required under section 17A.9. The motion to dismiss also claimed the issue was not ripe for adjudication both because there was not a formalized factual record through the administrative process and the dispute was over a "proposed" highway, rendering it premature. Sierra Club responded by asserting it did not need a declaratory ruling prior to seeking judicial review because there was no question sections 314.23 and 314.24 applied to the proposed highway, and 17A.9 declaratory orders are only required when asserting hypothetical fact situations. Sierra Club also argued that the case was ripe for judicial review because it was challenging the location of the highway, that the proposal is in the IDOT's five-year plan, and funds for right-of-way acquisition and mitigation have been committed. The IDOT responded that the planning and design of the proposed highway was not complete and "cannot become a matter of reality until further administrative action takes place and funding for construction is approved."

A hearing was held and the district court, in an order entered October 18, 2011, found it did not have jurisdiction because "there [was] no evidence in the

record that [Sierra Club] has petitioned the Department of Transportation for a declaratory ruling; thus, there is no decision for this court to 'judicially review.'" The district court also found the case was not ripe for review as there was "nothing in the record to indicate that any actual or present controversy exists. [Sierra Club's] petition clearly refers to the project as 'proposed.'" On November 4, Sierra Club filed a motion to enlarge and expand findings and modify the ruling pursuant to Iowa Rule of Civil Procedure 1.904(2). The IDOT responded and argued that Sierra Club's motion was "simply a rehash of the issues raised in [Sierra Club's] resistance to the motion to dismiss." The district court denied Sierra Club's motion in its entirety on November 23, 2011. Sierra Club filed a notice of appeal on December 5, 2011.

II. Timeliness of Appeal

The first issue we address is the IDOT's assertion that we do not have appellate jurisdiction because Sierra Club's notice of appeal was not timely filed under Iowa Rule of Appellate Procedure 6.101(1)(b). Sierra Club responds that the thirty-day window to appeal did not start to run until after its rule 1.904(2) motion had been ruled upon.

Generally, a notice of appeal from an order, judgment, or decree must be filed within thirty days from the time the judgment is entered. Iowa R. App. P. 6.101(1)(b). This time period is altered, however, when a motion for new trial, motion for judgment notwithstanding the verdict, or a rule 1.904(2) motion is filed in a timely manner. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005). However, the time limit for appeal cannot be extended by filing an improper post-trial motion. *State v. Olsen*, 794 N.W.2d 285, 298 (Iowa 2011).

We must therefore determine whether Sierra Club's post-trial motion was proper, such that the notice of appeal was timely. Iowa Rule of Civil Procedure 1.904(2)[1] permits a party to file a motion to request the district court to amend or enlarge its findings and conclusions, and to enable the court to modify its judgment or enter a new judgment. Thus, it is a procedural mechanism that permits parties to request reconsideration of a ruling, and authorizes the court to change its ruling. *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002). However, a rule 1.904(2) motion is available only to address "a ruling made upon [the] trial of an issue of fact without a jury." *Id.* (citations omitted).

Our supreme court addressed the varied uses and application of rule 1.904(2) motions in *Okland*:

> The rule can be used by a party, with an appeal in mind, as a tool for preservation of error. *See Meier*, 641 N.W.2d at 538 ("Our preservation of error doctrine requires a party to make a request for a ruling, and rule 179(b) [now 1.904(2)] establishes a procedure to use under some circumstances to make the request."). Similarly, it can be used to better enable a party to attack "specific adverse findings or rulings in the event of an appeal" by requesting additional findings and conclusions. *Johnson v. Kaster*, 637 N.W.2d 174, 182 (Iowa 2001) (citing *Ritz v. Wapello County Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999)). Additionally, it can be used, with no appeal in mind, to obtain a ruling on an issue that the court may have overlooked in making its judgment or decree. *See U.S. Cellular Corp. v. Bd. of Adjustment*, 589 N.W.2d 712, 720 (Iowa 1999) ("When the district court fails to comply with rule 179(a) [now 1.904(1)], a party may request that the court enlarge or amend its findings and conclusions."). Yet, it can also be used by a party to merely request the court to reconsider and change the ruling, with or without an appeal in mind. *Meier*, 641 N.W.2d at 538.

[1] Rule 1.904(2) was formerly rule 179(b). The content of the rule did not change when renumbered. It will be referred to as its current numbering for consistency in this opinion.

Okland, 699 N.W.2d at 266-67. The supreme court reasoned that these purposes are all derived from the broad language of the rule allowing a party to file a motion following the entry of a judgment or decree in many types of nonjury cases to request "'the findings and conclusions . . . be enlarged or amended and the judgment or decree modified . . . or a different judgment or decree substituted.'" *Id.* at 267 (quoting Iowa R. Civ. P. 1.904(2)). It gives a party the opportunity to request the court to reconsider its ruling before incurring the time and expense of an appeal. *Id.*

This does not mean a rule 1.904(2) motion is not available to challenge an issue of law, but the legal issue must have been addressed by the court in the context of an issue of fact tried by the court without a jury. *See Bellach*, 573 N.W.2d at 905 (finding a rule 1.904(2) motion did not toll time to appeal because the motion did not raise a challenge to an issue of fact or to a legal issue reached in the context of an issue of fact). This issue has also been addressed in the realm of judicial review of agency action in *State ex rel*. *Johnston v*. *Iowa Department of Social Services*, 328 N.W.2d 912, 912-13 (Iowa 1983). The court in *Johnston* held that even though the predecessor of rule 1.1603 provided that the provisions of rule 1.904(2) apply, rule 1.1603 governs contested case proceedings and does not apply to judicial review of agency action other than in a contested case. *Id.* at 913; *see also Osborne v*. *Iowa Natural Res*. *Council*, 336 N.W.2d 745, 747 (Iowa 1983) (holding in agency adjudication other than a contested case, rule 1.904(2) motions are limited to decisions in which the district court made a determination of fact). However, our supreme court has recently held that a motion raising the court's failure to decide a purely legal issue could

still be described as a rule 1.904(2) motion to preserve error. *LaMasters v. State*, ___ N.W.2d ___, ___, 2012 WL 50429966, at *6 (Iowa 2012)

The argument that the Sierra Club's motion was inappropriate has some appeal; however, Sierra Club claims it made the motion to fully preserve issues for appeal. When a motion is "in substance" a timely rule 1.904(2) motion, permitting extension of the time of filing notice of appeal is appropriate. *Bellach*, 573 N.W.2d at 905. In its post trial motion, Sierra Club asked the district court to "explain" its jurisdictional ruling, and make or correct other "findings" such that the district court's dismissal of the action for failure to exhaust administrative remedies and ripeness was in error. Clearly, exhaustion of administrative remedies is a question of law, not fact. "Exhaustion of the administrative process is jurisdictional, and a suit commenced without complying with this process is subject to dismissal." *Schneider v. State*, 789 N.W.2d 138, 145 (Iowa 2010). Likewise, ripeness is also a question of law, not of fact. *See Iowa Coal Mining Co.*, *Inc. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996).

In reviewing Sierra Club's rule 1.904(2) motion, we note some factual findings that it sought the district court to correct.[2] Although a close issue, we choose to find the post trial motion was properly utilized, such that the time for filing a notice of appeal of the initial ruling was tolled.

[2] For example Sierra Club wanted corrected the district court's finding that Sierra Club was challenging "the decision to locate the highway . . . not the construction of the highway itself," and to find mitigation had already begun. Sierra Club also challenged the findings to reflect that funds had already been committed for some aspects of the project.

III. Standard of Review

We review a district court's grant of a motion to dismiss for correction of errors at law. *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). A court must "view the petition in the light most favorable to the plaintiff, and will uphold dismissal only if the plaintiff's claim could not be sustained under any state of facts provable under the petition." *Griffen v. State*, 767 N.W.2d 633, 634 (Iowa 2009). While normally motions to dismiss must be based solely on the strength of the petition only, motions to dismiss for lack of jurisdiction may consider matters outside the pleadings such as affidavits. Iowa R. Civ. P. 1.421(1); *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 (Iowa 2004). Sierra Club has the burden of establishing jurisdiction of the court. *See Lutz v. Iowa Swine Exports Corp.*, 300 N.W.2d 109, 111 (Iowa 1981) ("Where jurisdiction is challenged, it is the obligation of the plaintiff to establish it."). Critical to the district court's dismissal are interpretations of a rule of civil procedure and provisions of chapter 17A, the Iowa Administrative Procedures Act (IAPA). We review those underlying questions of statutory construction for the correction of errors at law as well. *See Travelers Indem. Co. v. D.J. Franzen, Inc.*, 792 N.W.2d 242, 246 (Iowa 2010).

IV. Exhaustion of Administrative Remedies

We next turn to Sierra Club's argument that it did not fail to properly exhaust administrative remedies before turning to the district court. The judicial review provisions of section 17A.19 are jurisdictional and exclusive. *Neumeister v. City Dev. Bd.*, 291 N.W.2d 11, 14 (Iowa 1980). Section 17A.19 states: "Except as expressly provided otherwise by another statute referring to this chapter by

name, the judicial review provisions of this chapter shall be 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." Only after a party "has exhausted all adequate administrative remedies" and "is aggrieved or adversely affected by any final agency action" is the party entitled to judicial review under the IAPA. *Richards v. Iowa State Commerce Comm'n*, 270 N.W.2d 616, 619 (Iowa 1978).

Sierra Club argues that it did exhaust all administrative remedies and the declaratory order provision found in Iowa Code section 17A.9 is not applicable to the injunctive relief it seeks. The IDOT argues the district court was correct in finding that section 17A.9 applied and Sierra Club failed to request a declaratory order. Iowa Code section 17A.9 provides for the procedure for seeking a declaratory order from an agency:

> 1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.
>
> . . . .
>
> 5. Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:
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> a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.
>
> b. Set the matter for specified proceedings.
>
> c. Agree to issue a declaratory order by a specified time.
>
> d. Decline to issue a declaratory order, stating the reasons for its action.
>
> 6. A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.
>
> 7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the

> proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.
>
> 8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefore, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph "d," a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

The issue raised in Sierra Club's petition to the district court, but not previously raised before the IDOT under 17A.9, is whether the IDOT, in proposing the Highway 100 project, has complied with Iowa Code sections 314.23 and 314.24. Section 314.23(3) provides:

> Highways, streets, and roads constructed on or through publicly owned lands comprising parks, preserves, or recreation areas, shall be located and designed, in consultation with the public entity owning the land, so as to blend aesthetically with the areas and to minimize noise. When land is taken from the areas for highway construction and if, in consultation with the public entity owning the land, mitigation is deemed necessary, the land shall be replaced by an equal or greater amount for public use, or by other mitigation, undertaken in consultation with the public entity owning the land, and deemed to be appropriate to the amount of land taken, including, but not limited to, the improvement, development, or preservation of the areas.

Section 314.24 states:

> Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section, cities, counties and the department shall make a diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways.

According to the petition, these sections "require agencies undertaking highway projects to preserve and protect natural and historic features and to avoid destruction or damage to natural areas if reasonable alternatives are available at no significantly greater cost." It is undisputed that sections 314.23 and 314.24 apply to the construction of a highway through a nature preserve. The parties disagree as to who is charged with that responsibility in the first instance, the courts or the agency. While the Sierra Club argues to the contrary, the case law as well as the code places the responsibility for compliance with sections 314.23 and 314.24 with respect to primary highways with the IDOT. *See* Iowa Code § 306.4(1) ("Jurisdiction and control over the primary roads shall be vested in the department."); *see also Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 760 (Iowa 1998) ("Thus, the power to determine the location of a highway is a legislative, and not a judicial, function. In the absence of fraud, corruption, oppression, or gross injustice, courts are not to interfere with that function. . . . The legislature has empowered the Highway Division of IDOT to make initial recommendations regarding location of highways and has empowered the commission to make decisions regarding which of the alternatives proposed should be adopted." (internal citations omitted)).

As set forth above, the code provides a path to seek a final order on IDOT's application of sections 314.23 and 314.24 in section 17A.9 which details how a declaratory order is to be sought, ruled on and finally, subject to judicial review. Iowa Code § 17A.9. To comply with section 17A.9, the IDOT adopted rules for the filing of petitions for declaratory orders. The IDOT defined a petition for declaratory order as "a formal request from a person or agency to the

department asking how the department will apply a statute, rule or order based on a specific set of facts contained in the petition." Iowa Admin. Code r. 761–12.1. Under the IDOT rule, the purpose of a petition for declaratory order "is to seek binding advice from the department, not to challenge a decision that the department has already made." *Id.*

Sierra Club argues declaratory orders are not available at the agency level for three reasons: (1) declaratory orders only apply when the question is whether a statute applies to a particular circumstance; (2) declaratory orders are permissive only, or not exclusive of the judicial remedy; and (3) declaratory orders only apply to hypothetical facts, not concrete action taken by the IDOT to approve and begin development of the Highway 100 project.

First, Sierra Club claims it did not need to seek a 17A.9 declaratory order because by its terms 17A.9 only applies where there is a question as to whether a statute applies to a particular circumstance and it is clear that sections 314.23 and 314.24 apply to a highway project that would go through a nature preserve. Sierra Club argues that IDOT did not comply with sections 314.23 and 314.24. We find that this argument falls squarely into a section 17A.9(1)(a)—a matter for the IDOT relating "to the applicability to specified circumstances of a statute . . . within the primary jurisdiction of the agency." Furthermore, this argument must fail when one takes into account the administrative rule the IDOT has promulgated to comply with 17A.9; where by filing a petition for a declaratory order, the petitioner is asking "how the department will apply a statute . . . based on a specific set of facts contained in the petition." Iowa Admin. Code r. 761–12.1. By this interpretation, 17A.9 is not merely to determine whether a particular

statute applies, but also how the statute is to be applied. It then follows that sections 314.23 and 314.24 are within the agency's primary jurisdiction. As addressed above, the case law and statutes confirm this specialized agency function.

Sierra Club's second argument regarding section17A.9 is that declaratory orders are permissive and therefore not an exclusive remedy. *See Riley v*. *Boxa*, 542 N.W.2d 512, 522 (Iowa 1996) ("The exhaustion of administrative remedies doctrine does not apply if, by the terms and implications of the statutes authorizing an administrative remedy, such remedy is permissive only or not exclusive of the judicial remedy, warranting the conclusion that the legislature intended to permit resort to the courts even though the administrative remedy has not been exhausted." (internal quotation omitted)). If there is a specifically defined procedure for a series of administrative steps for a party's complaints to be heard before court action can be initiated, those administrative steps must be exhausted. *Id.* Sierra Club contends "there is nothing in 17A.9 that indicates that it is an integral part of an administrative process of which sections 314.23 and 314.24 are also a part." Therefore, utilizing section 17A.9(1)(a), that a party "may petition an agency for a declaratory order," is permissive. This argument must fail because the IDOT has jurisdiction to control placement of primary roads. Iowa Code § 306.4(1). This clear grant of authority shows the legislature intended the IDOT to first determine the environmental compliance of its road projects, not the courts. Sierra Club's contention that the word "may" in section 17A.9 renders it permissive is unpersuasive considering the other code sections granting the IDOT jurisdiction over matters such as this. *See Riley*, 542 N.W.2d

at 522 (holding that the use of the term "may" does not automatically warrant judicial relief before exhaustion of the administrative remedies; the legislative intent must be discerned).

For its final argument regarding 17A.9, Sierra Club relies heavily on *Bennett v. Iowa Department of Natural Resources*, 573 N.W.2d 25 (Iowa 1997), and *Tindal v. Norman*, 427 N.W.2d 871 (Iowa 1988), for the proposition that section 17A.9 applies only to hypothetical issues. The court in *Tindal* stated that "section 17A.9 contemplates rulings on purely hypothetical sets of facts, not on concrete challenges such as that here presented." *Tindal*, 427 N.W.2d at 873; *see also Des Moines v. Pub. Emp't Relations Bd.*, 275 N.W.2d 753, 758 (Iowa 1979) (holding section 17A.9 "contemplates declaratory rulings by administrative agencies on purely hypothetical facts"). This language in *Tindal* is obiter dictum—as the court found the plaintiff was challenging the facial constitutional validity of a statute, which was beyond the agency's ability to decide. 427 N.W.2d at 872–73. The opinion does not limit declaratory orders to cases involving hypothetical facts; it simply clarifies that declaratory orders are necessary to determine the final agency action on an issue. By comparison, courts may not render declaratory judgments on hypothetical or speculative questions. *See Bechtel v. City of Des Moines*, 225 N.W.2d 326, 331–32 (Iowa 1975) (requiring "justiciable controversy").

Nothing in the language of the section 17A.9 suggests that declaratory orders would be unavailable when a petition contains genuine facts as the "specified circumstances" underlying its request for a determination. Iowa Code § 17A.9(1)(a). A declaratory order must set out the "particular facts on which it is

based." *Id.* § 17A.9(7). Accordingly, we reject Sierra Club's argument that declaratory orders are only available on hypothetical fact patterns. We find no error in the district court's decision that section 17A.9 offers Sierra Club an adequate administrative remedy.

We agree with the IDOT's statement that Sierra Club could presently bring a challenge to the proposed project, but it must utilize the administrative process set forth under section 17A.9. The IDOT must first be given the opportunity to explain its compliance with Iowa Code sections 314.23 and 314.24 in the subject case in the context of a declaratory order. The potential benefits of agency declaratory orders in resolving real disputes and providing a reviewable ruling should not be limited in the ways Sierra Club suggests. We therefore affirm the district court's finding that it did not have jurisdiction as Sierra Club has failed to exhaust its administrative remedies as provided under the code.

V. Ripeness

Although the lack of district court jurisdiction because of Sierra Club's failure to exhaust administrative remedies fully resolves this case on appeal, we will also address and affirm the district court's conclusion that this case is improper on ripeness grounds as well. "A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative." *State v*. *Tripp*, 776 N.W.2d 855, 859 (Iowa 2010). Sierra Club argues that the district court was incorrect in finding its seeking to enjoin the IDOT from moving forward with the Highway 100 project was not ripe for judicial review. The IDOT contends the district court was correct because

(1) there is no final agency action to review, and (2) Sierra Club's "binding admission" that the highway is "proposed."

The parties agree *Ohio Forestry Association v*. *Sierra Club* sets forth the proper three-part test for determining ripeness for this environmental challenge to the proposed Highway 100 extension project: (1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented. 523 U.S. 726, 733 (1998). We find that Sierra Club has failed to satisfy its burden establishing the district court's jurisdiction as all three factors support finding this matter not ripe for adjudication.

First, there would be no harm to the parties in delaying review. The five year plans of the IDOT do not aid Sierra Club, but rather confirm that no funding is allocated for the actual construction of Highway 100 in the vicinity of the nature preserves through 2016. *See Friends of Marlot v*. *U*.*S*. *Dep't of Transp*., 382 F.3d 1088, 1094 (10th Cir. 2004) ("There is nothing concrete about a highway that may never be built."). Therefore, there is no pressing need for the courts to immediately review this case. Most telling are the second and third elements from *Ohio Forestry* because, as the district court aptly found, "there is nothing in the record to indicate that any actual or present controversy exists." The IDOT, as the agency in charge of the proposed highway, must be given the opportunity to explain and develop whether the current plan follows the environmental guidelines, not the court. Judicial intervention would interfere with the IDOT's

administrative duty of determining compliance and the court would greatly benefit from factual development of the issues.

Sierra Club attempts to salvage its action by claiming that it is attacking the plans for the highway, not the construction itself. However, in its prayer for relief, Sierra Club "request[s] the court issue a permanent injunction prohibiting [IDOT] from taking any further action to . . . carry out any construction work to implement the above described highway project as presently contemplated . . . ." The words of the petition further exemplify the hypothetical nature of this action:

> The Highway 100 project **would** adversely impact this ecosystem and these members' use and enjoyment of the Preserves.
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> . . . .
>
> The Highway 100 project **would** adversely impact this ecosystem and Ms. Biederman's use and enjoyment of the Preserves.
>
> . . . .
>
> The Highway 100 project **would** adversely impact this ecosystem and Mr. Garlock's use and enjoyment of the Preserves.
>
> . . . .
>
> The Respondent has **proposed** to construct a highway referred to as Highway 100 . . . .

(Emphasis added). Irrespective of our finding that Sierra Club failed to exhaust administrative remedies, we find that based on the record before us, the claim is too abstract and hypothetical for judicial adjudication. There is no actual, present controversy, but rather a hypothetical one in which Sierra Club asserts it "would" be harmed in the future by "proposed" action, rather than suffering from a present harm. If the court was to become involved now in this action, it would be "entangling [itself] in abstract disagreements over administrative policies." *Tripp*, 776 N.W.2d at 859. The district court was correct in finding the action was not ripe for review.

VI. Conclusion

We find the district court was correct in dismissing Sierra Club's petition. The district court had nothing to judicially review because Sierra Club failed to first seek the appropriate administrative remedies, specifically under section 17A.9. Furthermore, the case was not ripe for judicial review. A proposed highway that may or may not be built in a way that may or may not violate environmental protection statutes is not sufficiently ripe for a court to review.

AFFIRMED.