

## WI Court of Appeals Unanimously Reverses Lower Court in Favor of Lake Beulah Advocates

Written by LBMD

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The Wisconsin Court of Appeals issued its decision today in the 2005 permit extension case for the Village of East Troy Well #7 High Capacity Well, and reversed Judge Kennedy's decision. A copy of the Court of Appeals' decision is here.

From the decision (first paragraph only):

BROWN, C.J. This decision explores the interplay between the public trust doctrine and the regulation of high capacity wells, especially when citizens or conservancy organizations such as lake management districts perceive that a proposed well may adversely affect nearby navigable waters. We will go through our analysis in some detail, but for purposes of this introductory statement, it is enough to say the following: The statutes identify three types of water wells, differentiated by the quantity of water they consume—wells consuming 100,000 gallons per day (gpd) or less, wells consuming over 2,000,000 gpd and wells in-between. This case has to do with wells in-between. The parties dispute the role that the public trust doctrine plays with regard to the middling wells. The Village of East Troy says that, with certain statutorily defined exceptions, there is no role. Lake Beulah Management District and Lake Beulah Protective and Improvement Association claim that there is always a role such that the DNR is mandated to thoroughly investigate each proposed middling well for possible public trust doctrine implications. The DNR agrees with the District and the Association that the doctrine always plays a role but asserts that the comprehensiveness of the investigation is solely at its discretion. We agree with the DNR, but we also hold that the DNR misused its discretion here. We therefore reverse and remand with directions that the circuit court remand this case to the DNR for further proceedings. We also affirm a side issue and a cross-appeal.

What the Court of Appeals held is as follows:

1. The LBMD timely filed its Petition for Judicial Review of the 2005 permit extension, which the Court held was a new permit. The Court held that the LBMD had six months, not 30 days, from the date of the issuance of the permit extension to file its Petition for Judicial Review.
2. The DNR has a duty, even for high capacity wells with capacities to pump less than 2 million gallons per day, to consider the public trust doctrine "when it has evidence suggesting that waters of the state may be affected by a well."
3. The LBMD provided the DNR with evidence suggesting that the waters of Lake Beulah may be affected by the Well No. 7 high capacity well, by way of Robert Nauta's affidavit, which stated that the well will "cause adverse environmental impacts to the wetland and navigable surface waters of Lake Beulah."

The Court of Appeals remanded the case "to the circuit court with directions to, in turn, remand this case to the DNR so that it may consider the Nauta affidavit and any other information the agency had pertinent to Well #7 before it issued the 2005 approval."

The Court of Appeals' decision is 25 pages in length, is unanimous (there were no dissents), and is recommended for publication in the official reports. The decision includes a history of the issue and is useful for gaining an understanding as to why the Lake Beulah Management District (LBMD) and Lake Beulah Protective and Improvement Association (LBPIA) has continued to pursue this issue to protect Lake Beulah from possible, negative impact from nearby high capacity wells.

This is excellent news for those who wish to protect the waters of Lake Beulah for the people of Wisconsin.