

## Supreme Court Decisions, Monitoring History and Next Steps

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Tuesday, 17 April 2012 06:13

### Wisconsin Supreme Court Decisions

The State Supreme Court issued its decisions on pending litigation between the Lake Beulah Management District and the Lake Beulah Protective and Improvement Association (the “conversances”) vs. the Village of East Troy relating to the Village’s high capacity well (Well #7) on July 6, 2011.

The court overturned a portion of the June 16, 2010 ruling by the Waukesha District Court of Appeals that would have required the DNR to reconsider the permit issued in 2005 for Well #7 that can draw up to 1.4 million gallon per day well from the aquifer that also feeds Lake Beulah. However, the court affirmed the

Portion of the Court of Appeals ruling that states: “the DNR has the authority and duty to consider the environmental impact of a proposed high capacity well if presented with sufficient scientific evidence suggesting potential harm to waters of the state”. This ruling affirms that the DNR has the responsibility to enforce the public trust doctrine to protect all state navigable waters as opposed to current legislation that protects only trout streams and springs. This ruling will have statewide impact on the protection of inland waterways but, unfortunately, won’t currently help Lake Beulah.

The court also affirmed the Appeals Court decision that the LBMD ordinance requiring the Village to return 95% of the water pumped from Well #7 to the Lake Beulah watershed is in violation of state law and is in conflict with the authority of the DNR.

The court also stated that: “If the DNR or the 'conversances' believe that the well is actually causing harm to Lake Beulah, they are not foreclosed by our decision from perusing a remedy in the future through an enforcement or nuisance action”. Justice Ziegler issued a concurring opinion: “Notwithstanding our decision today, there remains credible, concrete evidence that Well #7, now constructed and in operation since August 1, 2008, has the potential to harm the wetland and navigable waters of Lake Beulah. If the DNR was not aware of this evidence then, it most certainly is aware now”.

Links to court decisions: [20110706\\_08AP3170\\_00383892](#)    [20110706\\_09AP2021\\_00383893](#)

### Monitoring History and Next Steps

The LBMD has been monitoring groundwater flows into and out of Lake Beulah since 2005 through the work of fourteen volunteers who take weekly water level readings at five “strike point” monitoring wells on the lake shore from May to November each year. Data from these readings are loaded into a UW-

Madison computer program that tracks changes in water flow both before and after the installation of Well #7 and during various changes of normal rainfall and weather conditions.

The US Geological Survey, through an agreement with LBMD, samples and analyzes changes in the chemistry and temperature of Lake Beulah waters. Diversion of groundwater from the sand and gravel aquifer that feeds the lake could reduce the hardness of lake water reducing water clarity and increasing the potential for algae and weed growth.

Finally, in February 2008, the LBMD and the Village of East Troy negotiated a Cooperation Agreement that approved the Villages installation of two deep monitoring well “nests” between Well #7 and Lake Beulah on Village property plus a comparison “nest” on the north-west side of Lake Beulah in the Town of East Troy. These wells measure water flows between the deep and shallow aquifers that feed the well and the lake compared to groundwater flows in a different aquifer system. Hydrogeologists representing the Village and LBMD download flow history on an agreed upon timetable into a computer program to measure changes over time. The parties also agreed to share all collected monitoring data that would be archived in the USGS database and published in the Wisconsin Science Center’s annual lake report.

Data from these wells has confirmed that there is no impermeable barrier between the deep aquifer that feeds the well and the shallow aquifer that feeds the lake. Water flows from the lake aquifer into the deep aquifer whenever Well #7 is pumping.

After the court’s decision was announced, Village President Bill Loesch said in an interview with the East Troy Times that the Village Board will meet to determine future monitoring schedules. He stated: “We look forward to working with the Lake Beulah Management District with monitoring the lake and hope that we can move forward”

The above monitoring programs are now even more important given the need for the LBMD and LBP&IA to record and prove any future damage to Lake Beulah. Since installation of Well #7 in 2008, the Village has not required the volume of water that had been predicted in their growth plan. Well pumping has been intermittent and the water volume withdrawn has never approached the permitted 1.4 million gallons per day. Also, during the last three years, we have not suffered a prolonged drought that would have reduced rainfall and other lake water sources.

The LBMD appreciates the support of our volunteers and all District members for their approval of funding the litigation and monitoring programs that have brought us to this point. We need to continue budgeting for the Well #7 Defense fund which supports our continuing monitoring programs.

As LBMD Chairman Dave Bitter said in the recent East Troy Times article: “It’s never going to be over for us. We are never going to stop protecting Lake Beulah”