

ORDINANCE NO. 2006-03

AN ORDINANCE PROHIBITING THE NET TRANSFER OF GROUNDWATER AND SURFACE WATER FROM LAKE DISTRICT HYDROLOGIC BASIN

WHEREAS, Lake Beulah Management District (the “District”) is a municipal entity existing pursuant to Wisconsin Statutes, Section 33.235 with powers of a town sanitary district as provided therein, and the powers of an inland lake protection and rehabilitation district as provided in Wisconsin Statutes, Section 33.22; and

WHEREAS, the District exists for the purposes of undertaking a program of lake protection and rehabilitation and promoting the public health, comfort, convenience and welfare of the District, and also serves as a local unit of government as described in Wisconsin Statutes, Section 281.11 to further state policy to mobilize resources to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private, and accomplish the greatest result for the people of the state as a whole; and

WHEREAS, the District finds it necessary to protect the entire local water resource, both groundwater and surface water, both water quality and water quantity, to achieve its purposes of protecting and rehabilitating Lake Beulah and promoting the public health, comfort, convenience, and welfare of the District; and

WHEREAS, the District finds that waters vital to the existence, well being and quality of Lake Beulah are limited to those that fall naturally to the land surface within the Lake Beulah Surface Water Drainage Basin or flow into Lake Beulah from the Lake Beulah Groundwater Basin; and

WHEREAS, the District finds that Lake Beulah is a complex ecosystem, in which the biological and physical components and constituents are interrelated such that whatever effects one will affect the others, the sustainability of which depends on adequate supplies of groundwater and surface water; and

WHEREAS, the District finds that it is harmful to Lake Beulah and contrary to the purposes of the District to allow the surface or groundwater within the Lake Beulah drainage basin or groundwater basin to be despoiled, depleted or diverted or transferred out of said regions; and

WHEREAS, the District seeks to assure that Lake Beulah is protected, that the public health, comfort, convenience and welfare of the District are promoted, and that until such time that the District installs a single enterprise water distribution and sewerage system, the electors of the District will be able to produce from their own lands adequate supplies of clean groundwater for drinking, while still utilizing customary private septic systems for disposal of septic waste; and

WHEREAS, the District finds it necessary to encourage conservation of groundwater and surface water resources within the District and protect those resources from despoliation and over consumption in order to protect Lake Beulah and promote the public health, comfort, convenience or welfare of the District; and

WHEREAS, the District finds that the state legislature has empowered the District to undertake any act necessary to carryout a program of lake protection and rehabilitation and undertake specific and general acts for the promotion of public health, comfort, convenience or welfare of the District; and

WHEREAS, the District finds that it is consistent with its legislatively prescribed duties to prohibit the net transfer of waters out of the region upon which Lake Beulah, this District and its electors depend for a source of water necessary to maintain and improve the quality of Lake Beulah and provide potable supply to the electors.

NOW THEREFORE, the Commissioners of the Lake Beulah Management District do ordain as follows:

Section 1. DEFINITIONS.

- A. **Lake Beulah Hydrologic Basin.** The term “Lake Beulah Hydrologic Basin” or “Hydrologic Basin” shall mean: the geographic region or territory whose boundaries include all of the Lake Beulah Surface Water Drainage Basin and all of the Lake Beulah Groundwater Basin.
- B. **Lake Beulah Surface Water Drainage Basin.** The term “Lake Beulah Surface Water Drainage Basin” or “Drainage Basin” shall mean: The geographic region or territory whose boundaries include all those lands and waters on which water deposited at the ground surface would, if prevented from infiltrating into the soil, flow by gravity to a point where it would enter into Lake Beulah.
- C. **Lake Beulah Groundwater Basin.** The term “Lake Beulah Groundwater Basin” or “Groundwater Basin” shall mean: The three dimensional region whose boundaries encompass that portion of the aquifer known variously as the shallow, unconsolidated, or sand and gravel aquifer, within which the groundwater, if it were unaffected by pumping or other artificial inducement, would flow into, beneath or within the Lake Beulah Surface Water Drainage Basin.
- D. **De Minimis.** The term “de minimis” as applied to use, diversion or transfer of water shall mean: Any use, diversion or transfer (“UDT”) that is of such character or quantity that its effect upon Lake Beulah or the Lake Beulah ecosystem, when considered singly or in the aggregate along with all other UDTs in or from the Hydrologic Basin, including UTDs declared exempt under this Ordinance, cannot to a reasonable degree of

scientific certainty be found to cause, result in or bring about an adverse effect or impact on Lake Beulah, the Lake Beulah ecosystem, the shallow, unconsolidated aquifer within the Groundwater Basin, potable water supplies within the District or the public health, comfort, convenience or welfare of the District.

NOTE: As demand for water increases or available water decreases, the application of this definition of “*de minimis*” will result in a lowering of the upper threshold of the quantity of water found to be *de minimis*. The District intends to protect Lake Beulah and sustain the Lake Beulah ecosystem by allowing previously granted *de minimis* determinations to remain in effect, while subjecting new determinations to those limitations established by environmental conditions existing at the time of the new determination.

Section 2. PROHIBITED ACTS. It shall be unlawful and prohibited by this Ordinance for any person or entity to do any of the following unless such acts are authorized in advance by and performed in conformance with a valid permit issued by the District pursuant to this Ordinance:

- A. Divert or transfer surface water out of the Lake Beulah Surface Water Drainage Basin.
- B. Divert, transfer, or induce the diversion or transfer of groundwater out of the Lake Beulah Groundwater Basin.
- E. Withdraw groundwater from within the Lake Beulah Groundwater Basin and then divert or transfer said water out of the Lake Beulah Groundwater Basin.

Section 3. LIABILITY AND PENALTY. Any person or entity found in violation may be assessed a penalty in accordance with this section. Any person that violates this Ordinance, except as provided for in Section 5, shall be liable to the Lake Beulah Management District for the cost of enforcing this Ordinance and the cost of replacing, to the District’s satisfaction, any water that is diverted away from or transferred out of the Lake Beulah Hydrologic Basin in violation of this Ordinance, said replacement to consist of bringing into and discharging within the District, in a manner approved by the District, water in equal quantity and quality as that water which was diverted or transferred out of the Lake Beulah Hydrologic Basin, the Lake Beulah Surface Water Drainage Basin, or the Lake Beulah Groundwater Basin in violation of this Ordinance. For the purposes of this Ordinance the “cost of enforcement” shall include, without limitation, the following:

- administrative costs
- expert and consultant fees
- attorney’s fees
- court costs

Section 4. PERMIT PROCESS. No use or action may be initiated, undertaken or continued that would be in violation of this Ordinance except in accordance with a permit issued by the District. A request for a permit for such use or action must be submitted to the Board of Commissioners for approval. The petition, together with any documents or records that support the petition, must clearly state the grounds upon which the petitioner requests the permit including, at minimum, a concise statement of the purpose of the request, the annual volume of water to which the request applies and the number of years the petitioner seeks for the approval or permit to remain in effect. In addition, said petition must include a thorough environmental study of the proposed use or action with emphasis on the potential impacts of such use or action on the following: Lake Beulah; groundwater and surface water contributing to Lake Beulah; wetlands adjacent to Lake Beulah or any surface water tributary to Lake Beulah; private wells in the District; and groundwater supplying any private well in the District. Petitioner may request an opportunity to testify and present evidence at a hearing conducted by the Board of Commissioners. The permit shall be granted only upon the majority decision of the Board of Commissioners based upon the following procedure:

- A. *Review.* The Board of Commissioners shall review the petition, proposed site drainage, sewerage and water systems, the proposed water diversion or transfer operation and any study commissioned or required by the District with respect to any potential impact upon Lake Beulah, the Lake Beulah ecosystem, the surface water resources of the Lake Beulah Surface Water Drainage Basin or the groundwater resources of the Lake Beulah Groundwater Basin.
- B. *Determination.* After study and review of the necessary data, the Board of Commissioners shall hold a public hearing on the petition. The Board of Commissioners shall render its decision in writing no later than 90 days from the date of the public hearing. Any further consideration of the petition beyond the 90 day period shall be preceded by another public hearing on the petition.
- C. *Factors and Standards to be Considered.* The Board of Commissioners shall apply each of the following factors and standards in making its determination and shall not grant any permit or approval that if the net effect would be adverse to Lake Beulah or the public health, comfort, convenience, and welfare of the District:
 - 1. Health, safety and welfare of the District;
 - 2. Water supply, sanitation, and utilities in the District;
 - 3. Impact on property values within the District;

4. The amount of water that will be diverted or transferred from the Hydrologic Basin and not returned to and discharged within the Hydrologic Basin;
5. Impact on Lake Beulah, the Lake Beulah ecosystem, or the water supply necessary or advisable for protecting, maintaining or improving the quality of Lake Beulah;
6. Impact on any well, water supply or septic system of any elector of the District, and
7. That such grant is not contrary to the public interest where, owing to special conditions, a literal enforcement of the terms of this ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.
8. In considering the preceding factors, the Board of Commissioners shall apply each of the following standards in making its determination:
 - a. No proposed use, diversion or transfer shall be permitted unless a volume of water equal to at least 95% of the water actually diverted or transferred is returned to the Hydrologic Basin at the location(s) where the adverse effects of the proposed use, action, diversion or transfer will be mitigated.
 - b. Any return flows allowed as part of a permit granted pursuant to this Ordinance must be discharged so as to mitigate the adverse effects of the proposed use, action, diversion or transfer to the satisfaction of the District.
 - c. Any return flows allowed as part of a permit granted pursuant to this Ordinance must be of water quality equal or superior to the water diverted or transferred from the Hydrologic Basin.

D. *Fees.* Such petitioner shall be liable for, and one or more processing fees shall be charged to reimburse, the District's reasonable costs of reviewing, processing and hearing such petition, including any of the District's costs of any studies reasonably necessary to determine the impact of the proposed action and the costs of any appeals that petitioner may choose to

bring of any decision of the District regarding the petition. Additionally, a one time or annual fee shall be charged for granting any approval or permit, such fee being sufficient to cover on-going environmental monitoring, water replacement, water treatment and permit administration as the District may deem appropriate. The petitioner will be provided an itemized invoice for the fees, and said fees are due within 30 days. Non-payment of any fee charged shall be cause for revocation of any permit or approval granted under this Ordinance and any amount of non-payment may be assessed as a special assessment or special charge and shall lienable against any property of the petitioner.

- E. *Review and Appeal of Determinations.* The procedures set forth in Wisconsin Statute Chapter 68 shall apply to any request for review, administrative appeal or judicial review of any District determination, action or inaction pursuant to this Ordinance.

Section 5. EXCEPTIONS.

- A. The penalty provisions of this Ordinance shall not apply to any uses, diversions or transfers of water that occur in accordance with a permit issued by the District.
- B. The permit and penalty provisions of this Ordinance shall not apply to any uses, diversions or transfers of water that are declared by the District to be exempt, provided such use, diversion or transfer is first registered with the District upon forms provided by the District, the estimated quantity of such use, diversion or transfer, and the points of water acquisition and discharge, are annually reported to the District, and the use, diversion or transfer does not change such that the District finds it is no longer exempt. The following shall be exempt from the penalty provisions of this Ordinance as provided above:
 - 1. *De Minimis* Use, Diversion or Transfer.
 - 2. Single-Family Residential Use, Diversion or Transfer for Customary Residential Purposes.
 - 3. Existing Small Volume Use, Diversion or Transfer. This category shall apply only to those uses, diversions or transfers that do not exceed 1000 gallons per day and that actually exist on the effective date of this Ordinance.


Section 6. ADMINISTRATIVE CONVENIENCE. The District may develop, adopt and require the use of forms and other materials consistent with and useful for the administration of this Ordinance. The boundaries of the Hydrologic Basin, Drainage

Basin and Groundwater Basin shall be portrayed on one or more maps approved by the District in accordance with available data, and said maps may be revised from time to time in accordance with newly available data.

Section 7. SEVERABILITY. If any part of this ordinance is held void, such part shall be deemed severable and the invalidity thereof shall not affect any remaining part of this ordinance.


Section 8. EFFECTIVE DATE. This Ordinance shall become effective on the first day after the Ordinance has been adopted by the Board of Commissioners and duly published.

Dated this 11 day of December, 2006.

LAKE BEULAH MANAGEMENT DISTRICT


DAVID SKOTARZAK, Commissioner

ATTEST:



VALERIE JOHNSON, Clerk-Treasurer

Date Adopted 12-11-06
Date Published 12-13-06
Effective Date 12-14-2006