

NOTICE OF CLAIM AND CLAIM PURSUANT TO WIS. STAT. § 893.80 AND WIS. STAT. § 893.82

Now come the Claimants, Kent Haeger, Ron Jarecki, Dale Roble, John Sonderegger, the Eagle Springs Lake Management District, by its president, Tom Day, and the Phantom Lake Management District, by its president, Steve Barber, by their attorneys, Berger, Newmark & Fenchel P.C., by Attorney Frank T. Davenport, and Lawton & Cates, S.C., by Attorney Daniel P. Bach, and pursuant to Wis. Stat. § 893.80 and Wis. Stat. § 893.82, make the following claims:

1. Claimant, Kent Haeger, is an adult, who owns property located at W1629 South Shore Drive, East Troy, Wisconsin 53120.
2. Claimant, Ron Jarecki, is an adult, who owns property located at N9080 Oakwood Lane, Mukwonago, Wisconsin 53149.
3. Claimant, John Sonderegger, is an adult, who owns property located at W2032 Kings Parkway, East Troy, Wisconsin 53120.
4. Claimant, Dale Roble, is an adult, who owns property located at N9367 Beulah Park Road, East Troy, Wisconsin 53120.
5. Claimant, Eagle Springs Lake Management District, is a lake management district, as described and authorized under Wis. Stat. Ch. 33, which is responsible for the management, protection and preservation of Eagle Springs Lake.
6. Claimant, Phantom Lake Management District, is a lake management district, as described and authorized under Wis. Stat. Ch. 33, which is responsible for the management, protection and preservation of Phantom Lake.
7. Respondent, Village of East Troy, Wisconsin, is a municipal corporation. The Village Administrator for the Village of East Troy, Wisconsin is Judy Weter. Her business

address is 2106 Church Street, East Troy, Wisconsin 53120. She must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

8. Respondent, William Loesch is the President of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

9. Respondent, John Alexander, is a Trustee of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

10. Respondent, Fred Douglas, is a Trustee of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

11. Respondent, William Joas, is a Trustee of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

12. Respondent, Randy Timms, is a Trustee of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

13. Respondent, Bill Stubbs, is a Trustee of the Village of East Troy, Wisconsin. His business address is 2106 Church Street, East Troy, Wisconsin 53120. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

14. Respondent, Mary Hubbard-Nugent, is a Trustee of the Village of East Troy, Wisconsin. Her business address is 2106 Church Street, East Troy, Wisconsin 53120. She must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a).

15. Respondent, Wisconsin Department of Natural Resources, is a governmental agency. Scott Hassett is the current Secretary of the Wisconsin Department of Natural Resources (“DNR”). His business address is Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin 53707. He must be served with the Notice of Claim pursuant to Wis. Stat. § 893.80(1)(a). Furthermore, as required by Wis. Stat. § 893.82(5), a copy of this Notice of Claim is being served upon Attorney General J.B. Van Hollen, Wisconsin Department of Justice, 17 West Main Street, P.O. Box 7857, Madison, Wisconsin 53707-7857 via certified mail.

16. That Claimants, Kent Haeger, Ron Jarecki, Dale Roble and John Sonderegger, all own property adjacent to Lake Beulah, located in Walworth County, Wisconsin. The Claimants, and all members of the public, have an interest in protecting the natural resources of the State of Wisconsin, including Lake Beulah, for their collective use and enjoyment.

17. That Claimants, Eagle Springs Lake Management District and Phantom Lake Management District are charged with the duty and responsibility to, among other things, manage and oversee the natural resources within their districts, which include, but are not limited to, Eagle Springs Lake and Phantom Lake, respectively. Both Eagle Springs Lake Management District and Phantom Lake Management District are located near Lake Beulah. Furthermore, Phantom Lake is fed, in part, by water flowing from Lake Beulah.

18. That Article IX, § 1 of the Wisconsin Constitution places the navigable waters of this state, including Lake Beulah and other lakes, streams and rivers, in trust for the public use and enjoyment.

19. That the DNR is the trustee responsible for the safeguarding of such waters, and must act in a manner consistent with that of a trustee entrusted with the duty and obligation to protect and preserve such waters.

20. That the Village of East Troy, Wisconsin applied for approval to the DNR in 2003 for the installation of a high capacity well designed to draw ground water from an aquifer that serves as a source of water for Lake Beulah and other waterways. The high capacity well will provide water service to a new subdivision among other users located in the Village of East Troy, Wisconsin.

21. That the Village of East Troy, Wisconsin failed to renew its application for approval for Well 7 when the original approval expired in September 2005. The DNR unlawfully renewed the previous approval, later claiming that it had issued a new approval pursuant to a new statutory scheme.

22. That the DNR granted (or renewed) approvals for the installation of the high capacity well without considering what environmental impact the withdrawal of groundwater through that well will have on nearby lakes, wetlands, streams and rivers, contrary to its duties and obligations as the state's steward of the state's natural resources under the Public Trust Doctrine and state statutes and regulations.

23. That in granting the aforementioned approval to the Village of East Troy, Wisconsin for the installation and operation of a high capacity well near the shoreline of Lake Beulah without due consideration of the potential environmental impact of such well on nearby wetlands, streams, rivers and lakes, the DNR violated its obligations as trustee of such waters.

24. That the Village of East Troy, Wisconsin, its officers and trustees have authorized the construction of the aforementioned well and intend to use it to withdraw groundwater,

without knowing what impact that withdrawal of groundwater will have on nearby wetlands, streams and other surface waters, and while taking action to prevent adequate study and consideration of the likely impact of the well on the environment.

25. That there are or will be other similarly situated municipalities that are or will seek to deploy high capacity wells near other wetlands, streams, rivers and lakes that could adversely affect those natural resources.

26. That any state statute or regulation, or combination thereof, if construed in a manner that effectively relieves the DNR of its obligations as trustee of the state's navigable waters, would violate Article IX, § 1 of the Wisconsin Constitution.

Wherefore Claimants seek:

- A. An order declaring that the DNR is required to conduct sufficient inquiry to determine the likely impact of the high capacity well being installed near Lake Beulah by the Village of East Troy, Wisconsin on the waters of Lake Beulah as well as nearby wetlands and streams;
- B. An order rescinding the existing approval for such well and directing that the Village of East Troy, Wisconsin cease efforts made to construct such well, and if operational cease the withdrawal of groundwater through such well, until an assessment is made regarding the likely impact of such well on nearby lakes, rivers, wetlands and streams; and
- C. An order prohibiting the DNR from granting any new approvals for the installation and/or operation of any high capacity well prior to a determination that operation of such well will not adversely affect nearby surface waters, wetlands and streams.

Dated this ____ day of August 2007.

**BY: BERGER, NEWMARK &
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