

well #7.docx - Powered by Google Docs[Download \(13K\)](#) [Print \(1 page\)](#) [Plain HTML](#) [Edit Online](#) [Save in Google Docs](#)**Bubbling Up Again**

On June 16, 2010, the Wisconsin Court of Appeals, District II, issued a ruling favorable to the Lake Beulah Management District (LBMD) and Lake Beulah Protective and Improvement Association (LBPIA) in connection with the longstanding litigation over the Village of East Troy's Well #7. In sum, the appellate court found that the Wisconsin Department of Natural Resources had information that it should have, but failed to consider before deciding to grant a second approval to the Village in 2005 to construct the well. That information was in the form of an affidavit from a hydrogeologist stating that available data showed that operation of the well could adversely impact the lake. The court directed that the matter be returned to the DNR for re-consideration of the well permit.

In reaching this decision, the appellate court concluded that the DNR is authorized to consider the adverse impact upon surface waters of a high capacity well drawing less than two million gallons of water per day---a threshold above which DNR must conduct an environmental analysis. However, the court limited DNR's consideration to "scientific evidence" presented to it that a well drawing less than two million gallons per day (Well #7 is allowed to draw roughly 1.4 million gallons per day) may affect surface waters. DNR now agrees that it has the authority to consider such information, a switch from its initial position in this case.

The Village, no surprise, disagrees with the appellate court and DNR, insisting that the legislature has granted DNR authority to review the potential damage a high cap well may do to surface waters only where the well gushes more than two million gallons of water per day. The Village has filed a petition asking the Wisconsin Supreme Court to overturn the appellate court's ruling. The LBMD, LBPIA and DNR responded asking that the Supreme Court not review the unanimous appellate decision. As of this writing, the Supreme Court has not decided whether to take the case.

To many, perhaps, the notion that DNR should consider the potential environmental impact of a high capacity well situated near the banks of a spring fed lake before permitting construction of the well, would seem patently consistent with its duties as trustee of the state's public waters. Apparently, the following entities disagree, as each has filed a motion to intervene in the case to advocate overturning the appellate court's decision: Wisconsin Builders Association; Wisconsin Realtors Association; League of Wisconsin Municipalities; Wisconsin Rural Water Association; Wisconsin Manufacturers and Commerce; Wisconsin Paper Council; Midwest Food Processors Association. Heavens---we have met the enemy and he is us!

A Spanish proverb goes: "It is not the same to talk of bulls as to be in the bullring." Stay tuned---we are knee deep in bullring.