



ATTORNEY LAING IN THE NEWS

The below article, discussing a decision of the Wisconsin Court of Appeals in a case being handled by Attorney [Dean Laing](#) of our firm, was published in the June 28, 2010 edition of the *Milwaukee Journal Sentinel*. Our client, Lake Beulah Management District, was successful in the appeal.

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DNR review ordered for well permit**East Troy case could expand agency's swath**By **DON BEHM**
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A state appeals court has ordered the Department of Natural Resources to reconsider a 2005 permit the agency granted to East Troy for constructing a high capacity well that has been operating for nearly two years 1,400 feet from Lake Beulah in Walworth County.

Lake Beulah Management District attorney Dean Laing said the ruling provides traction for the district's effort to shut down the well to prevent a drop in the lake's water level.

The ruling's impact will be felt statewide since this is the first court to hold that the DNR has general authority to review the environmental impacts of high capacity wells of less than 2 million gallons a day, Laing said.

The court is telling the DNR it can invoke its authority to protect the waters of the state, under the Wisconsin Constitution's public trust doctrine, if it receives information about possible environmental damage, Laing said. This authority remains with the DNR even though separate state laws mandate environmental impact studies

Well ruling

Lake Beulah Management District has won a state appeals court ruling that orders the Department of Natural Resources to reconsider a 2005 permit granted to East Troy for a high capacity well 1,400 feet from Lake Beulah. The well has been in operation for nearly two years.



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for high capacity wells of that size in specific circumstances, he said.

"The DNR's mission must be to protect waters of the state from potential threats caused by unsustainable levels of groundwater being withdrawn by a well, whatever type of well that may be," the Waukesha-based District II appeals court says in a June 16 ruling. The public trust doctrine says that the state holds title to navigable waters in trust for public pur-

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poses.

The East Troy well has the capacity to deliver up to 1.4 million gallons of water a day from a saturated sand and gravel aquifer close to the surface. This same groundwater source feeds the lake and an adjacent wetland, according to management district consultant Robert Nauta, a geologist.

Pumping water from the well could lower water levels in the wetland and lake, Nauta said in a 2005 affidavit given to a DNR attorney at the time.

But DNR permit writers were not given the affidavit before approving East Troy's request to locate the well a short distance south of the lake, according to the appeals court. The department had a duty to consider the information before issuing the permit, the decision says.

"It's disappointing that the DNR is now being asked to review its decision of five years ago, based on speculation," East Troy special counsel Paul Kent said. The village's

well No. 7 began operating in August 2008.

Prior to its construction, the village voluntarily installed three monitoring wells to track its impact on groundwater levels, Kent said. "Our experts have confirmed, after reviewing monitoring well data, that well No. 7 has had no adverse impact on the lake," he said.

Kent expects East Troy to ask the state Supreme Court to hear the case.

"A significant question for the Supreme Court will be whether general statutes can supersede more recent legislation" giving DNR authority to act in specific circumstances, he said.

Nauta, the management district's consultant, watches several other monitoring wells, according to Laing. Those records indicate pumping from the municipal well is lowering the lake level, he said.

"It is the lake district's position that the well should never have been allowed to be constructed or operated in its current location, and that the DNR and the courts, if necessary, should order East Troy to immediately cease and desist from operating that well," Laing said.

The deadline for the village to petition the Supreme Court is 90 days after the date of the appeals court ruling.