

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

DANE COUNTY

CLEAN WISCONSIN, INC.

Petitioner,

v.

Case No. 16CV2816

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

FILED

JAN - 6 2017

DANE COUNTY CIRCUIT COURT

**BRIEF IN SUPPORT OF PETITION TO INTERVENE AS RESPONDENTS OF
WISCONSIN MANUFACTURERS & COMMERCE, DAIRY BUSINESS
ASSOCIATION, MIDWEST FOOD PROCESSORS ASSOCIATION, WISCONSIN
POTATO & VEGETABLE GROWERS ASSOCIATION, WISCONSIN CHEESE
MAKERS ASSOCIATION, WISCONSIN FARM BUREAU FEDERATION,
WISCONSIN PAPER COUNCIL, AND WISCONSIN CORN GROWERS
ASSOCIATION**

Wisconsin Manufacturers & Commerce, Dairy Business Association, Midwest Food Processors Association, Wisconsin Potato & Vegetable Growers Association, Wisconsin Cheese Makers Association, Wisconsin Farm Bureau Federation, Wisconsin Paper Council, and Wisconsin Corn Growers Association (Proposed Intervenors, hereinafter Intervenors), through their undersigned counsel, submit this brief in support of their Petition to Intervene.

BACKGROUND

Clean Wisconsin (Petitioner) filed nine petitions for judicial review challenging Wisconsin Department of Natural Resources' (DNR) decisions to approve nine high-capacity well permit applications that were submitted by nine separate applicants.¹ These cases were consolidated by court order into this action Dec. 13, 2016. Petitioner asked that the court

¹ Petitions for Judicial Review, Dane County Circuit Court, Case Nos. 16CV2816-16CV2824.

invalidate each of these nine permits and find that DNR has broad powers to deny or condition approvals of high capacity well applications.²

Petitioner's arguments rest on the applicability of the Wisconsin Supreme Court's holding in *Lake Beulah Mgmt. Dist. et al. v. Dep't of Natural Resources*, 2011 WI 54 355 Wis. 2d 47. 799 N.W.2d 73. They also cite as authority the administrative law judge's decision in *In re Conditional High Capacity Well Approval for Two Potable Wells to be Located in the Town of Richfield, Adams County Issued to Milk Source Holdings Inc. (Richfield Dairy)*, Nos. IH-12-03, IH-12-05, DNR 13-021, DNR 13-027 (Wis. Div. Hearings & Appeals Sept. 3, 2014). Both *Lake Beulah* and *Richfield Dairy*, however, with respect to the claims made by Petitioner in these consolidated cases, have been overturned or otherwise superseded by legislation aimed directly at limiting agency authority in general and specifically with respect to cumulative impacts relating to high capacity wells.

I. 2011 WISCONSIN ACT 21 AND RELATED ACTIVITIES

2011 Wisconsin Act 21 was introduced as Assembly Bill 8 in the 2011 January Special Session by the Joint Committee on Organization at the request of Governor Walker and Rep. Thomas Tiffany. Act 21 made changes to the administrative rulemaking process and added limits on regulatory authorities of state agencies. Its primary relevancy to these consolidated cases was eliminating implied delegation of authority to DNR with respect to high capacity wells.

Act 21 requires state agencies have "explicit authority" to implement or enforce regulatory mandates. Wis. Stat. § 227.10(2m), created by Act 21, provides in part:

No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, *unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule* that has been promulgated in accordance with this subchapter. (emphasis added)

² Petition for Judicial Review, Case No. 16CV2816. Relief requested pages 6-7, paragraphs 1-5.

“Explicitly” is defined as “clearly stated and *leaving nothing implied*; distinctly expressed; definite; *distinguished from implicit*.” Webster’s New World College Dictionary (4th Edition) (emphasis added.) In other words, the terms “explicit” and “implicit” are mutually exclusive. But to further distinguish “explicit” and “implicit” authorities, Act 21 prohibits the use of statutory preambles – declarations of legislative intent, purpose, findings, or policy, and descriptions of an agency’s general powers or duties – as agency authority. Wis. Stat. § 227.11(2)(a).

In February 2016, the Assembly Committee on Organization requested Attorney General Brad Schimel provide an opinion on Act 21’s effect on DNR’s statutory authority to regulate high capacity wells.³ The request notes that the “confusion” over DNR’s authority under Chapter 281 and the public trust doctrine has “created a substantial backlog for permit requests, bringing the issuance of new permits to a standstill.” The request asked for an opinion to “address the effect Act 21 has on the ability of the DNR to impose requirements and conditions not explicitly provided for in statute or rule, such as monitoring wells and cumulative impact analysis.”

On May 10, 2016, Schimel issued a formal opinion on Act 21’s limits on DNR authority. Opinion of Wis. Att’y Gen. to Hon. Robin Vos, Chairperson, Assembly Comm. on Org. OAG-01-16 (May 10, 2016), <https://www.doj.state.wi.us/sites/default/files/OAG-01-16%20FINAL.pdf>. The opinion included three findings:

1. The Wisconsin Supreme Court in *Lake Beulah* “did not interpret and apply [Wis. Stat. § 227.10(2m)] when evaluating DNR’s authority. Therefore, much of the court’s reasoning in *Lake Beulah*, including the breadth of DNR’s public trust authority discussed below, is no longer controlling.” OAG-01-16, ¶ 16.
2. The legislature did not delegate authority through Chapter 281 prefatory provisions or delegate public trust duties that would allow DNR to impose monitoring well

³ See Letter to Attorney General Brad Schimel from Assembly Committee on Organization, dated February 2, 2016, attached hereto as Exhibit A.

conditions, undertake cumulative impact analysis, or impact analysis on groundwater, other public wells, and wetlands. *Id.* ¶¶ 28, 33.

3. Wisconsin's high capacity well regulatory structure set forth at Wis. Stat. § 281.34, or in related sections, has no explicit authority relating to monitoring wells or cumulative impact analysis. *Id.* ¶ 46.

With respect to the explicit versus implicit authority issue, Schimel states:

Through the plain language of Act 21, the Legislature sought to regain and maintain control of the breadth of agency authority in two ways. First, an *agency must have explicit authority to impose license and permit conditions* and second, by requiring explicit authority for rulemaking. Wis. Stat. §§ 227.10(2m), 227.11(2)(a). *Id.* ¶29. (emphasis added)

DNR concurred with the attorney general opinion and proceeded to modify the high capacity well permit program to reflect Act 21's limitation on its authority. When reviewing permit applications, DNR limited its analysis to parameters enumerated in the statutes, such as whether the proposed high capacity well is in close proximity to trout streams or other exceptional resource waters, adversely impacts public drinking water wells or groundwater resources, or threatens public safety.⁴

In a related case on Act 21, on Nov. 12, 2015, Judge McGinnis, Outagamie County Circuit Court, found that DNR imposed unlawful permit conditions on high capacity wells. *New Chester Dairy, LLC v. DNR*, No. 14CV1055 (Wis. Cir. Ct. Outagamie Cty. Dec. 2, 2015) (*New Chester*).⁵ The *New Chester* case presented the first opportunity for judicial review of Act 21 in the context of agency authorities. The key conclusion of law by Judge McGinnis was that:

The language of Wis. Stat. § 227.10(2m) states very clearly that an agency can only implement or enforce a requirement 'including as a term or condition of any license' if that requirement is 'explicitly required or explicitly permitted by statute or by a rule.' Thus, under the plain language of Wis. Stat. § 227.10(2m), agencies cannot rely on

⁴ See *Wisconsin DNR's High-Capacity Well Review Frequently Asked Questions* (June 2016). "DNR must limit the scope of its review of proposed high capacity wells to that which is specifically authorized in statutes and rules, and may not include conditions in approvals unless explicitly required by law." (emphasis in original) <http://dnr.wi.gov/topic/wells/documents/HighCapacity/FAQ.pdf>.

⁵ See Decision of Judge McGinnis, Outagamie County Circuit Court, *New Chester Dairy*, attached hereto as Exhibit B.

implied authority to impose conditions. Rather, those agencies must seek amendment to a statute or promulgate a rule. *New Chester*, at 4-5.

Petitioner Clean Wisconsin intervened in *New Chester* in support of respondent DNR.

Intervenors who intervened in the *New Chester* case in support of the permit applicant were Wisconsin Manufacturers & Commerce, Dairy Business Association, Midwest Food Processors Association, and Wisconsin Potato & Vegetable Growers Association. Brief for Wisconsin Manufacturers and Commerce et al. as Intervenors, *New Chester*. Plaintiffs and the business intervenors prevailed in *New Chester*, but Petitioner Clean Wisconsin failed to appeal.

Ostensibly, Petitioner is asking the court to ignore controlling policies adopted by the legislature, signed into law by the governor, clarified in a formal attorney general opinion, upheld by another circuit court, and accepted by DNR. The effect would be to have DNR resurrect failed policies that essentially shut down its high capacity well permit program, causing immeasurable harm to agricultural and manufacturing businesses that require groundwater wells for their operations.

II. BUSINESS COALITION INTERVENORS

The Intervenors are eight trade associations whose members interact with DNR and other state agencies on a regular basis. Intervenors' members own and operate businesses in nearly every category of agricultural, business, and industrial activity. Many of the Intervenors' members own and operate high capacity wells that are regulated by DNR, and many others are contemplating the construction of high capacity wells to support planned business development and expansion activities. The Intervenors' members benefit from the legislative protection afforded by Act 21 and Wis. Stat. §281.34(5m), and their interests will be affected by the final judgment in this action as it pertains to the court and DNR's interpretation and application of Act 21 and Wis. Stat. §281.34(5m).

Through these consolidated cases, Petitioner takes direct aim at Act 21 regulatory reforms that require agencies have explicit authority before imposing mandates on the regulated community. In addition, Petitioner ignores Wis. Stat. §281.34(5m) prohibiting any challenge to a high capacity well permit based on the lack of consideration of cumulative impacts. Petitioner also dismisses the attorney general opinion regarding Act 21, and considers invalid DNR practices that arose out of that opinion by arguing that the *Lake Beulah* decision controls.

Intervenors have actively supported the policies being challenged by Petitioner in these consolidated cases through legislation, litigation and other means. Intervenors made 2011 Wis. Act 21 a top legislative priority throughout its development and enactment. Intervenors Affidavits. In a related effort, four of the intervenors filed an amicus brief in the *Lake Beulah* case that Petitioner argues here controls. Brief for Wisconsin Manufacturers and Commerce et al. as Amici Curiae, *Lake Beulah*. These intervenors asked the court in *Lake Beulah* to limit DNR's authorities to only those requirements clearly stated in the statutes. *Id.* at 6-9. Certain intervenors were also parties to the *New Chester* litigation in which the court concluded that under Act 21 agencies no longer can impose permit conditions through implied authority. Brief for Wisconsin Manufacturers and Commerce et al. as Intervenors, *New Chester*. They also lauded the clarifying attorney general opinion.⁶

Wisconsin Manufacturers and Commerce ("WMC") is a nonprofit business trade organization with roughly 3,700 members statewide in the manufacturing, dairy, energy, commercial, health care, insurance, banking and service sectors of the economy. Manley Aff. ¶ 2. WMC actively participated in development of 2003 Act 310, which established the

⁶ See Wisconsin Manufacturers & Commerce press release noting that the attorney general opinion "gives greater certainty to Wisconsin's regulated industries." (May 10, 2016) <https://www.wmc.org/news/press-releases/attorney-general-opinion-upholds-major-regulatory-reform/>

statutory framework for high capacity well approvals like the one at issue in this case, as well as 2011 Wisconsin Act 21. Manley Aff. ¶ 3. WMC frequently participates in the rulemaking process by commenting on various issues directly affecting its members' ability to conduct business in the state. *Id.*

WMC has ten members with high capacity well permits issued after the publication of the attorney general opinion, and 235 members with permits issued prior to the attorney general opinion. Manley Aff. ¶ 5. WMC has three members with existing permit applications under review. Manley Aff. ¶ 6.

Dairy Business Association, Inc. ("DBA") is a nonprofit, statewide organization of dairy producers, vendors, allied industry partners, and professionals actively working to ensure that dairy producers, large and small, remain an active, thriving part of Wisconsin's economy, communities, and food chain. Holevoet Aff. ¶ 3. A large part of DBA's work is fostering a positive business and political environment for dairy farming in Wisconsin. *Id.* This includes being dedicated to the creation and preservation of consistent water, environmental, and waste management regulation. *Id.* DBA participated in the development of 2011 Wisconsin Act 21. Holevoet Aff. ¶ 7.

Water is essential to many parts of the dairy industry, from raising livestock to dairy product production. Holevoet Aff. ¶ 4. DBA's members rely on high capacity wells to conduct business, and will be particularly affected if their high capacity well permits are modified or rescinded by DNR by order of this court based upon the relief sought by Petitioner. *Id.* One DBA member has a high capacity well permit targeted in this case. *Id.* DBA membership includes at least seventeen high capacity permit holders allowing for the operation of twenty-seven separate

wells that are essential to their operations. *Id.* DBA also has three members with permit applications under review. Holevoet Aff. ¶ 6.

The Midwest Food Processors Association (“MWFPA”) is a trade association that advocates on behalf of food processing companies and affiliated industries in Illinois, Minnesota, and Wisconsin. George Aff. ¶ 2. Established in 1905 as the Wisconsin Cannery Association, today MWFPA represents a diverse group of food processors on a variety of food issues. *Id.* A primary role of MWFPA is to influence public policy and make the Midwest a great place for food processors to do business. George Aff. ¶ 3. To achieve this goal, MWFPA represents food processors before the legislature and regulatory agencies. *Id.* MWFPA participated in development of 2011 Wisconsin Act 21. George Aff. ¶ 7

Water is a critical resource throughout all food industry sub-sectors. George Aff. ¶ 4. For example, water is used in the fruit and vegetable processing industry for: process cooling, operating boiler systems, water fluming, as well as blanching, peeling, cooking, product rinsing, and equipment cleaning, and used as an ingredient in final products. *Id.* MWFPA has one member among the consolidated cases under review, two members issued permits following the issuance of the attorney general’s opinion, and at least eighteen members with existing well permits. George Aff. ¶ 5.

Wisconsin Paper Council is a nonprofit statewide organization representing twenty pulp and paper mills located in Wisconsin, along with seventy paper converting and related business associate members employing over 31,000 or over seven percent of all manufacturing workers in Wisconsin. Landin Aff. ¶ 2. The value of paper and pulp shipments represents gross state product in Wisconsin more than \$14 billion annually. *Id.* The Wisconsin Paper Council advocates for and represents its members in public affairs and public relations matters, serves as a center for

exchange of ideas, and disseminates news and information concerning the industry. Landin Aff.

¶ 3. Wisconsin Paper Council supported 2011 Wisconsin Act 21. Landin Aff. ¶ 7.

Water is a critical resource for Wisconsin Paper Council members who rely heavily on both surface and groundwater resources in various phases of the production of paper products in Wisconsin. Landin Aff. ¶ 4. High capacity wells are sometimes the only viable means to obtain the necessary water for certain members. *Id.* Wisconsin Paper Council has one associate member whose permit was issued since the publication of the attorney general opinion and at least seven members with existing high capacity well permits. Landin Aff. ¶ 5.

Wisconsin Potato and Vegetable Growers Association (“WPVGA”) is a nonprofit statewide organization representing 300 farm operations and related business associate members. Houlihan Aff. ¶ 2. WPVGA was created to help its grower-members conduct and utilize the latest research and technologies, garner government support, produce environmentally sound research and stay in touch with consumers. *Id.* Wisconsin ranks third in the United States in potato production and generally ranks number one in canning vegetable production. Houlihan Aff. ¶ 3. The Wisconsin potato and vegetable industry provides 35,000 jobs in Wisconsin and generates \$7.5 billion in gross state product. *Id.*

Water is a critical resource for WPVGA’s members who rely heavily on groundwater from high capacity well permits to irrigate their crops. Houlihan Aff. ¶ 4. It would be virtually impossible to grow adequate quality potatoes and vegetables in the central sands area without irrigation. *Id.* WPVGA has twenty-two members whose permits have been issued since the attorney general opinion was issued, at least eighty-nine members with existing permits.

Houlihan Aff. ¶ 5. WPVGA has nine members with permit applications pending.

Houlihan Aff. ¶ 6.

The Wisconsin Farm Bureau is Wisconsin's largest general farm organization with more than 46,000 members. Zimmerman Aff. ¶ 2. Its members come from every one of Wisconsin's seventy-two counties. *Id.* The Wisconsin Farm Bureau is a nonprofit statewide agricultural organization providing a voice for farmers and a vision for agriculture for its farmer members who are leaders in the production of Wisconsin's dairy, beef, pork, poultry, corn, soybeans, grain, alfalfa, forage, cranberry, vegetables, fruits, forestry, and aquatic products. *Id.* The Wisconsin Farm Bureau monitored the development of Wisconsin Act 21. Zimmerman Aff. ¶ 7.

Water is a critical resource for Wisconsin Farm Bureau members who rely heavily on groundwater resources pumped from permitted high capacity wells in various types of commodity agriculture production. Zimmerman Aff. ¶ 4. Water, like soil, is essential to sustaining and growing agricultural production in Wisconsin in order to feed, clothe and sustain the world's growing population. *Id.* Wisconsin Farm Bureau includes as members five current permit holders whose permits could be modified or rescinded by the DNR by order of this court. Zimmerman Aff. ¶ 5. Wisconsin Farm Bureau has at least twenty-four members that have been issued permits since the attorney general opinion that could be modified or rescinded. *Id.* Wisconsin Farm Bureau has at least twelve members with existing well permit applications under review. Zimmerman Aff. ¶ 6.

Wisconsin Cheese Makers Association is a nonprofit statewide organization representing over eighty dairy product manufacturing facilities in Wisconsin, and more than 100 companies in Wisconsin supplying goods and services to the dairy industry. Umhoefer Aff. ¶ 2. It provides information, advocacy, member education and networking events for its member companies. *Id.*

Water is critical resource for Wisconsin Cheese Makers Association members who rely heavily on groundwater resources in the production of dairy products. Umhoefer Aff. ¶ 4.

WCMA has members with forty-eight processing plant sites that operate a total of eighty-two existing permitted wells. *Id.* In addition, WCMA has one member with an existing well permit application under review that could be set aside or denied by DNR based upon the relief sought by Petitioner. *Id.*

Wisconsin Corn Growers Association (WCGA) is a nonprofit statewide organization representing 842 corn farming operators, operations and related business associate members. Wagner Aff. ¶ 2. The WCGA was created to assist its grower-members to conduct and utilize science-based agricultural research and technologies, garner public and private sector support for agricultural research, and educate the consumer on corn crop production and utilization in consumer products. *Id.*

Among the consolidated cases in this litigation is one WCGA member, and also thirty-three members that have been issued high capacity well permits since the publication of the attorney general's opinion referenced in these consolidated cases. Wagner Aff. ¶ 5. Any existing high capacity well permits that are modified or rescinded because of this litigation will cause serious economic harm to WCGA members that require those wells for their operations. *Id.* WCGA has thirteen members with existing well permit applications under review that could be denied, approved with infeasible conditions, or not acted upon by DNR in a timely manner based upon the relief sought by Petitioner. Wagner Aff. ¶ 6.

ARGUMENT

I. The Business Intervenors, as Associations, Have Standing to Seek Intervention under Wis. Stat. 227.53(1)(d).

Wisconsin law allows a court to permit interested parties to intervene as a party in an action for judicial review of agency decisions brought under Wis. Stat. § 227.52. and Wis. Stat.

§227.53. Wisconsin courts have applied a two-part test for determining whether a party is aggrieved and has standing under Wis. Stat. §§ 227.52 and 227.53(1)(d).

The first step is to “ascertain whether the decision of the agency directly causes injury to the interest of the Petitioner.” *Wisconsin’s Environmental Decade, Inc. v. Public Service Comm. (WED)*, 69 Wis. 2d 1, 10, 230 N.W.2d 243 (1975). “The second step is to determine whether the interest asserted is recognized by law.” *WED*, 69 Wis. 2d at 10.

Courts have liberally construed the standing requirement and “recognized that public policy should play a role in that construction.” *Metropolitan Builders Ass’n of Greater Milwaukee (MBA) v. Village of Germantown*, 282 Wis. 2d 458, 466, 698 N.W. 2d 301 (2005). This is especially true regarding associations: “The *WED* court recognized a special variation of this standing rule for associations when it allowed an organization devoted to environmental protection and preservation to sue, provided it could demonstrate sufficient facts on remand *to show that a member of the organization could have sued.*” *MBA*, 282 Wis. 2d at 466. (emphasis added).

The court in *MBA* further articulated the basis for a special recognition of the role public policy should play in the court’s construction of associational standing, finding that “although individual developers could all bring separate challenges to the use of impact fees, judicial economy would suffer,” and thus “there is simply nothing to be gained from repeated litigation of the same issue,” when allowing an association standing in a challenge on behalf of its members to development impact fees. *MBA*, 282 Wis. 2d at 468. The original nine cases in this litigation were consolidated in the interest of judicial economy, and the combined advocacy of these eight associations will also effectively focus judicial resources. Because individual members of the association would have standing to intervene in the court

proceeding, the court reasoned, their association was a legitimate surrogate for purposes of standing in judicial proceedings involving public policy broadly affecting members' interests.

As demonstrated below, Intervenorors have standing to intervene in this case.

1. Intervenorors Have Sustained an Injury in Fact

As explained by the *WED* court, an “[i]njury alleged, which is remote in time or which will only occur as an end result of a sequence of events set in motion by the agency action challenged, can be a sufficiently direct result of the agency’s decision to serve as a basis for standing.” *WED*, 69 Wis. 2d at 14.

Each of the Intervenorors have members that rely on the use of high capacity wells. Water is essential both for the agricultural and manufacturing sectors. Groundwater is often the only source of water for these operations. For example, it would be virtually impossible to grow adequate quality potatoes and vegetables in the central sands area without high capacity well irrigation. Wisconsin law requires a permit from DNR to operate a high capacity well. Without such permit, there will be no well, no well water, and no agricultural and manufacturing operations dependent upon such well water. Loss of high capacity well permits will, therefore, result in great economic harm to numerous Intervenorors’ member companies, many of whom are small, family-run businesses.

The relief sought by Petitioner is to do just that; that is, to have the court reverse, set aside, or vacate nine DNR permit approvals of the high capacity well applications that are the subject of the consolidated cases. Under Wis. Stat. §281.34 (7), once a high capacity well permit has been approved, DNR must either modify or rescind the permit if the approval is not in conformance with the applicable law. Thus, granting the relief sought will trigger existing permits to be modified or rescinded. Such a ruling could impact many or all existing high

capacity well permits. Particularly at risk are those permits that are targeted in this litigation and the hundreds of other permits approved by DNR under the same protocols Petitioner seeks to invalidate in these consolidated cases.

Petitioner is also seeking the court to direct DNR to consider the cumulative impacts of a high capacity well prior to approval of the permit application. Since the issuance of the attorney general opinion, DNR has not considered cumulative impacts or certain permit conditions such as installation of monitoring wells because it was determined to be outside the scope of its delegated authority. If the court grants Petitioner's request to consider cumulative impacts or other factors or permit conditions not evaluated by DNR when issuing high capacity well permits, hundreds of permits could be modified or rescinded or otherwise affected.

There are various categories of permit holders that would be adversely affected should Petitioner prevail in this case. Most obvious are any of the wells that are the subject of the DNR approvals being challenged by Petitioner in these consolidated cases. They would be modified or rescinded upon the relief sought by Petitioner. In that regard, certain Intervenors have members with permits being directly challenged by Petitioner in these cases. A broader and more significant threat, however, relates to those operations requiring high capacity well permits that have been issued by DNR after the May 10, 2016, attorney general opinion. There are over 200 such permits issued to date, allowing for the operation of over 300 wells.⁷

Intervenors have at least 60 members that have been issued high capacity wells since the attorney general opinion. These permits have a high probability of being modified or rescinded by the DNR should the court, as requested by Petitioner, invalidate DNR's permitting policies that arose from that opinion. As noted above, for example, a requirement to

⁷ See DNR Spreadsheet, Hicap Approvals 5-1-2016 to 1-5-2016.xlsx, attached hereto as Exhibit C.

evaluate cumulative impacts or other factors or permit conditions not previously considered by DNR would trigger the reopening of all these permits that have not undertaken such a consideration. The result would be the disruption or the shutdown of those processes requiring water from the permitted high capacity wells. This will cause great economic injury to the affected farms and businesses, that are members of Intervenor's associations.

There is also a potential that a court decision granting the relief sought would adversely impact permits issued prior to the attorney general opinion. There are thousands of such permits in existence that are essential for all sorts of agricultural and manufacturing processes requiring water from high capacity wells. Intervenor's have identified over 450 members with high capacity well permits issued prior to the attorney general opinion. At a minimum, establishing new high capacity well permitting protocols by judicial directive resulting from this case will create significant regulatory uncertainty for anyone holding such a permit.

Agricultural and manufacturing companies that require new high capacity well permits would also be injured if the court granted the relief requested. Their high capacity well permit applications would have an increased likelihood of being denied, approved with infeasible conditions, or not acted upon in a timely manner. Denial or granting the permit with infeasible conditions would have similar impacts to having an existing permit being rescinded. Instead of curtailing existing operations, those agricultural and manufacturing processes needing water from a high capacity well would never be launched. The company would have little choice but to invest outside of Wisconsin.

More common and more problematic is the scenario in which DNR effectively puts its high capacity well permit program on hold in response to the court granting Petitioner the relief sought. This was the situation facing permit applicants prior to the attorney general

opinion. For example, the February 2016 request by the Assembly Committee on Organization for the attorney general opinion was to “address confusion surrounding the authority of the DNR” with respect to issuance of high capacity well permits. This confusion, according to the committee, has “created a substantial backlog in permit requests, bringing the issuance of new permits to a standstill.”⁸ According to the Dairy Business Association:

When the attorney general’s opinion referenced in these consolidated cases was issued, 33 dairy farmers had well permit applications languishing in DNR’s permit backlog. The delay caused by the backlog cost dairy farmers thousands of dollars in additional attorney, engineering, and construction costs. It also caused more than one DBA member to abandon his proposed project entirely. The backlog has been greatly reduced because of DNR’s policies resulting from the attorney general opinion on application of 2011 Wis. Act 21 to high capacity well permits. *Holevoet Aff.* ¶ 5.

Therefore, beyond the obvious impact on those with existing high capacity wells, the agricultural and manufacturing operations requiring well permits in the future are likely to experience delay and higher permitting costs associated with a court decision that grants the relief requested in these consolidated cases. It is inevitable that any court decision that adds additional permit approval requirements, such as evaluation of cumulative impacts or other factors or permit conditions not previously considered by DNR, would necessarily delay the approval process and re-create the high capacity permit application backlog that gave rise to the Assembly request for the attorney general opinion. Such delays and additional costs create a significant economic disincentive to those wishing to locate or expand operations in Wisconsin that require high capacity wells.

The nine well permit holders whose permits are being challenged here, as well as the over 200 permits issued under similar DNR protocols, face significant direct injury to their interests recognized by law. The nine permit holders have a statutory right to participate, conferring

⁸ See Letter to Attorney General Brad Schimel from Assembly Committee on Organization, dated February 2, 2016, attached hereto as Exhibit A.

standing on them to respond to Petitioner's challenge under Wis. Stat. §227.53(1)(d). These eight intervenor associations are uniquely positioned to respond on behalf of the interests of the nine individual permit holders directly at risk who are association members of various intervenors, as well as articulate the regulatory interests of the associations' other members whose permits may be placed in jeopardy.

Intervenors had a hand in developing or otherwise supporting the regulatory reforms established in Act 21. These reforms affect more than high capacity well permits. Requiring explicit authority or otherwise limiting the use of previously found plenary authority in preamble provisions affects all regulatory programs, including the issuance of air, water, and waste discharge permits. Future regulations must also be promulgated consistent with Act 21 directives. Both the regulated community and the regulators understand the plain meaning of Act 21's explicit authority requirement. A court decision that eliminates or narrows this regulatory predicate would have a serious detrimental impact on the thousands of Wisconsin farms and businesses that are Intervenors' members. For example, rejecting or narrowly construing the requirement that DNR permit terms and conditions arise from explicit authority would cause direct and indirect economic injury to Intervenors' members because it could result in agencies modifying or rescinding existing permits, or denying, imposing infeasible conditions, or delaying action on permit applications, whatever the regulatory program at whatever agency.

At a minimum, the regulatory uncertainty that would result from the court granting the relief requested by the Petitioner in these consolidated cases will cause substantial economic uncertainty, with adverse economic development implications.

The court in *MBA* found that the imposition of an impact fee amounting to approximately \$600 per residential unit provides the requisite injury to the members of the Metropolitan

Builders Association of Greater Milwaukee to allow the association to sue on behalf of its members. *MBA*, 82 Wis. 2d at 468. Here, the Intervenor's members are at risk for injuries significantly more severe. Their very livelihood is at risk if their high capacity well permits are modified or rescinded. Because Intervenor's members would be injured if the relief sought by Petitioner is granted, the Intervenor, as associations, have the requisite standing.

2. The Adverse Implications Arising from Permit Denials and Delays and Other Regulatory Uncertainties is an Injury to The Intervenor's Interests Recognized by Law.

The second part of the two-step analysis set forth in *WED* requires that the injury to the interests of Intervenor be an interest recognized by law. *WED*, 69 Wis. 2d at 10. In setting forth its two-step analysis, the *WED* court looked to a similar two-pronged standing analysis outlined by the United States Supreme Court in *Data Processing Service v. Camp*. (1970), 397 U. S. 150, 90 S.Ct. 827, 25 L.Ed. 184 (*Data Processing*). With respect to the second step, the *Data Processing* court notes that associations may sue on behalf of their members if the interest sought to be protected "is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Data Processing*, at 153. If the court grants the relief requested by Petitioner, injuries to Intervenor's members fall squarely within the zone of interests intended to be protected by the legislature and the governor in Act 21.

As a special session bill, Governor Walker was essentially the author of Act 21. One of his and the legislature's key objectives was to clarify agency authorities for the benefit of the regulated community. In that regard, Governor Walker noted the following:

Unelected bureaucrats are drafting rules and regulations based on the department's *general duties provisions*, not based on the more specific laws the legislature meant to govern targeted industries or activities. Instead of basing rules on the specific rule of law approved by the legislature, bureaucrats are empowering themselves to use the department's *overall duties provision*.

Laws are created by the elected officials in the legislature who have been empowered by the taxpayers, not employees of the State of Wisconsin. The practice of creating rules *without explicit legislative authority* is a constitutionally questionable practice that grants power to individuals who are not accountable to Wisconsin citizens.⁹ (emphasis added.)

Act 21 built on the requirement for explicit authority set forth in Wis. Stat. § 227.10(2m) by prohibiting use of statutory preambles as a source of regulatory authority. Wis. Stat.

§ 227.11(2)(a) provides in relevant part:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

Act 21, according to the governor, “will create certainty in Wisconsin’s regulatory climate, which will be an important part of ensuring that the private sector can create 250,000 jobs.”¹⁰ Tom Tiffany, the lead author of AB 8, was equally emphatic: “[The] agency's general powers do not confer rule-making authority. In other words, they can't use their mission statement in order to write a rule.”¹¹ The purpose of enacting such regulatory reform, then, was not intended to benefit the regulators or Petitioner’s interests. Instead, Act 21 was enacted to protect the regulated community, particularly those requiring permits to conduct business. The Intervenor’s members interest in regulatory certainty provided by requiring agencies to have explicit authority is the precise interest that was to be protected by Act 21.

⁹ See Walker, Regulatory Reform Informational Paper, (Dec. 21, 2010.). <https://walker.wi.gov/press-releases/regulatory-reform-info-paper>

¹⁰ *Id.*

¹¹ Transcript of Jan. 2011 Special Session Assembly Floor Debate on AB 8, (Feb. 2, 2011).

In a similar effort to provide regulatory certainty, the legislature enacted Wis. Stat. §281.34(5m), which states:

No person may challenge an approval, or an application for approval, of a high capacity well based on the lack of consideration of the cumulative environmental impacts of that high capacity well together with existing wells.

Petitioner specifically requested that the court declare DNR has the authority and duty to address the cumulative effects of all high capacity wells on waters of the state. DNR, consistent with Wis. Stat. §281.34(5m), Act 21 and the attorney general opinion, did not consider cumulative impacts when assessing high capacity well permit applications, including the nine applications at issue in these consolidated cases, as well as the over 200 permits for over 300 wells issued since the attorney general opinion. As with Act 21, Wis. Stat. §281.34(5m) was enacted to provide regulatory certainty to high capacity well permit holders.

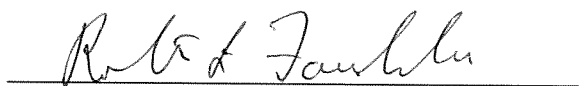
The injury to Intervenor's members if the court finds there is a duty to consider cumulative impacts will be substantial, requiring DNR to either modify or rescind hundreds of permits issued since the attorney general opinion. Future high capacity well permit applicants will face an increased likelihood of denial, infeasible conditions, or untenable delay resulting from difficulties associated with cumulative impact analysis. Intervenor's members interest in regulatory certainty by prohibiting the consideration of cumulative impacts is the precise interest that was to be protected by Wis. Stat. §281.34(5m).

CONCLUSION

For the foregoing reasons, Intervenor respectfully ask this court to grant their Petition to Intervene.

Dated this 6th day of January, 2017.

GREAT LAKES LEGAL FOUNDATION



Robert I. Fassbender

SBN 1013985

Attorneys for Proposed Intervenor

Wisconsin Manufacturers and Commerce, Midwest Food Processors Association, Dairy Business Association, Wisconsin Paper Council, Wisconsin Potato and Vegetable Growers Association, Wisconsin Farm Bureau Federation, Wisconsin Cheese Makers Association, and Wisconsin Corn Growers Association

Address:

10 East Doty Street, Suite 504

Madison, WI 53703

Telephone: (608) 310-5315



EXHIBIT

A

ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

February 2, 2016

The Honorable Brad Schimel
Wisconsin Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

RE: Request for Formal Opinion

Dear Attorney General Schimel:

We are writing to request a formal opinion regarding the application of Wis. Stat. § 227.10(2m), as enacted by 2011 Wis. Act 21, to the issuance of high-capacity groundwater well withdrawal permits by the Department of Natural Resources. We hope your opinion will address the effect Act 21 has on the ability of the DNR to impose requirements and conditions not explicitly provided for in statutes or rules, such as monitoring wells and cumulative impact analyses, prior to the issuance of a high-capacity groundwater well withdrawal permit requests.

This interpretation of Wisconsin law will help address confusion surrounding the authority of the DNR under Chapter 281 and the public trust doctrine to impose conditions on the issuance of high-capacity well permits. These permit conditions have created a substantial backlog in permit requests, bringing the issuance of new permits to a standstill. The interpretation will also help the legislature assess the validity and applicability of current law and determine whether future legislation is in any way appropriate or necessary.

We have set forth below our questions presented, tentative conclusions and a review of relevant statutory provisions and case law.

Questions Presented

1. *Did the court in Lake Beulah interpret and apply the requirement in Wis. Stat. § 227.10(2m) that DNR have explicit authority to impose requirements and conditions?*

The confusion surrounding the DNR's authority arises out of the timing of Act 21's enactment and the Wisconsin Supreme Court's decision in *Lake Beulah Management District v. DNR*, 2011 WI 54, 355 Wis. 2d 47, 799 N.W.2d 73. Wis. Stat. § 227.10(2m), as created by 2011 Act 21,

requires agencies to have “explicit” authority to implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency.¹

It does not appear that the *Lake Beulah* court considered Wis. Stat. § 227.10(2m) prior to issuing its decision in *Lake Beulah*. The effective date of 2011 Act 21 was June 8, 2011.² Thus, the provision at issue here did not exist until after the briefing and oral argument in *Lake Beulah*.³ A group of intervenors attempted to have the Supreme Court consider Wis. Stat. § 227.10(2m) as a supplemental authority pursuant to Wis. Stat. § 809.19(10). But all parties, including the DNR, argued that Wis. Stat. § 227.10(2m) was not relevant to the *Lake Beulah* case.

The court’s only reference to Act 21 was in a footnote stating they “agree with the parties that 2011 Wisconsin Act 21 does not affect our analysis in this case.” *Lake Beulah*, 335 Wis. 2d 47, ¶ 39 n. 31. Therefore, it appears the court chose not to address Act 21 in their decision in *Lake Beulah*.

2. *Are Wis. Stat. §§ 281.11 and 281.12, Stat. exceptions to the proscriptions of Wis. Stat. § 227.10(2m) such that DNR may impose monitoring well conditions or require consideration of cumulative impacts for high-capacity well permits in the absence of explicit authority under any statute or administrative rule?*

Wis. Stat. §§ 281.11 and 281.12 are statements of policy and general duties preambles to Wis. Stat. ch. 281. They do not contain the explicit authority required by Act 21 and Wis. Stat. § 227.10(2m), to regulate high capacity wells.

The Legislature and the Governor sent a clear message through other provisions in Act 21 that these prefatory provisions do not provide sufficient explicit regulatory authority.

Sections Wis. Stat. §§ 227.11(2)(a)1.-2., both created by Act 21, provide:

A statutory or nonstatutory provision containing a statement or declaration of legislative intent, *purpose*, findings, or *policy* does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

A statutory provision describing the agency’s general *powers* or *duties* does not confer rule-making authority on the agency or augment the agency’s

¹ “No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter...”

² 2011 Wisconsin Act 21, LEGIS.WISCONSIN.GOV, <https://docs.legis.wisconsin.gov/2011/related/acts/21> (last accessed Jan. 26, 2016).

³ The parties’ last brief was turned in the court on January 11, 2011 and oral arguments took place on April 13, 2011. *Lake Beulah Management District v. DNR*, WICOURTS.GOV, <http://wscca.wicourts.gov/appealHistory.xsl?jsessionid=C59881D4DFEE59D64E2A0B2D8F0D1E26?caseNo=2008AP003170&cacheId=D9E2DD1D9014BE470DDDB117591D0E45&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=DESC> (last accessed Jan. 26, 2016).

rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

Wis. Stat. §§ 227.11(2)(a)1.-2. (Emphasis ours).

The legislative history also shows that Act 21 was meant to prohibit the use of general prefatory statutory statements as rule-making authority. Governor Scott Walker stated that “departments’ broad statements of policies or general duties or powers provisions do not empower the department to create rules not explicitly authorized in state statutes.”⁴ Similarly, then-Representative Tom Tiffany, the lead author of AB 8 (which became Act 21) said, “[The] agency’s general powers do not confer rule-making authority. In other words, they can’t use their mission statement in order to write a rule.”⁵

There is no indication in either the language the statute or the legislative history of Act 21 that Wis. Stat. §§ 281.11 and 281.12 are immune to the change in regulatory landscape ushered in by Act 21. Moreover, a more reasonable reading of Act 21 is that these provisions are specifically excluded as a source of the required explicit authority.

3. *Did the legislature delegate its public trust authority to DNR with sufficient clarity and specificity in the context of the issuances of high-capacity groundwater well withdrawals, particularly with respect to: (i) conditions for monitoring wells, (ii) cumulative impact analysis, and (iii) impact analysis on groundwater, other private wells and wetlands?*

It is the legislature’s prerogative whether to delegate its public trust authorities, rather than agencies asserting delegation is implied in broad prefatory clauses. A delegation of public trust authority requires “clear and unmistakable language that cannot be implied.” In *City of Madison v. Tolzmann*, the court provided:

[I]n this instant for the state’s trustee not only for the residents of Wisconsin but for all the people, such delegation of authority should be in clear and unmistakable language and cannot be implied from the language of a general statute delegating police powers to cities. 7 Wis.2d 570, 575, 97 N.W.2d 513 (1959).

This “clear and unmistakable” standard is in essence the definition of the term “explicit,” which is the requirement for a delegation under Wis. Stat. § 227.10(2m).⁶ Requiring any public trust delegation be explicit is consistent with the clear language of, and intent behind, Wis. Stat. § 227.10(2m).

It appears, then that Wis. Stat. § 227.10(2m), which prohibits implementing or enforcing any requirements, including permit conditions, unless explicitly required or permitted, also applies to the degree of clarity and specificity required for a valid delegation of public trust jurisdiction.

⁴ Walker, *Regulatory Reform informational Paper*, Dec. 21, 2010, available at <http://walker.wi.gov/newsroom/press-release/regulatory-reform-info-paper>.

⁵ Transcript of Jan. 2011 Special Session Assembly Floor Debate on AB 8, (Feb. 2, 2011).

⁶ See *Webster’s New World College Dictionary* (4th Edition) that defines “explicit” as “clearly stated and leaving nothing implied.”

That is, Act 21, consistent with *City of Madison v. Tolzmann*, requires any delegation of public trust authorities to be explicit.

We are aware of no statutory provisions, including the general prefatory statements at Wis. Stat. §§ 281.11 and 281.12, that could be considered explicit delegation of public trust authority in the context of the issuances of high-capacity groundwater well withdrawals, particularly relating to permit conditions for monitoring wells and cumulative impact analysis.

4. *Does Wisconsin's high capacity well regulatory structure set forth at § 281.34, Stat. or related regulations, explicitly require or explicitly permit monitoring wells or cumulative impact analysis as conditions for high-capacity well permits?*

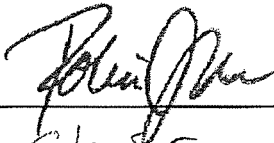
Authority to regulate high capacity wells was established in Wis. Stat. §§ 281.34 and 281.35. We see nothing in the language of these provisions that explicitly delegates DNR authority to create monitoring well conditions on high capacity wells. The only language concerning cumulative impact analysis is found in Wis. Stat. § 281.34(5m), which prohibits individuals from challenging the approval of an application for a high capacity well permit "based on the lack of consideration of the cumulative environmental impacts of high capacity wells together with existing wells." Wis. Stat. § 281.34(5m). This language cannot reasonably be construed to explicitly require DNR to consider cumulative impacts when reviewing applications for high capacity wells.

Wis. Admin. Code NR § 812.09(4), the only section potentially relevant to installing monitoring wells, authorizes DNR to condition the approval of a permit "[w]hen deemed necessary and appropriate for the protection of public safety, safe drinking water, and the groundwater resource..." Wis. Admin. Code NR § 812.09(4). However this provision only applies to "well and heat exchange drill hole locations, well and heat exchange drill hole construction or pump installation specifications." *Id.* The provision's own language shows it is not explicit authority for DNR to require monitoring wells as a condition of permit approval.

We hope that your opinion can be delivered as expeditiously as possible given the urgency of the backlog of high-capacity well permit applications. Inaction on these permits hinders economic opportunities and job creation. Your input is essential as the state considers legislative action on this issue.

Sincerely,

Assembly Committee on Organization

By: 
Its: Chair

**EXHIBIT
B**

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

OUTAGAMIE COUNTY

NEW CHESTER DAIRY, LLC and
MS REAL ESTATE HOLDINGS, LLC,

Petitioners,

WISCONSIN MANUFACTURERS AND
COMMERCE, et al.,

Intervenors-Petitioners,

v.

Case No. 14CV001055

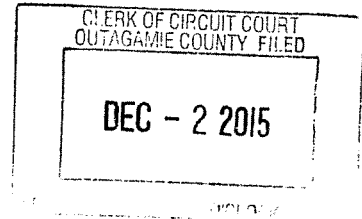
WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

and

CLEAN WISCONSIN INC.,

Intervenor-Respondent.



DECISION AND ORDER

This matter came before the Court for hearing and decision on November 12, 2015, with Attorney Joseph D. Brydges of Michael Best and Friedrich LLP appearing on behalf of Petitioners New Chester Dairy, LLC and MS Real Estate Holdings, LLC ("New Chester"), Attorney Robert I. Fassbender of Great Lakes Legal Foundation appearing on behalf of Intervenors-Petitioners Wisconsin Manufacturers and Commerce, Dairy Business Association, Midwest Food Processors Association, and Wisconsin Potato and Vegetable Growers Association, Attorney Timothy Allen Andryk appearing on behalf of Respondent Wisconsin

Department of Natural Resources (“DNR”), and Attorney Elizabeth Anne Wheeler appearing on behalf of Intervenor-Respondent Clean Wisconsin, Inc. (“Clean Wisconsin”).

NOW, THEREFORE, upon consideration of the entire record of proceedings before DNR and the Wisconsin Division of Hearings and Appeals in this matter, as well as all records, files, pleadings, and proceedings filed in this action, the Court finds as follows:

FINDINGS OF FACT

New Chester operates a dairy farm in Adams County, Wisconsin. It constructed its facilities after receiving a Wisconsin Pollutant Discharge Elimination System (“WPDES”) Permit, an approval to construct reviewable facilities, and a high-capacity well approval from DNR in 2011. In 2012, New Chester applied to modify its WPDES Permit to accommodate an expansion of its facilities. DNR requested that New Chester evaluate surface and groundwater impacts of the increased water use necessitated by the expansion on nearby Patrick Lake. New Chester retained an expert to conduct a groundwater modeling study of the potential impact of the expanded water use on Patrick Lake and to identify possible alternative sites for its high-capacity well. New Chester’s expert identified an alternative well location approximately 2.5 miles from the dairy where the impact on surface waters would be minimized. DNR agreed that the alternate well location was appropriate and issued an environmental assessment concluding that the impacts to water resources from New Chester’s proposed high-capacity well did not have a significant adverse impact on Patrick Lake or area streams.

DNR also included a condition (the “Monitoring Condition”) within New Chester’s high-capacity well approval requiring New Chester to install three separate groundwater monitoring wells at different locations within the area its expert projected would experience at least 24 inches of groundwater drawdown after five years of pumping and two additional wells within the

area its expert projected would experience at least 12 inches of groundwater drawdown after five years. DNR further required New Chester to collect monitoring data from these wells for at least three years and to provide that data to DNR on a quarterly basis.

New Chester challenged DNR's imposition of the Monitoring Condition via contested case hearing and moved for summary judgment, arguing that DNR did not have the requisite authority to impose the Monitoring Condition in light of Wis. Stat. § 227.10(2m), which New Chester argued prohibits an agency from imposing a permit condition that is not explicitly authorized or explicitly permitted by statute or rule. The administrative law judge denied New Chester's motion and granted DNR's motion for partial summary judgment, concluding as a matter of law that DNR did have the authority to impose the Monitoring Condition. A contested case hearing was held on the reasonableness of the Monitoring Condition and the administrative law judge found that the condition was reasonable.

In this judicial review proceeding, New Chester seeks reversal of the administrative law judge's decisions that DNR was authorized to impose the Monitoring Condition and that the Monitoring Condition was reasonable. Specifically, New Chester argues that the Wis. Stat. § 227.10(2m) prohibits DNR from imposing the Monitoring Condition because the Monitoring Condition is not explicitly authorized or explicitly permitted by statute or rule. Clean Wisconsin argues that Wis. Stat. § 227.10(2m) does not change how the Court should interpret DNR's powers but instead codifies DNR's power to act via implied authority. Clean Wisconsin further argues that that DNR is explicitly authorized or permitted to impose the Monitoring Condition pursuant to Wis. Admin. Code § NR 812.09.

CONCLUSIONS OF LAW

New Chester's arguments require the Court to address an issue of first impression, that is, how the newly-enacted Wis. Stat. 227.10(2m) is to be applied. Because this is an issue of first impression, the Court applies a *de novo* standard of review. *RURAL v. PSC*, 200 WI 129, ¶ 22, 239 Wis. 2d 660, 619 N.W.2d 888. *De novo* review is also appropriate because the Court is assessing the scope of DNR's powers, and DNR is not entitled to deference in defining the scope of its own power. *Wis. Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI App 103, ¶ 11, 270 Wis. 2d 318, 677 N.W.2d 612.

New Chester's arguments also require the Court to interpret Wis. Stat. 227.10(2m). When interpreting a statute, the Court begins by examining the language of the statute, and the analysis ends there if the meaning is plain. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶¶ 44-45, 271 Wis. 2d 633, 681 N.W.2d 110. Statutory language is interpreted in relation to the language of surrounding or closely-related statutes and reasonably to avoid absurd or unreasonable results. This includes the scope, context, and purpose of the statute if it is evident from the statutory language. If the Court's interpretation yields a plain, clear statutory meaning, then the statute is unambiguous and the Court need not resort to other sources such as legislative history to aid in its interpretation.

Wis. Stat. § 227.10(2m) provides, in its entirety:

No agency may implement or enforce any standard, requirement, or threshold, including as a term or a condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter except as provided in s. 186.118(2)(c) and (3)(b)3. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

The language of Wis. Stat. § 227.10(2m) states very clearly that an agency can only implement or enforce a requirement "including as a term or condition of any license" if that requirement is

“explicitly required or explicitly permitted by statute or by a rule.” Thus, under the plain language of Wis. Stat. § 227.10(2m), agencies cannot rely on implied authority to impose conditions. Rather, those agencies must seek amendment to a statute or promulgate a rule.

Clean Wisconsin argues that this interpretation leads to an unconstitutional and absurd result and that Wis. Stat. § 227.10(2m) must be harmonized with other statutes, case law, and constitutional requirements. Clean Wisconsin further argues that courts have consistently found that limiting agency powers to those expressly granted is too restrictive to allow agencies to function in an efficient and effective manner. The language and legislative history of Wis. Stat. § 227.10(2m), however, indicates quite clearly that the legislature disagrees with Clean Wisconsin’s conclusion. Rather, the legislative history indicates that the Legislature wanted to provide subjects of agency regulation more notice and involvement in how regulations will be applied to them. Denying an agency implied authority does not conflict with other statutes or constitutional divisions of power. *Lake Beulah Mgmt. Dist. v. DNR*, 2011 WI 54, ¶ 23, 335 Wis. 2d 47, 799 N.W.2d 73.

As a result, the Court finds that the Monitoring Condition is valid only if DNR has explicit authority to impose monitoring conditions on high-capacity well permittees through either a statute or a rule. Clean Wisconsin argues that Wis. Admin. Code § NR 812.09 grants DNR explicit authority to impose the Monitoring Condition because it permits DNR to impose more stringent requirements on high-capacity wells where DNR deems it necessary and appropriate for the protection of public safety, safe drinking water, and the groundwater resource. The provision that Clean Wisconsin relies on, however, is limited to well and heat exchange drill holes and does not explicitly permit DNR to impose groundwater monitoring requirements on high-capacity well permittees as a condition of permit approval. Thus, Wis.

Admin. Code § NR 812.09 does not explicitly authorize or permit DNR to impose the Monitoring Condition.

In summary, the Court finds that no statute or administrative rule explicitly authorizes or explicitly permits DNR to impose the Monitoring Condition and, as a result, DNR does not have the authority to impose the Monitoring Condition pursuant to Wis. Stat. § 227.10(2m).

ORDER

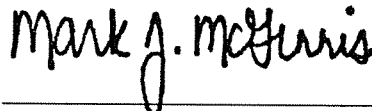
IT IS HEREBY ORDERED THAT:

1. The administrative law judge's decision denying New Chester's motion for summary judgment is reversed; and
2. New Chester's high-capacity well approval is remanded to DNR for removal of the Monitoring Condition.

This is a final Order for purposes of appeal.

Dated this 2nd day of December 2015.

BY THE COURT:



Honorable Mark J. McGinnis
Circuit Court Judge, Branch 1

EXHIBIT C

A	B	C	D	E	F	G	H
MAINNAME	PROPERTY_SEQ	COUNTY_NAME	HICAP_WELL_NO	SOURCE_NAME	APPROVAL_DATE	COMPLETION_DATE	WA
JAMES PETERSON &	14156	Marathon		60 jetted 1.5"	2-May-16	2-May-16	Construction dewatering
3 WISCONSIN	13826	Pierce	91006 #3		3-May-16		Frac sand mining
4 WISCONSIN	13828	Pierce	91009 #1		3-May-16		Frac sand mining
5 WISCONSIN	13828	Pierce	91010 #2		3-May-16		Frac sand mining
6 WISCONSIN	13826	Pierce	91007 #4		3-May-16		Frac sand mining
7 WM YOSS	14089	Rock	91588 Plant Well		3-May-16	10-May-16	Mineral preparations
8 BROCKWAY CRANBERRY	12227	Jackson	91678 New House Well		4-May-16		Privt/single residence
9 BAKKE, GARY	13861	Columbia	91038 Irrigation Well		4-May-16		Agricultural irrigation
10 RIVERS EDGE	10633	Portage	91681 Campground Southwest		5-May-16	25-May-16	Lodging
11 RIVERS EDGE	10633	Portage	91682 Camground		5-May-16	26-May-16	Lodging
12 MEYER, MEYER, MENSE	13871	Dunn	91053 Irrigation		6-May-16	24-May-16	Agricultural irrigation
13 VOLK, MAURICE &	13812	Portage	74422 Irrigation Well		9-May-16		Agricultural irrigation
14 MI-CON DEWATERING	14154	Dane	100 - 1.5" point wells		11-May-16	13-May-16	Construction dewatering
15 CURTISS, VILLAGE OF -	10990	Clark	91780 Well 12		20-May-16	8-Jun-16	Public utility
16 ROTHCHILD, VILLAGE	11196	Marathon	91954 Kort Street - Well #6		20-May-16	12-Jul-16	Public utility
17 STEEN CONSTRUCTION	14153	Clark	3 trenched 10" wells		23-May-16	23-May-16	Construction dewatering
18 CAPITOL	14155	Dane	2 - 12" drilled wells		23-May-16	16-May-16	Construction dewatering
19 MAPLE LEAF DAIRY INC	7438	Manitowoc	91469 #12 South Well		27-May-16	9-Jun-16	Dairy farming
20 MAPLE LEAF DAIRY INC	7438	Manitowoc	91470 #11 North Well		27-May-16	6-Jun-16	Dairy farming
21 KOOS RICHARD-	8565	Dane	91741 Irrigation Replacement		7-Jun-16	14-Jun-16	Agricultural irrigation
22 LACROSSE COUNTY	8992	La Crosse	91740 #15 - PARK OFFICE		8-Jun-16	15-Sep-16	Commercial - other
23 LITTLE FLORIDA - GEISS	11395	Lincoln	74570 2016 Well		10-Jun-16	19-Jul-16	OTM - public
24 TYCO FIRE PROTECTION	6124	Marathon	91784 EW 1		10-Jun-16		Construction dewatering
25 TYCO FIRE PROTECTION	6124	Marathon	91785 EW 2		10-Jun-16		Construction dewatering
26 TYCO FIRE PROTECTION	6124	Marathon	91786 EW 3		10-Jun-16		Construction dewatering
27 TYCO FIRE PROTECTION	6124	Marathon	91787 EW 4		10-Jun-16		Construction dewatering
28 TYCO FIRE PROTECTION	6124	Marathon	91789 EW 6		10-Jun-16		Construction dewatering
29 TYCO FIRE PROTECTION	6124	Marinette	91788 EW 5		10-Jun-16		Construction dewatering
30 TYCO FIRE PROTECTION	6124	Marinette	91790 EW 7		10-Jun-16		Construction dewatering
31 EAGLE CREEK MIDWEST	10494	Barron	91422 Hanson's #2404		10-Jun-16	14-Jun-16	Agricultural irrigation
32 WEEKLY LAND CO LLC	13892	Adams	91076 Irrigation		13-Jun-16	27-Oct-16	Agricultural irrigation
33 STREICH, BEN & DONNA	13994	Rock	91356 Irrigation		13-Jun-16		Agricultural irrigation
34 KOHLER CO	8712	Sheboygan	91694 Engines Proving		13-Jun-16	20-Jun-16	Sod irrigation
35 HARNISCH, MARK	13925	Dunn	91120 Irrigation		13-Jun-16	28-Jun-16	Agricultural irrigation
36 GLASER LLC	14121	Dunn	91646 Irrigation		13-Jun-16		Agricultural irrigation
37 WEEKLY LAND CO LLC	12889	Waushara	91100 Replacement Irrigation		13-Jun-16		Agricultural irrigation
38 STREICH FAMILY FARMS	13992	Rock	91352 Irrigation Well		13-Jun-16		Agricultural irrigation
39 SACIA ENTERPRISES	14127	Trempealeau	91669 Orchard Well		14-Jun-16	30-Jun-16	Other transient, non-community
40 BORDE, DONALD &	13928	Columbia	91122 Irrigation Well		14-Jun-16		Agricultural irrigation
41 GAEDTKE ROLLING	14160	Kewaunee	91750 Well #2		15-Jun-16	18-Nov-16	Dairy farming
42 STAAB CONSTRUCTION	14170	Marathon	3 jetted 12" wells		15-Jun-16	20-Jun-16	Construction dewatering
43 CLARK, LORI	13822	Chippewa	91002 DRT Sands Production		15-Jun-16		Frac sand mining
44 GAEDTKE ROLLING	14160	Kewaunee	91749 Well #3 Replacement		15-Jun-16		Privt/single residence
45 ANFANG PROPERTIES	13567	Jefferson	73776 HWY P Well		15-Jun-16		Agricultural irrigation
46 DEN HOED DAIRY	13942	Polk	91145 Irrigation Well		15-Jun-16		Agricultural irrigation
47 BOESL, MIKE	14049	Dunn	91497 Irrigation		15-Jun-16		Agricultural irrigation

	A	B	C	D	E	F	G	H	I
48	FIRKUS, LONNIE	6707 Portage	91173 East Irrigation Well 002			15-Jun-16		Agricultural irrigation	1296000
49	KRUEGER, JAMES	13867 Columbia	91048 Morgan Farm			15-Jun-16		Agricultural irrigation	1440000
50	NORTHERN	14162 Chippewa	40-50 jetted 1.5" points			16-Jun-16	21-Jun-16	Construction dewatering	360000
51	MANHARDT, RICHARD	13993 Waushara	91354 Irrigation			16-Jun-16		Agricultural irrigation	360000
52	LEHR FARMS	13936 Waushara	91142 Irrigation Well			16-Jun-16		Agricultural irrigation	1296000
53	JAMES B DOHERTY &	13980 Columbia	91308 W Hemling			16-Jun-16		Agricultural irrigation	1512000
54	JAMES B DOHERTY &	13980 Columbia	91310 SE Hemling			16-Jun-16		Agricultural irrigation	1368000
55	KRUEGER, BYRON	13989 La Crosse	91342 Irrigation Well			17-Jun-16		Agricultural irrigation	1152000
56	SHAFEL, JAMES & LISA	13729 Langlade	74212 Angle Rd Horizontal			17-Jun-16		Agricultural irrigation	720000
57	MCREATH, STEVE	14163 Marquette	91762 Well #1			20-Jun-16		Agricultural irrigation	1440000
58	SCHMIDT, RANDY	13935 Richland	91136 Irrigation			20-Jun-16		Agricultural irrigation	936000
59	ALLIANT ENERGY - ROCK	9279 Rock	91141 Riverside Energy Center			20-Jun-16		Fossil fuel power-recirc	9000
60	KOBYLSKI, RICHARD &	13998 Juneau	91370 Home Irrigation Well			20-Jun-16		Agricultural irrigation	1296000
61	ARCTIC VIEW FARMS	14141 Trempealeau	91715 Well #2 (New in 2016)			21-Jun-16	1-Jul-16	Dairy farming	43200
62	ARCTIC VIEW FARMS	14141 Trempealeau	91716 Well #3			21-Jun-16	11-Jul-16	Dairy farming	43200
63	PIPING & DEWATERING	14165 Waukesha	6 - 8" jetted wells			21-Jun-16	21-Jun-16	Construction dewatering	6048000
64	MILESTONE MATERIALS	13995 Monroe	91358 Wilton Quarry 134-			21-Jun-16		Mineral preparations	720000
65	KELLY FARMS	14018 Columbia	91414 Irrigation Well			22-Jun-16		Agricultural irrigation	1440000
66	SCHLUTER FARMS	14019 Jefferson	91415 Irrigation Well			22-Jun-16		Agricultural irrigation	1440000
67	KURSEWSKI, ROBERT	14005 Portage	91385			22-Jun-16		Agricultural irrigation	1440000
68	VAN ETTEN, SCOTT	14010 Columbia	91397 Irrigation Well			22-Jun-16		Agricultural irrigation	1008000
69	SILENT NIGHT	14031 Marquette	91435 Irrigation Well			23-Jun-16		Agricultural irrigation	1152000
70	CEDAR RIVER POTATO	9352 Dunn	91764 South West Mars			23-Jun-16	22-Aug-16	Agricultural irrigation	1152000
71	KURSEWSKI BROTHERS	13504 Portage	91181 Irrigation Well #2			23-Jun-16	24-Jun-16	Agricultural irrigation	1440000
72	KELLY FARMS	14021 Columbia	91419 Irrigation Well			23-Jun-16	13-Oct-16	Agricultural irrigation	1152000
73	CHURCH, CHARLES AND	14044 Adams	91483 Irrigation			24-Jun-16	3-Nov-16	Agricultural irrigation	720000
74	ROHL, JAMES	14045 Pierce	91490 Irrigation			24-Jun-16		Agricultural irrigation	1152000
75	G & L BACON FARMS	7340 Waushara	91768 SE Replacement			24-Jun-16		Agricultural irrigation	576000
76	MONARCH PAVING -	14087 Pierce	91585 Plant 46-Aggregate			27-Jun-16	19-Oct-16	Mineral preparations	1440000
77	TKC REAL ESTATE	14040 La Crosse	91476 Pit Well			27-Jun-16		Mining, quarrying	720000
78	SCHWARTZ, RYAN &	14072 Dane	91550 Irrigation			27-Jun-16		Agricultural irrigation	1008000
79	LARSON, GARY	14022 Eau Claire	91421 Eau Claire River Bottom			27-Jun-16		Agricultural irrigation	864000
80	DAIRYLAND FARM LLC	10287 Brown	91695 Well #6			28-Jun-16	1-Sep-16	Dairy farming	288000
81	BOWDEN, STEVEN	14091 Sauk	91590 Bowden Irrigation Well			28-Jun-16		Agricultural irrigation	1440000
82	STAHL, LARRY, STEVE &	9580 Kewaunee	91769 2016 Dairy			29-Jun-16	1-Jul-16	Dairy farming	172800
83	J BLAYNE BARTA &	13480 Barron	91591 2			29-Jun-16		Agricultural irrigation	576000
84	RNL FARMS	14098 Buffalo	91600 Irrigation Well #3			29-Jun-16		Agricultural irrigation	936000
85	MEYER FAMILY FARM	12624 Clark	91624 8			30-Jun-16		Dairy farming	36000
86	SMITHBACK, DAVID	14118 Dane	91642 Irrigation Well			30-Jun-16		Agricultural irrigation	1440000
87	MILK SOURCE	9805 Brown	91773 North New			1-Jul-16	14-Jul-16	Non-dairy farming	15000
88	NELSON, KENNETH	14133 Dunn	91689 Irrigation 1			1-Jul-16		Agricultural irrigation	720000
89	KLEVGARD, KENDALL	14115 Buffalo	91628 Irrigation			1-Jul-16		Agricultural irrigation	1152000
90	HUNTSINGER FARMS	8298 Dunn	91774 2016 Replacement			5-Jul-16	14-Jul-16	Agricultural irrigation	1440000
91	FIVE STAR DAIRY	13966 Chippewa	91226 Howard #2			6-Jul-16		Agricultural irrigation	1296000
92	FOUR C DAIRY LLC	13446 Pepin	91119 Dave's Farm Irrigation			6-Jul-16		Agricultural irrigation	900000
93	KOTLOWSKI, SCOTT	14073 Adams	91554 Irrigation			7-Jul-16	13-Jul-16	Agricultural irrigation	1440000
94	WISCONSIN DUNES LLC	13725 Adams	91728 Well 1: 4 bedroom			7-Jul-16	16-Jun-16	Lodging	93600

	A	B	C	D	E	F	G	H	I
95	WISCONSIN DUNES LLC	13725 Adams		91729 Well 2: 12 Bedroom		7-Jul-16	22-Aug-16	Lodging	93600
96	WISCONSIN DUNES LLC	13725 Adams		91730 Well 3: Golf Equipment		7-Jul-16	22-Aug-16	Public/non-transient	72000
97	DEJAGER, TED	14166 Columbia		91771 De Jager Well 001		7-Jul-16		Agricultural irrigation	1440000
98	BULA, MARK	13376 Adams		91638 New Well		8-Jul-16	15-Jul-16	Agricultural irrigation	1440000
99	BULA, MARK	13376 Adams		91742 Supplemental Well		8-Jul-16	18-Jul-16	Agricultural irrigation	864000
100	L & S REZIN CRANBERRY	12849 Monroe		91639 004		8-Jul-16	26-Jul-16	Cranberry irrigation	792000
101	GARBALDI RANCH LTD	9385 Portage		91779 P4 Replacement		8-Jul-16	8-Jul-16	Agricultural irrigation	1440000
102	EAU CLAIRE, CITY OF -	11012 Chippewa		91963 Well -22 Riverview Dr		11-Jul-16	1-Sep-16	Public utility	
103	SKYWARD INC	13947 Portage		91159 Irrigation Well		11-Jul-16		Irrigation - other	432000
104	FIVE STAR DAIRY	13967 Chippewa		91228 Howard #1		11-Jul-16		Agricultural irrigation	1296000
105	MEQUON-THIENSVILLE	12162 Ozaukee		91763 Well 2		12-Jul-16	19-Jul-16	Public/non-transient	50000
106	SACIA ENTERPRISES	14126 Trempealeau		91665 New Well		12-Jul-16		Commercial - other	5000
107	WIERSMA FARMS	13869 Columbia		91051 Irrigation Well		12-Jul-16		Agricultural irrigation	864000
108	SEDELBAUER, KIDD &	13918 Jackson		91112 Joann's		12-Jul-16		Agricultural irrigation	1440000
109	HORN, BRIAN	13875 Calumet		91060 East Well		13-Jul-16	30-Nov-16	Dairy farming	158400
110	KROGWOLD, GORDON	13949 Portage		91161 Krogwold Irrigation Well		13-Jul-16	25-Aug-16	Agricultural irrigation	1440000
111	KROGWOLD, GORDON	13949 Portage		91670 Krogwold Irrigation Well		13-Jul-16	11-Aug-16	Agricultural irrigation	1440000
112	LEPAK, LAVERNE	13885 Portage		91072 Edgewood Irrigation		13-Jul-16		Agricultural irrigation	1152000
113	DELIKOWSKI, JAMIE	13952 Portage		91175 Delikowski Irrigation		13-Jul-16		Agricultural irrigation	1152000
114	HORN, BRIAN	13875 Calumet		91059 West Well		13-Jul-16		Dairy farming	158400
115	E & N HUGHES	14171 Green		3 - 8" jetted wells		14-Jul-16	19-Jul-16	Construction dewatering	
116	JACK'S PRIDE FARMS	8080 Dodge		91220 Irrigation Well (East)		14-Jul-16		Agricultural irrigation	576000
117	JENSEN, LEE & JIM	13965 Dunn		91224 Elk Mound		14-Jul-16		Agricultural irrigation	1296000
118	MANTHEY, ROSS	13981 Columbia		91312 Irrigation Well		14-Jul-16		Agricultural irrigation	1296000
119	KINDSCHIP'S INC	14013 Sauk		91409 Irrigation Well		18-Jul-16		Agricultural irrigation	1440000
120	KOTLOWSKI, SCOTT	14014 Adams		91410 Apache CT and G		18-Jul-16		Agricultural irrigation	1440000
121	LIFE FARM OPERATIONS	14020 Waushara		91418 Irrigation Well		19-Jul-16		Agricultural irrigation	1584000
122	LINS, FRED	14110 Sauk		91621 Irrigation Well		19-Jul-16		Agricultural irrigation	360000
123	DANE COUNTY	13976 Dane		91302 Irrigation Well		19-Jul-16		Agricultural irrigation	1440000
124	LAKEVIEW DAIRY LLC	14039 Dodge		91474 Dairy Well #2		20-Jul-16	8-Aug-16	Dairy farming	144000
125	HAAS SONS PIPING &	14173 Marathon		3 - 8" jetted wells		20-Jul-16	25-Jul-16	Construction dewatering	3024000
126	HAAS SONS PIPING &	14174 Polk		70 1.2" jetted wells		20-Jul-16	1-Aug-16	Construction dewatering	2160000
127	WINONA MECHANICAL	14178 Trempealeau		5 - 8" jetted wells		20-Jul-16	15-Sep-16	Construction dewatering	4320000
128	SORENSEN HILLVIEW	14000 Waushara		91375 Irrigation Well		20-Jul-16		Agricultural irrigation	792000
129	DRAEGER FARMS	14028 Green Lake		91430 Irrigation Well		20-Jul-16		Agricultural irrigation	1008000
130	LEICK, JAMES &	14142 Brown		91719 Farm Well 2		20-Jul-16		Dairy farming	93600
131	HATZ FARMS INC	14004 Sauk		91384 Replacement		21-Jul-16		Agricultural irrigation	1152000
132	COBBLESTONE	14145 Barron		91733 South Well		21-Jul-16		Lodging	1800
133	COBBLESTONE	14145 Barron		91734 North Well		21-Jul-16		Lodging	1800
134	MALSON, DON	14002 Winnebago		91380 Irrigation Well		21-Jul-16		Agricultural irrigation	1728000
135	JOHNSONVILLE	8719 Sheboygan		91765 Tech Center Building		22-Jul-16	5-Aug-16	Public/non-transient	93600
136	NEW AGE	14185 Vernon		10 - 8" jetted wells		22-Jul-16	15-Aug-16	Construction dewatering	5616000
137	MILLER, JOE	14011 Waushara		91399 Irrigation Well		22-Jul-16	18-Aug-16	Agricultural irrigation	1080000
138	HERSHBERGER, ADLAY	14003 Waushara		91382 Irrigation Well		22-Jul-16		Agricultural irrigation	720000
139	FRONTIER RANCH LLC	14007 Portage		91391 Hwy. B Irrigation Well		26-Jul-16		Agricultural irrigation	1152000
140	WROBLEWSKI, KEITH	14079 Portage		91562 Wroblewski Home		26-Jul-16		Agricultural irrigation	1440000
141	BIADASZ JR, DOMINIC	10635 Portage		91690 Standing Rocks		26-Jul-16		Agricultural irrigation	576000

	A	B	C	D	E	F	G	H	I
142	DOMBROWSKI, ANTON	6683 Portage		91812 Wilderness		27-Jul-16	3-Aug-16	Agricultural irrigation	1728000
143	KOSHKONONG	9306 Jefferson		91754 Concession Stand		28-Jul-16	29-Jul-16	Restaurants, taverns	216000
144	AUGUST WINTER &	14181 Polk		50 - 1.5" jetted wells		28-Jul-16	29-Jul-16	Construction dewatering	2160000
145	DIEDERICH, RAYMOND	14143 Brown		91724 West Well		28-Jul-16		Dairy farming	72000
146	DIEDERICH, RAYMOND	14143 Brown		91725 East Well		28-Jul-16		Dairy farming	72000
147	RHINEHART, CHRIS	14078 Adams		91561 Huber Well #01		1-Aug-16	27-Oct-16	Agricultural irrigation	1440000
148	NORTHEAST	13331 Brown		91805 Well #3		1-Aug-16	20-Sep-16	Orchards/nursery irrig	25000
149	SULLWOLD, DAN	14077 St. Croix		91560 Irrigation		1-Aug-16		Agricultural irrigation	1008000
150	TRAPP, LORRAINE	14084 Green Lake		91570 #1		1-Aug-16		Agricultural irrigation	1440000
151	PEARSON, TODD	14009 Jackson		91394 Hi Cap Well #1		1-Aug-16		Frac sand mining	432000
152	PEARSON, TODD	14009 Jackson		91395 Hi Cap Well #2		1-Aug-16		Frac sand mining	432000
153	PEARSON, TODD	14009 Jackson		91396 Hi Cap Well #3		1-Aug-16		Frac sand mining	432000
154	POND HILL DAIRY	12438 Jefferson		91556 Irrigation well #6		1-Aug-16		Agricultural irrigation	1440000
155	GAGAS, CLIFFORD	7431 Portage		91604 Karch Irrigation Well on		1-Aug-16		Agricultural irrigation	1152000
156	BULA POTATO FARMS	2263 Langlade		91568 Post Lake NW		1-Aug-16		Agricultural irrigation	1440000
157	THOME, DANIEL	13987 Adams		91336 New Haven Irrigation		1-Aug-16		Agricultural irrigation	1152000
158	DAHLKE, COLLETE	14041 Adams		91478 Dahlke Well 001		2-Aug-16		Agricultural irrigation	1440000
159	GREG OSTROWSKI	14111 Marathon		91622 Cty Rd. D Well		2-Aug-16		Agricultural irrigation	1440000
160	MULLIKIN, ROBERT &	14120 Rock		91645 Irrigation		3-Aug-16		Agricultural irrigation	1152000
161	SOMMERS, KENT	14135 Sauk		91692 Lyndon Rd Irrigation		4-Aug-16		Agricultural irrigation	1728000
162	BUSHMAN, KYLE & LEE	13575 Buffalo		73805 Irrigation Well		4-Aug-16		Agricultural irrigation	1152000
163	WHITING, ZENITH	14132 Barron		91686 High cap		4-Aug-16		Agricultural irrigation	576000
164	ONAN, DALE &	14015 Portage		91411 Grayson Rd Well		5-Aug-16		Agricultural irrigation	1440000
165	PETERSON, JON	14134 Dunn		91691 Sec 16 Irrigation		5-Aug-16		Agricultural irrigation	1440000
166	HALE, TOWN OF	13242 Trempealeau		91798 South Well		8-Aug-16	19-Jul-16	Agricultural irrigation	1152000
167	HAINES, GARY	13806 Trempealeau		74403 Wash Plant Well		8-Aug-16		Commercial - other	300
168	PETERSON, JEFF	14138 Portage		91706 Jeff Peterson Irrigation		8-Aug-16		Frac sand mining	1440000
169	GERNER, JEFFREY &	13990 Jefferson		91346 Irrigation Well		8-Aug-16		Agricultural irrigation	1440000
170	LAURAS-LANE NURSERY	6782 Portage		91736 County Rd D		8-Aug-16		Orchards/nursery irrig	1728000
171	J W MATTEK & SONS	13991 Langlade		91348 Chille Rd Well		9-Aug-16		Agricultural irrigation	1728000
172	TKC REAL ESTATE	13402 La Crosse		67362 Clements Quarry		10-Aug-16		Mining, quarrying	1440000
173	WATER TOWER AGRA	9592 Adams		91737 Well #3		10-Aug-16		Cranberry irrigation	400000
174	SHAFEL, JAMES & LISA	13728 Langlade		74211 Hwy 45 Horizontal		10-Aug-16		Agricultural irrigation	1440000
175	LEONARD F & MARY	14122 Langlade		91647 Singer Rd Well		11-Aug-16	26-Aug-16	Agricultural irrigation	720000
176	JONES/RADEL CENTURY	14161 Sauk		91752 Irrigation Well		11-Aug-16		Agricultural irrigation	1440000
177	J W MATTEK & SONS	7763 Langlade		91579 Hill Rd Well		11-Aug-16		Agricultural irrigation	1152000
178	J W MATTEK & SONS	7763 Langlade		91580 Rosio Rd Well		11-Aug-16		Agricultural irrigation	1440000
179	DOUDLAH'S DIRT LLC	13601 Rock		73862 Weary Road		16-Aug-16		Agricultural irrigation	1440000
180	PROCHNOW, RON E	13514 Dunn		73639 610th/94 Well		16-Aug-16		Agricultural irrigation	1728000
181	DOUDLAH'S DIRT LLC	13602 Rock		73863 Tuttle Road		16-Aug-16		Agricultural irrigation	1100000
182	DOUDLAH'S DIRT LLC	13609 Rock		73882 North Wilder		16-Aug-16		Agricultural irrigation	2160000
183	DOUDLAH'S DIRT LLC	13609 Rock		73883 South Wilder		16-Aug-16		Agricultural irrigation	1728000
184	CEDAR LAKE SAND &	14157 Kewaunee		91744 Make Up Water Well #1		17-Aug-16		Mining, quarrying	1728000
185	FLF HERRMAN LLC	13786 Barron		74352 Frac Sand Fields		18-Aug-16		Agricultural irrigation	150000
186	FLF HERRMAN LLC	13785 Barron		74353 Home South Field		19-Aug-16		Agricultural irrigation	1728000
187	WACHSMUTH, BRENT	14167 Dunn		91772 Stallman Well		22-Aug-16	4-Oct-16	Agricultural irrigation	1152000
188	SMITH, MIKE	13872 Wood		91054 W Irrigation Well 001		24-Aug-16		Agricultural irrigation	1142000
								Agricultural irrigation	432000

	A	B	C	D	E	F	G	H	I
189	D AND D JONES FARMS	14104 Columbia		91609 Irrigation Well #1		24-Aug-16		Agricultural irrigation	1008000
190	FLF HERRMAN LLC	13784 Chippewa		74350 Jennie-O		25-Aug-16		Agricultural irrigation	1440000
191	BIG GAIN WISCONSIN,	14140 Columbia		91712 Boiler Well #2		25-Aug-16		Food manufacturing	72000
192	DEMPSEY FARM	13428 Waukesha		73467 Irrigation Well		25-Aug-16		Agricultural irrigation	720000
193	WEISS, GORDY	13908 Buffalo		91101 Irrigation Well		26-Aug-16		Agricultural irrigation	1008000
194	SMART SAND INC	13853 Jackson		91027 North Well		29-Aug-16		Frac sand mining	1440000
195	SCHMIDT, RANDY	8285 Richland		91618 Barn Well #1		30-Aug-16	16-Sep-16	Dairy farming	288000
196	SCHMIDT, RANDY	8285 Richland		91619 Barn Well #2		30-Aug-16	20-Sep-16	Dairy farming	288000
197	STRASSBURG	14168 Shawano		91778 West		1-Sep-16	30-Sep-16	Dairy farming	86400
198	PAGEL, JOHN	9582 Kewaunee		91630 Irrigation Well/Potable		7-Sep-16		Dairy farming	504000
199	MILESTONE MATERIALS	14131 Rusk		91683 Northern Lights Pit-High		7-Sep-16		Mining, quarrying	864000
200	ROUTSALA	14203 Lincoln		30 2" jetted wells		20-Sep-16		Construction dewatering	
201	WI DNR - LAKE	8834 Chippewa		91839 Entrance Well		23-Sep-16		Public/transient	275
202	VERHASSELT FARMS	9940 Outagamie		91571 BU Well		26-Sep-16		Dairy farming	122400
203	DUDKIEWICZ, HARRY	2524 Marinette		91584 Schmidt's		27-Sep-16		Agricultural irrigation	1440000
204	ZAHS FARMS LLC	10401 Oconto		91113 MHR- South #14		28-Sep-16		Dairy farming	288000
205	ZAHS FARMS LLC	10401 Oconto		91114 MHR- North #15		28-Sep-16		Dairy farming	288000
206	ZAHS FARMS LLC	10401 Oconto		91115 11653 Cr H #16		28-Sep-16		Dairy farming	216000
207	ZAHS FARMS LLC	10401 Oconto		91116 11863 Cr H		28-Sep-16		Dairy farming	50400
208	MENOMONIE, CITY OF -	11112 Dunn		91687 Well #8		29-Sep-16		Public utility	1728000
209	HARMONY AG LLC	14029 Adams		91431 Harmony Ag. Easton		30-Sep-16	17-Oct-16	Agricultural irrigation	1440000
210	JAMES BURNS & SONS	13798 Portage		74388 Keene		30-Sep-16		Agricultural irrigation	1728000
211	AGRI-ALLIANCE LAND,	13874 Portage		91056 Grant Tower Rd.		30-Sep-16	30-Sep-16	Agricultural irrigation	1440000
212	LUTZ, WAYNE	13617 Portage		73907 Irrigation Well		30-Sep-16		Agricultural irrigation	1440000
213	FLYTE, LARRY	7350 Waushara		91437 Irrigation		30-Sep-16		Agricultural irrigation	1440000
214	DEROUSSEAU, DOUG &	13626 Barron		73935 Irrigation		30-Sep-16		Agricultural irrigation	1440000
215	PEPLINSKI, LEON R & B	13738 Portage		74235 Irrigation		30-Sep-16		Agricultural irrigation	1296000
216	TURZINSKI, ROGER	13931 Portage		91127 Sherman Rd. Irrigation		30-Sep-16		Agricultural irrigation	1440000
217	FROZENE, THOMAS &	13625 Waushara		73932 Irrigation		30-Sep-16		Agricultural irrigation	1440000
218	LASKOWSKI FARMS	13860 Portage		91036 Replacement		30-Sep-16		Agricultural irrigation	1296000
219	WEEKLY, THOMAS H	7325 Waushara		91405 West Elliot (F)		30-Sep-16		Agricultural irrigation	720000
220	GROSENICK, LARRY	14042 Waushara		91479 Dakota Irrigation		30-Sep-16		Park&Rec field irrig	1296000
221	HELL, RICHARD	13468 Marquette		74393 Kenny's Irrigation		30-Sep-16		Agricultural irrigation	720000
222	KOTLOWSKI, SCOTT	14090 Portage		91589 Grant Tower Rd.		30-Sep-16		Agricultural irrigation	1440000
223	COUNTRY AIRE FARMS	7548 Brown		73836 West		30-Sep-16		Agricultural irrigation	1440000
224	COUNTRY AIRE FARMS	7548 Brown		73837 East		30-Sep-16		Dairy farming	288000
225	AGRI-ALLIANCE LAND,	13873 Portage		91055 Grant Tower Rd.		30-Sep-16		Dairy farming	288000
226	PILECKY, ROGER	13515 Langlade		73640 Ackley Rd Well		30-Sep-16		Agricultural irrigation	1440000
227	FOSTER, DAVE	14139 Adams		91708 Irrigation Well #1		30-Sep-16		Agricultural irrigation	1100000
228	LAURITZEN PROPERTIES	7860 Waupaca		74316 SUHS		30-Sep-16		Agricultural irrigation	720000
229	CREEKSIDE HOMELAND	13950 Portage		91165 Five Corners Irrigation		30-Sep-16		Agricultural irrigation	1440000
230	CREEKSIDE HOMELAND	13951 Portage		91169 Kyle's House Irr Well		30-Sep-16		Agricultural irrigation	576000
231	2003 APPLETREE ROAD,	14159 Sheboygan		91865 North Well #1		12-Oct-16	20-Oct-16	Privt/multi residences	86400
232	2003 APPLETREE ROAD,	14159 Sheboygan		91866 South Well #2		12-Oct-16	25-Oct-16	Privt/multi residences	86400
233	PAVELSKI, JOHN &	7869 Portage		74131 Pavelski & Five Corners		12-Oct-16		Agricultural irrigation	864000
234	MARAWOOD	14218 Clark		91887 Well 2		13-Oct-16		Frac sand mining	576000
235	MARAWOOD	14218 Clark		91888 Well 3		13-Oct-16		Frac sand mining	28800

	A	B	C	D	E	F	G	H	I
236	MARAWOOD	14218 Clark		91889 Well 4		13-Oct-16		Frac sand mining	72000
237	MARAWOOD	14218 Clark		91890 Well 5		13-Oct-16		Frac sand mining	129600
238	ADAMS, PAUL & JOANN	14179 Trempealeau		91817 Well #4		13-Oct-16		Dairy farming	72000
239	NORTH COUNTRY	14036 Jackson		91441 West Well		17-Oct-16	1-Nov-16	Irrigation - other	220000
240	BIADASZ DAIRY FARM	13269 Portage		91803 Riley Rd. Irrigation Well		19-Oct-16		Agricultural irrigation	1440000
241	BORDE, DONALD &	14180 Columbia		91818 Irrigation Well 01		20-Oct-16		Agricultural irrigation	1728000
242	JDH CRANBERRIES	14182 Adams		91821 Tenpas		20-Oct-16		Cranberry irrigation	1440000
243	GUTH, THOMAS	14189 Portage		91838 Cty Rd J Irrigation Well		24-Oct-16		Agricultural irrigation	1440000
244	CLOVERLAND FARMS	14191 Grant		91850 Irrigation Well		24-Oct-16		Agricultural irrigation	936000
245	BIADASZ, STANLEY	14188 Portage		91837 Stanley Biadasz		24-Oct-16		Agricultural irrigation	1440000
246	STANISLAWSKI,	14158 Portage		91746 Stanislawski Irrigation		24-Oct-16		Agricultural irrigation	864000
247	SCHUH FARMS	9753 Trempealeau		91802 2016 Irrigation		25-Oct-16		Agricultural irrigation	864000
248	ADAMSKI, JIM	14194 Langlade		91858 Irrigation		26-Oct-16		Agricultural irrigation	864000
249	JW JACOBS FARM	14172 Dunn		91804 Pickerin		26-Oct-16	23-Nov-16	Agricultural irrigation	864000
250	PIECHOWSKI, RICHARD	7857 Waupaca		91854 2016 Irrigation		26-Oct-16		Agricultural irrigation	1440000
251	DISHER, WILLIAM AND	14200 Portage		91877 William Disher Irrigation		28-Oct-16		Agricultural irrigation	1008000
252	SLOWEY FARMS	14223 Marquette		91917 Heifer Barn		1-Nov-16	3-Nov-16	Non-dairy farming	28800
253	BITTLEMAN, JORDAN	14198 Marquette		91871 Irrigation Well #1		1-Nov-16		Agricultural irrigation	864000
254	CLOVER HILL DAIRY LLC	9802 Fond Du Lac		91840 Calif Barn Well		1-Nov-16		Dairy farming	35000
255	OTTO, DREW AND JILL	9536 Manitowoc		91926 #003		2-Nov-16	9-Nov-16	Commercial - other	72000
256	KENNEDY, TOM AND	14217 Portage		91885 Irrigation		3-Nov-16		Agricultural irrigation	1080000
257	WICHMAN FARMLAND	14192 Waupaca		91851 Irrigation		4-Nov-16		Agricultural irrigation	864000
258	WYSOCKI FARMS INC	10129 Vilas		91883 Croker Rd Road Well		7-Nov-16		Agricultural irrigation	648000
259	UNIVERSITY OF	14193 Oneida		91856 Irrigation		7-Nov-16		Agricultural irrigation	1440000
260	JOHN HANCOCK	7642 Adams		91891 2016 Irrigation		7-Nov-16		Agricultural irrigation	1440000
261	BULA, GARY & LINDA	7159 Adams		91693 A		8-Nov-16		Agricultural irrigation	1440000
262	BULA, GARY & LINDA	7159 Adams		91831 B		8-Nov-16		Agricultural irrigation	1440000
263	KRUEGER, BRAD	14183 Shawano		91824 #1		9-Nov-16		Dairy farming	43200
264	KRUEGER, BRAD	14183 Shawano		91825 #2		9-Nov-16		Dairy farming	43200
265	KRUEGER, BRAD	14183 Shawano		91826 #3		9-Nov-16		Dairy farming	43200
266	KRUEGER, BRAD	14183 Shawano		91827 #4		9-Nov-16		Dairy farming	43200
267	KRUEGER, BRAD	14183 Shawano		91828 #5		9-Nov-16		Dairy farming	43200
268	FRIEDLY-BADER FARM	14038 Green		91471 Pinnacle 1 (south)		9-Nov-16		Dairy farming	864000
269	FRIEDLY-BADER FARM	14038 Green		91472 Pinnacle 2 (North)		9-Nov-16		Dairy farming	864000
270	PURFRAC LLC	13897 Chippewa		91093 H-C Well #1		11-Nov-16		Frac sand mining	864000
271	PURFRAC LLC	13897 Chippewa		91094 TW #1		11-Nov-16		Public/transient	9600
272	COUNTY MATERIALS	6913 Portage		91895 New Shop		11-Nov-16		Industrial - other	20000
273	JIM & TRACY	7654 Portage		91905 Timm 80		14-Nov-16		Agricultural irrigation	1440000
274	MORTENSON	6388 Waushara		91906 Castor New		21-Nov-16		Agricultural irrigation	1440000
275	WEISHAAR LAND LLC	10331 Marquette		91921 Dairy Barn		22-Nov-16	30-Nov-16	Dairy farming	57600
276	OURADA, SAMUEL &	7031 Wood		91892 2016 Irrigation		22-Nov-16		Agricultural irrigation	1440000
277	ELF HERRMAN LLC	13785 Barron		91908 Dairy		28-Nov-16	28-Nov-16	Agricultural irrigation	1152000
278	WAGNER FARMS II LLC	14230 Adams		91936 Elk and 9th		28-Nov-16		Agricultural irrigation	1440000
279	SCHROEDER BROS	10789 Oconto		91919 Replacement Well		29-Nov-16		Agricultural irrigation	1080000
280	SCHROEDER BROS	14225 Oconto		91922 New Well		29-Nov-16		Agricultural irrigation	1080000
281	SCHALLER, JOHN &	13364 La Crosse		91811 CTY Z		29-Nov-16		Agricultural irrigation	936000
282	RAWHIDE INC	10557 Waupaca		91927 Rawhide Court Well		2-Dec-16		Commercial - other	1000

	A	B	C	D	E	F	G	H	I
283	SEIBEL, TIM	14224 Chippewa		91918 Home		6-Dec-16		Agricultural irrigation	1296000
284	METEOR TIMBER	14055 Jackson		91529 Hi-Cap Well #8267-1		8-Dec-16		Frac sand mining	504000
285	METEOR TIMBER	14055 Jackson		91531 Well #8267-3		8-Dec-16		Frac sand mining	10000
286	METEOR TIMBER	14055 Jackson		91530 Hi-Cap Well #8267-2		8-Dec-16		Frac sand mining	504000
287	PAULUS, MIKE	12105 Ozaukee		91882 Farm Well		9-Dec-16		Dairy farming	30720
288	SWAN COMPANIES INC.	14243 Barron		30 2" Jetted Wells		13-Dec-16		Construction dewatering	561600
289	PIPING & DEWATERING	14236 Waupaca		9 8" Jetted Wells		13-Dec-16		Construction dewatering	6480000
290	ADVANCE	14237 Milwaukee		12 15" Drilled Wells		13-Dec-16		Construction dewatering	3456000
291	PAVELSKI A M & SONS	6503 Portage		91937 2016 Irrigation		14-Dec-16		Agricultural irrigation	1440000
292	WISCONSIN DNR:	14220 Waupaca		91904 Fire-Control Storage		15-Dec-16		Commercial - other	72000
293	WISCONSIN	14137 Jackson		91704 HC-1		15-Dec-16		Frac sand mining	720000
294	WISCONSIN	14137 Jackson		91705 LC-1		15-Dec-16		Commercial - other	28800
295	LEVERICH, JAMES &	13549 Monroe		73735 Irrigation Well		15-Dec-16		Agricultural irrigation	936000
296	LEVERICH, JAMES &	13549 Monroe		91980 Wagner Well		15-Dec-16		Agricultural irrigation	1008000
297	LEVERICH, JAMES &	13549 Monroe		91981 Lakowski		15-Dec-16		Agricultural irrigation	1152000
298	OAK RIDGE DAIRY	13888 Lafayette		91073 Dairy Well 1		15-Dec-16		Dairy farming	432000
299	OAK RIDGE DAIRY	13888 Lafayette		91074 Dairy Well 2		15-Dec-16		Dairy farming	432000
300	DYKES, LORN J	9997 Portage		91946 Thorson Irrigation Well		19-Dec-16		Agricultural irrigation	1440000
301	PINE AND BUCK ACRES	14016 Columbia		91413 Irrigation Well		20-Dec-16		Agricultural irrigation	1152000
302	OSTROWSKI LAND CO.	14176 Portage		91808 Ostrowski Soil Irrigation		20-Dec-16		Agricultural irrigation	1440000
303	ROCKVIEW FARMS LLC	14177 Juneau		91810 Rockview Farms		20-Dec-16		Agricultural irrigation	864000
304	PENTAIR	14229 Walworth		91928 EXR-1		21-Dec-16		Groundwater remediation	100000
305	PENTAIR	14229 Walworth		91929 EXR-2		21-Dec-16		Groundwater remediation	100000
306	PENTAIR	14229 Walworth		91930 EXR-3		21-Dec-16		Groundwater remediation	100000
307	PENTAIR	14229 Walworth		91931 EXR-4		21-Dec-16		Groundwater remediation	100000
308	PENTAIR	14229 Walworth		91932 EXR-5		21-Dec-16		Groundwater remediation	100000
309	PENTAIR	14229 Walworth		91933 EXR-6		21-Dec-16		Groundwater remediation	100000
310	PENTAIR	14229 Walworth		91934 EXR-7		21-Dec-16		Groundwater remediation	100000
311	PENTAIR	14229 Walworth		91938 EXR-8		21-Dec-16		Groundwater remediation	100000
312	ARMSTRONG, BILLY	14233 Adams		91948 Armstrong Irrigation		22-Dec-16		Agricultural irrigation	720000