

**WISCONSIN SUPREME COURT**  
**WEDNESDAY, APRIL 13, 2011**  
**9:45 a.m.**

*2008AP3170 is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed in part a Walworth County Circuit Court decision, Judge Robert J. Kennedy, presiding.*

*2009AP2021 is a review of a decision by the Wisconsin Court of Appeals District II, which affirmed a Walworth County Circuit Court decision, Judge Robert J. Kennedy, presiding.*

2008AP3170            Lk. Beulah Mgt. Dist. v. Wis. DNR and  
2009AP2021            Lk. Beulah Mgt. Dist. v. Village of East Troy

These two cases arise from a dispute between the Lake Beulah Management District (Lake District) and the Village of East Troy (the Village) and the State Department of Natural Resources (DNR) over a proposed high-capacity well. Proponents argue the well is needed to support increased development; opponents charge that pumping millions of gallons of water per day will damage the lake and surrounding wetlands.

Some background: The dispute began in 2003, when the Village sought permission from the DNR to drill a well about 1,400 feet from the shore of spring-fed Lake Beulah. The Village proposed a capacity of about 1.44 million gallons per day, and presented a consultant's study that showed the lake would be unharmed by the well.

The DNR issued the permit in September 2003. The following month, the Lake Beulah Management District, formed in 1968 by the Town of East Troy, filed a petition arguing that the agency had failed to fulfill its responsibility to protect navigable waters, ground water and the environment as a whole in issuing the permit. The Lake District lost, first before an administrative law judge and then in the circuit court. The Lake District filed a motion for reconsideration, presenting a new study from a geologist who concluded that the well would lower lake levels. The motion was denied.

In 2006, the Lake District tried a different approach, passing an ordinance to prevent the well's operation. The circuit court concluded that the ordinance was void and unenforceable in that it conflicted with state law. The Lake District appealed, and the Court of Appeals affirmed. This ruling triggered 2009AP2021, one of the two cases now before the Supreme Court.

The circuit court nullified the ordinance, saying it conflicted with state law. The Court of Appeals affirmed this ruling. The Supreme Court is expected to decide whether governmental entities, municipalities, the Department of Natural Resources (DNR), or anyone else has the authority to consider adverse environmental impacts of high capacity wells with capacities to withdraw less than 2 million gallons per day.

The underlying dispute about the authority of the DNR continued. In September 2008, the circuit court, considering a revised petition brought by the Lake District, found that the DNR had a right to consider the public trust doctrine in deciding if the well would negatively impact the lake, but further found that there was "an absolute dearth of any proof" of potential harm in this case. This ended the matter in the circuit court. The

Lake District appealed, and the Court of Appeals affirmed in part and reversed in part. This ruling triggered 2008AP3170 in which the Supreme Court is asked to overturn one portion of a Wisconsin Court of Appeals opinion that says that the DNR may consider the Public Trust Doctrine when deciding whether to grant applications for new wells. The Village argues that the Public Trust Doctrine does not extend to groundwater, and that the DNR's authority is limited to what the Legislature enacted in the state groundwater law.