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☞ Details: Complaint.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

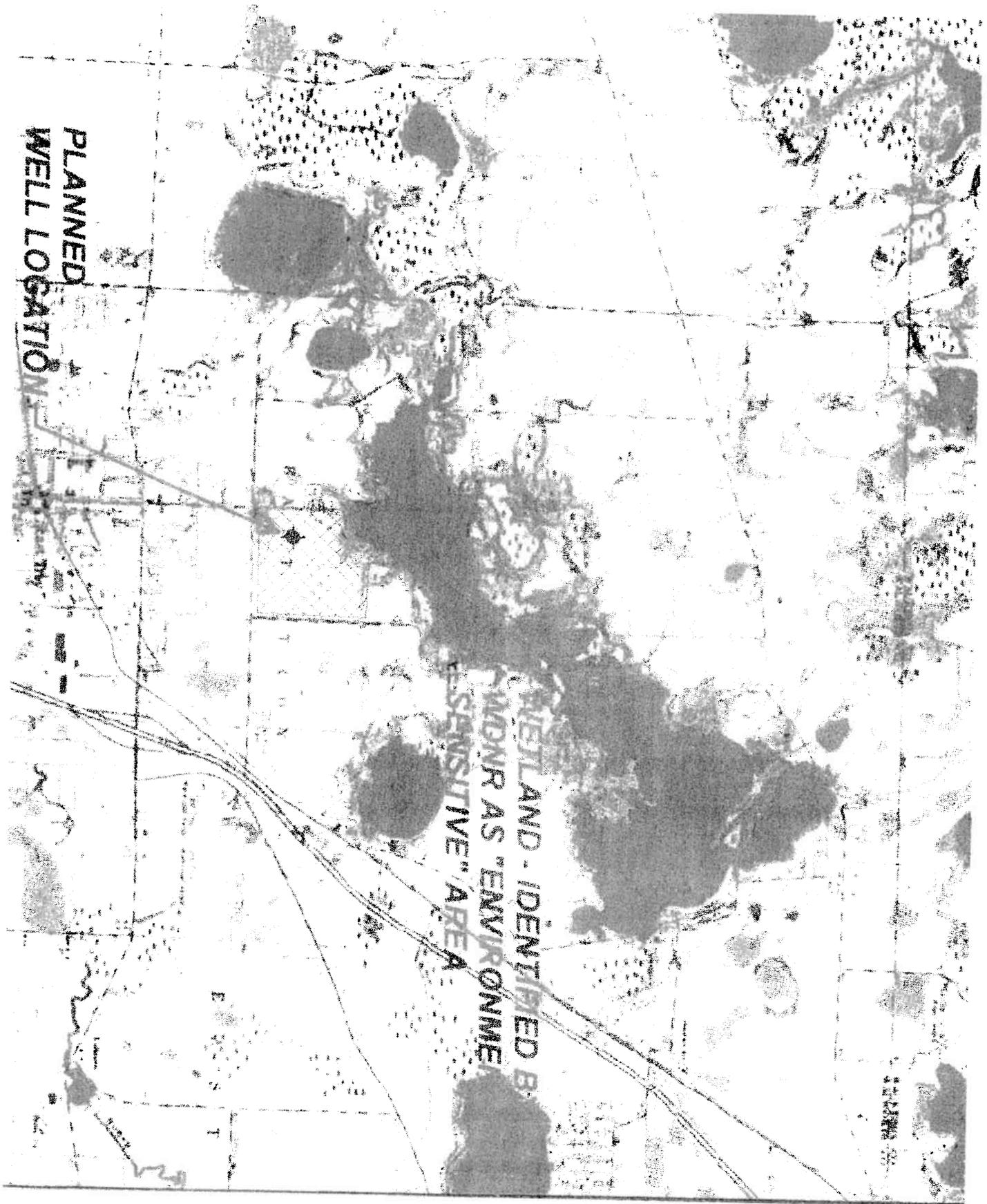
- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

EXHIBIT 1



WETLAND - IDENTIFIED BY
MDNR AS "ENVIRONMENTAL
SENSITIVE" AREA

PLANNED
WELL LOCATION

SCALE

EXHIBIT 2

Lake Beulah Sensitive Area Assessment

Final Report
May 1994

Prepared By
Kathi Dionne
Water Resources Specialist
Dan Helsel
Water Resources Management Specialist
Southeast District
Wisconsin Department of Natural Resources

Provided by:
Lake Beulah Protective
and Improvement Association



LAKE BEULAH SENSITIVE AREA STUDY

DNR WATER RESOURCES
MAY, 1994

INTRODUCTION

Lake Beulah is a valuable resource of the state of Wisconsin held in trust for the general public. The lake provides recreation, aesthetic enjoyment, opportunities for fishing and wildlife observation, boating and swimming. Lake Beulah has offered enjoyable conditions such as good water quality, abundant fisheries of good sized game fish and areas of aesthetic beauty.

The aquatic plants in this lake are a diverse community which has served the lake well, keeping nutrients and sediments to a minimum and providing valuable food and habitat for many desirable animals such as game fish and waterfowl.

In July of 1993, Department of Natural Resources staff visited Lake Beulah for the purpose of identifying areas which are sensitive and therefore in need of extra protection. Areas are considered sensitive if they fall under the following definition:

"... areas of aquatic vegetation identified by the department as offering critical or unique fish and wildlife habitat, including seasonal or lifestage requirements, or offering water quality or erosion control benefits to the body of water." (NR 107, 1989)

These might include:

- Diverse stands of high quality native aquatic plants which help provide a buffer against invasion of Eurasian water milfoil, a very aggressive non native aquatic plant which is increasingly becoming a nuisance in Wisconsin's lakes.
- Areas of vegetation which trap sediments and nutrients flowing into the lake thereby improving water clarity and reducing available nutrients for undesirable plant growth.
- Areas of vegetation which offer spawning nesting or feeding habitat for fish or wildlife.
- Areas of vegetation whose species composition or hydrology make it an ecologically unique community.

Lake Beulah is an 834 acre drainage lake, with a maximum depth of 58 feet and an average depth of 17 feet. The water clarity at Lake Beulah typically ranges between 6 and 11 feet during the summer. There are eight areas in Lake Beulah identified as sensitive. Each of these areas possesses characteristics which are beneficial to the lake as a whole. Their protection will help to preserve the quality of the water in Lake Beulah. A brief description of the eight identified sensitive areas follows:

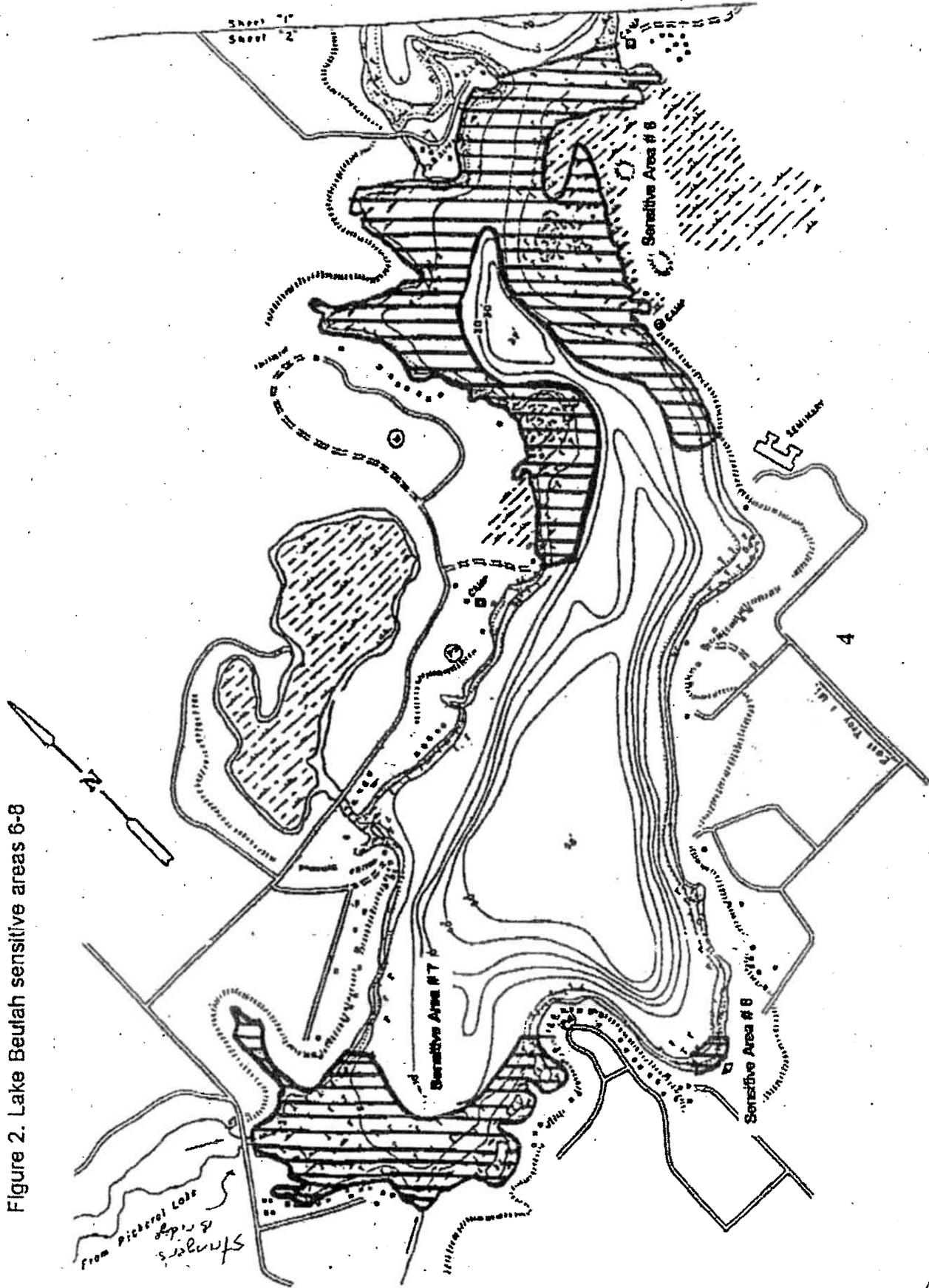
- o Sensitive Area 1 is located along the eastern shore of Jesuit island in the northeastern part of the lake.
- o Sensitive area 2 is a small cove located across from Jesuit island.
- o Sensitive area 3 is located around a small island along the northeastern shore of the lake.
- o Sensitive area 4 is located along the southern shore of the lake in the area also know as Mueller's Cove.
- o Sensitive area 5 is in the south shore cove area, located on the southern shore of the eastern end of the lake.
- o Sensitive area 6 is located in the narrows between the two basins of the lake.
- o Sensitive area 7 is located in the bay near the inlet form Pickerel Lake in the southwestern part of the lake.
- o Sensitive area 8 is located just southeast of the East Troy boat launch on the southwestern shore of the lake.

In general, these areas support a diverse community of native aquatic plants with limited areas of Eurasian water milfoil. They offer spawning and nursery areas for several fish species, nesting habitat for animals, act as a sediment and nutrient trap, as well as helping protect the shoreline from erosion.

Sensitive areas are determined by assessment of a team of scientists from the Wisconsin Department of Natural Resources, including fisheries, wildlife, water resources and water regulation and zoning staff. Each team member has expertise in areas relating to water quality and fish or wildlife biology and the ecological value of the area being assessed. The members of the team which investigated this area are:

Doug Welch (Fish Management) Mark Anderson (Wildlife Management)
Dan Helsel (Water Resources) Liesa Nesta (Water Regulation and Zoning)

Figure 2. Lake Beulah sensitive areas 6-8



Sensitive Area # 8

SENSITIVE AREA SITE DESCRIPTION

Sensitive area #8 is located just southeast of the East Troy boat launch on the southwestern shore of Lake Beulah. (Figure 2 and 3)

RESOURCE ASSETS OF SENSITIVE AREA #8

Sensitive area #8 supports an diverse reservoir of native aquatic plants, both submergent and emergent, and only limited areas of Eurasian water milfoil (*Myriophyllum spicatum*). (Table 1) The emergent and floating leaved community includes swamp loosestrife (*Decodon verticillatus*), bulrushes (*Scirpus sp.*), white water lily (*Nymphaea tuberosa*) and yellow water lily (*Nuphar variegatum*). The submergent community includes native water milfoil, (*Myriophyllum heterophyllum*), and a variety of pondweed species (*Potamogeton spp.*).

Fish utilize this community in a variety of ways. The diverse community of emergent and submerged aquatic plants provide excellent spawning habitat for northern pike, and very good spawning habitat for largemouth bass and bluegills. The less heavily vegetated areas provide spawning areas for crappie and walleye. The vegetated areas also provide high quality nursery areas for northern pike, largemouth bass, walleye, crappie and bluegill. All these species will also find ideal feeding habitat in these areas.

Wildlife also depends on the resources provided by sensitive area #8. This area offers high quality habitat for a variety of wetland species. Ducks such as mallards and wood ducks will nest, feed, and rear their young here. Wading birds such as the great blue heron, smaller herons and bitterns feed here, and stop here during migration. Shorebirds such as sandpipers will be found feeding here, and songbirds will find nesting habitat, and will feed and rear their young in the trees and shrubs along the wetlands. Muskrats, opossum and raccoons can be found here year round, feeding, nesting and raising their young.

The plant community in sensitive area #8 acts as a sediment and nutrient trap, as well as protecting the shoreline from erosion. It also stabilizes the bottom sediments. These functions benefit the entire lake in that they reduce nutrients available in the water to support the growth of nuisance aquatic plants, and improve the clarity of the water. (Table 2)

Sensitive area #8 is ecologically important to the lake for several reasons. The excellent native species reservoir will act as a buffer against invasion by exotic plant species, as well as a refuge where native species have established and can continue to spread. The emergent, floating leaved and submergent plant community and the

spawning grounds they provide for fish are unique to the lake. (Table 2)

MANAGEMENT RECOMMENDATIONS FOR SENSITIVE AREA #8 (Table 4)

In-lake activities:

Aquatic plant control:

1. Chemical: chemical treatment of aquatic plants will be permitted in this area, but is limited to control of Eurasian Water Milfoil. These chemical applications should be as selective as possible to reduce impacts on the native aquatic plant community and be part of a lake wide Eurasian water milfoil control plan.
2. Mechanical: mechanical control of any type is not recommended.

Water Regulation and Zoning:

1. Dredging will not be permitted.
2. Filling will not be permitted.
3. Pea gravel/sand blanket will not be permitted.
4. Aquatic plant screens will not be permitted.
5. Special permitted piers/boardwalks for water access will be considered on a case by case basis.

Riparian Activities:

1. Wetland alterations of any type will not be allowed without the proper DNR and Army Corp of Engineers permits.
2. Boardwalks will be considered on a case by case basis for the purposes of limited riparian access and public education.
3. Shoreland zoning standards do not allow new homes or other structures such as gazebo's and decks to be built in wetlands. All other construction must comply with all Walworth County requirements, especially the 75 foot setback from the shoreline.
4. Shoreline protection will not be permitted as it is unnecessary in this area.

Common Name	Scientific Name	Sensitive Area Occurrence
Eurasian water milfoil	<i>Myriophyllum spicatum</i>	1,2,3,4,5,6,8
Swamp loosestrife	<i>Decodon verticillatus</i>	1,5,6,7,8
White water lily	<i>Nymphaea tuberosa</i>	1,2,3,4,5,6,7,8
Yellow water lily	<i>Nuphar variegatum</i>	1,2,3,4,5,6,7,8
Variable leaved water milfoil (native)	<i>Myriophyllum heterophyllum</i>	1,2,4,5,6,7,8
Sago pondweed	<i>Potamogeton pectinatus</i>	1,5,6,7
Clasping leaved pondweed	<i>P. richardsonii</i>	1,4,6,7
Floating leaved pondweed	<i>P. natans</i>	1,6,7
Large leaved pondweed	<i>P. amplifolius</i>	1,5,6,7
Narrow leaved pondweed	<i>P. spp.</i>	2
White stemmed pondweed	<i>P. praelongus</i>	4
Curly leaved pondweed	<i>P. crispus</i>	2
Bladderwort	<i>Utricularia sp.</i>	1,2,6
Wild celery	<i>Valisneria americana</i>	1,2,5,6,7
Musk-grass	<i>Chara sp.</i>	1,2,4,5,6,7
Duckweed	<i>Lemna sp.</i>	5
Narrow leaved cattail	<i>Typha angustifolia</i>	6
Large leaved elodea	<i>Elodea canadensis</i>	6
Bulrushes	<i>Scirpus spp.</i>	4,6,7,8

Table 1. Aquatic plant species found in Lake Beulah sensitive areas and their locations

Resource Value	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6	Area 7	Area 8
Diverse Native Plant Community	X	X	X	X	X	X	X	X
Sediment & Nutrient Trap-protects water quality	X	X	X	X	X	X	X	X
Wildlife & Fishery Value-spawning, nursery, feeding, etc.	X	X	limited by size	X	X	X	X	
Shoreline Erosion Protection	X	X	X	X	X	X	X	
Stabilization of Bottom Sediments- protects water quality	X		X			X	X	X
Ecological/ hydrological/other	spawning	buffer / refuge	fish cover		very diverse	traps incoming nutrients from Pickerel lake	buffer / refuge	

Table 2. Resource values of sensitive areas in Lake Beauh.

Activity	Sensitive Area 1	Sensitive Area 2	Sensitive Area 3	Sensitive Area 4
Chemical control of aquatic plants	Allowed only as part of a Eurasian water milfoil control plan	Allowed only as part of Eurasian water milfoil control plan	Allowed only as part of Eurasian water milfoil control plan	Allowed only as part of Eurasian water milfoil control plan
Mechanical harvesting of aquatic plants	Not recommended	Not recommended	Not recommended	Recommended only for Eurasian water milfoil
Dredging	Navigation purposes only - native plantings required. Southern part only	May be permissible on a case by case basis - native planting required	Permit required - native planting required	Permit required - native planting required - not in shoreline area of butushes and willow
Filling	Not permitted	Not permitted	Not permitted	Permit required
Pea gravel / sand blanket	Not permitted	Not permitted	Permissible on a case by case basis	Permissible on a case by case basis
Aquatic plant screens	Permissible	Permit required	NA	Permissible on a case by case basis
Boardwalks and special permitted pier	Permissible on a case by case basis	Permissible - must meet local and DNR standards	NA	Permissible on a case by case basis
Other - Seawall construction	Generally not permitted but possible if conditions warrant	Generally not permitted but possible if conditions warrant	NA	Generally not permitted but possible if conditions warrant
Wetland alterations	Permit required	NA	NA	NA
Boardwalks	Permissible for limited riparian and educational uses	NA	NA	NA
Shoreline protection	Riprap only - not in wetland - only in cases where erosion is occurring	Permit required	Permit required	Permit required
Shoreline zoning	Must comply with local standards, 75 foot setback	Must comply with local standards	Must comply with local standards	Must comply with local standards

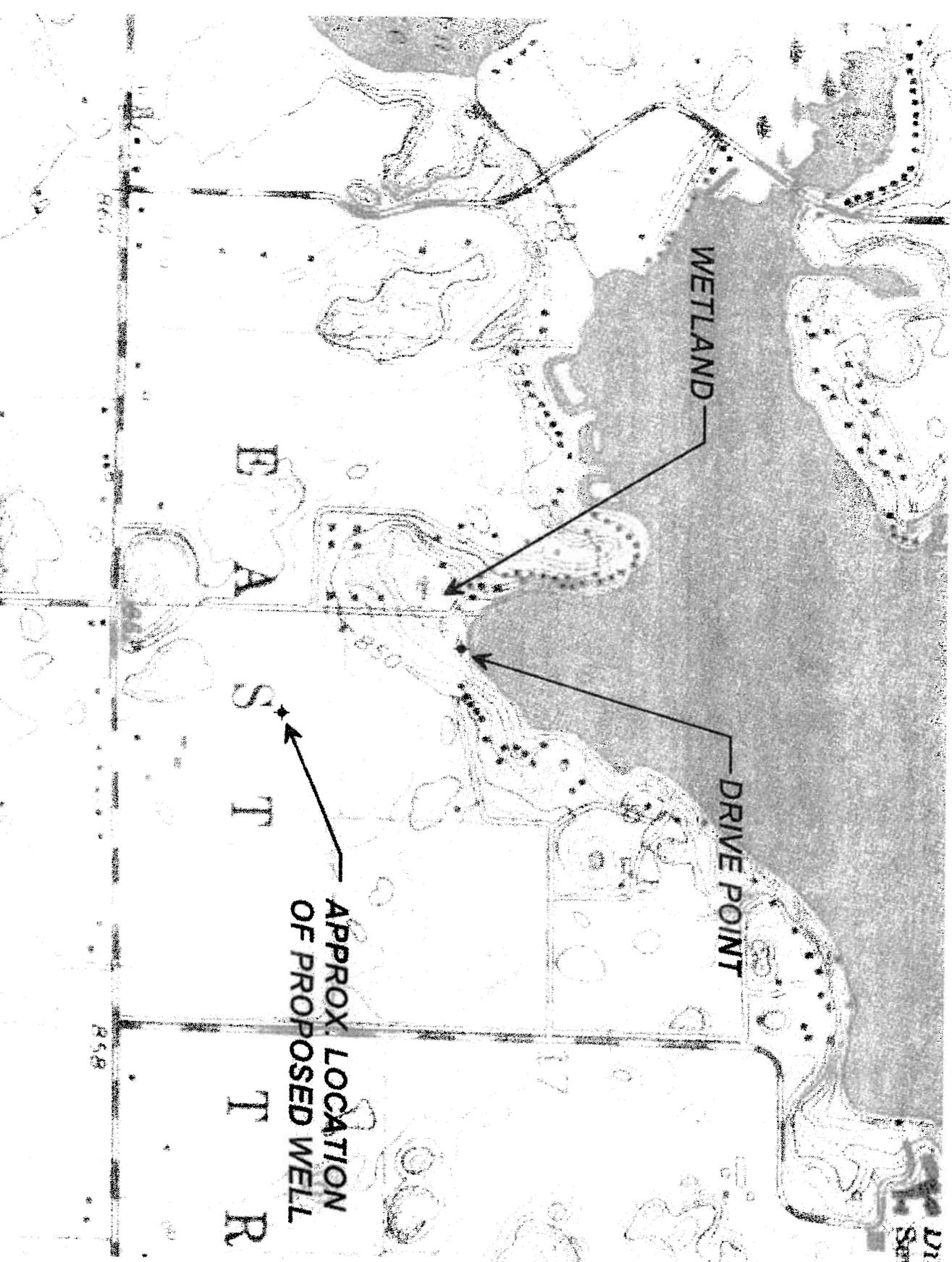
Table 3. Management recommendations and restrictions for Lake Beulah sensitive areas 1-4.

Activity	Sensitive Area 6	Sensitive Area 8	Sensitive Area 7	Sensitive Area 8
In Lake Activities	Chemical control of aquatic plants	Allowed only as part of Eurasian water milfoil control plan	Not permitted	Allowed only as part of Eurasian water milfoil control plan
	Mechanical harvesting of aquatic plants	Not recommended	Recommended for navigational channels only	Not recommended
	Dredging	Permittable but limited - native planting required	Not permitted	Not permitted
	Filling	Not permitted	Not permitted	Not permitted
	Pea gravel / sand blanket	Not permitted	Pea gravel possible - sand not permitted	Not permitted
	Aquatic plant screens	Permit required	Permit required	Not permitted
	Boardwalks and special permits	NA	Permittable on a case by case basis	Permittable for limited water access only
	Other - Boating regulations	NA	Recommended to remain slow / no wake	NA
	Other - Seawall construction	NA	NA	Generally not permitted but possible if conditions warrant
	Wetland alterations	NA	Not permitted	Permit required
Riparian Activities	Boardwalks	NA	Permittable for education and riparian access	Permittable for education and riparian access
	Shoreline protection	Riprap permittable - only in cases where erosion is occurring	Riprap permittable - only in cases where erosion is occurring	Not permitted
	Shoreline zoning	Must comply with local standards	Must comply with local and shoreline wetland zoning standards	Must comply with local and shoreline wetland zoning standards

Table 4. Management recommendations and restrictions for Lake Beulah sensitive areas 5-8.

EXHIBIT 3

D11
S41



2E. USGS 7.5 MINUTE QUADRANGLE, EAST TROY, WISCONSIN, 1960, REVISED 1994.

EXHIBIT 4

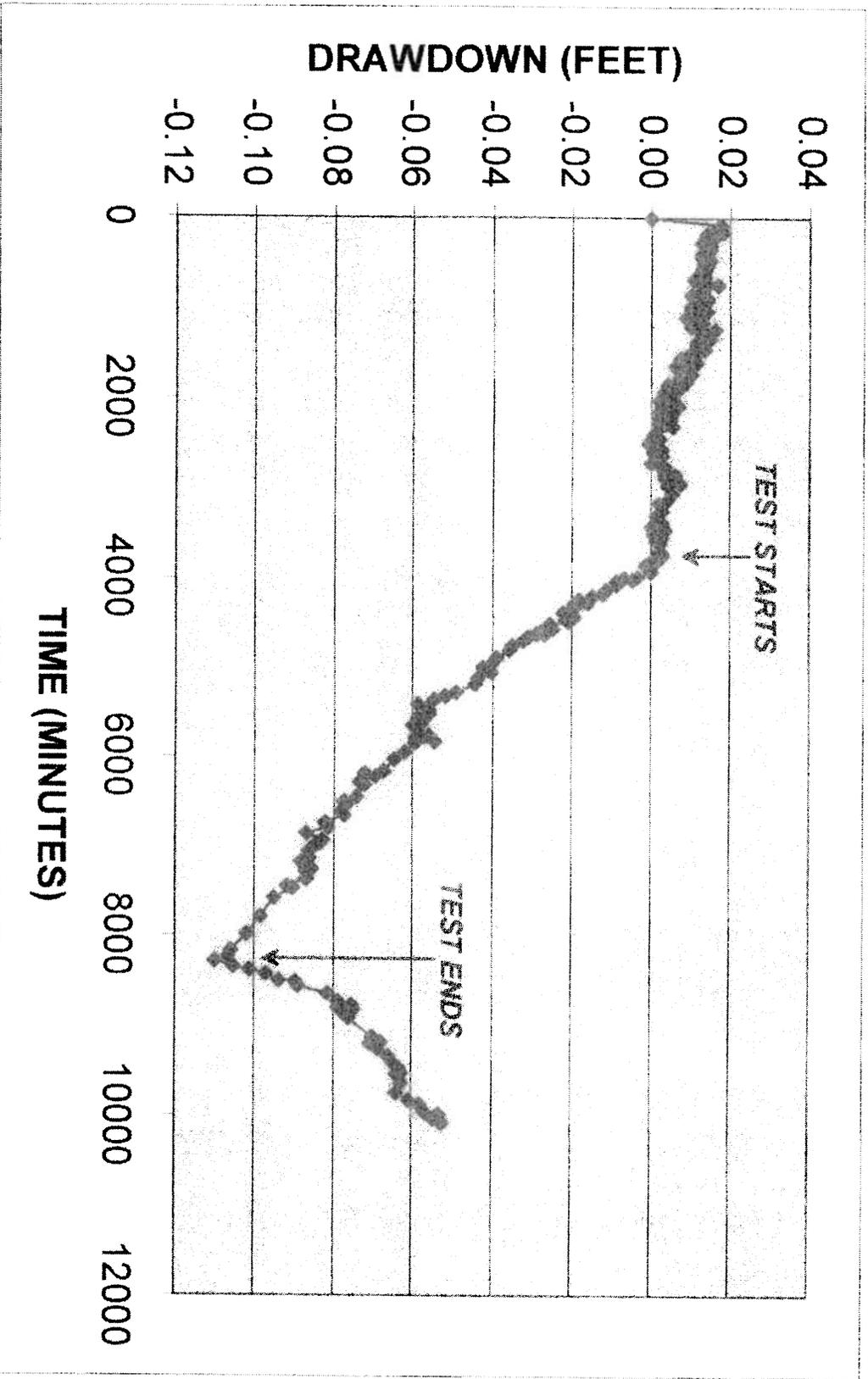


EXHIBIT 5

Ohm, Judith M - DNR

From: Paul Kent [pkent@andersonkent.com]
Sent: Wednesday, December 15, 2004 4:58 PM
To: Ohm, Judith M.; Schlaefer, Mary W. (DNR)
Cc: Bill Loesch; Judy Weter
Subject: DNR Brief
Follow Up Flag: Follow up
Flag Status: Red

Judy,

Thank you for your fax.

I must say that I am both surprised and disappointed with your statement, "To the extent that the legal analysis in Section III C. of LBPIA's Brief supports the position that WDNR has authority to condition or limit a high capacity well approval where operation of the well has negative impacts on public rights in navigable waters, WDNR agrees with that analysis." Br. at 2.

At the very least this is a departure from the Department's prior position and public statements on this and other cases. As recently as November 2003 Todd Ambs, stated in the Journal-Sentinel, "State law says the DNR can regulate high capacity wells only if they affect a municipal water supply." How do you possibly square that position with that in Dennis' brief? For the reasons stated in my brief, I also think it is just plain wrong as a matter of law and policy. There are public trust remedies, but making up authority the legislature has not granted, is not one of them.

I was well aware of the Department's unease with this issue because of political pressure, but I thought you were going to simply argue procedure. If you were going to take this position I would have at least appreciated the same courtesy I extended you by making clear what you were going to be arguing. That way I could have had more than 20 minutes to adjust my brief accordingly.

Paul G. Kent
Anderson & Kent, S.C.
1 N. Pinckney Street, Suite 200
Madison, WI 53703
(608) 246-8500 Telephone
(608) 246-8511 Fax
pkent@andersonkent.com

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12/13/2007

EXHIBIT 6



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
PO Box 12436
Milwaukee, Wisconsin 53212-0436
Telephone 414-263-8749
FAX 414-263-8483
TTY 414-263-8713

September 4, 2003

RECEIVED-DNR

SEP 7 2005

MS JUDY WETER
VILLAGE OF EAST TROY
PO BOX 166
EAST TROY WI 53120

DRINKING WATER & GW

Project Number: W-2003-0665
PWSID#: 26501233
DNR Region: SE
County: WALWORTH

SUBJECT: WATER SYSTEM FACILITIES PLAN AND SPECIFICATION APPROVAL

Dear Ms. Weter:

The Wisconsin Department of Natural Resources, Division of Water, Bureau of Drinking Water and Groundwater, is conditionally approving plans and specifications for the following project. The project submittal included an engineering report or information of sufficient detail to meet the requirements of NR 811.13(3).

Water system name: Village of East Troy

Date received: 6/20/03

Length of time extension: none

Design firm: Crispell-Snyder, Inc.

Project Designer: Kelly L. Zylstra

Regional DNR Contact: Petwara Toyngtrakoon - Southeast Region Plymouth Service Center

Project description: Site Investigation and Proposed Construction for Well No. 7

The proposed project involves the conversion of the existing NR 812 (sand & gravel) test well into a production well. Well No. 7 will be located in the SW1/4 of the SW1/4 of Section 17, T4N, R18E, Town of East Troy, Walworth County, Wisconsin. The Village will purchase the site pending consolidation/annexation approval for the proposed subdivision where the well will be located.

The nearest sand and gravel well serving a utility is approximately 6 miles to the northeast. It is not believed that the proposed well will have an adverse effect on any nearby wells owned by another water utility. If there is an actual adverse effect caused by the proposed well to nearby utility wells, or any other wells, the injured party may seek relief under the reasonableness of use tests set forth in State of Wisconsin v. Michels Pipeline Construction, Inc., 63, Wis. 2nd, 278 (1974).

If rotary methods and an outer casing is used, the Well No. 7 will be constructed (within the same drillhole as the test well) with the following specifications:

Outer Drillhole: 27 inch - drilled to a depth of 312 feet
Optional Outer Casing: 24 inch; installed in the 27 inch drillhole from the surface to a depth of 312 feet; completely withdrawn, or withdrawn to a maximum allowable depth of 239 feet if permanent installation
Screen: As connected to 16 inch casing; installed from 262 feet to 312 feet; stainless steel; continuous slot; wire wrap; #30 slot size
Filter Pack: To be installed from a depth of 312 feet to 242 feet; Colorado Silica Sand, Inc. 10-20 filter media (see also Part 2.5 of Section 0215)
Sand/Bentonite Seal: Two foot sand seal installed from a depth of 242 feet to 240 feet
One foot sand seal installed from a depth of 240 to 239 feet

- Grout: If the 24 inch casing is completely withdrawn
To be installed in the annular space between the 16 inch casing and the 27 inch drillhole from the ground surface to a depth of 239 feet
- If the 24 inch casing is left in-place (maximum casing depth of 234 feet)
To be installed in the annular space between the 16 inch casing and the 27 inch drillhole from a depth of 239 feet to 234 feet and in the annular space between the 16 inch casing and the 24 inch casing between the surface and a depth of 234 feet
- Grout Placement: Tremie pipe placed at the bottom of the annular space after gravel pack and bentonite seal placement
- Grout Mixture: Neat cement; 6 gallons (maximum) of water to 94 pounds of cement

If the 24 inch outer casing is installed by percussion methods or a Barber rig, no annular space is generated outside the casing. If the 24 inch outer casing is completely withdrawn (during the grouting operation), grout will be placed in the annular space outside the 12 inch casing from the ground surface to a depth of 60 feet. If the 24 inch outer casing is to remain as part of the permanent well construction, the maximum allowable depth casing is 234 feet.

According to Section 02030 of the Specifications, Well No. 7 will be test pumped at approximately 1,000 gpm for 24 continuous hours. Note that NR 811.16(15)(c) requires that the test be run for a minimum of 4 hours at a rate equal to the anticipated capacity of the final well pump.

A finished floor elevation of 787.5 feet is proposed for the pumpstation. The revised site plan for Well No. 7 indicates that the well site may be located less than 200 feet to the future sanitary sewer. Sanitary sewer within 200 feet of the well site shall be constructed of piping and joints complying with water main standards.

Additional background information

The results of pumping the test well were discussed in an April 2003 report prepared by Layne-Geosciences. As discussed on Page 3 of the report:

... at the request of the Village, Layne coordinated with the Lake Buelah Management District's consultant (RSV Engineering, Inc.) and Dr. Ken Bradbury of the Wisconsin Geologic and Natural History Survey (WGNHS) to develop a supplemental groundwater monitoring program that could be used to better-predict the impacts of groundwater production at the test well site on Lake Buelah. Based upon the results of several discussions between RSV Engineering, the WGNHS and Layne, the Village authorized the installation of one additional approximately 300-foot deep monitoring well, two 70 foot-deep shallow monitoring wells, a shallow well point and a lake level staff gauge, which were monitored throughout the pump test.

A 72 hour pump test was started at 9:06 a.m. on February 24, 2003. The test well was pumped at approximately 400 gpm. In addition to the groundwater monitoring points described above, three private wells were also monitored. Groundwater elevations before and at the end of the pump test [from the installed groundwater monitoring points] were provided on Page 4 of the report. Based on the pump test data, estimates of aquifer parameters were provided on Page 6 of the report.

Based upon the analysis from the pump test data, Layne-Northwest estimated that a well producing 2,500 gpm could be constructed – based upon local aquifer hydraulics. Layne-Northwest estimated that a well producing 1,000 gpm would avoid any serious disruption of groundwater discharge to Lake Buelah (reference Page 7).

Variations being issued to Chapter NR 811, Wis. Adm. Code: None

Approval conditions related to Chapter NR 811, Wis. Adm. Code:

1. A preconstruction conference shall be held to ensure the understanding of, and compliance with, the approved plans and specifications, the proposed method of erosion control, the duties of the resident project representative, the disinfection and bacteriological sampling requirements of NR 811.07(3), and any special conditions listed below.

2. Erosion control methods shall be used to prevent siltation to lands and waterways adjoining the construction area. These methods shall include but not be limited to the following:
 - a. siltation fences,
 - b. trench stabilization,
 - c. immediate mulching and seeding, and
 - d. the use of dewatering settling basins
3. A chlorine residual shall be maintained in the well throughout the drilling operation.
4. The owner, or the owners agent, shall provide Petwara Toyingtrakoon of the Department's Plymouth Service Center, phone number 920-892-8756 extension 3034, telefax number 920-892-6638, written notification of the intent to grout the well at least 2 working days prior to grouting. The notification shall include the name and telephone number of the resident project representative, the proposed method of grouting, the method for determining grout density, and the casing thickness and manufacturer's markings.
5. The resident project representative shall have documentation at the well site at the time of grouting to indicate a thorough knowledge and understanding of the approval, method of grouting, and WAC NR 811 requirements. This documentation shall include a copy of the DNR approval and any approved modifications, a copy of the plans and specifications, a drawing of the well as constructed, a method of determining the grout density, the calculations of the annular space volume, the calculations showing the volume of grout required, the volume of grout ordered, a copy of the letter notifying the DNR of the resident project representative, and a copy of WAC NR 811.
6. The well shall be test pumped for a minimum of 12 consecutive hours. The pump test shall include pumping at minimum of 4 hours - at a rate equal to the anticipated capacity of the final well pump.
7. Any sanitary sewer within a 200 foot radius of Well No. 7 shall be constructed using water main pipe and installation standards.
8. A wellhead protection plan shall be approved before Well No. 7 is placed into service. In addition to the wellhead protection plan, the required Form 3300-215 [PUBLIC WATER SUPPLY POTENTIAL CONTAMINANT USE INVENTORY] shall also be submitted.
9. The construction of the pumphouse, pump discharge piping, connecting water main and the installation of the well pump are not being approved at this time. Plans and specifications for these improvements shall be submitted to the Department for review and approval following the construction and test pumping of the well. The well construction reports, test pumping data, plumbness and alignment data, water quality data and the contaminant use inventory must be submitted to this office prior to or with the submission of the plans and specifications.

Approval conditions related to other Department requirements: None

Approval constraints: This approval is valid for two years from the date of approval and is subject to the conditions listed above. If construction or installation of the improvements has not commenced within two years the approval shall become void and a new application must be made and approval obtained prior to commencing construction or installation.

This approval is based upon the representation that the plans submitted to the Department are complete and accurately represent the project being approved. Any approval of plans that do not fairly represent the project because they are incomplete, inaccurate, or of insufficient scope and detail is voidable at the option of the Department.

Appeal rights: The project was reviewed in accordance with s. 281.41, Statutes for compliance with Chapters NR 108 and NR 811 Wis. Adm. Code and is hereby approved in accordance with s. 281.41, Statutes subject to the

conditions listed above. If you believe you have a right to appeal this decision, you may file a written request for a contested case hearing pursuant to s. 227.42, Wis. Stats., or file for judicial review under s. 227.52 and 227.53, Statutes. You have 30 days after this approval is mailed to file your written request for hearing or file and serve your petition for judicial review. Your request for hearing or petition for judicial review must name the Secretary of the Department as respondent. This notice is provided pursuant to s. 227.48, Statutes.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

Francis G. Fuja, P.E.
DG Plan Review Engineer

cc: Tom Rossmiller - Water Supt.
Kelly Zylstra - Crispell-Snyder, Inc.
Bob Nauta - RSV Engineering, Inc., 112 S. Main St., Jefferson, WI 53549
David Skotarszak - Lake Beulah Management District, P.O. Box 71, East Troy, WI 53120-0071
Paul Didier - Lake Beulah Protective & Improvement Association, 1019 Rooster Run, Middleton, WI 53562
Dan Peplinski - Layne Geosciences, W229 N5005 Duplainville Rd., Pewaukee, WI 53072
Petwara Toyingtrakoon - SER Plymouth Service Center
Heidi Bunk - SER Waukesha Service Center
Jim D'Antuono - SER Waukesha Service Center
Randy Shumacher - SER Waukesha Service Center
Lee Boushon - DG/2
Fuja - DG Reviewer at SER Milwaukee
Kenneth Bradbury - WG&NHS
USGS
PSC

EXHIBIT 7

Judy Weter

From: Paul Kent [pkent@andersonkent.com]
Sent: Thursday, May 26, 2005 3:22 PM
To: Judy Weter (E-mail); bloesch@uspackaging.net; wloesch@wi.rr.com
Subject: Hudec and DNR Updates

Judy and Bill,

Judy Ohm called me this morning from DNR about the well extension request. She indicated that her analysis was that since the law has changed, they cannot simply extend the current approval without a re-application. She did however indicate that DNR would not require any additional information, or for that matter any additional analysis, because the provisions of the new law didn't affect this well. I told her that this would create a number of problems not the least of which would be the re-initiation of the request for a hearing by Pat Hudec regardless of what Carlson rules. I also told her I did not want a new application because from a PR perspective it would encourage Pat to press for relocation which would require more testing. She agreed to hold any formal determination for a while to see what Carlson rules. If he sends it back for more hearings anyway, a new application wouldn't matter. If he upholds DNR then any new request for a hearing could be promptly dismissed. In the meantime, I will see if I can give her some reassurance that extending the current permit can be done without reapplication.

We also talked about getting back to Pat on his settlement letter. I would propose sending the following:

Dear Pat,

Thank you for your letter of May 19th in response to the Village's settlement letter to you dated February 22, 2005. I have shared your letter with the Village and its consultants and we will get back to you on the issues you have raised.

At this point I would like to clarify one item that you have now raised on a number of occasions. At our last face to face meeting the end of December, we discussed a number of concepts some of which required technical evaluation. John Jansen was not able to be at that meeting. On February 8, 2005 John spoke with Bob Nauta to hear first hand from Bob some of the technical concepts we discussed at our meeting. I then had subsequent discussions with the Village and its consultants. We determined that some concepts were acceptable and those were outlined in our draft settlement and explained in my cover letter. In my February 22nd cover letter, I also indicated that other areas were not acceptable such as an analysis of water temperature, water chemistry and monitoring of various biometrics. We invited the District to do this work on its own. As a result there was no need for the Village to have follow-up technical discussions with the District on those topics.

After we have had a chance to review your response and questions we will be getting back to you.

Paul G. Kent
Anderson & Kent, S.C.
1 N. Pinckney Street, Suite 200
Madison, WI 53703
(608) 246-8500 Telephone
(608) 246-8511 Fax
pkent@andersonkent.com

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EXHIBIT 8



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

September 6, 2005

Judy Weter
East Troy Village Administrator
P.O. Box 166
East Troy, WI 53120-0166

Re: Request for Extension of High Capacity Well Approval; Village of East Troy;
Project Number W-2003-0665A

Dear Ms. Weter:

The Village of East Troy has requested an extension of the Department of Natural Resources (DNR) Water System Facilities Plan and Specification Approval (for Well #7), dated September 4, 2003. Your request has been assigned Project Number W-2003-0665A. Paul Kent, an attorney representing the Village in this matter, requested this extension by a letter to DNR attorney Judy M. Ohm, dated August 3, 2005. A follow up letter was sent to me from Kelly L. Zylstra, of Crispell-Snyder, Inc. and Daniel Peplinski, of Layne-Northwest, consultants for the Village, dated August 30, 2005.

Mr. Kent's letter indicated that the Village has been precluded from commencing construction of Well #7 because of litigation concerning the DNR approval (DNR has been a party to this litigation) and litigation regarding annexation of the well location into the Village. The letter from Mr. Zylstra and Mr. Peplinski indicates that there have been no changes in the physical circumstances upon which the application was based.

DNR has considered the Village's request under the standards set forth in 2003 Wisconsin Act 310, which became effective on May 7, 2004. This law was enacted after the original DNR approval was issued (September 4, 2003), but before the request for an extension was received. Under s. 281.34(4) and (5), Wis. Stats., DNR approves the request for an extension of the original approval, for a period of two years. Thus, the original approval is valid until September 4, 2007, subject to the conditions listed in the original approval (attached).

As a result of the ongoing litigation regarding the original approval, DNR is aware that the Lake Beulah Management District and the Lake Beulah Protective and Improvement Association are interested parties. Therefore, DNR is providing a copy of this approval to their attorneys.

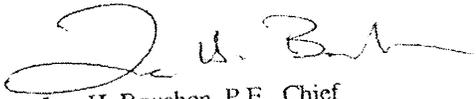
Appeal Rights

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your

petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30 day period for filing a petition for judicial review.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Lee H. Boushon, P.E., Chief
Public Water Supply Section

Attachment

c:

Kelly L. Zylstra
Crispell-Snyder

Paul Kent
Anderson & Kent
Attorney for Village

Dennis L. Fisher
Meissner Tierney Fisher & Nichols
Attorney for Lake Beulah Management
District

Daniel Peplinski
Layne-Northwest

Judy M. Ohm
DNR—LS/5

David V. Meany
DeWitt Ross & Stevens
Attorney for Lake Beulah Protective
and Improvement Association

0021

EXHIBIT 9

Ohm, Judith M - DNR

From: Paul Kent [pkent@andersonkent.com]
Sent: Monday, January 09, 2006 8:45 PM
To: Judy Weter; bloesch@uspackaging.net
Cc: Ohm, Judith M.; Larry Konopacki
Subject: Draft Brief
Follow Up Flag: Follow up
Flag Status: Red
Attachments: Village Appeal Brief_010906.doc

Judy and Bill,

Attached is an initial draft of our response brief to the court of appeals. You will note we need to add the tables of contents, add record cites, and add some additional case law authority particularly on the implied authority argument. However, the general outline of the brief and the main arguments are there. Please forward any comments by email. Please do not make copies of this brief public.

I am also forwarding a copy of this draft to Judy Ohm, so she has the benefit of our position. I wanted her to note in particular the mootness argument and to note that we are trying to clarify our position on the public trust doctrine. On the latter point we are not saying public trust does not apply. Rather we are saying that under the legislative scheme it does not apply prospectively as part of the permit process, but it does apply through post permit remedies.

One final note. Today Dave Meany called and asked for a week extension on his reply. I was not in a position to object.

I look forward to your comments.

Paul G. Kent
Anderson & Kent, S.C.
1 N. Pinckney Street, Suite 200
Madison, WI 53703
(608) 246-8500 Telephone
(608) 246-8511 Fax
pkent@andersonkent.com

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EXHIBIT 10



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL
Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
V/TTY 608/267-8902

September 19, 2000

Secretary George S. Meyer
Department of Natural Resources
GEF II, 5th Floor
Madison, WI 53702

RECEIVED

And delivered 11:45 P.M. Dm

SEP 19 2000

**OFFICE OF THE
SECRETARY**

Dear Secretary Meyer:

I have received a great deal of correspondence from people very concerned about the application of Perrier Group of America, Inc., to operate a high capacity well system in the Town of New Haven in Adams County. The wells will be located within 300 feet of two spring sites, Jensen's Pond and Buckley Springs Pond. These spring sites are connected to Big Spring Creek, a class 1 trout stream and an exceptional resource water. There are wetlands adjacent to both spring sites. The wells are expected to pump from 350 to 500 gallons per minute. The entire project will include a bottling plant and a system of pipes to convey the water from the wells to the plant.

Your department is about to complete an environmental assessment on the part of the system that comprises the wells only. None of the tests conducted to date has demonstrated that the proposed wells will not harm the wetlands, groundwater or surface waters in the area. In addition, the bottling plant and pipes will also need state permits, but the environmental assessment has not fully addressed those components of the project.

The waters that will be affected by the proposed project are protected by the public trust and state law. The public trust imbues the state's navigable waters with heightened value, and imposes a heavier burden on the state as trustee. The legislature has in addition given the Department of Natural Resources considerable authority over groundwater and wetlands, which will also be affected by the proposed project. DNR's authority to protect state waters is not exclusive. Under Wisconsin law, the attorney general is independently authorized by statute to bring a public nuisance action to protect the public trust in navigable waters. In addition, the unreasonable use of state waters may be a public nuisance which may also be similarly enjoined through action by the Attorney General.

In light of the uncertain effects of Perrier's proposed operation on critical resources of the state, I strongly urge you to proceed with an environmental impact statement for this project. The Department of Natural Resources should not permit an activity that could harm the state's wetlands, groundwater and surface water until it can determine that the activity will not do so. Where, as here, a project poses a recognized potential for harm to state resources that are imbued with extra value under the public trust and the statutes, it is necessary to fully assess the potential

George S. Meyer
September 18, 2000
Page 2

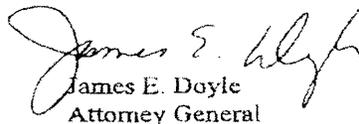
harm before allowing such a project to proceed. To issue Perrier a permit now, and do studies later, risks abrogating the department's responsibility to protect the waters of the state.

The effect of Perrier's proposal on wetlands, groundwater and surface waters is now unknown, and a significant and harmful effect cannot be ruled out. Perrier's proposal should be given the strictest scrutiny provided under state law. I strongly urge the department to proceed with a full environmental impact statement.

Many citizens have contacted my office regarding their concerns about this project. Local governmental units have passed resolutions in opposition to the Perrier project. Local units of government are also authorized under Wisconsin law to bring a public nuisance action to protect the public trust and waters of the state. My office is committed to working with local governments and their representatives in protecting the public trust and all waters of the state.

My office will be monitoring developments on the Perrier project very carefully. We are considering all of our options, including the possibility of legal action by my office at some future time, should it appear that the public trust or waters of the state are threatened.

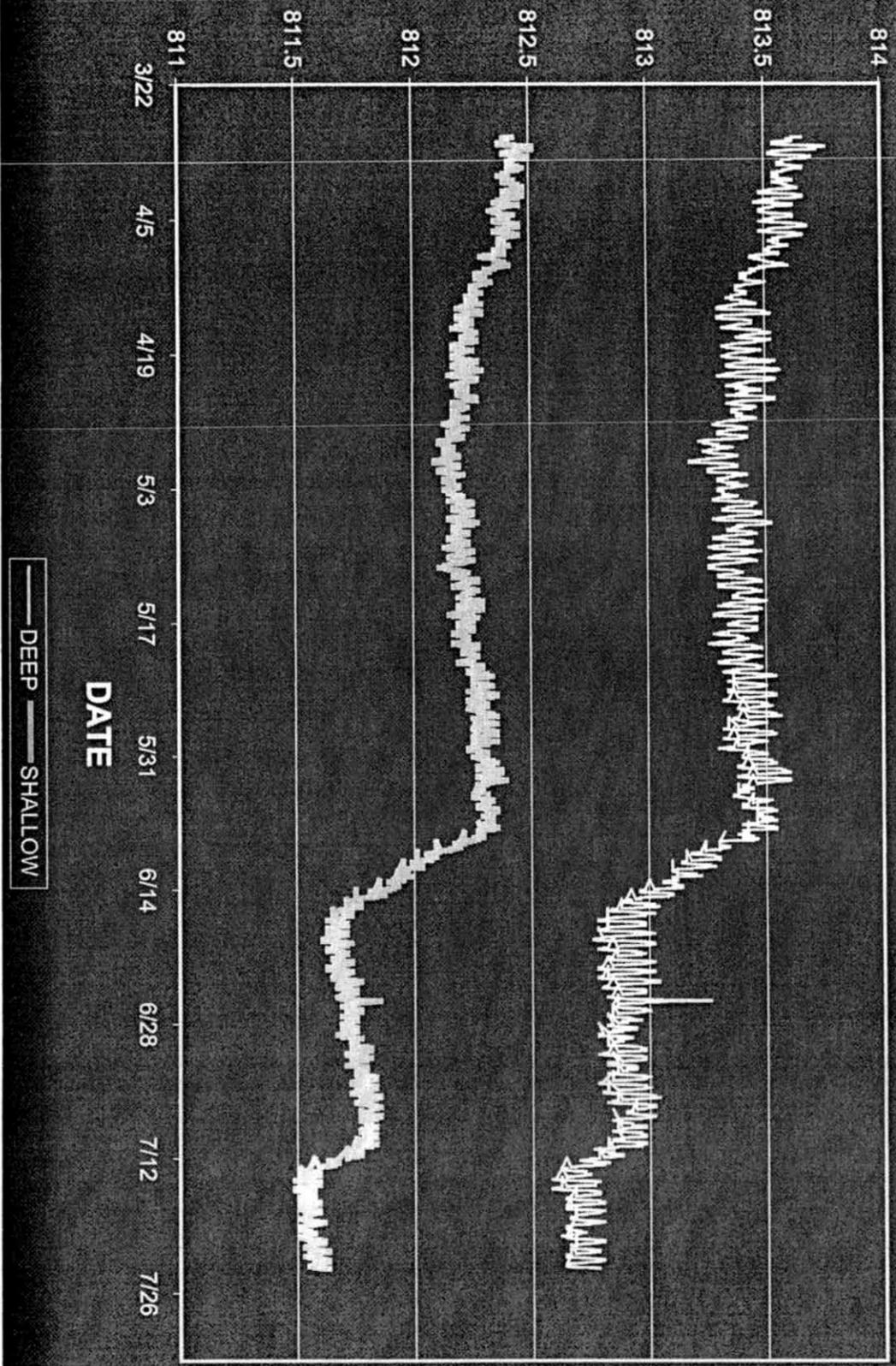
Sincerely,


James E. Doyle
Attorney General

JED:MJF

EXHIBIT 11

GROUNDWATER ELEVATION



EAST TROY WELL NEST NUMBER MW-2