STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
Branch 3

CLEAN WISCONSIN, INC.
And PLEASANT LAKE MANAGEMENT DISTRICT,

Petitioners,

vs.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

Respondent.

DECISION AND ORDER

Case Nos. 16-CV-2817
16-CV-2818
16-CV-2819
16-CV-2820
16-CV-2821
16-CV-2822
16-CV-2823
16-CV-2824

## BACKGROUND

This matter is an administrative agency review case appealing the Wisconsin Department of Natural Resources (the "DNR") approval of eight "high capacity wells."[1] The facts are not in dispute[2] and were confirmed by DNR's counsel at the oral argument in this matter:

1. The DNR received an application for a high capacity well;
2. DNR staff determined that Public Trust waters would be adversely impacted by the loss of groundwater (and in some cases expressly stated that the application must be denied);
3. DNR management decided to hold the application in abeyance pending potential legislative changes to allow approval;

[1] The definition of high capacity wells is defined in Wis. Stat. § 281.3(1)(b).
[2] Transcript of Hr'g, pp. 34-35 (hereinafter, "Tr. Of Hr'g.").

4. After an AG opinion (OAG 1-16) was promulgated, DNR advised the applicant that the well was now approved because of limitations in its authority as opined by the Attorney General; and
5. DNR approved the application without any conditions necessary to protect the affected Public Trust waters. (See attached Exhibit.)

It is also undisputed there were no evidentiary hearings in these matters. Therefore, the "substantial evidence" test does not apply. Instead, Wis. Stat. § 227.57(5)&(7) apply.

What is also not in dispute is that this matter is not about Wis. Stat. § 281.34(5m). In all of the cases, the DNR did consider the impacts of other cumulative effects, whether it was other proposed wells, stream diversions, or other factors. These considerations were done by the DNR before the AG Opinion was published, which arguably had the affect of preventing any consideration of factors other than explicitly set forth in Wis. Stat. § 281.34 and § 281.35. (Tr. of Hr'g., pp. 30-35.)

The DNR stated that the standard of review regarding the scope of DNR's authority under Wis. Stat. § 227.10(2m) and the Public Trust Doctrine, is *de novo.* (DNR Response Brief, pg. 19.) The DNR also asserts that its statutory interpretations are entitled to "due weight deference" because it is charged with authority to administer the high capacity well statutes. ( DNR Response Brief, pp. 18-19, hereinafter "Re. Br.".)

The Petitioners argue that this Court should apply a *de novo* review because the matters concern the scope of the agency's authority, *citing Grafft v. DNR*, 2000 WI App 187, ¶ 4, 238 Wis. 2d 750, 754, 618 N.W.2d 897. The Petitioners also argue that the above stated reasons do not support affirming the DNR's decision on these high capacity wells.

Instead, they seek revocation of the permits other than the "Turzinski" well permit, which they request be remanded back to the DNR for further study.

At oral argument, the DNR stated several reasons why this Court should uphold the DNR's decision to approve the high capacity wells. The first is that the Public Trust Doctrine embodied in Wisconsin's Constitution only governs the right of public access to navigable waters (Tr of Hr'g., pp. 36-40); second, Wis. Stat. § 227.10(2m) prohibits the DNR from considering any factors other than the factors set forth in Wis. Stat. § 281.34 and § 281.35 in considering a high capacity well application (Tr. Of Hr'g., pp. 37-38); third, Wis. Stat. § 281.11 only applies to subchapter II and not to any other of the subchapters, so it would not apply to high capacity well permits (Tr. Of Hr'g., pp. 44-45); and fourth, the recent Supreme Court case, *Lake Beulah Management Dist. v. State Dept. of Natural Resources*, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73 was decided incorrectly and/or overruled by *Rock-Koshkonong Lake District v. State Dept. of Natural Resources*, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800. (Tr. Of Hr'g., pp. 40-43.) Several times the DNR indicated that the Wisconsin Supreme Court "got [it] wrong," that "rather than relying on the Court's amalgamation of DNR's authority, the agency would ask this Court to look to the statutes that circumscribe our authority," and that "the Court should consider the statutes, the statutory language rather than *Lake Beulah's* amalgamation." (Tr. Of Hr'g., pp. 43-44.)

For the following reasons, this Court is vacating the well approvals except for the "Turzinski" well. In that case, the Court is remanding the matter back to the DNR for further action consistent with this decision. A chart is attached with a summary of the Court's decision by case number.

## DISCUSSION

### I. Standards For Review of an Agency Decision.

The scope of judicial review of an agency decision is found in specific statutory provisions. Section 227.57(5) describes the Court's ability to remand for further action under a correct interpretation of the law, and states in pertinent part:

> The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law. (emphasis added)

Section 227.57(7) provides:

> If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility. (emphasis added)

Courts have generally applied one of three levels of deference to agency conclusions of law and statutory interpretation: great weight, due weight, or de novo. *See Sauk County v. WERC*, 165 Wis. 2d 373, 413–14, 477 N.W.2d 267 (1991); *Jicha v. DILHR*, 169 Wis. 2d 284, 290–91, 485 N.W.2d 256 (1992). The degree of deference given to an agency's statutory interpretation depends upon the extent to which the " administrative agency's experience, technical competence, and specialized knowledge aid the agency in its interpretation and application of the statute." *Kelley Co. v. Marquardt*, 172 Wis. 2d 234, 244, 493 N.W.2d 68 (1992); *see also State ex rel. Parker v. Sullivan*, 184 Wis. 2d 668, 699, 517 N.W.2d 449 (1994) (the level of deference "depends on the comparative institutional capabilities and qualifications of the court and the administrative agency").

The middle level of deference, as requested by the DNR, is known as "due weight" or

"great bearing." *Kelley Co.,* 172 Wis. 2d at 244, 493 N.W.2d 68. The "due weight" standard is used "if the agency decision is 'very nearly' one of first impression." *Sauk County,* 165 Wis. 2d at 413–14, 477 N.W.2d 267. Put another way, the courts give "due weight" under circumstances where "the agency has some experience in an area, but has not developed the expertise which necessarily places it in a better position to make judgments regarding the interpretation of the statute than a court." *UFE,* 201 Wis. 2d at 286, 548 N.W.2d 57. As the Wisconsin Supreme Court stated, deference to the agency's interpretation under these circumstances is not warranted based on the agency's expertise per se; rather, it is based on the fact that the legislature entrusted enforcement of the particular statute to the agency. *Id.* The Court has further explained the reasoning behind and application of this standard:

> Since in such situations the agency has had at least one opportunity to analyze the issue and formulate a position, a court will not overturn a reasonable agency decision that comports with the purpose of the statute unless the court determines that there is a more reasonable interpretation available.

*Id.* at 286–87, 548 N.W.2d 57.

The lowest level of deference accorded is de novo review, under which the agency's interpretation is given no weight at all. *Sauk County,* 165 Wis.2d at 414, 477 N.W.2d 267. This standard is only applied when the issue is "clearly one of first impression" for the agency or "when an agency's position on an issue has been so inconsistent so as to provide no real guidance." *UFE,* 201 Wis. 2d at 285, 548 N.W.2d 57 (internal citations omitted). A recent case has indicated that there is little difference between due weight deference and no deference, since both situations requires a court to construe the statutory construction. *Operton v. LIRC,* 2017 WI 46, ¶ 22, 375 Wis. 2d 1, 894 N.W.2d 426. In addition, when a court is construing a statute involving the scope of an agency's power, the court interprets the statute *de novo*. *See Grafft v. DNR,* 2000 WI App 187, at ¶ 4.

Here, the DNR's position is based on a relatively new statute, Wis. Stat. §227.10(2m), it concerns the agency's own interpretation of the scope of its authority under the statutes, and is apparently solely based on an Attorney General Opinion (OAG 1-16) which contradicts a recent Wisconsin Supreme Court case. Under either the "due weight" or de novo standard, the DNR's interpretation that in reviewing a high capacity well application it is not allowed to consider anything other than the factors listed in Wis. Stat. § 227.34 and § 281.35 is incorrect.

## II. The Public Trust Doctrine and *Lake Beulah* Govern This Matter and Allow the DNR to Consider Impacts Other Than the Ones Set Forth in Wis. Stat. § 281.34 and § 281.35.

The DNR argued at the hearing that the Public Trust Doctrine only regulates public access to navigable waters, and not the water itself. (Tr. of Hr'g., p. 40.) According to the DNR, water levels are regulated under the State's police powers, which are not at issue in this matter. (Tr. of Hr'g., p. 37.) However, the Public Trust Doctrine has never been interpreted that narrowly.

The Wisconsin Supreme Court in *Lake Beulah*, stated:

> It is undisputed that Lake Beulah is a navigable water. Thus, we begin our analysis with the applicability of the public trust doctrine to the DNR's regulation of high capacity wells because "[w]hen considering actions that affect navigable waters in the state, one must start with the public trust doctrine, rooted in Article IX, Section 1 of the Wisconsin Constitution." *Hilton*, 293 Wis.2d 1, ¶ 18, 717 N.W.2d 166. While originally derived from the Northwest Ordinance, the public trust doctrine emanates from the following provision of the Wisconsin Constitution: "[T]he river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free." Wis. Const. art. IX, § 1.
>
> This court has long confirmed the ongoing strength and vitality of the State's duty under the public trust doctrine to protect our valuable water resources. In *Diana Shooting Club v. Husting*, we explained the importance of a broad interpretation and vigorous enforcement of the public trust doctrine:

The wisdom of the policy which, in the organic laws of our state, steadfastly and carefully preserved to the people the full and free use of public waters cannot be questioned. Nor should it be limited or curtailed by narrow constructions. It should be interpreted in the broad and beneficent spirit that gave rise to it in order that the people may fully enjoy the intended benefits. Navigable waters are public waters, and as such they should inure to the benefit of the public. 156 Wis. 261, 271, 145 N.W. 816 (1914). We reaffirmed this maxim in *Muench v. Public Service Commission* in our examination of the history and evolution of the public trust doctrine, which indicated a "trend to extend and protect the rights of the public to the recreational enjoyment of the navigable waters of the state." 261 Wis. 492, 499–508, 53 N.W.2d 514 (1952). We have further explained, "The trust doctrine is not a narrow or crabbed concept of lakes and streams. It appreciates such bodies of water as more than arteries for waterborne traffic." *Menzer v. Vill. of Elkhart Lake,* 51 Wis.2d 70, 82, 186 N.W.2d 290 (1971).

From this fundamental tenet of our constitution, the State holds the navigable waters and the beds underlying those waters in trust for the public. *Hilton,* 293 Wis.2d 1, ¶ 18, 717 N.W.2d 166; *ABKA Ltd. P'ship v. Wis. Dep't of Natural Res.,* 2002 WI 106, ¶¶ 11–12, 255 Wis.2d 486, 648 N.W.2d 854; *Wis. Envtl. Decade, Inc. v. Dep't of Natural Res. (DNR),* 85 Wis.2d 518, 526, 271 N.W.2d 69 (1978). "This 'public trust' duty requires the state not only to promote navigation but also to protect and preserve its waters for fishing, hunting, recreation, and scenic beauty. The state's responsibility in the area has long been acknowledged." *Wis. Envtl. Decade v. DNR,* 85 Wis.2d at 526, 271 N.W.2d 69 (internal citations omitted).

While it is primarily the State's duty to protect and preserve these resources, "[i]n furtherance of the state's affirmative obligations as trustee of navigable waters, the legislature has delegated substantial authority over water management matters to the DNR. The duties of the DNR are comprehensive, and its role in protecting state waters is clearly dominant." *Id.* at 527, 271 N.W.2d 69; *see also Hilton,* 293 Wis.2d 1, ¶ 20, 717 N.W.2d 166; *ABKA Ltd. P'ship,* 255 Wis.2d 486, ¶ 12, 648 N.W.2d 854.

*Id.* at ¶'s 30-33. (emphasis added)

As Justice Zeigler said in her concurring opinion:

> The waters of this state are deeply revered, especially by those who live alongside them. As the late Justice William A. Bablitch so eloquently observed, "Fishing is many things, the least of which to many who indulge is the catching of fish." *Cnty. of Adams v. Romeo*, 191 Wis.2d 379, 391, 528 N.W.2d 418 (1995) (Bablitch, J., concurring in part, dissenting in part). Well over a century ago, this court recognized one of the unique and most significant rights enjoyed by riparian landowners: "The right of the riparian owner to the natural flow of water substantially unimpaired in volume and purity is one of great value, and which the law nowhere has more persistently recognized and jealously protected than in Wisconsin." *Winchell v. City of Waukesha*, 110 Wis. 101, 108, 85 N.W. 668 (1901).

*Id.* at ¶ 69.

These statements clearly and eloquently extend the Public Trust Doctrine beyond simply allowing access to water that may remain after it has been diverted.

The other arguments advanced by the DNR are also incorrect. First, the village in *Lake Beulah* presented the same arguments advanced by the Attorney General's Opinion---that the DNR had no authority to regulate high capacity wells other than under Wis. Stat. § 281.34 and § 281.35, and the Supreme Court rejected it. The Wisconsin Supreme Court also rejected a similar argument to that advanced by the Intervenors, that allowing the DNR to evaluate water losses would result in a permit system without clear standards:

> The Village argues that the DNR does not have the authority to consider the effect of a proposed high capacity well on waters of the state or to reject a well permit application because of such concerns. The Village asserts that the specific statutory scheme set forth in Wis. Stat. § 281.34 and § 281.35 circumscribes the DNR's authority to conduct environmental reviews and limits it to only those proposed high capacity wells specifically enumerated in the statute (which do not include Well No. 7): certain wells with a capacity of between 100,000 and 2,000,000 gpd and all wells with a capacity of over 2,000,000 gpd. The Village argues that the legislative history of Wis. Stat. § 281.34 and § 281.35 indicates that this statutory scheme evinces a deliberate legislative choice to

> limit the DNR's authority. The Village asserts that this specific, limited grant of authority cannot be superseded by the public trust doctrine or the general policy provisions in Wis. Stat. § 281.11 and § 281.12. The Village argues that interpreting the DNR's authority so broadly would create a permit system without clear standards and would provide no guidance for permit applicants. The Village notes that concerns about the environmental impacts of high capacity wells may be addressed through (1) the DNR's enforcement authority under ch. 30, (2) the State's authority to address nuisance conditions caused by excessive water withdrawals, and (3) citizen nuisance actions.

*Id.* at ¶ 29.

As indicated, the Court rejected these arguments. Regarding the "lack of clear guidance" in allowing the DNR to consider other factors, also argued by the Intervenors in this matter, the Court stated:

> Contrary to the Village's argument, this does not create a permit system without standards. The Village's argument ignores the reality of how the DNR exercises its authority and complies with its duty within the statutory standards. As with many other environmental statutes, within the general statutory framework, the DNR utilizes its expertise and exercises its discretion to make what, by necessity, are fact-specific determinations. General standards are common in environmental statutes and are included elsewhere in the high capacity well statutes. *See, e.g.*, Wis. Stat. § 281.35(5)(d)1. (requiring the DNR to make a finding "[t]hat no public water rights in navigable waters will be adversely affected" before issuing a permit). The fact that these are broad standards does not make them non-existent ones.

*Id.* at ¶ 43.

As to the argument that Wis. Stat. § 227.10(2m) and § 227.11(2)(a) limit the DNR's ability to use Wis. Stat. § 281.11 and § 281.12 to consider cumulative impacts outside the requirements of Wis. Stat. § 281.34 and § 281.35, this argument was also raised and rejected by the Wisconsin Supreme Court. The Court stated::

> Our conclusion is not affected by the argument advanced by the Great Lakes Legal Foundation (GLLF) in a letter recently

> submitted on behalf of the amici Dairy Business Association, Wisconsin Manufacturers & Commerce, Inc., Wisconsin Paper Council, Inc., and Midwest Food Processors Association, Inc. In its letter, the GLLF asserts that 2011 Wisconsin Act 21, enacted on May 23, 2011, further circumscribes the DNR's authority to consider environmental harm under Wis. Stat. ch. 281. The GLLF relies on Wis. Stat. § 227.10(2m)—"No agency may implement or enforce any standard, requirement, or threshold, including 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...."—and Wis. Stat. § 227.11(2)(a)—limiting an agency's rule-making authority to that "explicitly conferred on the agency by the legislature," not including any "statement or declaration of legislative intent, purpose, findings, or policy," or "the agency's general powers or duties."
>
> None of the parties argues that the amendments to Wis. Stat. ch. 227 in 2011 Wisconsin Act 21 affect the DNR's authority in this case. The DNR responds that Wis. Stat. ch. 281 does explicitly confer authority upon the DNR to consider potential environmental harm presented by a proposed high capacity well. The conservancies agree. The Village maintains that the DNR lacks such authority under Wis. Stat. ch. 281 but states that "Wis. Stat. § 227.10(2m) does not change the law as it relates to the authority of the [DNR] to issue high capacity well approvals under Wis. Stat. § 281.34." We agree with the parties that 2011 Wisconsin Act 21 does not affect our analysis in this case. Therefore, we do not address this statutory change any further.

*See Lake Beulah*, ¶ 39, fn. 31. (emphasis added)

If these subsections were so radical as to limit the ability of the DNR to consider other factors not expressed in Wis. Stat. § 281.34 and § 281.35, the Wisconsin Supreme Court would have addressed it further. As it did not do so, its reasoning is binding on this Court.[3]

In addition, the Wisconsin Supreme Court explicitly rejected the argument that the DNR is limited to considering the factors in Wis. Stat. § 281.34 and § 281.35:

[3] OAG 1-16 is not persuasive on this Court. *See Wood County v. Bd. Of Vocational, T. & A. Ed.,* 60 Wis. 2d 606, 613, 211 N.W.2d 617 (1973). First, it states that the legislative changes to Wis. Stat. § 227.11(2)(a) and Wis. Stat. § 227.10(2m) were designed to overrule *Lake Beulah*. However, these changes were addressed in the decision because they predated the decision. It also argues that the reasoning used by the Court was because the changes were not retroactive but rather prospective. However, the Court did not mention this issue in its decision at all. Instead, the Court stated that the DNR has explicit authority under Wis. Stat. § 281.11 and § 281.12 to consider potential harms by a proposed high capacity well.

> We conclude that, pursuant to Wis. Stat. § 281.11, § 281.12, § 281.34, and § 281.35 (2005–06), along with the legislature's delegation of the State's public trust duties, the DNR has the authority and a general duty to consider whether a proposed high capacity well may harm waters of the state.

*Id.* at ¶ 3; *See also Id.* at ¶ 62.

Moreover, the Public Trust Doctrine is an affirmative duty to protect the waters of the state. *Wis. Environmental Decade, Inc. v.* DNR, 85 Wis. 2d 518, 527, 271 N.W.2d 69 (1978). Under the DNR's interpretation, if the legislature did not delegate authority at all to protect the waters of the state, there would be no protection. (Tr, of H'rg., p. 37-40.) Instead, enforcement of the Public Trust Doctrine would rely on private citizens to bring nuisance actions. (Tr. of Hr'g., p. 38.)

This logic is inconsistent with the holding in *Priewe v. Wis. Stat. Land & Improvement Co.*, 103 Wis. 537, 549-50, 79 N.W. 780 (1899):

> The Legislature has no more authority to emancipate itself from the obligation resting upon it…to preserve for the benefit of all the people forever the enjoyment of the navigable waters within its boundaries, than it has to donate…the state capital to a private purpose.

Similarly, the DNR's argument that Wis. Stat. § 281.11 only relates to a specific subchapter, and not to high capacity wells also fails. Wis. Stat. § 281.11 explicitly states that the purpose of the subchapter is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. (emphasis added) To read this section as only applying to Wis. Stat. § 281.13-281.20, dealing with water quality standards, would be nonsensical. Instead, the subsection is to grant necessary powers to protect the water of the State and expressly gives the DNR the ability to enforce standards.

In addition, Wis. Stat. § 281.12 explicitly grants the DNR authority to "have general supervision and control over the waters of the state. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of the state. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of the chapter…." (emphasis added) Wis. Stat. § 281.31 provides that to:

> aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans…for the efficient use, conservation, development, and protection of this state's water resources…."

This subsection, in which Wis. Stat. § 281.34 and § 281.35 lie, also provides the explicit grant of authority to the DNR "to make studies…for the protection of this state's water resources." Therefore, none of these statutes contradict Wis. Stat. § 221.10(2m) as noted by the Wisconsin Supreme Court in *Lake Beulah*.[4]

Finally, *Rock-Koshkonong Lake District v. State Dept. of Natural Resources*, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, did not overrule *Lake Beulah.* First, it cited with approval *Lake Beulah*. It also did not mention Wis. Stat. § 227.11(2) or § 227.10(2m). Further, *Rock-Koshkonong* dealt with the impact of the Public Trust Doctrine on non-navigable waters whereas *Lake Beulah* dealt with the impact on navigable waters. Thus, they are distinguishable.

As indicated, there is no dispute that there were cumulative impacts that were considered by the DNR. Absent the Attorney General opinion, the DNR would have denied

[4] Under Wis. Stat. § 221.10(2m), "No agency may implement or enforce any standard, requirement, or threshold, including 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…" Here, as stated by the Supreme Court, the DNR is explicitly permitted and required to have control over the waters of the state.

all but one of these well applications as impacting navigable waters. The last well had not reached that decision as of when the approval was granted. The only reason the permits were approved was based on the incorrect OAG decision which contradicts the holding in *Lake Beulah.* Therefore, Wis. Stat. § 227.57(7) requires this Court to vacate the well approvals as a matter of law except for the "Turzubski" well. In that case, the DNR is able and should evaluate the effect the well will have on the affected trout stream near the well. Nothing in Wis. Stat. § 221.10(2m) prevents the DNR from evaluating negative effects on navigable waters in order to preserve and protect the Public Trust Doctrine firmly established in the Wisconsin Constitution.

## CONCLUSION

This Court is bound by nearly 120 years of precedent and a long rich history in this State of respecting the Wisconsin Constitution and its fundamental protection of the waters of the State for the enjoyment of all. FOR THESE REASONS, it is HEREBY ORDERED that the high capacity well permits listed in the attached exhibit are vacated. The "Turzinski" well permit is vacated and remanded back to the DNR for further evaluation of possible cumulative impacts consistent with this decision.

Electronically signed by Judge Valerie Bailey-Rihn

Circuit Court Judge

10/11/2017

This order is final for purposes of appeal pursuant to Wis. Stat. § 808.03(1).

# *Clean Wisconsin, Inc., et al. v. DNR*
## Dane County Case Nos. 16-CV-2817, et seq.

| Case No. | Well Owner | DNR Evaluations | Order |
|---|---|---|---|
| 16-CV-2817 | Lutz | Cumulative impact on Stoltenberg Creek:<br>>30% depletion; <3% each from Lutz, Pavelski and Peplinski wells. DNR should deny or withdraw application<br>(Order, Exhibit 1)[5] | Reverse and vacate well approval |
| 16-CV-2818 | Pavelski | Cumulative impact on Stoltenberg Creek:<br>>30% depletion; <3% each from Lutz, Pavelski and Peplinski wells. DNR should deny or withdraw application<br>(Order, Exhibit 1) | Reverse and vacate well approval |
| 16-CV-2819 | Peplinski | Cumulative impact on Stoltenberg Creek:<br>>30% depletion; <3% each from Lutz, Pavelski and Peplinski wells. DNR should deny or withdraw application<br>(Order, Exhibit 1) | Reverse and vacate well approval |
| 16-CV-2820 | Frozene | At 36.3 million gallons per year (MG/Y):<br>1. Drawdown at Pleasant Lake = 1.7-3.6 inches (in addition to cumulative impacts)<br>2. Flow reductions to 3 streams = 1.2-2.3% (in addition to cumulative impacts): exceed allowable depletion thresholds for all 3 creeks.<br>3. Drawdown to calcareous fen would be 1.3 inches, in addition to 4 inches from existing wells. 1-1.5 inch drawdown would cause loss of 10% if fen.<br>Approved for 272.3 MG/Y (7.5 times evaluated withdrawal rate)<br>(Petition, Exhibit B)[6] | Reverse and vacate well approval |

[5] Order granting motion to supplement record
[6] Petition, 16CV2820, Filed October 28th, 2016, Exhibit B

| Case No. | Well Owner | DNR Evaluations | Order |
|---|---|---|---|
| 16-CV-2821 | Turzinski | Well should be evaluated for impacts to affected trout stream (Petition, Exhibit B)[7] | Reverse and remand for evaluation of impacts |
| 216-CV-2822 | Laskowski | Well is too close to trout reproduction area. Stream is already too impacted by cranberry operation surface water diversions (Petition, Exhibit B)[8] | Reverse and vacate well approval |
| 16-CV-2823 | Lauritzen | New well will add to significant existing adverse impact to Radley Creek. Existing impact = 2-5% base flow reduction. (Petition, Exhibit B)[9] | Reverse and vacate well approval |
| 16-CV-2824 | Derousseau | Existing and proposed wells will cause impact to Roux Creek much greater than allowable stream depletion. DNR informed applicants that they could voluntarily withdraw or be denied. (Order, Exhibit 7) | Reverse and vacate well approval |

[7] Petition, 16CV2821, Filed October 28th, 2016, Exhibit B
[8] Petition, 16CV2822, Filed October 28th, 2016, Exhibit B
[9] Petition, 16CV2823, Filed October 28th, 2016, Exhibit B