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NEWS RELEASE

AG Schimel Issues Formal Opinion Regarding 2011 WI Act 21 and High Capacity Wells

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MADISON – Attorney General Brad Schimel today issued a formal opinion regarding the application of 2011 Wisconsin Act 21 to the issuance of high capacity groundwater well withdrawal permits by the Wisconsin Department of Natural Resources.

The Attorney General opinion is in response to a request from the Assembly Committee on Organization, which posed the following questions:

1. Did the Wisconsin Supreme Court in *Lake Beulah Management District v. Department of Natural Resources* interpret and apply the requirement in Wis. Stat. § 227.10(2m) that DNR have explicit authority to impose requirements and conditions?
2. Are Wis. Stat. §§ 281.11 and 281.12 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?
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?
4. Does Wisconsin's high capacity well regulatory structure set forth at Wis. Stat. §§ 281.34 and 281.35 or related regulations, explicitly require or explicitly permit monitoring wells or cumulative impact analysis as conditions for high capacity well permits?

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Below is an excerpt from the introduction of the Attorney General opinion:

I have determined that the Supreme Court did not address the newly passed Act 21 in *Lake Beulah Management District v. Department of Natural Resources. Lake Beulah*, 335 Wis. 2d 47. I further conclude that neither Wis. Stat. § 281 nor the public trust doctrine give DNR the authority to impose any condition not explicitly allowed in state statute or rule. In addition, no other authority exists which permits DNR to impose the conditions enumerated by the Assembly.

A copy of the full Attorney General opinion is available by visiting the DOJ website:
<https://www.doj.state.wi.us/opinions/ag-opinions>

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