

Defending Wisconsin's Waters

Golden Sands Dairy LLC v. Town of Saratoga

Issue: This case is about *vested rights*. Specifically, whether Wysocki Farms has the right to use the land they have purchased (6,388 acres) for their identified purpose, the construction of a new dairy confined animal feeding operation (CAFO). In this case, the clear-cutting and cropping of the land which would be required to develop the CAFO is in conflict with the Town of Saratoga's zoning. The CAFO plan is to convert 4,660 acres of wooded area, and an existing 1,800 acres of farm land, into irrigated crop fields. The project will require 33 high capacity wells.

The Wysocki Family Farms, claims they have agricultural rights to the land because it was unrestricted when the dairy filed for building permits in 2012. The Town of Saratoga argues the land was re-zoned for preservation four months after the applications were filed and therefore agricultural use is not permitted.

Status: Circuit Court: In 2015, the Wood County Circuit Court found the Wyski Family Farm's application for dairy building on the 100 acres of Saratoga land allowed it to use any additional land associated with the proposed dairy for agricultural purposes.

Court of Appeals: May, 2017 The 4th District Court of Appeals ruled that just identifying property in a building permit application doesn't result in use rights. Hence, the 4th District Court of Appeals ruled in favor of the Town of Saratoga, and against permitting the operation of the Golden Sands Dairy farm.

Wisconsin Supreme Court: The oral arguments in this case will be presented January 11, 2018 before the Wisconsin Supreme Court. A decision is expected sometime this spring. The Supreme Court oral arguments can be viewed live on Wisconsin Eye (<http://www.wiseye.org/Schedule>).

Clean Wisconsin & Pleasant Lake Management District v. Wisconsin DNR

Issue: DNR's failure to carry out its duties and authority under the Public Trust Doctrine to protect navigable waters. October, 2016 Clean Wisconsin and Pleasant Lake Management District challenged DNR's permitting of 8 (originally 9) High Capacity Wells that DNR had permitted, even though the DNR had determined each would have a negative environmental impact on the state's water resources.

Status: Dane County Circuit Court: On October 11, 2017 Judge Bailey-Rihn ruled to nullified seven of the high-capacity well permits, the eighth was sent back to DNR for review. Judge Bailey-Rihn required the DNR to void the permits and fulfill their constitutional duty to protect Wisconsin's waters.

Court of Appeals: January 5, 2018 DNR along with their intervener groups (WMC, DBA, and others) appealed the October 11 Circuit Court decision invalidating the eight high capacity well permits. The first week of April, 2018 the Department of Justice asked the court for additional time to prepare their case. The new date is May 2, 2018.

CSWC filed an Amicus Brief to support this action in Circuit Court. A similar action is now being considered for the Court of Appeals action.

Kinnard Farms Case: Lynda Cochart, et al. v. Wisconsin DNR

Issue: Does the DNR's narrow interpretation of Act 21 limit DNR's authority to impose Wisconsin Pollutant Discharge Elimination System (WPDES) permit conditions

Status:

Dane County Circuit Court: July 14, 2016, Judge Markson affirmed the petitioners' (Clean Wisconsin and others at this point) argument that the Wisconsin DNR improperly rejected Administrative Law Judge Boldt's order to include an animal unit limit and off-site groundwater monitoring in Kinnard Farms, Inc.'s WPDES permit. Judge Markson concluded that that Wisconsin statutes do empower the DNR to require animal unit limits and monitoring of water pollution to ensure permittees comply with state clean water laws.

Court of Appeals: Wisconsin DNR appealed Judge Markson's decision and requested that the appeal be heard in District 2, Waukesha, rather District 4, Dane County. April 3, 2018 the Wisconsin Supreme Court ruled (5-2) that the appeal filed by the Wisconsin DNR must be heard by the District II Court of Appeals.

Pleasant Lake Management District v. DNR and Richfield Dairy

Issues:

1. Wisconsin DNR's failure to uphold and enforce Judge Boldt's September, 2014 court order limiting the number of animal units to be housed at the Richfield CAFO. Specifically, DNR's failure to impose a WPDES animal unit limit that would protect the groundwater and enable the CAFO to operate within its 52.5 million gallons of water limit per year.
2. Whether the groundwater monitoring required by the Richfield CAFO WPDES permit is sufficient to protect groundwater and drinking water supplies in the area.
3. Whether the Richfield CAFO can be eligible for a nitrate alternative concentration limit (ACL). If awarded this ACL, the Richfield CAFO would be able to add nitrates to the groundwater beyond the 10 mg/liter limit – the Wisconsin and federal standard for safe drinking water. Groundwater in the area already exceeds 10mg/L nitrate concentration (the federal and Wisconsin standard).

Status: April 20, 2018 Richfield and the DNR filed a motion with Judge Défort requesting that this case be stayed (postponed) until a decision in the Kinnard case has been made. The request was based on the fact that both cases address the authority of the DNR to limit animal units to protect groundwater.