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**Court Grants Businesses' Request to Join Lawsuit to Stop DNR's Effort  
to Impose Unlawful Permit Conditions**

*DNR's Permit Conditions on High Capacity Wells Not Allowed Under 2011 WI Act 21*

Madison, WI – On behalf of the Wisconsin Manufacturers and Commerce (WMC), Dairy Business Association (DBA), Midwest Food Processors Association, and Wisconsin Potato and Vegetable Growers Association, the Great Lakes Legal Foundation (GLLF) filed a motion to intervene in a case (*New Chester Dairy v. Wisconsin Department of Natural Resources and Clean Wisconsin*) seeking to prevent the DNR from overstepping its regulatory authority.

On February 17, Judge McGinnis (Outagamie County) granted these business groups their request to participate in this important case by rejecting the claim by Wisconsin Department of Natural Resources (DNR) and Clean Wisconsin that the business association members do not have sufficient interest in this case involving the imposition of unlawful permit conditions for high capacity wells. Many of these businesses require high capacity wells for their operations.

“DNR’s underlying position in this case is wrong and discouraging, but it is particularly disheartening that the agency joins hands with Clean Wisconsin to assert that business associations have no legally recognized interest in DNR’s efforts to impose unlawful, expensive and unnecessary permit conditions on their members,” says Scott Manley, WMC’s vice president of government relations. “Thankfully, the court found DNR and Clean Wisconsin’s arguments had little merit.”

New Chester Dairy sought DNR approval to construct two high capacity wells for its dairy operation in the Town of New Chester. DNR conditioned its approval on New Chester Dairy installing groundwater monitoring wells, collecting data, and submitting that data to the agency. However, nothing under the high capacity well statutes, Wis. Stat. §§ 281.34 and .35, provides DNR the authority to impose such conditions. DNR claims that it has broad authority to impose the conditions under its general duties provisions in Wis. Stat. §§ 281.11 and .12.

In its motion to intervene, GLLF argues that Gov. Scott Walker’s regulatory reform law (2011 Wis. Act 21) unambiguously precludes DNR from using these broad statements of policy, often found in the statutes, as authority to regulate. Instead, agencies must look to enabling statutes, such as those provisions enacted to regulate high capacity wells, for explicit grants of authority over the activities being targeted by the agencies. In addition, Act 21 provides that “[n]o agency may implement or enforce any standard, or threshold, including as a term or condition of any license issued by the agency, unless the standard, requirement, or threshold is explicitly

permitted by statute or by a rule that has been promulgated in accordance with this subchapter...” Nowhere in the high capacity well statutes is there explicit authority for DNR to require monitoring when issuing high capacity well permits, and necessarily then, no rules could be validly promulgated to provide for such conditions.

Laurie Fischer, DBA’s Director of Dairy Policy, said that “this case is about protecting Wisconsin businesses and property owners from state agencies acting beyond the specific legislative authority given to them by the legislature. The conditions imposed on New Chester Dairy in this case are in direct conflict with Act 21. Unfortunately, DNR, with Clean Wisconsin, argues that the law signed by Gov. Walker does not apply in this case. DBA, and the other business groups who now have the court’s blessing to intervene in the case, disagree.”

2011 Wis. Act 21 was one of Gov. Scott Walker’s signature special session bills aimed at creating regulatory certainty and protecting businesses and individuals from unauthorized overreach by state agencies. This, in turn, advances economic growth and increases job opportunities in Wisconsin.

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*The Great Lakes Legal Foundation is a non-profit legal foundation providing legal and policy expertise to advance economic growth and increase job opportunities in the upper Midwest.*