

AG Kaul: Issues letter withdrawing 2016 AG opinion on high-capacity well permitting

Posted on Friday, May 1, 2020

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

MADISON, Wis. –Wisconsin Attorney General Josh Kaul issued [a letter](#) today informing Wisconsin Department of Natural Resources (DNR) Secretary Preston Cole that Kaul is withdrawing a 2016 Attorney General Opinion about high-capacity well permitting. Kaul’s letter was in response to an inquiry from Secretary Cole about the ongoing validity of the 2016 Attorney General Opinion after certain court orders questioned aspects of the opinion.

In his letter to Secretary Cole, Attorney General Kaul explained that, in light of two courts’ orders that undermine the legal analysis in the 2016 opinion, that opinion is no longer valid. Kaul explained that he is therefore withdrawing the 2016 opinion in its entirety.

The 2016 opinion related to a 2011 Wisconsin Supreme Court decision recognizing that DNR has “broad authority and a general duty . . . to manage, protect, and maintain waters of the state,” including “the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state.” *Lake Beulah Management District v. DNR*, 2011 WI 54, ¶¶ 39, 63, 355 Wis. 2d 47, 799 N.W.2d 73. The 2016 Attorney General Opinion concluded that other statutes had changed the high-capacity well permitting framework, so that the 2011 supreme court decision was “no longer controlling.”

However, since 2016 two Wisconsin courts have rejected the reasoning of the Attorney General Opinion, stating that courts are instead bound to apply the 2011 supreme court decision when evaluating DNR's decisions to issue or deny high-capacity well permits.

A copy of the letter can be found [here](#).