



To: Chair Al Haga, Jr. & Portage County Board of Supervisors

From: Venture Dairy Cooperative
Wisconsin Dairy Alliance
Wisconsin Manufacturers & Commerce

Date: November 1, 2022

Re: Opposition to proposed budget amendment to add \$240,135.00 to the Capital Projects Fund budget for a groundwater monitoring wells project.

It has come to our attention that the Portage County Board Finance Subcommittee has submitted a budget line item to the full County Board for consideration at its next regularly scheduled Board meeting. The budget item relates to an additional \$240,135.00 for the installation of monitoring wells in the Village of Nelsonville. The Finance Committee presents this budget item without a recommendation for acceptance or rejection.

Each of our organizations supports a fair and predictable regulatory environment for Wisconsin dairy farms. The **Wisconsin Dairy Alliance (WDA)** represents modern regulated dairy farms in Wisconsin and works diligently to preserve Wisconsin's heritage as the Dairy State. WDA advocates for the truth by contesting unnecessary regulations that do not protect natural resources.

Venture Dairy Cooperative (VDC) has a mission to positively impact policy at the state and local levels and protect the overall use of technology and innovation in how farmers grow and raise food. VDC works to combat unnecessary regulations, reduce government bureaucracy and advance smart policy to support the future of dairy farmers.

Wisconsin Manufacturers & Commerce (WMC) is the largest general business association in Wisconsin, representing over 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. This mission includes ensuring a strong and vibrant dairy industry in Wisconsin.

Our organizations take issue with the use of county funds for these purposes. Village well age and testing data makes it clear that the primary cause of nitrate contamination in the Village is well condition. If the intent of the village is to provide clean water, installing monitoring wells certainly does not get them closer to that goal, especially as they leave readily available clean-up options on the table. Reverse Osmosis (R.O.) systems, clean and freely available water, along with state-level grant funding to repair and replace wells is the answer to cleaning up legacy nitrate contamination in the Village, not monitoring wells.

A vocal few in the Village are not interested in those options because cleaning up the water is not their primary goal, as actions speak louder than words. Residents in the Village have yet to utilize any of the programs available to them. They have been offered no-cost R.O. Systems from the County, and free water offered through the church. Moreover, thanks to the bipartisan work between the Wisconsin Legislature and Governor Evers, Wisconsin has a \$10 million grant program available to support the replacement, reconstruction and treatment of contaminated private wells.

We have reason to believe the issue in Nelsonville is a very specific anti-agricultural agenda. They seek to put an end to a century-old farm owned by a community member. This multi-generation farm is owned and operated by a farmer who has done nothing but go above and beyond to work in partnership with the Village and others in the town to ensure the town has access to clean water. This farmer has been on the cutting edge of clean water technologies and best practices and has always done what has been asked of him, and that is in addition to compliance with the strictest state standards for farmers. Unfortunately, short of an end to his operation, it is never enough for those seeking these ARPA funds.

Those he sought to partner with have acted in bad faith, most notably by first including him on a “Nelsonville Water Committee,” where he adjusted hundreds of acres of his crop rotation in a good will attempt to appease a vocal few, only to be suddenly removed from the committee because of his “conflict of interest.” Because of this and the reasons listed below, the Board should be wary to provide a significant portion of hard-earned taxpayer dollars to this project, especially when the Board represents numerous taxpayers, including farmers throughout the county. This action could set a dangerous precedent for farmers.

We certainly do not dispute that there are wells testing above acceptable levels in certain parts of the Village. However, the data makes clear it would be wiser to spend this money on improving outdated wells susceptible to both animal and septic (human) contamination, instead of installing new monitoring wells just to carry out this anti-agricultural agenda.

To the best of our knowledge, here are important points to consider in reference to the wells in the Village of Nelsonville:

- This issue stems from results of selective sampling from 2018. No other sampling has been done by an unbiased third party since that time. This has been a statistical game by the anti-agriculture activists from the beginning. 60 out of 72 well owners volunteered to be tested. Then the 25 wells above 10 ppm N were source tested. 14 are consistently above 10 ppm N.
- Of these 14 wells that are still being tested and used as evidence for contamination (out of 72+ total wells), three of the wells have **2-inch shallow points from the 1900’s**, one being 20 to 37 feet which was **dug more than 45 years ago**, and **four of them tested had septic tracers** (from humans-caffeine, sweeteners, antibiotics).
- 30% of the wells drilled in Nelsonville were drilled prior to any state standards.
- Only one well was drilled within the last 25 years that is exceeding the 10-ppm measurement.

- In the four wells with the highest contamination readings, **NO NITRATES CAME FROM COWS.**
- The 15 wells drilled most recently in the Village show an average 3.16 ppm of nitrates.
- Most recently, a well was drilled at the Nelsonville Church to provide free water to the public, making it easily accessible. Last week that well had a **nitrate level of just 0.1 ppm. Not 1, but 0.1.**
- **Gordondale Farms**, the farm which has drawn the ire of a vocal few in the village underpinning this request for funds, has **95% of the Nelsonville Recharge Zone *already planted in alfalfa and forest.* Again, this was voluntarily done by Gordondale Farms. This means ZERO nitrogen is being applied in the Nelsonville Recharge Zone – NO manure, NO commercial nitrogen.**
- Because of its size, Gordondale Farms is subject to the **strictest state regulations** of any farms in the State.
- Gordondale Farms has NOT used any of the herbicides detected in any of the water samples in the last 26 years.
- All herbicide and pesticides that were found were well within the SAFE ZONE and below tolerances for consumption.
- The Portage County public health data does not match the claims being made.

Monitoring wells are not a responsible solution to improving water quality. It is abundantly clear that the nearly quarter million dollars would be much better used to update wells, or at the very least subsidize reverse osmosis systems to the residents who are truly concerned about water quality.

The Board should also bear in mind that neither counties, nor municipalities, have the authority to require the installation of these monitoring wells, and they certainly do not have any authority to enact ordinances or other regulations based upon monitoring well results. “Counties have no inherent power to govern.” *Ecker Bros. v. Calumet Cnty.*, 2009 WI APP 112, ¶ 18, 321 Wis.2d 51, 772 N.W.2d 240 (citation omitted). Instead, “[a] county is a creature of the legislature and as such, it has only those powers that the legislature by statute provided.” *Jackson Cnty. v. State of Wis. Dep’t of Natural Res.*, 2006 WI 96, ¶ 16, 293 Wis. 2d 497, 717 N.W.2d 713 (citing Wis. Const. art. IV, S 22). And no part of Wisconsin’s statutes provides counties the authority to install monitoring wells. Especially considering the preemption of water regulation by state law and the DNR’s unique authority to require monitoring wells.

Wisconsin courts have long recognized that a legislative action of a county or municipality is preempted by state law if: (1) “the legislature has expressly withdrawn the power of municipalities to act”; (2) “the ordinance logically conflicts with the state legislation”; (3) “the ordinance defeats the purpose of the state legislation”; or (4) “the ordinance goes against the spirit of the state legislation.” *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI 19, ¶ 64, 373 Wis. 2d 543, 892 N.W.2d 233 (quoting *Anchor Sav. & Loan Ass’n v. Equal Opportunities Comm’n*, 120 Wis. 2d 391, 397, 355 N.W.2d 234 (1984)).

When the legislature has required the promulgation of state standards, the Court has held that this requirement is an express withdrawal of power of political subdivisions (towns, villages,

cities, and counties) to enforce varied and inconsistent standards. For example, the Court has repeatedly held that a local ordinance which “prohibits what the DNR has authorized pursuant to the statutes, its rules, and its role as manager of water resources that ordinance is preempted because it frustrates the purpose of the state law.” *Lake Beulah v. Village of East Troy*, 2011 WI 55, ¶18., citing *Wis. Envtl. Decade, Inc. v. Dep’t of Natural Res.*, 85 Wis. 2d 518, 535-36 (1978).

Specifically, in *Lake Beulah v. Village of East Troy* the Supreme Court held that a local high capacity well permit requirement was preempted because it required an additional local permit “which would require the submission of information in addition to what [a permittee] was required to submit to the DNR.” *Lake Beulah v. Village of East Troy*, 2011 WI 55, ¶17.

“[T]he ordinance is invalid because it conflicts with, defeats the purpose of, and violates the spirit of the legislature's delegation of authority to the DNR to regulate high capacity wells in Wis. Stat. § 281.11 and § 281.12 and its creation of a comprehensive permitting framework for high capacity wells in Wis. Stat. § 281.34 and § 281.35. Thus, the ordinance is preempted by state law.” *Lake Beulah v. Village of East Troy*, 2011 WI 55, ¶2.

Moreover, the Supreme Court held that a local government cannot “lawfully forbid what the legislature has expressly licensed, authorized or required, or authorize what the legislature has expressly forbidden.” *Fox v. Racine*, 225 Wis. 542, 545, 275 N.W. 513 (1937). In other words, if an activity is permitted by a state agency like the DNR, a local government is prohibited from enforcing an ordinance that would impose regulations on that same activity.

Nowhere in Wisconsin law does it provide counties or villages the authority to install monitoring wells, and even if it did, counties and villages would clearly be prohibited from regulating based upon the results of any monitoring wells. Therefore, if clean water is the goal, what is the purpose of the wells if the County or Village cannot regulate its citizens based upon the results? Thus, the Board should carefully weigh whether an investment of taxpayer funding of this magnitude is wise, especially considering the data.

Finally, we ask, aside from measures that will clean up contamination in the wells, i.e., repair and replacement, and R.O Systems, what else could that nearly a quarter million dollars be put towards to make the village residents safer and protect their health? A monitoring well in no way improves the water quality of the village. It is only a mechanism that we believe will be used in bad faith for anti-agricultural agenda, an agenda that is not based on any available evidence.

We ask that you do not support this budget item and instead ask the Finance Subcommittee to further consider repurposing that nearly quarter million dollars for projects that actually improve the water quality in the Village of Nelsonville, as the proposed budget item will not improve water quality, pushes an anti-agricultural agenda, and there are serious questions as to the county’s legal authority for this proposal.

Thank you for your consideration.