

SB44

BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

**Testimony of Senator Brian Burke
On Senate Bill 44
Before the Senate Committee on Environmental Resources
March 1, 2001**

Chairman Baumgart and Committee Members, thank you for this opportunity to testify on Senate Bill 44 today. I appear on behalf of the bill's author, Senator Kevin Shibilski, because he is unable to attend today's public hearing.

One of our most important duties as legislators is to protect the public's right to clean water. SB 44 is an important step forward in the continuous implementation of this responsibility.

SB 44 is a simple bill. It addresses the issue of taking and using a public resource - Wisconsin groundwater - and exporting it out of state for private profit. If this type of activity is to occur at all, we must ensure that our vital groundwater supplies are protected.

This legislation requires that an Environmental Impact Statement (EIS) be prepared whenever a high-capacity well permit application involves the use of groundwater to produce and sell bottled drinking water. It also gives DNR authority to deny or set conditions on such a permit based on potential adverse impacts to water quality - not just impacts to the supply of a public water utility.

The Substitute Amendment that is before you today makes only one minor change. It clarifies the author's intent that this new EIS requirement does not apply to municipalities - in the unlikely event that they would want to bottle water.

Seventy-five percent of Wisconsin residents use groundwater for drinking and cooking, yet DNR says current law hamstring them. Let's pass this bill and liberate DNR to do their job and protect our groundwater supplies. Thank you for your consideration.

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**Testimony of the Department of Natural Resources
Relating to Senate Bill 44**

Senate Environmental Resources Committee

March 1, 2001

**By Jill Jonas
Bureau Director Drinking Water and Groundwater**

I am here today to testify for informational purposes on the Senate substitute amendment to 2001 Senate Bill 44. Current law prohibits a person from constructing or operating one or more wells on one property that withdraw a total of more than 100,000 gallons per day without the approval of the Department. If the Department finds that the proposed withdrawal will adversely affect the water supply of a public utility, the Department must disapprove the withdrawal or condition its approval so that the water supply of the public water utility will not be impaired. The Department does not currently have the authority to withhold approval or limit withdrawals based on other impacts.

The proposed substitute amendment to SB 44 would provide the Department with additional authority and allow the Department to withhold approval or limit withdrawal in order to minimize adverse effects to the quality or quantity of waters of the state. The Department shares the concern for protection of our State's water resources from adverse effects due to unrestrained groundwater use demonstrated by the substitute amendment to SB 44. However, you should understand that SB 44 limits the Department's increased authority to only those wells used to produce bottled drinking water.

In addition, the substitute amendment to SB 44 would require the Department to prepare an environmental impact statement for every well approved to supply bottled drinking water. The Department has an existing environmental analysis and review process established in Chapter NR 150 Wis. Administrative Code. Under this process an environmental impact statement would be prepared for all major actions that would significantly affect the quality of the human environment. Examples of these actions include metallic mines and hazardous waste disposal facilities. The potential for a well to significantly affect the environment varies depending on location, aquifer type, and rate of withdrawal. Not all wells would have a significant impact on the human environment. Because of this the Department favors using the existing environmental analysis and review process to identify and implement the appropriate environmental response for each proposed well. Requirement of a mandatory EIS for each water bottling well would have a fiscal impact to the Department for the review, evaluation, and legal issues associated with the EIS process.

Thank you for the opportunity to testify on the substitute amendment to SB 44.

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Senate Committee Hearing
SB 44
High-Capacity Well Legislation
March 1, 2001

While attending the Wisconsin Stewardship Conference held in January, Marilyn Leffler, a UW-extension researcher and member of the guest groundwater panel, gave a talk on her research of groundwater laws in Wisconsin and in other states. Marilyn is a graduate of the UW-Madison's Department of Urban and Regional Planning. She studied the implications of groundwater laws in various states and also co-authored and edited *Modernizing Wisconsin Groundwater Management: Reforming the High Capacity Well Laws*. What follows is taken from my notes on her specific information.

Marilyn Leffler, UW-extension researcher on groundwater laws in Wisconsin and other states, gave insight into how states such as Minnesota, Oregon, Florida, and Washington deal with groundwater withdrawals. For instance in Oregon, if removal is within one-quarter mile of a stream no permit is issued. The law recognizes that it will automatically have an adverse impact. In Washington, they retain the right to deny a permit. Out of 600 permit applications for water usage in 1996, over half were denied. Florida has water management districts throughout the state which recognizes that surface water and groundwater are connected. Some states have adaptive management, which gives authority to reduce or stop withdrawals should changes occur such as growth, reduction in recharge, changing weather, and other unforeseen circumstances.

I support legislative changes to bring our high capacity laws up to date with this new century we are living in. Trading off our most precious natural resource, while in the world there is documentation showing our potable fresh water is becoming depleted, is not a good idea. Bore-holes drilled to "catch" the spring-flow is taking directly from the best oxygenated and richest water that feeds the streams, rivers, lakes and wetlands. Wisconsin needs to protect this resource and the public trust. SB 44, with added amendments, is needed to accomplish this task.

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**Testimony of Todd L. Ambs
Executive Director, River Alliance of Wisconsin
Before the Senate Environmental Resources Committee
On Senate Bill 44
March 1, 2001**

Good morning. My name is Todd Ambs. I am the executive director of the River Alliance of Wisconsin. The River Alliance is a statewide non-partisan, non-profit organization. We work on behalf of over 1,700 individuals and businesses and more than 40 local organizations to protect and restore the rivers and streams of Wisconsin.

Thank you for the opportunity to speak to you today. I am speaking today for information purposes. I do so because our organization believes that the bill in its current form only addresses the tip of the groundwater iceberg here in Wisconsin. You have already heard from hydrologists today about the significant adverse impacts that are already occurring here in Wisconsin as a result of the more than 9400 currently permitted high capacity wells in our state. Our larger concern is with this issue and we hope that the committee will address this concern.

We believe that action must be taken now to address significant adverse impacts that are happening today across our state in places like:

- Portage county, where the Little Plover River is running at 40% less flow than it was a decade ago thanks to high capacity municipal and agricultural wells.
- Wisconsin Rapids, where Bloody Run Creek, a class one trout stream, actually runs dry thanks to water withdrawals for the city of Wisconsin Rapids.
- Green Bay, where Duck Creek is currently feeding the aquifer, a perverse hydrologic cycle created by high capacity wells.
- In Appleton, where the main aquifer there is slated to run dry in the next 10-15 years thanks to high capacity wells.
- And here in Madison, where the high capacity wells used by this community threaten the springs that feed our lakes, the signature statement of our state capitol.

In the face of all these real and current threats you have before you a bill that simply doesn't address these issues. The bill instead provides increased hurdles for a water bottling facility that may pose a threat in the future.

We are prepared to offer an amendment that contains five components and is supported by a number of organizations. In particular, we believe that this bill must be strengthened in a couple of key ways:

A Legislative Council Study Committee should be formed to look at this broader groundwater issue. We have some of the best experts in the nation right here in Wisconsin and we should use the knowledge of those experts at places like the Groundwater Center at UW-Stevens Point, Wisconsin Geological Survey and The United States Geological Survey to make some responsible recommendations about how to address these larger groundwater quantity issues. Then the legislature should act quickly on those recommendations.

We should also recognize in statute today the hydraulic connection between groundwater and surface water. The hydrologic cycle is a scientific fact yet Wisconsin law does not recognize this critical ecosystem connection. It is time to do so and we have language prepared to do so in section 281 of the statutes.

These additions to this bill would enable our organization to support this legislation. Frankly, we would like the legislature to act even quicker on a broader bill and we understand that some members of the assembly may be prepared to do that. If this is to be the Senate vehicle though, we believe that we must at least add these two amendments if the bill is to have any impact on the greater water quantity concerns faced in this state.

Having said all that, let me take a moment to address the Perrier question directly. As I have said to many people in this room, it is not at all clear what this bill does to protect the water resources of our state. Requiring the DNR to minimize the adverse impacts of a bottling facility doesn't strike me as being appreciably different from the no significant adverse impact standard that the DNR has already publicly endorsed. Others here today will raise constitutional concerns about the bill. So as the executive director of a statewide group whose mission it is to protect the rivers and streams of this state, we aren't very excited about this legislation.

But I will tell you one thing. If I was a legislator I would be hard pressed to oppose Senate Bill 44. The reason is that I believe that this issue is now considerably larger than an environmental question. This issue is now about the rights of people in a community to determine their quality of life.

Today we have the benefit of two town referendums, the recall of a town chairman, an overwhelming vote by the Adams County board, opposition from two Wisconsin governors and dozens of petitions, marches, demonstrations and protests.

The message is crystal clear --- the people of Adams County don't want Perrier -- and that ought to count for something.

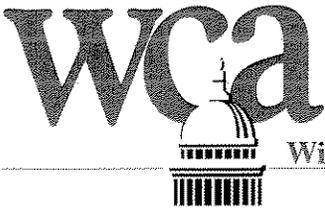
As I said recently to a representative of Perrier, if you guys were planning to print bibles in Adams County, as an individual I would likely oppose it.

Our organization advocates for the selective removal of old, unsafe and uneconomical dams. We firmly believe that dam removal is perhaps the greatest river restoration opportunity we have in this state. When we go into a community we urge that community to make a fully informed decision when they must decide whether to repair or remove an old dam. We hope that the community chooses removal. But if the community opts to repair the dam and has the money to do so, we walk away. Because ultimately, we believe these are local community decisions.

The local community has decided in Adams County. It is time for Perrier to walk away.

Perrier has dug their own hole over the last year but I hope that this "Perrier bill" will be amended so that our children and grandchildren will point to this legislation as the time when the state began to take a serious look at how to protect our groundwater resources, not just the fraction of those resources that some would like to put into little plastic bottles.

Thank you.



MEMORANDUM

TO: Honorable Members of the Senate Committee on Environmental Resources
FROM: Jennifer Sunstrom, Legislative Associate JS
DATE: March 5, 2001
SUBJECT: Senate Bill 44

The Wisconsin Counties Association (WCA) supports SB 44, which places several requirements on the approval of high capacity wells and the use of the water for commercial purposes. WCA respectfully asks the committee to require that all the necessary precautions and regulations are taken to reduce potential negative impacts large-scale extractions of water may have on the surface and ground waters of the state.

On Tuesday, September 19, 2000, the Wisconsin Counties Association in convention assembled, adopted a resolution to oppose any large scale extraction of water for bottling purposes without a full Environmental Impact Statement and hydro-geological study that absolutely guarantees that such water removal will not have a negative impact on the water table or watershed from which it is withdrawn. In addition, the resolution stipulates that before the Department of Natural Resources approves a high capacity well for retail water consumption, the County Board of Supervisors of the county in which the well is located, must have final review and approval authority.

WCA asks that local government control be given significant consideration in the approval of high-capacity wells given the direct impact they will have on area residents and local environmental programs.

Thank you for considering our comments.

REGARDING SENATE BILL 44

BEFORE THE SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES

INVITED TESTIMONY OF

George J. Kraft

**Associate Professor of Water Resources
Director of Water Resources Outreach
University of Wisconsin - Extension
University of Wisconsin - Stevens Point**

February 28, 2001

Good morning committee members and staff, and thank you for this opportunity. My name is George Kraft. I am a professor of water resources and director of water resources outreach at UW-Stevens Point and UW-Extension. The information I'm offering you today is done so in the Wisconsin Idea tradition, that is, the boundaries of the University of Wisconsin are the boundaries of the state.

Groundwater is a hugely important resource in Wisconsin. You may already know the statistics: Groundwater supplies the needs of three-fourths of Wisconsin households; 97% of municipal systems; one-third of industrial water needs; and virtually all of the agricultural needs for stock watering, irrigation water, and on-farm milk processing.

What often gets ignored is that groundwater feeds our streams, lakes, wetlands, and the wildlife that depends on them. Without groundwater, surface water in many parts of the state would disappear. So groundwater is also responsible for powering our tourism industry, and the outdoor heritage that we have here in Wisconsin.

We have not yet dealt with managing groundwater quantity in Wisconsin, that is, how much individual users may extract from the ground. As the Perrier controversy highlighted so well, groundwater extraction in Wisconsin is pretty much the Wild West. If you can get a well drilled, you can pretty much pump as much as you want. So, even though Wisconsin law prevents someone from throwing a hose into your favorite lake or stream and pumping them dry, we have no explicit law preventing a person from doing the same thing by pumping a nearby well.

It's hard to say exactly what is the extent of the problems associated with over-pumping of groundwater, because the state hasn't gone looking for problems. But what we know just anecdotally points to some wide-ranging problems. For instance, we have had huge drops in the water tables in the Milwaukee and Green Bay area that have resulted in large expenditures for drilling new wells and installing larger pumps. The water level drop there continues at a rate of several feet per year. Overpumping has resulted in deterioration of water quality in the Oshkosh area. The arsenic problem in the counties around Lake Winnebago is thought to be largely induced by over pumping. There are springs around Madison that no longer run. Flows in the flow Little Plover River, a class I trout stream, are down and someday that river might not run. There is seasonal drying up of Bloody Run Creek near Wisconsin Rapids. And there are many more cases.

Current high capacity well laws were drafted in the 1930s to protect public health. They were not drafted to address environmental concerns. The writers of the law wanted to ensure that public water supply wells would not be endangered by other water users. They were mostly unaware (and likely didn't care) that pumping can harm other resources. State law still hasn't changed to recognize the fact that groundwater, streams, lakes, and wetlands are all connected.

SB44 in its present form falls short of what is needed for sound groundwater management. It applies to only one industry, an industry that on a statewide basis extracts a minuscule amount of water. And then the bill only requires that an Environmental Impact Statement be written. An EIS by itself only constitutes a disclosure of impacts. There is nothing in SB44 that allows the state to protect itself from the impacts. So a bottling plant could write an EIS showing it would dry up a local stream, but the state would be powerless to deny the facility a permit.

My suggestion and hope is that a more comprehensive bill be crafted that would scrutinize permit applications for new high-capacity wells and then allow permits to be rejected or modified if they might cause harm to other users or to the environment. Furthermore, legislation should allow management of groundwater extraction on a basin or watershed basis so that the cumulative impacts of all the users in a basin could be evaluated.

Such legislation does not have to be difficult nor onerous. There are many common sense work-arounds that can be implemented to allow us to use our water resources more wisely, efficiently, and at a lesser total cost, while still allowing for economic development. I urge you to use the resources and expertise you have in the University, state agencies, and private sector to craft for Wisconsin sensible groundwater extraction legislation.

Finally, I implore you to use this opportunity that the Perrier controversy has afforded us. We may not have another such opportunity for another 10 or 20 years.

Thank you.

EIS & Bottled Water High Capacity Wells

My name is Rand Atkinson and I am a consulting aquatic ecologist for my own company. Over the last 30 years I have written many EIA reports and reviewed several EIS statements, first for the government and then as a private consultant. 30 years ago my college professor, a student of Leopold, always emphasized how EIS were so inadequate in describing the real impacts of resource development. Just last year, I spent two weeks reviewing another EIS. The ability of its vastness to describe the real impact of the situation was easily hidden in the bundle of resource reports that could not make the association between water levels, aquatic invertebrates and plants, fish, and wildlife. Plainly put, EIS statements are scientific inventories that stretch to find trends and patterns and end up creating data of averages. A man can drown in water that averages three feet and an environmental impact statement does not protect the environment.

The EIS process that we have created to date does not provide environmental protection, especially protection to both surface and ground water, which is a single resource. 1.

Over ten years ago, I was hired to identify the surface water resource problems in the Big Spring area for the Lake Mason Association. This is the same area that Perrier wishes to pump water from. I recognized the geological uniqueness of the area and its ability to produce a large amount of ground water from a small area. The water quality of this crystal clear spring water deteriorated quickly as it left its source. There was little environmental responsibility.

Perrier has shown environmental responsibility through the EIA process, and they have gone beyond the law. They are offering a corporate land conscientiousness for the future that one hundred years of occupancy by the residents of this area have not advanced.

I have ecologically evaluated high capacity well water use in both the agriculture and aquaculture industries and it's relationship to fish farming and spray irrigation. The potential negative effects on the water quality went way beyond the impact of removal of ground water for consumption. Remember there is no difference between surface and ground water-they are the same resource.

Laws that protect ground water from pollution are more important than those that regulate its removal. Once ground water is contaminated there is no demand for the resource. This is at the very heart of why the demand around the world is shifting from a local source to someone else's backyard. Wisconsin will be the backyard for the world. We need pioneers with a land ethic, as Perrier is showing, to lead the way. There are only a few sites in Wisconsin that can provide the finite requirements for bottled spring water and have minimal or no impact on the water resources. The question is "do we need a new bureaucracy that focuses on a single industry, or an expensive environmental process that continues to put economic pressures on an industry that can be environmentally friendly"

This bill was created under a borage of environmental reactionism. Consequentially, reactionism often overrides foresight, logic, and good science in search of a quick fix.

In conclusion, we need to apply ground water principles to what Leopold once said in 1933. " The hope for the future lies not in curbing the influence of human occupancy - it is already too late for that - but in creating a better understanding of the extent of that influence and a new ethic for its governance."

Janet Atkinson March 1, 2000



State Senator
Kevin Shibilski

March 1, 2001

TO: Chairman Baumgart and Members -- Committee on Environmental Resources
FROM: Senator Kevin Shibilski
RE: Substitute Amendment to Senate Bill 44

I apologize for my absence at this very important public hearing of the Senate Committee on Environmental Resources. However, I trust that Senator Burke, a co-author of SB 44, will adequately explain the bill.

The primary duty of the Legislature is to protect the public's interests. Wisconsin's groundwater and surface waters are of fundamental interest to all our state's residents. Indeed, groundwater is the source of fresh water for 75% of our state's population.

The Legislature clearly has a duty to respond when the Department of Natural Resources tells us they have little or no regulatory authority over a company that would extract over 500 gallons of groundwater per minute, 24 hours per day, and export this priceless natural resource out of our state.

Currently the DNR can only deny a high-capacity well permit application (100,000 gallons/day) if it is determined that the well will adversely affect the public water supply. This bill recognizes this huge loophole and provides protection for our ground and surface waters.

SB 44 simply requires that an Environmental Impact Statement (EIS) be completed whenever a proposal for a high-capacity well permit involves the extraction, packaging and selling of bottled water. Under the proposal, the DNR may deny or condition a high-capacity well permit if the quality or quantity of state waters is adversely affected.

It is narrow in focus, recognizing that the water bottling industry is somewhat new and unique to this state and also because a bipartisan, Senate-Assembly coalition has come together to address a specific problem with a straightforward solution.

The substitute amendment corrects an oversight that had the effect of including municipal systems in the new Environmental Impact Statement requirement. By correcting this error with the substitute amendment, the fiscal estimate is drastically reduced to less than \$100,000.

Thank you for your consideration of SB 44. Your support of this legislation would be greatly appreciated.

**TESTIMONY OF
PETER A. PESHEK, DEWITT ROSS & STEVENS s.c.
ON BEHALF OF
GREAT SPRING WATERS OF AMERICA, INC.
A SUBSIDIARY OF
THE PERRIER GROUP OF AMERICA, INC.
RE: 2001 SENATE BILL 44**

**BEFORE THE
SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES
MARCH 1, 2001**

INTRODUCTION

GOOD MORNING, MR. CHAIR AND MEMBERS OF THE COMMITTEE. I AM ATTORNEY PETER A. PESHEK, OF THE LAW FIRM OF DEWITT ROSS & STEVENS s.c., MADISON, WISCONSIN. DEWITT IS THE LAW FIRM WHICH HANDLES REGULATORY MATTERS FOR GREAT SPRING WATERS OF AMERICA, INC., A SUBSIDIARY OF THE PERRIER GROUP OF AMERICA, INC.

FOR THE PAST TWENTY-FIVE YEARS, I HAVE HAD THE DISTINCT PLEASURE AND CORRESPONDING RESPONSIBILITY TO APPEAR BEFORE THIS COMMITTEE, ITS ASSEMBLY COUNTERPART, AND THE WISCONSIN NATURAL RESOURCES BOARD, AS WELL AS SERVING ON VARIOUS LEGISLATIVE COUNCIL STUDY COMMITTEES AND DNR TECHNICAL ADVISORY COMMITTEES. MY APPEARANCES AND PARTICIPATION HAVE WORN A VARIETY OF HATS:

(1) AS WISCONSIN'S PUBLIC INTERVENOR;

- (2) AS A REPRESENTATIVE OF VARIOUS REGULATED COMMUNITIES; AND
- (3) AS A PRIVATE CITIZEN.

DURING THESE MANY YEARS OF INVOLVEMENT, I HAVE CONSISTENTLY OFFERED A NUMBER OF THEMES WHICH OUGHT TO GUIDE ENVIRONMENTAL POLICYMAKING IN WISCONSIN:

- (1) WISCONSIN HAS A RICH TRADITION OF PROTECTING ITS ENVIRONMENTAL RESOURCES. NO ONE PERSON, NO ONE POLITICAL PARTY HAS A MONOPOLY ON CARING ABOUT WISCONSIN'S ENVIRONMENT;
- (2) WE OUGHT TO BE EXCEPTIONALLY PROUD OF OUR WISCONSIN DEPARTMENT OF NATURAL RESOURCES. IT DOES A SUPERIOR JOB OF PROTECTING OUR VITAL RESOURCES;
- (3) THIRD, WE NEED TO PROTECT OUR VALUABLE ENVIRONMENTAL RESOURCES WITH HOLISTIC REGULATORY SCHEMES; AND
- (4) FINALLY, WE CAN AND WE SHOULD CONTINUALLY SEEK TO REINVENT OUR REGULATORY STRATEGIES AND WORK TO SECURE GREATER COMMITMENTS FROM THE REGULATED COMMUNITIES TO UNDERTAKE INVENTIVE ALTERNATIVES FOR REGULATORY MANAGEMENT.

WITH THOSE INTRODUCTIONS, LET ME NOW SPEND A FEW MOMENTS TALKING ABOUT GROUNDWATER PROTECTION.

GROUNDWATER QUANTITY PROTECTION

BY THE EARLY 1980s, THE WISCONSIN LEGISLATURE HAD COMMITTED THIS STATE TO PROTECTING ITS GROUNDWATER QUALITY. WE HAD THEN, AND WE HAVE TODAY, ONE OF THE MOST COMPREHENSIVE AND WELL-THOUGHT-OUT REGULATORY STRATEGIES FOR PROTECTING THE QUALITY OF OUR GROUNDWATER. WE HAVE BEEN IN A CONTINUAL REINVENTION MODE TO TRY TO IMPROVE THE STRATEGIES FOR PROTECTING OUR GROUNDWATER QUALITY. THE NR 700 CHAPTER OF THE ADMINISTRATIVE RULES, ALONG WITH THE DEPARTMENT'S BUREAU OF REMEDIATION & REDEVELOPMENT, ARE EXAMPLES OF THAT REINVENTION EFFORT. THERE REMAIN SUBSTANTIAL ADDITIONAL WAYS IN WHICH WE CAN IMPROVE THE IMPLEMENTATION OF OUR STRATEGY AND SUBSTANTIALLY REDUCE TRANSACTIONAL COSTS. THAT, HOWEVER, IS NOT THE SUBJECT OF TODAY'S HEARING.

RATHER, WE ARE HERE TODAY TO DISCUSS ONE OF THE LARGEST REGULATORY VOIDS THAT REMAINS IN WISCONSIN'S GREATER ENVIRONMENTAL STRATEGY. THAT REGULATORY VOID CONCERNS THE PROTECTION OF THE *QUANTITY* OF GROUNDWATER THAT WISCONSIN HAS FOR THIS GENERATION AND FOR FUTURE GENERATIONS. SINCE AT LEAST 1980, I HAVE SPOKEN IN MANY CAPACITIES ARGUING THAT WE NEED TO DO MORE TO PROTECT OUR

GROUNDWATER. AS PUBLIC INTERVENOR, I WAS UNSUCCESSFUL IN CONVINCING THIS LEGISLATURE THAT GROUNDWATER QUANTITY WAS A PUBLIC POLICY ISSUE WHICH NEEDED TO BE ADDRESSED. I RECALL ATTENDING A WISCONSIN WATER WELL DRILLERS ASSOCIATION ANNUAL MEETING IN 1999, LONG BEFORE PERRIER CAME TO WISCONSIN. JOHN ROBINSON, A FORMER LEGISLATIVE LEADER ON ENVIRONMENTAL MATTERS, ASKED ME TO SPEAK ABOUT REINVENTING WISCONSIN'S ENVIRONMENTAL STRATEGY. ONE OF THE SUBJECTS THAT I DISCUSSED WAS THE NEED TO FILL THIS REGULATORY VOID WHEN IT CAME TO PROTECTING WISCONSIN'S GROUNDWATER.

THERE ARE TWO SALIENT PHILOSOPHICAL POINTS WHICH ARE WORTH EMPHASIZING. FIRST, THE STANDARD WHICH ONE APPLIES TO MEASURE WHETHER OR NOT WE ARE DEVELOPING SOUND PUBLIC POLICY WITH RESPECT TO THIS RESOURCE IS VERY SIMPLE:

DOES THE GROUNDWATER KNOW THE DIFFERENCE?

THAT IS, IF WE REPRESENT WE ARE ATTEMPTING TO PROTECT GROUNDWATER, DOES THE GROUNDWATER KNOW THE DIFFERENCE OF WHETHER THE EXTRACTION OF THE WATER IS FOR MAKING A PEPSI OR COCA COLA PRODUCT OR A BOTTLE OF BEER OR A BOTTLE OF WATER OR FOR FLUSHING A TOILET IN AN INCORPORATED COMMUNITY? IF THE GROUNDWATER DOES NOT KNOW THE

DIFFERENCE, THEN THE OBJECTIVE IS PROPERLY STATED IN TERMS OF "WHAT CAN WE DO TO PROTECT THE RESOURCE FROM THOSE MAN-INDUCED ACTIVITIES (AND THAT IS IN THE PLURAL) WHICH, IN FACT, HAVE THE POTENTIAL FOR INJURY?" IN SHORT, THE GROUNDWATER, FROM A *QUANTITY* PERSPECTIVE, DOES NOT REALLY CARE WHAT THE PURPOSE FOR THE EXTRACTION IS, AS LONG AS THE WATER, ITSELF, IS OTHERWISE REASONABLY USED AND NOT WASTED.

THE SECOND SALIENT POINT IS THAT WE HAVE LEARNED MUCH IN WISCONSIN DURING THE PAST TWO DECADES ABOUT HOW TO DO EFFECTIVE ENVIRONMENTAL REGULATION. WE CAN DEVELOP A GROUNDWATER QUANTITY STRATEGY WHICH MINIMIZES TRANSACTIONAL COSTS, DELAY, AND NEEDLESS REGULATION. WE CAN APPLY ALL OF THE NEWEST THINKING ON ENVIRONMENTAL REGULATORY THEORY. WE CAN REGIONALIZE GROUNDWATER QUANTITY STRATEGIES, BECAUSE THE PROBLEMS IN MANY PARTS OF THE STATE ARE REGIONAL AND NOT ISOLATED TO A SINGLE WELL OUT OF 9400 PERMANENT HIGH-CAPACITY PERMITS. WE CAN INTEGRATE LOCAL AND STATE AGENCIES TO ADDRESS THE GROUNDWATER QUANTITY PROBLEM, JUST AS WE HAVE DONE WITH SHORELAND ZONING AND RELATED REGULATORY PROGRAMS.

WE NEED TO DEVELOP A COMPREHENSIVE STRATEGY FOR PROTECTING GROUNDWATER QUANTITY IN WISCONSIN. 2001 SENATE BILL 44 PROPERLY

IDENTIFIES THE POLICY QUESTION AND THE SHORTCOMINGS OF EXISTING LEGISLATIVE ENABLING STATUTES, BUT IT DOES NOT – IN THE MOST REMOTE WAY – BEGIN TO ADDRESS THE SOLUTIONS.

SENATE BILL 44 CANNOT BE
RETROACTIVELY APPLIED

[T]HE PRESUMPTION AGAINST RETROACTIVE LEGISLATION IS DEEPLY ROOTED IN OUR JURISPRUDENCE AND EMBODIES A LEGAL DOCTRINE CENTURIES OLDER THAN OUR REPUBLIC. ELEMENTARY CONSIDERATIONS OF FAIRNESS DICTATE THAT INDIVIDUALS SHOULD HAVE AN OPPORTUNITY TO KNOW WHAT THE LAW IS AND TO CONFORM THEIR CONDUCT ACCORDINGLY; SETTLED EXPECTATIONS SHOULD NOT BE LIGHTLY DISRUPTED. FOR THAT REASON, THE "PRINCIPLE THAT THE LEGAL EFFECT OF CONDUCT SHOULD ORDINARILY BE ASSESSED UNDER THE LAW THAT EXISTED WHEN THE CONDUCT TOOK PLACE HAS TIMELESS AND UNIVERSAL APPEAL." ...IN A FREE, DYNAMIC SOCIETY, CREATIVITY IN BOTH COMMERCIAL AND ARTISTIC ENDEAVORS IS FOSTERED BY A RULE OF LAW THAT GIVES PEOPLE CONFIDENCE ABOUT THE LEGAL CONSEQUENCES OF THEIR ACTIONS. IT IS THEREFORE NOT SURPRISING THAT THE ANTIRETROACTIVITY PRINCIPLE FINDS EXPRESSION IN SEVERAL PROVISIONS OF OUR CONSTITUTION.... THESE PROVISIONS DEMONSTRATE THAT RETROACTIVE STATUTES RAISE PARTICULAR CONCERNS. THE LEGISLATURE'S UNMATCHED POWERS ALLOW IT TO SWEEP AWAY SETTLED EXPECTATIONS SUDDENLY AND WITHOUT INDIVIDUALIZED CONSIDERATION. ITS RESPONSIVITY TO POLITICAL PRESSURES POSES A RISK THAT IT MAY BE TEMPTED TO USE RETROACTIVE LEGISLATION AS A MEANS OF RETRIBUTION AGAINST UNPOPULAR GROUPS OR INDIVIDUALS.

LANDGRAF V. USI FILM PRODUCTS, 511 U.S. 244, 265-267 (1994).

JUSTICE STEVENS' ARTICULATE AND COMPELLING SUMMARY OF THE LAW ON THE RETROACTIVE APPLICATION OF STATUTES, AS QUOTED ABOVE, SHOULD BE CLOSELY CONSIDERED BY THE WISCONSIN LEGISLATURE IN THIS CASE

BECAUSE S.B. 44 IS PRECISELY THE TYPE OF LEGISLATION CITED BY JUSTICE STEVENS: IT IS A TRANSPARENT ATTEMPT AT RETRIBUTION AGAINST WHAT IS, TO A CERTAIN NUMBER OF PEOPLE, AN UNPOPULAR INDIVIDUAL (PERRIER).

LEGISLATORS SHOULD ALSO BEAR IN MIND THE WORDS OF JAMES MADISON, ONE OF OUR FOUNDING FATHERS, WHO STATED THAT RETROACTIVE APPLICATION OF THIS TYPE OF LEGISLATION IS "CONTRARY TO THE FIRST PRINCIPLES OF THE SOCIAL COMPACT, AND TO EVERY PRINCIPLE OF SOUND LEGISLATION." LEGISLATORS SHOULD INSIST THAT THE RETROACTIVE PROVISIONS OF SECTION 3 OF S.B. 44 BE STRICKEN.

HOWEVER, EVEN IF SECTION 3 OF S.B. 44 IS NOT STRICKEN BY THE LEGISLATURE BECAUSE IT IS BAD PUBLIC POLICY, SUCH RETROACTIVE APPLICATION WILL NOT BE PERMITTED BY THE COURTS.

SIMPLY PUT, THE CLEAR AND UNARGUABLE PRIMARY PURPOSE OF SECTION 3 OF S.B. 44 IS TO UNDO THE DNR'S APPROVAL OF CERTAIN HIGH CAPACITY INDUSTRIAL WATER SUPPLY WELL(S) IN ADAMS COUNTY ON SEPTEMBER 22, 2000. HOWEVER, SUCH APPROVAL WAS MADE IN ACCORDANCE WITH THE APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING SUCH APPROVAL IN EFFECT AT THE TIME OF APPROVAL AND THE HOLDERS OF THE APPROVAL ARE CURRENTLY EXERCISING THE RIGHTS GIVEN TO THEM UNDER SUCH APPROVAL.

THE LEGISLATIVE REFERENCE BUREAU'S "BILL DRAFTING MANUAL" § 7.055(1s) SPECIFICALLY ADVISES AGAINST RETROACTIVITY IN CASES SUCH AS THIS SO AS TO NOT IMPAIR CONTRACTUAL OR OTHER VESTED RIGHTS. SEE ALSO § 7.055(9).

A COURT REVIEWING S.B. 44 WOULD FIND ITS RETROACTIVE APPLICATION UNCONSTITUTIONAL UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 1 OF THE WISCONSIN CONSTITUTION, CITING, AMONG OTHER CASES, *STATE EX REL. BRIGGS & STRATTON CORP. V. NOLL*, 100 WIS. 2D 650, 302 N.W. 2D 487 (1981). IN *BRIGGS & STRATTON*, WORKERS' COMPENSATION LEGISLATION PUBLISHED ON MAY 12, 1980, CONTAINED A NONSTATUTORY PROVISION STATING THAT THE LEGISLATION WAS APPLICABLE AS OF JANUARY 1, 1980. WHILE THE WISCONSIN SUPREME COURT WAS CLEARLY SYMPATHETIC TO THE PURPOSES OF THE NEW LEGISLATION, IT FOUND WISCONSIN LAW TO BE CLEAR AND UNEQUIVOCAL THAT THE RETROACTIVE APPLICATION OF SUCH LEGISLATION WAS UNCONSTITUTIONAL.

MORE RECENTLY, THE WISCONSIN SUPREME COURT CONSIDERED THE CONSTITUTIONALITY OF THE RETROACTIVE APPLICATION OF STATUTES IN *NEIMAN V. AMERICAN NATIONAL PROPERTY AND CASUALTY CO.*, 236 WIS. 2D 411, 613 N. W. 2D 160 (2000). IN THAT CASE, THE COURT STATED THAT THE PROPER

TEST IS TO "BALANCE THE PUBLIC INTEREST SERVED BY THE RETROACTIVE APPLICATION OF THE [STATUTE] AGAINST THE PRIVATE INTERESTS THAT ARE OVERTURNED BY IT, INCLUDING ANY UNFAIRNESS INHERENT IN SUCH APPLICATION."

SUCH TEST DOES NOT MEAN DEFERENCE TO THE LEGISLATURE. UNDER *NEIMAN*, WHEN PERFORMING SUCH TEST, RETROACTIVITY IS TO BE "VIEWED WITH SOME DEGREE OF SUSPICION," AS "RETROACTIVITY DISTURBS THE STABILITY OF PAST TRANSACTIONS." MOREOVER, THE COURT STATED THAT IN ORDER FOR RETROACTIVE APPLICATION TO BE CONSTITUTIONAL, THE PUBLIC PURPOSE MUST BE "SIGNIFICANT AND LEGITIMATE" AND "DIRECTED TOWARDS REMEDYING A BROAD AND GENERAL SOCIAL OR ECONOMIC PROBLEM." WHERE IT IS NOT, AS IN *NEIMAN*, RETROACTIVITY IS UNCONSTITUTIONAL.

THERE IS NO POSSIBILITY THAT SECTION 3 OF S.B. 44 WILL MEET THE *NEIMAN* TEST. FIRST, THE CLEAR INTENT OF SECTION 3 IS RETRIBUTION AGAINST ONE PERSON. SECOND, THE CLASSIFICATION SYSTEM SET UP BY SECTION 2 OF S.B. 44 IS TOTALLY ARBITRARY AND COMPLETELY UNRELATED TO THE ISSUES OF PUBLIC HEALTH, SAFETY AND WELFARE. THE ONLY WELLS THAT ARE IMPACTED ARE THOSE USED TO PRODUCE BOTTLED DRINKING WATER. AN IDENTICALLY BUILT WELL USED TO PUMP AS MUCH OR MORE WATER IS NOT

SUBJECT TO SECTION 2 OF S.B. 44. SENATE BILL 44 DOES NOT EVEN ATTEMPT TO JUSTIFY SUCH CLASSIFICATION SYSTEM OR STATE THAT THERE IS A "SIGNIFICANT AND LEGITIMATE" PUBLIC PURPOSE, BECAUSE IT IS IMPOSSIBLE.

SECTION 2 OF SENATE BILL 44
IS UNCONSTITUTIONAL

SECTION 281.17(1), WIS. STATS., CURRENTLY REGULATES ALL WELLS WITHDRAWING IN EXCESS OF 100,000 GALLONS A DAY FROM UNDERGROUND SOURCES. AS SUCH, IT REFLECTS A LEGISLATIVE DETERMINATION THAT THE CAPACITY OF WELLS IS AN APPROPRIATE CRITERIA FOR REGULATION, IN THAT WELLS PRODUCING UNDER 100,000 GALLONS NEED NOT BE REGULATED IN THE SAME MANNER AS WELLS PRODUCING OVER 100,000 GALLONS.

THE LEGISLATURE MAKES THE FURTHER DISTINCTION THAT WELLS (OR OTHER WATER DIVERSIONS) WHICH WOULD RESULT IN A NEW WATER LOSS TO THE GREAT LAKES BASIN AVERAGING MORE THAN 2 MILLION GALLONS PER DAY MUST BE THE SUBJECT OF EVEN GREATER SCRUTINY, AND HAVE SET FORTH SPECIFIC GROUNDS GOVERNING THE APPROVAL OF SUCH ACTS UNDER § 285.35.

IN BOTH CASES, THE MEANS AND THE GOALS OF SUCH LEGISLATION APPEAR TO BE RATIONALLY RELATED TO EACH OTHER, IN THAT REGULATION IS TIED TO THE AMOUNT OF WATER BEING PUMPED OR DIVERTED. IT IS THE AMOUNT OF

WATER, NOT THE USE OF THE WATER, WHICH IS IMPORTANT TO THE STATUTORY GOALS SET FORTH IN THE STATUTES.

THE SAME CANNOT BE SAID OF SECTION 2 OF S.B. 44. THE PROPOSED LEGISLATION DOES NOT CONTAIN ANY STATEMENT OF LEGISLATIVE PURPOSE OR ANY ARTICULATION OF A PUBLIC HEALTH, SAFETY, OR WELFARE INTEREST IN SEPARATELY REGULATING ONLY THOSE HIGH CAPACITY WELLS USED TO PRODUCE BOTTLED WATER. THE REASON FOR THIS, OF COURSE, IS THAT THERE IS NONE.

AS A RESULT, NO WISCONSIN COURT IS GOING TO AGREE THAT THE PUBLIC'S HEALTH, SAFETY OR WELFARE IS ADVANCED BY S.B. 44'S REGULATION OF WELLS BASED ON THE USAGE OF THE WATER FROM THOSE WELLS. REGULATIONS BASED ON VOLUME ARE LIKELY TO BE LEGITIMATE IF NEEDED TO PROTECT OTHER PERSONS OR INTERESTS AND IF THEY ARE APPLIED IN A NONDISCRIMINATORY MANNER. SIMILARLY, REGULATIONS BASED ON THE QUALITY OF DRINKING WATER (BOTTLED OR UNBOTTLED) ARE LIKELY TO BE LEGITIMATE IF THEY PROMOTE HEALTH AND SAFETY AND ARE APPLIED IN A NONDISCRIMINATORY MANNER. BUT S.B. 44'S ATTEMPT TO REGULATE IDENTICAL WELLS DIFFERENTLY BASED SOLELY ON THE END OF USE OF THE WATER DEFIES LOGIC AND CANNOT BE JUSTIFIED BY A PROPER LEGISLATIVE PURPOSE.

UNDER WISCONSIN LAW, IN ORDER FOR THE LEGISLATURE TO DRAW VALID LINES BETWEEN DIFFERENT CLASSES OF CONDUCT, AND THUS BE A VALID EXERCISE OF THE STATE'S POLICE POWER, THOSE LINES MUST NOT BE ARBITRARY AND THE "STATUTE MUST HAVE A REASONABLE AND RATIONAL RELATIONSHIP TO THE FURTHERANCE OF A PROPER LEGISLATIVE PURPOSE." *NORANDA EXPLORATION, INC. v. OSTROM*, 113 Wis. 2d 612, 35 N.W. 2d 596 (1983). IF IT DOES NOT, IT IS AN UNCONSTITUTIONAL EXERCISE OF THE POLICE POWER.

WHEN THE RESULT IS REACHED, IF IT IS FOUND THE STATUTORY PROTECTION IS OF SUCH SLIGHT CONSEQUENCE, OR IS SO INCIDENTAL AS TO CAUSE THE PROVISIONS OF THE [STATUTE] TO BE WHOLLY IMPRACTICAL, AND NOT IN PROMOTION OF THE SAFETY IT SEEMS TO STRIVE FOR, THEN ITS OPERATION WOULD BE UNREASONABLE AND ARBITRARY.

CHICAGO & N.W. R. CO. v. LAFOLLETTE, 27 Wis.2d 505, 529, 135 N.W.2d 269 (1965).

THE LEGISLATURE CANNOT SIMPLY DRAW A LINE AND EXPECT THE COURTS TO FIND A PUBLIC PURPOSE WHERE NONE EXISTS. THERE ARE CURRENTLY OVER 9,400 PERMITTED HIGH-CAPACITY WELLS IN WISCONSIN. MORE WELLS WILL BE PERMITTED IN THE FUTURE. THOSE WELLS WILL NOT BE SUBJECT TO SECTION 2 OF S.B. 44 UNLESS THEY ARE USED TO PRODUCE BOTTLED DRINKING WATER. THE LEGISLATION FAILS TO ARTICULATE A RATIONALE FOR REGULATING THE FEW WELLS USED TO PRODUCE BOTTLED DRINKING WATER DIFFERENTLY THAN

MANY WELLS USED TO PRODUCE DRINKING WATER FOR MUNICIPALITIES, BEER,
OR INDUSTRIAL USES.

CONCLUSION

SOME MINUTES AGO, I SAID WHAT I BELIEVE TO BE THE CENTRAL CONCLUSION:

"WE NEED TO DEVELOP A COMPREHENSIVE STRATEGY FOR PROTECTING GROUNDWATER QUANTITY IN WISCONSIN. 2001 SENATE BILL 44 PROPERLY IDENTIFIES THE POLICY QUESTION AND THE SHORTCOMINGS OF EXISTING LEGISLATIVE ENABLING STATUTES, BUT IT DOES NOT - IN THE MOST REMOTE WAY - BEGIN TO ADDRESS THE SOLUTIONS."

RESPECTFULLY SUBMITTED BY:

PETER A. PESHEK
DEWITT ROSS & STEVENS s.c.

**TESTIMONY OF
CONROY SOIK
REPRESENTATIVE OF THE
WISCONSIN POTATO AND VEGETABLE
GROWERS ASSOCIATION (WPVGA)**

Good morning Chairman Baumgart and Members of the Environmental Resources Committee. My name is Conroy Soik, and I am the immediate past chairman of the Wisconsin Potato and Vegetable Growers Association. I appreciate the opportunity to share with you the WPVGA's thoughts on SB 44 relating to regulation of high capacity wells.

As you are undoubtedly aware, our members rely heavily on high capacity wells for irrigation purposes. Without irrigation, agriculture would be nearly impossible in the central sands of Wisconsin. Because of the high importance that water is to us, we always take a special interest when regulation of water is discussed.

Our use is non-consumptive, that is, we return water to the land immediately above the aquifer. Eventually, most of this water returns to the aquifer. This bill addresses only a consumptive use of water, that is the bottling and sale at a place remote from the aquifer from which it was taken.

As an organization, we have always based our position on ground water issues or well-researched science. In the case of SB 44, we understand concerns surrounding the issue of removing water from the aquifer for sale out of state, and we share those concerns.

It is our position that while SB 44 will serve the public as a safeguard against consumptive use of water, additional study and research must continue in this area. For this reason, the WPVGA has expanded our Nonpoint Task Force, which was initially formed to open a dialog between UW researchers from Madison and Stevens Point, growers and DNR and DATCP agency personal on specific nonpoint pollution issues. The new Task Force will now be called the Environmental Task Force and will tap the same people for research ideas surrounding groundwater usage as well.

Our intention is to gather additional information on the subject, bring different viewpoints to the table and discuss the scientific realities of the status of and possible vulnerabilities in a scientific arena. Through this communication we plan to continue our leadership in this area and continue our philosophy of basing decisions of this nature on science. I have attached a more detailed position paper on this subject to this testimony.

High Capacity Well Regulations

WPVGA LEGISLATIVE AFFAIRS ISSUE PAPER

February 2001

History

Ever since irrigation became the preferred if not the only way to grow crops in the central sands of Wisconsin, certain interests have advocated more governmental control over the ground water used to irrigate crops. In the 1940's irrigation became a way of life in the central sands, turning what was once a barren depressed area into a thriving agriculturally productive region. In 1959 a consortium of environmentalists, trout fishermen and politicians introduced bills in the State Assembly and Senate that would have put an end to irrigated farming in Wisconsin. Those measures were defeated with the support of the state geologist and the US Geological Survey. Irrigation rights were not then discussed in the legislature for 40 years when the legislature entertained a bill last year that would have given the DNR greater permitting authority for high capacity wells under 1999 SB 414 in response to concerns over Perrier's interest in and desire to bottle Wisconsin ground water and sell it out of state. The bill passed the Senate with an agricultural exemption, but died in the Assembly without a hearing.

Current Law

Current law prohibits a person from constructing or operating wells that withdraw a total of more than 100,000 gallons of water a day without the approval of the DNR. If the DNR finds the proposed withdrawal will adversely affect the water supply of a public water utility, the permit must be denied.

Proposed Changes Under 2001 SB 44

2001 SB 44 was introduced on Feb. 7 by Senator Shibilski along with a bi-partisan group of 13 Senators and 21 Reps. The bill would require the DNR to provide in each approval for a HCW that the water withdrawn from the well may not be used to produce bottled water unless the DNR approves use of the well for that purpose. The bill requires DNR to withhold condition or modify its approval in order to minimize adverse effects to water quality caused by an HCW used to produce bottled drinking water, and requires DNR to prepare an environmental impact statement for wells to be used for bottling water.

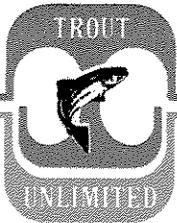
WPVGA Position

- The WPVGA position is the same as it was in 1959. All decisions on regulation of the ground water must be based on clear and definitive science, not opinion and emotions.
- The WPVGA supports SB 44 with reservation. We understand there is a concern over water usage that could take water out of state. While we share that concern, it is important to base regulatory decisions based on scientific fact.
- Based on available science, we believe the following to be true:
 - Depletion of the groundwater is unlikely at current uses, because we receive enough rain to recharge the underground lake that supplies the central sands which is 45 miles long, 20 miles wide and 400 feet deep.
 - Questions do arise when talking about stream water depletion, but scientists say that the potential for stream depletion depends on the following:
 - The proximity of the well to the stream
 - The relative pumping capacity of the well to the size and volume of the stream in question.
 - There must be a regulatory distinction between consumptive and non-consumptive uses of ground water.
 - More research needs to be done before legislation regulating non-consumptive use of ground water is enacted.
- The WPVGA has been proactive in addressing the issue of ground water regulation and study. We have formed an Environmental Task Force, which is an expansion of our Nonpoint Task Force. This group that consists of members of the scientific community, including researchers

from UW-Madison and UW-Stevens Point, growers and DATCP and DNR officials will expand cooperative efforts from nonpoint issues to all groundwater issues.

- This is clearly an issue that will have effects that go far beyond potato growers of Wisconsin. Many organizations use high capacity wells, which is any well that has the capacity to pump over 70 gallons per minute.
 - Wells are used for production of paper, and other manufacturing.
 - In agriculture, livestock producers often use high capacity wells to water their herds.
 - Municipalities use ground water to supply drinking water for urban residents.
 - Food Processors also use a tremendous amount of water both in the canning industries and the frying industries.

- The WPVGA's #1 legislative priority this session is to insure that any ground water regulation that affects our industry is based on science.



Resolution of the Wisconsin Council of Trout Unlimited
September 9, 2000

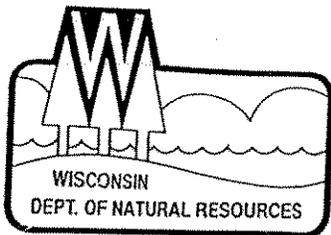
Pursuant to the mission statement of Trout Unlimited, which is "To conserve, protect and restore North America's coldwater fisheries and their watersheds," and understanding that uninterrupted groundwater supplies are essential to the health of these fisheries, the Wisconsin Council of Trout Unlimited hereby petitions the Wisconsin State Legislature to:

Uphold its duty under the Public Trust Doctrine to act as trustee of the public's interest in the water resources of the State by:

Declaring and implementing a moratorium on the permitting of high-capacity wells in areas that directly support coldwater resources until such time as legislation is enacted which enables and requires adequate scientific review to ensure that such wells will not adversely affect the State's Public Trust resources.

And to:

Enact legislation to include the groundwater of Wisconsin among those resources protected under the State's Public Trust Doctrine through statutory recognition of the hydraulic continuity of groundwater and surface water resources.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

September 20, 2000

File Number: 3320-4-01-3-0004

ROLAND AND SANDRA JENSEN
398 GOLDEN AVENUE
WISCONSIN DELLS WI 53965-8629

SUBJECT: Conditional Approval, High Capacity Industrial Water Supply Well(s), Adams County, Wisconsin

Dear Mr. and Mrs. Jensen:

The Department of Natural Resources (Department or DNR), Bureau of Drinking Water and Groundwater, has reviewed your application requesting approval for construction and operation of one or more high capacity, potable, industrial water supply well(s) on your property. The well site(s) is (are) located in section 22, Town 14 North, Range 7 East, Town of New Haven, Adams County, Wisconsin. The application was submitted on your behalf by URS – Dames and Moore and by Great Spring Waters of America, Inc. (GSWA), a subsidiary of The Perrier Group of America, Inc., and was received by the Department on June 20, 2000. On the same day, the Department also received an application from your neighbor, Brian Buckley, Trustee of the Buckley Springs Trust, for a similar high capacity well system. This document provides background information, a description of the high capacity well project and an approval with conditions.

BACKGROUND INFORMATION

The application was contained in tab 7 of the "High Capacity Well Application for the Perrier Group of America's Proposed Bottled Water Project", submitted to the Department on June 20, 2000. The application also includes a Warranty Deed demonstrating your ownership of the property.

For your information, the Department also received on June 20, 2000 the document entitled "Preliminary Design Report and Environmental Analysis for the Perrier Group of America's Proposed Bottled Water Project". The document contains an application for a high capacity well to be located on a parcel of land located about 1.5 miles south of your property, where GSWA is potentially considering construction of a possible bottling plant. A letter dated August 29, 2000 from Mr. Peter Peshek, attorney for GSWA makes it clear that GSWA considers the potential bottling plant-well or other facilities as a separate, possible action that is not a part of your application.

The document for your project, entitled "High Capacity Well Application for the Perrier Group of America's Proposed Bottled Water Project", contains additional information. Tab 1 contains an executive summary. Tab 2 contains an Interim Report – Groundwater Study. Tab 3 contains an Interim Report – Wetland Resources Study. Tab 4 contains an Interim Report – Aquatic Resources Study. Tab 5 contains Pre-Operational Work Plans – Groundwater, Wetlands, and Aquatics. Tab 6

contains a Preliminary Environmental Monitoring and Adverse Weather Mitigation Plan.

In both your application and the application for the Buckley Springs Trust property, the requested total maximum capacity is 500 gallons per minute (GPM) and the estimated daily pumping is 720,000 gallons per day (GPD). The application for each property states that these are the requested combined total pumping rates for both properties. This approval will provide a condition to assure that the total capacity of the two properties does not exceed approved limits.

Another important document related to this proposal is the Department's Environmental Assessment (EA) of the proposed high capacity well project. The EA was finalized on September 18, 2000. The Assessment contains information related to potential impacts from the high capacity well project and related activities. It identifies measures to prevent significant adverse impacts to nearby groundwater, surface waters and wetlands. Such measures are incorporated throughout the Conditional Approval section.

A written agreement (hereafter Agreement, attached hereto) has been developed between Brian Buckley, Trustee of the Buckley Springs Trust, Roland C. and Sandra L. Jensen, GSWA, and the Department. The Agreement is incorporated into this approval by reference.

PROJECT DESCRIPTION

Property Owner: Roland and Sandra Jensen
398 Golden Avenue
Wisconsin Dells WI 53965-8629

Officials: Roland and Sandra Jensen
Telephone Number: (608)981-2173

Well Operator: Great Spring Waters of America, Inc., a subsidiary of Perrier Group of America, Inc.
777 West Putnam Avenue
Greenwich, CT 06830

Officials: Mark Evans, Vice President & General Counsel
Telephone Number: (203)531-4100

Property Location: The property is comprised of the SW 1/4 of Section 22, T14N, R7E, Town of New Haven, Adams County, Wisconsin.

Existing Wells: There is one residential domestic well on the property located in the SW 1/4 of the SW 1/4 of the SW 1/4 of Section 22, the construction details of which are unknown. Two auxiliary flowing wells are also located on the property located in the SW 1/4 of the SW 1/4 of the SW 1/4 of Section 22, the construction details of which are unknown except that one has a 4 inch diameter casing. As part of the initial GSWA studies, seven wells were constructed on the property. Six observation wells were constructed in the N 1/2 of the NW 1/4 of the SW 1/4 of Section 22. They were constructed between March 9 and March 13, 2000 and are named OW-003, OW-004, OW-005, OW-005A, OW-006 and OW-007. Observation well depth varies from 80 to 200 feet and casings are 2-inch diameter schedule 80, PVC set in 6-inch diameter drillholes. The upper casing terminus are 2 feet above ground and screens are located below water level. A test pumping well, TW-002, was constructed on March 20, 2000 and is comprised of approximately 50 feet of screen attached to 150 feet of 6 inch diameter steel casing, set in

a 10-inch diameter upper enlarged drillhole. Conditions of this approval will require proper filling and sealing of wells not in use for continuing studies at the facility.

Proposed Wells and Method of Pumping:

The application contains a map showing the possible location of the one or more high capacity production wells in the SW 1/4 of Section 22, T14N, R7E, Town of New Haven, Adams County, Wisconsin. The exact location and number of wells will be determined based on reports and review as specified in the Conditional Approval section.

The well(s) will consist of about 100 feet of 8 inch diameter stainless steel screen with a welded-on steel bottom plate, welded to the bottom of a 100 foot string of 8 inch diameter stainless steel casing. The casing will be assembled with welded joints and will be set in a 12-inch diameter upper enlarged drillhole that is constructed using dual tube (Barber Rig) drilling methods. The drillhole will be 8 inches in diameter from the 100-foot depth to the bottom of the well. The annular space around the casing will be sealed with neat cement grout up to ground surface. The exact methods for well construction will be specified in a report required of the Applicant as specified in condition number 17 of the Conditional Approval section.

Water will be pumped from each well with a submersible pump contained within the well and connected to a discharge pipe exiting the well through a well seal. The well seal is proposed to be comprised of a solid steel cover containing a welded section of discharge piping, a compressible gasket for electrical wire conduit entry and a code compliant well vent. The well seal will be bolted to a rubber gasketed steel flange welded to the top of the casing. Water will be discharged from the well through a UL approved check valve. An air vacuum relief valve will be attached to the discharge pipe if the well head is not placed within a heated structure.

Total Water Usage:

This approval does not establish a pumping rate or water usage level at this time. The exact pumping rate and schedule will be determined in compliance with conditions specified in the Conditional Approval section.

Proximity to Known Contamination Sources: Eleven potential contamination sources were listed in the application. Nine of the potential sources are listed as registered fuel storage tanks. Two sites are listed as leaking underground fuel storage tanks where the potential contaminants have been contained. The nearest landfill is located 2.7 miles to the west of the property. This approval requires the high capacity water supply wells to be located in compliance with the separation distances specified for location of potable wells, contained in section NR 812.08, Wis. Adm. Code.

Proximity to Public Utility Well: The nearest existing well serving a public water utility is located in Wisconsin Dells, 6 miles west of the proposed high capacity well site. Section NR 812.09(4)(a)1, Wis. Adm. Code, provides the basis for review of high capacity wells. The Department has evaluated the application to determine if the proposed wells and maximum pumping rate would reduce the availability of water to the City of Wisconsin Dells public utility wells. The Department has found that the operation of the proposed high capacity well system on both properties would not adversely affect or reduce the availability of water to these utility wells if the high capacity well system is continuously operated at a maximum, combined rate of 500 gallons per minute.

CONDITIONAL APPROVAL

The Department has evaluated the application for a high capacity well system that proposes a maximum combined pumping rate of 500 gallons/minute (GPM) for continuous operation. The Department has concluded that the operation of the high capacity well system at the proposed combined maximum pumping rate on both properties of 500 GPM will not adversely affect or reduce the availability of water to the nearest existing public utility well. If data generated after any approval reflects that a higher extraction rate would under all climatic conditions have no significant adverse impact on any nearby groundwater, surface waters or wetlands, the Applicant may seek an amended approval for that higher extraction rate. In addition, item Number 10 of the Agreement requires that the operation of any high capacity well system shall have, under all climatic conditions but especially during drought conditions, no significant adverse impact on any nearby groundwater, surface waters or wetlands. The Department will evaluate the results of studies and groundwater modeling described in the Agreement (see item 4 in Agreement) to determine potential high capacity well water withdrawal effects on groundwater, surface waters and wetlands and unilaterally determine measures needed to prevent significant adverse impacts to these resources. Consequently the Department will defer the establishment of the final well design and operational parameters (i.e. location, pumping rate, schedule, well construction, etc.) pending further study and review.

Well operational parameters for this approval and subsequent approval modifications will maintain current water resources values and may include items A through F below. Well operational parameters may be used to require, under certain circumstances, pumping to be reduced or halted. Such pumping rates or other operational conditions would at least be designed to maintain:

- A. A minimum stream flow in the sections of Big Spring Creek upstream and downstream of Jensen's Pond and in the stream channel exiting Buckley Springs Pond(s).
- B. A minimum groundwater elevation at Jensen's Pond, Buckley Springs Pond and/or adjacent wetlands.
- C. A minimum and/or maximum water temperature in surface waters in the high capacity well project area.
- D. A minimum dissolved oxygen level and/or other water chemistry parameters in surface waters in the high capacity well project area.
- E. A minimum flow for Mason Lake refills after winter drawdowns.
- F. Higher stream flows, groundwater levels, water chemistry standards and minimum and/or maximum water temperatures during drought conditions and/or during trout spawning or other critical time periods.

The approved pumping rate, operational parameters or conditions contained in any modified approval may subsequently be further modified by the Department if the results of the proposed groundwater, surface water, and wetland studies and monitoring indicate that a subsequent modified rate of withdrawal is warranted to prevent significant adverse impacts to nearby wetlands, surface water and groundwater resources.

This approval is conditioned on compliance with the provisions of chapter NR 812, Wis. Adm. Code, section 281.17, Wis. Stats., all conditions of the Agreement between GWSA, the Buckley Springs Trust, Roland C. and Sandra L. Jensen and the Department (Agreement attached), and the following conditions:

1. The maximum combined pumping rate of high capacity wells on the Buckley and Jensen properties shall not cause any significant adverse impact to nearby groundwater, surface waters or wetlands.

2. The Applicant shall complete and/or adhere to all requirements as described in the Agreement. Design and operational parameters of any high capacity well system will be included in any subsequent, modified approval issued by the Department.
3. The actual construction and/or operation of any high capacity well shall not commence until this approval is modified to include a pumping rate and other operational parameters for each well. Before this approval is modified to allow construction or operation of the proposed high capacity well(s), the Department will evaluate the results of the additional studies and the groundwater model to determine if there is a specific location or locations, and associated pumping rate or rates or other operational conditions of the proposed high capacity wells that will allow the operation of the well(s) in a way that will have no significant adverse impact to nearby groundwater, surface waters or wetlands. A significant adverse impact would occur when the quantity or quality (e.g. temperature, dissolved oxygen, suspended solids, etc.) of the waters available to any affected groundwater, surface water or wetland is reduced or affected such that its physical, biological, social, economic or any other public interest value cannot be maintained.
4. As described in item 2.a. of the Agreement, the applicant shall implement a Department approved groundwater study. The study will require an inventory of wells in the area; show the results of a groundwater model designed to simulate the impacts of high capacity well extraction on nearby groundwater, surface water and wetlands. The study shall require long-term pumping tests and be designed to predict conditions in a variety of climatic conditions. The study will result in creation of a contingency plan designed to protect groundwater, surface water and wetlands in times of drought conditions. The groundwater study will propose a long-term monitoring program of water levels in nearby groundwater, wetlands and surface waters. Results of the groundwater study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
5. As described in item 2.b. of the Agreement, the applicant shall implement a Department approved aquatic resources study. The study will supplement previous studies and will additionally evaluate aquatic life, shall collect stream flow and pond water level information and establish a long-term aquatic resources monitoring program. Results of the aquatic resources study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
6. As described in item 2.c. of the Agreement, the applicant shall implement a Department approved long-term wetland resources monitoring study. The study will supplement previous studies and will refine the baseline characterization of wetland resources and establish the baseline parameters and framework for long-term monitoring activities. The applicant shall conduct studies, monitor and report on additional parameters, and submit reports and data as requested by the Department. Results of the long-term wetland resource monitoring study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
7. The Department reserves the authority to limit the pumpage in any amount that may be necessary to eliminate excessive drawdown in any public utility well that may be affected by high capacity well operations.

8. The applicant shall notify the State Historical Society and Department (DNR) archeologists at least 7 business days before the commencement of any well, access road or staging area construction in order to provide their staff an opportunity to be present to determine if any construction operations expose any historical or archeological artifacts. If during the construction of any well, access road or staging area, archeological artifacts are discovered, construction will cease and further construction will be moved to another location with Department (DNR) concurrence.
9. If the operation of a (the) high capacity supply well(s) adversely affects the operation of any private wells on neighboring properties, this Department approval will not negate the protection to which private well owners are entitled under Wisconsin case law relating to groundwater (State vs. Michels Pipeline Construction, Inc., 63 Wis. 2d 278 [1974]). Approval by the Department does not relieve the high capacity well property owner or well operator of any liability which may result from injury or damage suffered by any person upon operation of the approved well(s).
10. The Department has the authority to require either the alteration or the decommissioning, relocation, and reconstruction of any water supply well(s) if, during any future inspection of the well(s), the Department determines such work is required for compliance with the current requirements of chapter NR 812, Wis. Adm. Code.
11. Notification of the construction of the well(s) shall be given to the Drinking Water Systems Specialist, Eric Brach, at the Department of Natural Resources West Central Regional office at Wisconsin Rapids, telephone number (715) 421-7804, not less than 48 hours prior to the beginning of construction.
12. All sampling, reporting and other requirements for both the construction and operation of the well(s) contained in chapter NR 812, Wis. Adm. Code, shall be complied with. These requirements include the well driller preparing and submitting (a) construction report(s) of the well(s) to the Department within 30 days after completion of drilling of the well(s). For the new well(s), the construction reporting also requires that the well driller collect drill cuttings at 5-foot intervals throughout the depth of the well(s) and at each change in formation. The samples must be sent to the State Geologic Survey for examination and preparation of an accurate geologic log of the well(s).
13. The Department reserves the authority to require any schedule of reporting water levels within each production well that it deems necessary. If a water level measuring device is not permanently installed in any well that the Department requires to report water levels, the Department's authority shall extend to require the well to be taken out of service until the reporting can be conducted.
14. Either a pump operation timing device or a direct pumpage measuring meter shall be installed at each production well and maintained in good operating condition. Reports of the amount of monthly well pumpage (in gallons) for each well shall be made to the Department annually, if requested by the Department, in accordance with the requirements of section 281.17, Wis. Stats., on forms that are provided by the Department. The Department may require more frequent monitoring and reporting of pumpage from any/all wells.
15. Design, installation, construction, abandonment and documentation of all groundwater-monitoring wells shall be in compliance with chapter NR 141, Wis. Adm. Code.
16. The owner shall permit department employees access to the property to conduct inspections pursuant to sections 280.13(1)(a) and (c) and 281.97, Wis. Stats.

17. Failure to comply with any term or condition of an approval or the construction, reconstruction or operation of any drill hole or well in violation of any statute, rule or department order shall void the approval. Failure of GSWA or the Buckley Springs Trust to comply with the terms of the written agreement between the Department, the Buckley Springs Trust, Roland C. and Sandra L. Jensen and Great Spring Waters of America shall also void the approval.
18. The applicant shall submit a plan describing the precise locations of proposed wells, methods of constructing the wells, method of discharge and a technical evaluation of the sufficiency of any production well feature that is not code compliant for well construction and pump installation contained in chapter NR 812, Wis. Adm. Code.
19. As provided in section NR 812.09(4)(a)2., Wis. Adm. Code, approval to operate any high capacity well or the high capacity well system must be obtained should property ownership, or any portion thereof, be transferred to another. This approval is not transferable to a new owner or operator. A new owner or operator must therefore apply for and receive approval from this Department before operating the high capacity water supply system pursuant to section 281.17, Wis. Stats. As provided in item 18 of the Agreement, the obligations of each Party in the Agreement shall be binding upon, and its rights and benefits shall inure to the benefit of, the successors and assigns of that party in the event of a property transfer.
20. If construction of the approved well(s) has not commenced within two years from the date of this letter, this approval shall become void. After two years, therefore, a new application must be made for approval of the plans and specifications before any construction work is undertaken.
21. Any well that is not used for three (3) or more years shall be abandoned according to the requirements of section NR 812.26, Wis. Adm. Code, unless a written approval is obtained from the Department for the temporary abandonment of the well. A well abandonment form must be completed and submitted to the Department within 30 days of abandoning each well.
22. The operator of the high capacity water supply system shall obtain information regarding local degree/days and shall submit that information to the department and to the USGS office when requested.

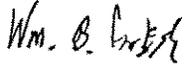
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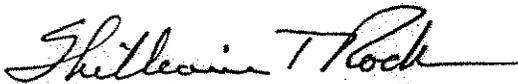
The applicant's appeal rights are modified by a written agreement as referenced in the approval.

Respectfully Submitted:



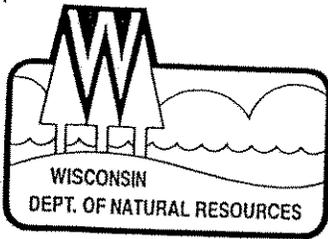
Wm. B. Furbish
Private Water Systems Section

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary:



William T. Rock, Chief
Private Water Systems Section
Bureau of Drinking Water and Groundwater

cc: Operator - Great Spring Waters of America
Eric Brach - Wisconsin Rapids
WGS - Roger Peters



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

September 20, 2000

File Number: 3320-4-01-3-0005

BRIAN T BUCKLEY - TRUSTEE
BUCKLEY SPRINGS TRUST
704 EVERGREEN CIRCLE
LAS VEGAS NV 89107

SUBJECT: Conditional Approval, High Capacity Industrial Water Supply Well(s), Adams County, Wisconsin

Dear Mr. Buckley:

The Department of Natural Resources (Department or DNR), Bureau of Drinking Water and Groundwater, has reviewed your application requesting approval for construction and operation of one or more high capacity, potable, industrial water supply well(s) on your property. The well site(s) is (are) located in section 22, Town 14 North, Range 7 East, Town of New Haven, Adams County, Wisconsin. The application was submitted on your behalf by URS – Dames and Moore and by Great Spring Waters of America, Inc. (GSWA), a subsidiary of The Perrier Group of America, Inc., and was received by the Department on June 20, 2000. On the same day, the Department also received an application from your neighbors, Roland C. and Sandra L. Jensen, for a similar high capacity well system. This document provides background information, a description of the high capacity well project and an approval with conditions.

BACKGROUND INFORMATION

The application was contained in tab 8 of the "High Capacity Well Application for the Perrier Group of America's Proposed Bottled Water Project", submitted to the Department on June 20, 2000. The application also includes the "Trust Transfer Deed" submitted to the Department on July 9, 2000.

For your information, the Department also received on June 20, 2000 the document entitled "Preliminary Design Report and Environmental Analysis for the Perrier Group of America's Proposed Bottled Water Project". The document contains an application for a high capacity well to be located on a parcel of land located about 1.5 miles south of your property, where GSWA is potentially considering construction of a possible bottling plant. A letter dated August 29, 2000 from Mr. Peter Peshek, attorney for GSWA makes it clear that GSWA considers the potential bottling plant well or other facilities as a separate, possible action that is not a part of your application.

The document for your project, entitled "High Capacity Well Application for the Perrier Group of America's Proposed Bottled Water Project", contains additional information. Tab 1 contains an executive summary. Tab 2 contains an Interim Report – Groundwater Study. Tab 3 contains an Interim Report – Wetland Resources Study. Tab 4 contains an Interim Report – Aquatic Resources Study. Tab 5 contains Pre-Operational Work Plans – Groundwater, Wetlands, and Aquatics. Tab 6 contains a Preliminary Environmental Monitoring and Adverse Weather Mitigation Plan.

In both your application and the application for the Jensen's property, the requested total maximum capacity is 500 gallons per minute (GPM) and the estimated daily pumping is 720,000 gallons per day (GPD). The application for each property states that these are the requested combined total pumping rates for both properties. This approval will provide a condition to assure that the total capacity of the two properties does not exceed approved limits.

Another important document related to this proposal is the Department's Environmental Assessment (EA) of the proposed high capacity well project. The EA was finalized on September 18, 2000. The Assessment contains information related to potential impacts from the high capacity well project and related activities. It identifies measures to prevent significant adverse impacts to nearby groundwater, surface waters and wetlands. Such measures are incorporated throughout the Conditional Approval section.

A written agreement (hereafter Agreement, attached hereto) has been developed between Brian Buckley, Trustee of the Buckley Springs Trust, Roland C. and Sandra L. Jensen, GSWA, and the Department. The Agreement is incorporated into this approval by reference.

PROJECT DESCRIPTION

Property Owner: Buckley Springs Trust
Brian T. Buckley - Trustee
704 Evergreen Circle
Las Vegas, NV 89107

Officials: Brian Buckley - Trustee
Telephone Number: (702)248-3340

Well Operator: Great Spring Waters of America, Inc., a subsidiary of Perrier Group of America, Inc.
777 West Putnam Avenue
Greenwich, CT 06830

Officials: Mark Evans, Vice President & General Counsel
Telephone Number: (203)531-4100

Property Location: The property is comprised of the N 1/2 of the SE 1/4 of Section 22, T14N, R7E, Town of New Haven, Adams County, Wisconsin.

Existing Wells: There is a 1.5 inch diameter, flowing artesian driven point well on the property. The well is approximately 45 feet deep and terminates approximately 1 foot above grade. In addition, installed as part of the initial GSWA studies at the property, there is a test pumping well and 4 observation wells. The test pumping well, TW-001, was constructed on March 12, 2000 and is comprised of approximately 30 feet of screen attached to 60 feet of 6 inch diameter steel casing, set in a 10 inch diameter upper enlarged drillhole. The remaining 4 observation wells, OW-001, OW-001A, OW-002 and OW-008 were installed between March 2 and March 14, 2000 and are 2 inch screened PVC wells set within 6 inch upper enlarged drillholes to depths of 55 to 180 feet below the ground surface. Conditions of this approval will require proper filling and sealing of wells not in use for continuing studies at the facility.

Proposed Wells and Method of Pumping:

The application contains a map showing the possible location of the one or more high capacity production wells in the NW 1/2 of the SE 1/4 of Section 22, T14N, R7E, Town of New Haven, Adams County, Wisconsin. The exact location and number of wells will be determined based on reports and review as specified in the Conditional Approval section.

The well(s) will consist of about 100 feet of 8 inch diameter stainless steel screen with a welded-on steel bottom plate, welded to the bottom of a 100 foot string of 8 inch diameter stainless steel casing. The casing will be assembled with welded joints and will be set in a 12 inch diameter upper enlarged drillhole that is constructed using dual tube (Barber Rig) drilling methods. The drillhole will be 8 inches in diameter from the 100-foot depth to the bottom of the well. The annular space around the casing will be sealed with neat cement grout up to ground surface. The exact methods for well construction will be specified in a report required of the Applicant as specified in condition number 17 of the Conditional Approval section.

Water will be pumped from each well with a submersible pump contained within the well and connected to a discharge pipe exiting the well through a well seal. The well seal is proposed to be comprised of a solid steel cover containing a welded section of discharge piping, a compressible gasket for electrical wire conduit entry and a code compliant well vent. The well seal will be bolted to a rubber gasketed steel flange welded to the top of the casing. Water will be discharged from the well through a UL approved check valve. An air vacuum relief valve will be attached to the discharge pipe if the well head is not placed within a heated structure.

Total Water Usage:

This approval does not establish a pumping rate or water usage level at this time. The exact pumping rate and schedule will be determined in compliance with conditions specified in the Conditional Approval section.

Proximity to Known Contamination Sources: Eleven potential contamination sources were listed in the application. Nine of the potential sources are listed as registered fuel storage tanks. Two sites are listed as leaking underground fuel storage tanks where the potential contaminants have been contained. The nearest landfill is located 2.7 miles to the west of the property. This approval requires the high capacity water supply wells to be located in compliance with the separation distances specified for location of potable wells, contained in section NR 812.08, Wis. Adm. Code.

Proximity to Public Utility Well: The nearest existing well serving a public water utility is located in Wisconsin Dells, 6 miles west of the proposed high capacity well site. Section NR 812.09(4)(a)1, Wis. Adm. Code, provides the basis for review of high capacity wells. The Department has evaluated the application to determine if the proposed wells and maximum pumping rate would reduce the availability of water to the City of Wisconsin Dells public utility wells. The Department has found that the operation of the proposed high capacity well system on both properties would not adversely affect or reduce the availability of water to these utility wells if the high capacity well system is continuously operated at a maximum, combined rate of 500 gallons per minute.

CONDITIONAL APPROVAL

The Department has evaluated the application for a high capacity well system that proposes a maximum combined pumping rate of 500 gallons/minute (GPM) for continuous operation. The Department has concluded that the operation of the high capacity well system at the proposed combined maximum pumping rate on both properties of 500 GPM will not adversely affect or reduce the

availability of water to the nearest existing public utility well. If data generated after any approval reflects that a higher extraction rate would under all climatic conditions have no significant adverse impact on any nearby groundwater, surface waters or wetlands, the Applicant may seek an amended approval for that higher extraction rate. In addition, item Number 10 of the Agreement requires that the operation of any high capacity well system shall have, under all climatic conditions but especially during drought conditions, no significant adverse impact on any nearby groundwater, surface waters or wetlands. The Department will evaluate the results of studies and groundwater modeling described in the Agreement (see item 4 in Agreement) to determine potential high capacity well water withdrawal effects on groundwater, surface waters and wetlands and unilaterally determine measures needed to prevent significant adverse impacts to these resources. Consequently the Department will defer the establishment of the final well design and operational parameters (i.e. location, pumping rate, schedule, well construction, etc.) pending further study and review.

Well operational parameters for this approval and subsequent approval modifications will maintain current water resources values and may include items A through F below. Well operational parameters may be used to require, under certain circumstances, pumping to be reduced or halted. Such pumping rates or other operational conditions would at least be designed to maintain:

- A. A minimum stream flow in the sections of Big Spring Creek upstream and downstream of Jensen's Pond and in the stream channel exiting Buckley Springs Pond(s).
- B. A minimum groundwater elevation at Jensen's Pond, Buckley Springs Pond and/or adjacent wetlands.
- C. A minimum and/or maximum water temperature in surface waters in the high capacity well project area.
- D. A minimum dissolved oxygen level and/or other water chemistry parameters in surface waters in the high capacity well project area.
- E. A minimum flow for Mason Lake refills after winter drawdowns.
- F. Higher stream flows, groundwater levels, water chemistry standards and minimum and/or maximum water temperatures during drought conditions and/or during trout spawning or other critical time periods.

The approved pumping rate, operational parameters or conditions contained in any modified approval may subsequently be further modified by the Department if the results of the proposed groundwater, surface water, and wetland studies and monitoring indicate that a subsequent modified rate of withdrawal is warranted to prevent significant adverse impacts to nearby wetlands, surface water and groundwater resources.

This approval is conditioned on compliance with the provisions of chapter NR 812, Wis. Adm. Code, section 281.17, Wis. Stats., all conditions of the Agreement between GWSA, the Buckley Springs Trust, Roland C. and Sandra L. Jensen and the Department (Agreement attached), and the following conditions:

1. The maximum combined pumping rate of high capacity wells on the Buckley and Jensen properties shall not cause any significant adverse impact to nearby groundwater, surface waters or wetlands.
2. The Applicant shall complete and/or adhere to all requirements as described in the Agreement. Design and operational parameters of any high capacity well system will be included in any subsequent, modified approval issued by the Department.
3. The actual construction and/or operation of any high capacity well shall not commence until this approval is modified to include a pumping rate and other operational parameters for each well.

Before this approval is modified to allow construction or operation of the proposed high capacity well(s), the Department will evaluate the results of the additional studies and the groundwater model to determine if there is a specific location or locations, and associated pumping rate or rates or other operational conditions of the proposed high capacity wells that will allow the operation of the well(s) in a way that will have no significant adverse impact to nearby groundwater, surface waters or wetlands. A significant adverse impact would occur when the quantity or quality (e.g. temperature, dissolved oxygen, suspended solids, etc.) of the waters available to any affected groundwater, surface water or wetland is reduced or affected such that its physical, biological, social, economic or any other public interest value cannot be maintained.

4. As described in item 2.a. of the Agreement, the applicant shall implement a Department approved groundwater study. The study will require an inventory of wells in the area; show the results of a groundwater model designed to simulate the impacts of high capacity well extraction on nearby groundwater, surface water and wetlands. The study shall require long-term pumping tests and be designed to predict conditions in a variety of climatic conditions. The study will result in creation of a contingency plan designed to protect groundwater, surface water and wetlands in times of drought conditions. The groundwater study will propose a long-term monitoring program of water levels in nearby groundwater, wetlands and surface waters. Results of the groundwater study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
5. As described in item 2.b. of the Agreement, the applicant shall implement a Department approved aquatic resources study. The study will supplement previous studies and will additionally evaluate aquatic life, shall collect stream flow and pond water level information and establish a long-term aquatic resources monitoring program. Results of the aquatic resources study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
6. As described in item 2.c. of the Agreement, the applicant shall implement a Department approved long-term wetland resources monitoring study. The study will supplement previous studies and will refine the baseline characterization of wetland resources and establish the baseline parameters and framework for long-term monitoring activities. The applicant shall conduct studies, monitor and report on additional parameters, and submit reports and data as requested by the Department. Results of the long-term wetland resource monitoring study shall be submitted to the Department for review. The Department's review may result in required additional studies and may result in the modification of this approval.
7. The Department reserves the authority to limit the pumpage in any amount that may be necessary to eliminate excessive drawdown in any public utility well that may be affected by high capacity well operations.
8. The applicant shall notify the State Historical Society and Department (DNR) archeologists at least 7 business days before the commencement of any well, access road or staging area construction in order to provide their staff an opportunity to be present to determine if any construction operations expose any historical or archeological artifacts. If during the construction of any well, access road or staging area, archeological artifacts are discovered, construction will cease and further construction will be moved to another location with Department (DNR) concurrence.

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production well feature that is not code compliant for well construction and pump installation contained in chapter NR 812, Wis. Adm. Code.

19. As provided in section NR 812.09(4)(a)2., Wis. Adm. Code, approval to operate any high capacity well or the high capacity well system must be obtained should property ownership, or any portion thereof, be transferred to another. This approval is not transferable to a new owner or operator. A new owner or operator must therefore apply for and receive approval from this Department before operating the high capacity water supply system pursuant to section 281.17, Wis. Stats. As provided in item 18 of the Agreement, the obligations of each Party in the Agreement shall be binding upon, and its rights and benefits shall inure to the benefit of, the successors and assigns of that party in the event of a property transfer.
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22. The operator of the high capacity water supply system shall obtain information regarding local degree/days and shall submit that information to the department and to the USGS office when requested.

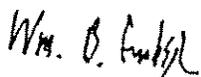
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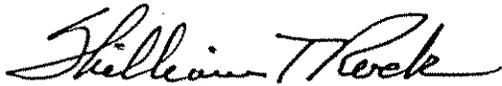
The applicant's appeal rights are modified by a written agreement as referenced in the approval.

Respectfully Submitted:



Wm. B. Furbish
Private Water Systems Section

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary:



William T. Rock, Chief
Private Water Systems Section
Bureau of Drinking Water and Groundwater

cc: Operator - Great Spring Waters of America
Eric Brach - Wisconsin Rapids
WGS - Roger Peters

AGREEMENT

This Agreement is entered into this 20th day of Sept., 2000 between Great Spring Waters of America, Inc. (GSWA), a subsidiary of the Perrier Group of America Inc. a Delaware corporation, having a place of business at 777 West Putnam Avenue, Greenwich, CT 06830; the Buckley Springs Trust, by Brian T. Buckley, Trustee, residing at 704 Evergreen Circle, Las Vegas, NV 89107; Roland C. and Sandra L. Jensen, residing at 398 Golden Avenue, Wisconsin Dells, WI 53965-8629; and the Wisconsin Department of Natural Resources (DNR), located at 101 South Webster Street, P.O. Box 7921, Madison, WI 53707-7921.

WHEREAS, pursuant to section 281.17, Stats., GSWA, the Buckley Springs Trust, and Roland C. and Sandra L. Jensen (collectively the Applicants) have applied to DNR for the approval of (a) high capacity well system(s) in Adams County;

WHEREAS, it is the intention of the Applicants and DNR (collectively the Parties) that this Agreement and the tasks outlined herein be valid and enforceable obligations of the Parties and be incorporated by reference into any conditional approval of such (a) high-capacity well system(s);

WHEREAS, each of the Parties represents and warrants that it has all requisite authority and capacity to enter into this Agreement, that this Agreement has been duly authorized, executed and delivered and constitutes the valid and enforceable obligation of that Party, and that it is not subject to any agreement, law, regulation, restriction or other legal requirement that would prevent it from entering into and fulfilling its obligations under this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. As part of the application for (a) high capacity well system(s) in Adams County, GSWA has voluntarily undertaken environmental studies and has submitted the following interim documents to DNR:

a. a groundwater study, prepared by URS – Dames & Moore, in the Big Springs area of Adams County, Wisconsin. The study area is located in Section 22, Town 14 North, Range 7 East of the Town of New Haven. The field work was completed on two properties: the Buckley property, located in the NW1/4 of the SE1/4 of Section 22, and the Jensen property, located in the NW1/4 of the SW1/4 of Section 22. The scope of work for the groundwater study had several phases:

a data search of hydrogeologic information available from the DNR, Wisconsin Geological and Natural History Survey (WGNHS), the Department of Agriculture, Trade and Consumer Protection (DATCP), and the United States Geological Survey (USGS), which was collected and reviewed;

field studies which involved the installation of groundwater observation wells, test wells and several surface water and shallow groundwater level monitoring points, as well as two short – term aquifer performance tests;

results of the site-specific studies were independently analyzed; and

a data analysis was completed which compares the data obtained from the field study with the data found in the literature search.

The purpose of the groundwater study was to describe the general physical characterization of the spring aquifer; determine the relationship between the aquifer and the springs; evaluate the groundwater flow conditions; complete a preliminary evaluation of the potential impacts of high capacity groundwater extraction on existing groundwater users, surface waters and wetlands; and identify baseline conditions for long-term monitoring.

b. an aquatic resources study, prepared by URS – Dames & Moore, in the Big Springs area of Adams County, Wisconsin. The study locations included Big Spring Creek from its spring – fed origin to its discharge point into Big Spring Pond, and two tributaries to Big Spring Creek: an unnamed tributary that flows into Big Spring Creek from the west, just south of Golden Avenue; and the unnamed tributary which flows from ponds on the Buckley property and enters Big Spring Creek at the lower end of Big Spring Pond. The aquatic resources assessment was conducted by staff from the University of Wisconsin – Milwaukee and URS – Dames & Moore. DNR staff also observed and provided assistance. The objectives of the aquatic resources study were to describe the fish community composition of the surface waters in the study area and to assess the quality of those surface waters based on habitat features and other chemical and biotic indicators.

c. a wetland resources study, prepared by URS – Dames & Moore, in the Big Springs area of Adams County, Wisconsin. The purpose of the wetland resources study was to inventory, delineate, describe and assess wetlands in the vicinity of the high capacity well project; identify potential threatened and endangered (T/E) species and habitats and natural areas; evaluate potential effects of high capacity groundwater collection on these resources; and initiate an inventory of wetland plants and animals.

Initial wetland investigations focused on the two wetland systems that are contiguous with Big Spring (on the Jensen property) and the Buckley property, as well as isolated wetlands located in close proximity to these systems. The area was later expanded to include a potential pipeline route from the two spring properties to one potential site for the bottling plant. The total area investigated includes approximately 300 acres surrounding the springs, lands immediately adjacent to CTH G, between Golden Avenue and STH 23, and one potential plant site, located in the SW1/4 of Section 34 and the SE1/4 of Section 33, Township 14 North, Range 7 East. In addition, an area of approximately 12 square miles centered on the study area was searched for T/E species and natural areas by DNR staff using the Natural Heritage Inventory (NHI) database, at the request of URS – Dames & Moore.

In addition to the information generated by the three studies identified above, GSWA has submitted the following information regarding one potential bottling plant site: conceptual site plan; conceptual building floor plan and phasing plan; preliminary design report; and preliminary pipeline design report.

2. GSWA has voluntarily committed to do additional groundwater, aquatic and wetland resource evaluations and monitoring, with DNR oversight. The additional studies are summarized below. The exact nature of the additional studies shall be in accordance with a work plan prepared by URS – Dames & Moore and approved and/or modified by DNR.

a. a future groundwater study shall be completed to more fully characterize the hydrogeology of the area, and to evaluate the impacts of high capacity groundwater withdrawals on wetlands, surface waters and aquatic life, and existing groundwater uses/users.

The scope of work for the groundwater study shall consist of six primary tasks: a well inventory; a groundwater model; a long-term aquifer test; the development of high capacity pumping scenarios and contingency plans; the design, construction and implementation of long-term monitoring; and a summary report.

The primary tasks are described in detail in the work plan. The well inventory shall be an accurate inventory of all water supply wells in Section 22 and the eight surrounding sections.

The groundwater model shall simulate the hydrogeologic system in the study area and, to the extent possible, evaluate the impacts to wetlands and aquatic life caused by withdrawals from the groundwater system. By simulating the impacts of high capacity extraction on groundwater and surface water resources in the area, including private wells, the groundwater model will help DNR determine an extraction rate which will prevent significant adverse impact to the environment.

The long-term aquifer test shall be used to refine the model for the evaluation of the effect of the proposed high capacity wells on water levels and provide additional data on the nature of the aquifer for use in the groundwater model.

The development of high capacity well pumping scenarios and contingency plans shall be based upon the groundwater model's evaluation of the impacts of variations in climatic conditions (e.g., drought conditions) on the overall hydrologic system. The purpose of the contingency plan shall be to protect the resources in times of extreme conditions, by identifying features which are vulnerable to the combined impacts of extreme climatic conditions and the proposed high capacity pumping, and by identifying modifications to the operation of the system which can be implemented to reduce, eliminate or mitigate those impacts.

The design, construction and implementation of long-term monitoring shall include a network of observation points for the long-term monitoring of water levels in the spring aquifer, wetlands and surface waters. This effort shall, as appropriate, include the construction of additional observation wells, and the installation of additional staff gauges and wetland monitoring probes.

Upon the completion of the tasks identified above, GSWA shall submit to DNR a summary report which will discuss all the tasks performed, the results of the investigative work, and conclusions and recommendations. The summary report shall include a detailed contingency plan and long-term monitoring plan.

b. a future aquatic resources study shall supplement the aquatic survey completed by GSWA in March 2000. The objectives of the investigation are to further characterize fish community and water quality and quantity conditions in Big Spring Creek. The results of the characterization study shall be used to establish operational limits that are protective of aquatic resources, and establish a long-term monitoring program for the spring.

The scope of work for the study shall consist of three primary tasks: additional evaluation of aquatic life; collection of stream flow/pond water level information; and long-term monitoring. DNR shall subsequently use this study to help establish operational limits/conditions, such as restricted well pumping rates, minimum stream flows, etc., to be incorporated into any high capacity well system approval.

The additional field investigation shall be conducted in the Big Springs area to supplement the baseline aquatic resources investigation completed by GSWA in March 2000. These activities shall include additional fish surveys in portions of Big Spring Creek above Big Spring Pond, measurements of stream flow, and water-quality monitoring in the creek and associated tributaries.

Setting of operational limits shall directly or indirectly establish minimum stream flows to protect trout habitat in Big Spring Creek. In this manner biological resources and other public interest values shall be protected. By measuring cross-sectional profiles of the stream bottom and adjacent banks, installing staff gauges, and placing control structures (e.g., weir) in the upper tributary and at the outlet of Big Springs, sufficient information shall be generated to establish minimum flows that ensure proper water temperature and oxygen levels are present to support healthy trout populations. If, while not required by this Agreement, any stream habitat restoration activities are undertaken, revised minimum flows shall be established by DNR in accordance with proposed cross sections using Instream Flow Incremental Methodology (IFIM) technology. Due to its limited potential for supporting high quality resource values, the stream emerging from Buckley Springs may have similar but likely less detailed monitoring.

Because high capacity groundwater extraction may influence water levels in Big Springs and the two ponds at the Buckley property and their associated wetlands, DNR may also establish minimum surface water elevations to protect these aquatic habitats and their biological communities.

A long-term monitoring program shall be established to ensure significant adverse impacts to aquatic resources do not occur. This program shall consist of monitoring compliance with operational limits, documenting abundance and community composition of fish and macroinvertebrates, and monitoring water