

**2003 DRAFTING REQUEST**

**Bill**

Received: **02/18/2004**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Mark Patronsky**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.state.wi.us**

Carbon copy (CC:) to: **Mark.Patronsky@legis.state.wi.us**  
**John.Stolzenberg@legis.state.wi.us**  
**Scott.Loomans@legis.state.wi.us**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

High capacity wells

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/P1	btradewe 02/24/2004	wjackson 02/25/2004	pgreensl 02/25/2004		sbasford 02/25/2004		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	btradewe 02/27/2004	wjackson 02/27/2004	pgreensl 02/27/2004	_____	lemery 02/27/2004	mbarman 03/02/2004	

FE Sent For:

<END>

AA  
Intro.

**2003 DRAFTING REQUEST**

**Bill**

Received: 02/18/2004

Received By: btradewe

Wanted: Soon

Identical to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Mark Patronsky

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - water quality

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.state.wi.us

Carbon copy (CC:) to: Mark.Patronsky@legis.state.wi.us  
John.Stolzenberg@legis.state.wi.us  
Scott.Loomans@legis.state.wi.us

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

High capacity wells

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/P1	btradewe 02/24/2004	wjackson 02/25/2004	pgreensl 02/25/2004		sbasford 02/25/2004		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	btradewe 02/27/2004	wjackson 02/27/2004	pgreensl 02/27/2004	_____	lemery 02/27/2004		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 02/18/2004

Received By: btradewe

Wanted: Soon

Identical to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Mark Patronsky

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - water quality

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.state.wi.us

Carbon copy (CC:) to: Mark.Patronsky@legis.state.wi.us  
John.Stolzenberg@legis.state.wi.us  
Scott.Loomans@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

High capacity wells

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				<i>[Signature]</i>			S&L
/P1	btradewe 02/24/2004	wjackson 02/25/2004	pgreensl 02/25/2004		sbasford 02/25/2004		

*1/2 11 WJ 2/27*  
*[Signatures]*

FE Sent For:

**<END>**

2003 DRAFTING REQUEST

Bill

Received: 02/18/2004

Received By: btradewe

Wanted: Soon

Identical to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Mark Patronsky

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - water quality

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.state.wi.us

Carbon copy (CC:) to: Mark.Patronsky@legis.state.wi.us  
John.Stolzenberg@legis.state.wi.us  
Scott.Loomans@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

High capacity wells

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe	pl Wlj 2/25	27 2/25 P8	24 2/25 P8			

FE Sent For:

<END>



---

---

## WISCONSIN LEGISLATIVE COUNCIL

---

---

*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: SENATOR NEAL KEDZIE AND REPRESENTATIVE DUWAYNE JOHNSRUD  
FROM: Mark C. Patronsky, Senior Staff Attorney, *mc* and John Stolzenberg, *js* Chief of Research Services  
RE: Revised Drafting Instructions for High Capacity Well Legislation  
DATE: February 18, 2004

This memorandum contains drafting instructions based on your request for high capacity well legislation.

### **I. APPROPRIATIONS.**

#### **A. Program Revenue From New Fees Established in the Bill for the Following Purposes:**

1. Department of Natural Resources (DNR) administrative costs.
  - a. Create a PR annual administration appropriation in s. 20.370 (4); provide in FY 03-04, \$0; and in FY 04-05, an amount to be determined.
2. Funding for research by DNR.
  - a. Create a PR biennial appropriation of the amounts in the schedule in s. 20.370 (4) [see s. 20.370 (4) (ar) for a model]; provide in FY 03-04, \$0; and in FY 04-05, an amount to be determined.
3. Mitigation payments and grants to local government units.
  - a. Create a PR continuing appropriation of the amounts in the schedule not appropriated under item 1. or 2. in s. 20.370 (6) [see s. 20.370 (6) (cr) for a model]; provide in FY 03-04, \$0; and in FY 04-05, an amount to be determined.

### **II. DEFINITIONS.**



**A. The Following Definitions Apply to the New Statute:**

1. "High capacity well" means a well in which that well, together with all of the other wells on the same property, has a capacity and rate of withdrawal in excess of 100,000 gallons per day (same as current law).
2. "Local governmental unit" means any city, village, town, county, town sanitary district, water utility district, a public inland lake protection and rehabilitation district that has town sanitary district powers under s. 33.22 (3), regional planning commission, or local water authority.
3. "Owner" means the owner of the land on which a high capacity well is located and includes the designated representative of the owner.
4. "Spring" means an area of concentrated groundwater discharge occurring at or near land surface and resulting in a current of flowing water with flows of a minimum of one cubic foot per second during a low flow condition. ["Low flow condition" means a flow that is exceeded 80% of the time.]
5. "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both. [Same as s. 281.35 (1) (L).]
6. "Well" means any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface constructed for the purpose of obtaining groundwater. [Same as s. NR 812.07 (112).]

**III. NEW HIGH CAPACITY WELL APPROVALS, INCLUDING STANDARDS, CONDITIONS, AND REVIEW.**

**A. Application and Requirement of Approval.**

1. The owner must apply for a high capacity well approval prior to construction.
2. A high capacity well may not be constructed, installed, or operated to withdraw groundwater without first obtaining the approval of the department.

**B. Standards; Statewide for All High Capacity Wells.**

1. A high capacity well may not impair the water supply of any public utility (same as current law).

**C. Additional Standards; Certain High Capacity Wells Within a Groundwater Protection Area.**

1. Subject to item 3., high capacity well within a groundwater protection area may not cause significant environmental impact except as in item 2., below.

2. Subject to item 3., DNR may approve a high capacity well in a groundwater protection area that is a public utility water supply if the well may cause significant environmental impact and the DNR determines that the environmental impact of the well is balanced by public benefit related to health and safety and if there is no other reasonable alternative location for the well.
3. The standards in items 1. and 2. apply if DNR determines under the environmental review process under item III. G. that an environmental impact report or an environmental impact statement shall be prepared on the approval of the well by DNR.

**D. Additional Standards; Certain High Capacity Wells Outside of a Groundwater Protection Area.**

1. Subject to item 4., a high capacity well outside of a groundwater protection area, that has water loss that exceeds 95% of the amount withdrawn, may not cause significant environmental impact. DNR shall promulgate rules that designate the percentage of water loss for classes of uses of high capacity wells.
2. Subject to item 4., a high capacity well outside of a groundwater protection area may not cause a significant environmental impact on a spring except as in item 3., below.
3. Subject to item 4., DNR may approve a high capacity well outside of a groundwater protection area that is a public utility water supply if the well may cause significant environmental impact on a spring and the environmental impact of the well on a spring is balanced by public benefit to health and safety and if there is no other reasonable alternative location for the well.
4. The standards in items 1., 2., and 3. apply if DNR determines under the environmental review process under item III. G. that an environmental impact report or an environmental impact statement shall be prepared on the approval of the well by DNR.

**E. Conditions on DNR Approval; All High Capacity Wells.**

1. Conditions to avoid impairment of a public utility water supply, including location, depth, pumping capacity, rate of flow, and ultimate use (same as current law).
2. All conditions of approval related to s. 281.35, as in the current statutes.
3. Owner of a high capacity well is required to submit an annual pumping report.
4. Owner of a high capacity well is required to identify the location of the high capacity well.
5. Delete provision in current statute regarding bottled water.

**F. Conditions on DNR Approval; High Capacity Wells in a Groundwater Protection Area and High Capacity Wells Outside of a Groundwater Protection Area That Have Greater Than 95% Water Loss or Have a Significant Environmental Impact on a Spring.**

1. Conditions to avoid significant environmental impact such as location, depth, pumping capacity, rate of flow, or ultimate use, except as in item 2., below.
2. If the well is a public utility water supply, conditions to balance the environmental impact of the well with the public benefit of the well related to health and safety.

**G. Environmental Review for Certain High Capacity Wells.**

1. A statutorily designated environmental review is required for a high capacity well proposed within a groundwater protection area or a high capacity well outside of a groundwater protection area that has water loss that exceeds 95% of the amount withdrawn or that may have a significant environmental impact on a spring.
2. A well identified in item 1. shall be subject to the environmental review process in the rules promulgated under s. 1.11 for a Type II action. (Section NR 150.03 (2) specifies that "Type II actions have the potential to cause significant environmental effects and may involve unresolved conflicts in the use of available resources.")

**IV. APPROVAL OF NEW WELLS OTHER THAN HIGH CAPACITY WELLS.**

**A. Statewide.**

1. Prior to construction, the owner of a well must report the location of the well to the DNR.

**V. ONE-TIME FEES FOR NEW WELLS.**

**A. High Capacity Wells; \$500.**

**B. Wells That Are Not High Capacity Wells; \$50.**

**VI. EXISTING HIGH CAPACITY WELLS.**

**A. High Capacity Wells That Are Approved Prior to, On or After the Effective Date of the Legislation.**

1. DNR may require modification of an approval if the owner changes or proposes to change the well or the operation of the well in a manner that is not authorized under the approval.
2. DNR may modify or rescind an approval if the well or use of the well is not in conformance with standards or conditions applicable to the original or modified approval of the well.

**B. High Capacity Wells That Are Approved Prior to the Effective Date of the Legislation.**

1. Approval for a preexisting high capacity well approved under the current statute continues under the new statute, subject to Part VI. A.
2. The owner of an existing high capacity well must provide DNR with accurate well location data and is required to submit an annual pumping report. DNR will determine by rule how and when these requirements are imposed.

## **VII. GROUNDWATER PROTECTION AREAS.**

### **A. Definition of Groundwater Protection Areas by Statute.**

1. A groundwater protection area is any area within 1,200 feet from an outstanding resource water or an exceptional resource water identified under s. 281.15, or a class I or class II trout stream (but excluding Class I or Class II trout streams that are farm drainage ditches with no prior stream history).
2. DNR shall identify trout streams and classify them as follows: Class I (text of s. NR 1.07 (7) (b) 1., Wis. Adm. Code), Class II (text of s. NR 1.07 (7) (b) 2.), and Class III (text of s. NR 1.07 (7) (b) 3.). DNR shall publish a list or map, or both, of all trout streams. DNR shall promulgate the list or map, or both, of Class I and Class II trout streams as an administrative rule. [Note: this provision may be better located in ch. 29, Stats.]
3. DNR shall create accurate images of groundwater protection areas--the maps are not rules.

### **B. Information on Groundwater Protection Areas.**

1. A person who proposes a high capacity well may request from DNR a determination if the proposed well is located within a groundwater protection area.

### **C. Mitigation Program.**

1. DNR shall establish a mitigation program for any wells that are located within a groundwater protection area, applicable only to wells that are in existence on the effective date of the legislation.
2. The purpose of mitigation is to reduce the effect that a well may have in the groundwater protection area, including abandonment of the well, replacement of the well at a different location, or management strategies.
3. DNR may order the owner to comply with a mitigation requirement but only if funding is available for the full cost of the mitigation. This provision does not apply if a well must be abandoned for issues regarding public health under ch. 280.

## **VIII. GROUNDWATER MANAGEMENT AREAS.**

### **A. DNR to Designate Two Groundwater Management Areas by Rule.**

1. DNR shall designate two groundwater management areas to consist of the two areas including and surrounding Brown County and Waukesha County, based on the line at which, on the effective date of the legislation, the groundwater potentiometric surface has been reduced 150 feet from the level at which it would be if no groundwater has been pumped. DNR shall include in the groundwater management area the entire area of each city, village, and town with part or all of its jurisdiction within the area of the 150-foot reduction.
2. DNR shall designate the two groundwater management areas within two years after the effective date of the legislation.

**B. Local Response in a Groundwater Management Area.**

1. DNR shall assist local governmental units in groundwater management areas by providing advice, incentives, and funding for research and for planning costs.

**IX. RESEARCH AND INFORMATION.**

**A. DNR to Undertake Monitoring and Research to Aid in Implementation of the New Statute; Groundwater Coordinating Council to Advise and Assist.**

1. Groundwater and surface water interaction.
2. Groundwater resource characterization.
3. Water management strategies.

**X. NONSTATUTORY PROVISIONS.**

**A. Include the Following Provisions in the Bill:**

1. DNR position authorizations (number and types of positions to be specified later).
2. Groundwater quantity committee to advise the Legislature.
  - a. Membership for the advisory committee will include the following members: four members appointed by the Governor, four members appointed by the Speaker of the Assembly, four members appointed by the Majority Leader of the Senate, and the Secretary of DNR or the Secretary's designee. Each appointing authority shall appoint an individual representing each of the following interests--industry, agriculture, environment, and municipal.
  - b. The Speaker of the Assembly and the Majority Leader of the Senate shall each designate one of their appointees as a co-chair of the committee.
  - c. No later than December 31, 2006, the committee shall report to the Legislature under s. 13.172 (3). The report shall recommend legislation for addressing the management of groundwater in groundwater management areas and other areas of the state in

which the long-term withdrawal of a groundwater in the area adversely affects the availability of water for use and adversely affects water quality due to the effects of the drawdown and in which there is a need for a coordinated response among groundwater users to address these effects.

- d. The recommendations under item c. shall be based on the development and implementation of a coordinated strategy for addressing these effects by affected local governmental units, with the assistance of DNR and other state agencies. The committee shall consult with affected local governmental units in the preparation of the recommendations. The recommendations shall include proposed administrative rules to implement the legislative recommendations.
  - e. No later than December 31, 2007, the committee shall review the implementation of the bill and report to the Legislature under s. 13.172 (3). The report shall recommend any appropriate changes in the regulation and management of high capacity wells in groundwater protection areas, that have a water loss of 95% or more, or that have a significant environmental impact on a spring. The report shall include recommendations for statutory authorization for management strategies that adopt the regulations as relevant information becomes available or groundwater conditions change.
  - f. The committee shall be staffed by DNR, and costs of the meetings paid by DNR.
  - g. If the groundwater quantity committee does not issue the report under item c., as directed, the DNR is required to promulgate rules to address groundwater quantity issues in groundwater management areas under its existing statutory authority.
3. Initial applicability provision that applies approval requirements for new wells under the bill to any well for which an approval request has not been submitted on the effective date of the legislation.
  4. Effective date of the legislation is the standard effective date on the day after publication.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

MCP:JES:all;wu;jal;ksm

## Tradewell, Becky

---

**From:** Stolzenberg, John  
**Sent:** Friday, February 20, 2004 11:27 AM  
**To:** Tradewell, Becky  
**Subject:** RE: Groundwater protection areas

Becky,

Keep the questions coming. Here are responses to the questions in your note.

1. I based the definition of "local governmental unit" on the definition in s. 66.0823 (2) (e), which includes "water utility district," plus a "local water authority," as specified in s. 66.0823 (2) (f). In this context, a water utility district appears to be a "utility district established under s. 66.0827 that provides water." I defer to you on how to refer to an entity created under s. 66.0823 - as a joint local water authority (the term used in s. 66.0823 (3) (a)) or local water authority (the term defined in s. 66.0823 (2) (f)).
2. Your interpretation of spring appears correct to me. I will confirm that the collapsing of the terms doesn't create any unintended consequences.
3. I'll check on whether the existing rules are adequate. My suspicion is that they aren't. In particular, the treatment of farm drainage ditches with no prior stream history that are trout streams may need clarification. Also, I can't tell if all class II trout streams are covered under s. NR 102.10 (1) (e) and 102.11 (1) (c).
4. Yes, it's necessary to use "potentiometric surface" because we want to get at changes in a confined aquifer (such as the deep aquifer under Waukesha). I had not defined it because I felt it was a technical term of art.

Here's my understanding of some relevant background information in general terms that may be of some help - The "potentiometric surface" is used to measure the amount of water pressure in a confined aquifer. An unconfined aquifer is exposed to the atmosphere. As such, when water is pumped from an unconfined aquifer, the water table (the uppermost level to which the soil is saturated with water) may go down but the potentiometric surface doesn't change since the unconfined aquifer wasn't under pressure to begin with. In the deep, confined aquifers, such as those under the "groundwater management areas," the pressure has decreased substantially due to excessive groundwater pumping but the level of the water has not gone down. This pressure drop is measured by a change in the potentiometric surface over a specified period and indicates a reduction in the amount of water available for pumping from the aquifer using a given amount of pumping effort.

My dictionary of scientific terms provides the following definitions:

- "Potentiometric surface" means an imaginary surface that represents the static head of groundwater and is defined by the level to which water will rise
- 
- "Static head" means the pressure of a fluid due to the [pressure] head of fluid above some reference point.
- 
- "[Pressure] head [of a fluid]" means (1) the height of a column of fluid necessary to develop a specific pressure, or (2) the pressure of water at a given point in a pipe arising from the pressure in it.

Let me know if you still want a definition of "potentiometric surface," and I'll propose one.

John

-----Original Message-----

**From:** Tradewell, Becky  
**Sent:** Thursday, February 19, 2004 5:01 PM  
**To:** Patronsky, Mark; Stolzenberg, John  
**Subject:** Groundwater protection areas

If you don't mind, I thought that I might ask some of the questions that come up in drafting the high cap well bill as I go along. Here are some:

1. I have in the past had some experiences with definitions of "local governmental unit" that refer to entities by names that do not seem to exist in the statutes. I see that two statutes refer to "water utility district" but don't see anywhere in the stats. that an entity with that exact name is created or authorized. There are utility districts under s. 66.0827. Should it say "utility district providing water" or something like that? Also, is "local water authority" meant to refer to the definition in s. 66.0823 (2) (f)? or maybe to joint local water authorities authorized under that section? Should the definition include municipal water districts under s. 198.22?

2. I am having trouble interpreting the definition of "spring." Does it mean: "an area of concentrated groundwater discharge occurring at or near the surface of the land and resulting in a current of flowing water with flows of a minimum of one cubic foot per second at least 80 percent of the time."?

3. I was looking at DNR's rules about trout streams and outstanding and exceptional resource waters. It looked to me as though all of the class I and II trout streams might be either outstanding or exceptional resource waters. I was wondering whether, if that is the case, it is necessary to include the rule making requirement about trout streams (part VII. A. 2.) in draft.

4. If it is necessary to use the term "potentiometric surface," I think it should probably be defined. I don't suppose that "water table" would do instead. The definition of potentiometric surface in DNR's rules is not very layperson friendly. I located some other definitions in the Internet, the simplest one of which is "The level to which water will rise in cased wells or other cased excavations into aquifers, measured as feet above mean sea level." The Nevada Division of Water Resources provides the following definitions:

**Potentiometric Surface** - A surface which represents the static head of ground water in tightly cased wells that tap a water-bearing rock unit (i.e., aquifer). In relation to an aquifer, the potentiometric surface is defined by the levels to which water will rise in tightly cased wells. If the head varies significantly with depth in the aquifer, then there may be more than one potentiometric surface. The *Water Table* is a particular potentiometric surface for an *Unconfined Aquifer*. This term has generally replaced the term *Piezometric Surface*.

**Static Head** - The difference in elevation in feet between the water surface of the body of water being pumped and the centerline of the discharge pipe at the point of release. It is the lift measured in feet.

**Water Table** - (1) The surface of a groundwater body at which the water is at atmospheric pressure; the upper surface of the ground water reservoir. (2) The upper surface of the *Saturated Zone* that determines the water level in a well in an *Unconfined Aquifer*. (3) The level of groundwater; the upper surface of the *Zone of Saturation* for underground water. It is an irregular surface with a slope or shape determined by the quantity of ground water and the permeability of the earth material. In general, it is highest beneath hills and mountains and lowest beneath valleys. Also referred to as *Ground Water Table*.

Thanks,  
Becky



## Tradewell, Becky

---

**From:** Stolzenberg, John  
**Sent:** Tuesday, February 24, 2004 11:24 AM  
**To:** Tradewell, Becky  
**Cc:** Patronsky, Mark  
**Subject:** RE: Groundwater

Becky,

Here's what I've learned in response to your notes on the treatment of trout streams in the groundwater draft:

- The DNR's definitions of "outstanding resource waters" and "exceptional resource waters" in ss. NR 102.10 and 102.11 identified between them at the time the rules were written all class I and many but not all class II trout streams.
- The DNR's Trout Stream publication now lists class I trout streams that are not in either of these sections. That is, the rule is now out of date with regard to its treatment of trout streams.
- Both class I and II trout streams can be in drainage ditches. Neither the rules nor the DNR's publication indicate if drainage ditches that are trout streams have a "prior stream history."

To deal with these observations in the draft, I'd suggest that conceptually the groundwater protection areas be applied to areas within 1200 feet of any of the following:

- An outstanding resource water that is not a trout stream.
- An exceptional resource water that is not a trout stream.
- A class I or II trout stream, excluding trout streams that are farm drainage ditches with no prior stream history.

To implement this applicability, the draft should direct the DNR to identify these waters by rule for the purpose of implementing the programs in the bill. For 18 months after the bill's effective date or until promulgation of the rule, whichever occurs first, authorize the DNR to determine the groundwater protection areas on a case by case basis, based on ss. NR 102.10 and 102.11, its trout stream publication and its knowledge of farm drainage ditches.

Let me know if you have any comments or questions on this approach to addressing the identification of groundwater protection areas.

John.

-----Original Message-----

**From:** Tradewell, Becky  
**Sent:** Monday, February 23, 2004 8:47 AM  
**To:** Stolzenberg, John  
**Subject:** FW: Groundwater

Another thought on this aspect of the draft: If any Class I or II trout streams that are drainage ditches with no prior stream history are identified as outstanding or exceptional resource waters, the draft will have to specify that those outstanding or exceptional resource waters are not groundwater protection areas, won't it?

Becky

-----Original Message-----

**From:** Tradewell, Becky  
**Sent:** Sunday, February 22, 2004 12:14 PM  
**To:** Stolzenberg, John  
**Subject:** Groundwater

John,

Two things on the issue of DNR promulgating rules classifying trout streams (part VII. A. 2. of the instructions):

1. If DNR has to promulgate rules that are necessary to determine what areas are groundwater protection areas, it

would seem that there would have to be a delayed date for putting the new regulatory system (or at least part of it) into effect.

2. The instructions don't say to require DNR in its rules to indicate which trout streams are farm drainage districts with no prior stream history. Should that be part of the rule-making requirement?

Becky

## Tradewell, Becky

---

**From:** Stolzenberg, John  
**Sent:** Tuesday, February 24, 2004 1:59 PM  
**To:** Tradewell, Becky  
**Cc:** Patronsky, Mark  
**Subject:** RE: Groundwater draft

Becky,

The provision on DNR promulgating rules if the committee doesn't issue a timely report is still wanted, as it provides a nudge to the committee to complete its work. Mark and I have identified ss. 281.12 (1) and 281.35, in addition to any further interpretations of s. 281.34, as created by the bill, as statutes that may provide authority for this rule-making.

John

-----Original Message-----

**From:** Tradewell, Becky  
**Sent:** Monday, February 23, 2004 12:04 PM  
**To:** Stolzenberg, John; Patronsky, Mark  
**Subject:** Groundwater draft

John and Mark,

I thought that it might help move this thing along if I gave you both a copy of the unedited groundwater draft as far as I have gotten with it to date. There are some notes with comments and questions in the draft. The main things that are missing (I think) are: any references to trout streams (the definition of groundwater protection area is incomplete), a definition of potentiometric surface, numbers of positions for DNR and amounts of appropriations, and the provision requiring DNR to promulgate rules if the groundwater quantity committee does not make the report it is supposed to make (Part X. A. 2. g.).

I have been pondering that last item. If a bill is going to require an agency to make rules (even if there is a condition that must be satisfied in order to trigger the requirement), this should be done in the statutes because it has a continuing legal effect (the Drafting Manual says not to draft a nonstat. requiring the promulgation of rules that the statutes only authorize an agency to promulgate). The instructions indicate that DNR should make the rules based on its existing statutory authority. The draft should identify the sources of that authority, especially because if it does not identify them, the rule-making requirement will itself look like a substantive source of rule-making authority (which I gather is not the intent). I am uncertain what authority the draft should reference, though, and would welcome your thoughts.

Let me know what you think about the draft or tell me if you would rather that I get it edited and submitted to the legislators first.

Becky

<< File: 03-4302/P1 >>

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*From John Stolzenberg  
2/24/03*

1 AN ACT ...; relating to: regulation of high capacity wells, notification of well  
2 construction, groundwater quantity management, and granting rule-making  
3 authority.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.  
For further information see the *state and local* fiscal estimate, which will be  
printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
5 the following amounts for the purposes indicated:

6  
7 20.370 Natural resources, department of  
8 (4) WATER

2003-04      2004-05

The appropriations in the draft use "groundwater withdrawal"; the nonstat position  
 authorization & study committee use "groundwater quantity"; LRB-4302/P1  
 The Kedzie/Johnson advisory committee used "groundwater quantity"; SECTION 1  
 of groundwater quality issues; that would be the preferred term. (to distinguish from  
 2003-04 2004-05

1	(cg) Groundwater withdrawal admin-				
2	istration	PR	A	-0-	-0-
3	(ch) Groundwater withdrawal				
4	research	PR	B	-0-	-0-
5	(6) ENVIRONMENTAL AIDS				
6	(eg) Groundwater mitigation and				
7	local assistance	PR	A	-0-	-0-

← should be "C"

SECTION 2. 20.370 (4) (cg) of the statutes is created to read:

20.370 (4) (cg) *Groundwater withdrawal administration.* From the general fund, from the moneys received under s. 281.34, the amounts in the schedule for the administration of the program under s. 281.34.

SECTION 3. 20.370 (4) (ch) of the statutes is created to read:

20.370 (4) (ch) *Groundwater withdrawal research.* Biennially, from the general fund, from the moneys received under s. 281.34, the amounts in the schedule for groundwater research and monitoring under s. 281.34 (10).

SECTION 4. 20.370 (6) (eg) of the statutes is created to read:

20.370 (6) (eg) *Groundwater mitigation and local assistance.* The amounts in the schedule for mitigation under s. 281.34 (8) (c) and funding to local governmental units under s. 281.34 (9) (b). All moneys received under s. 281.34 not appropriated under sub. (4) (cg) or (ch) shall be credited to this appropriation.

As a continuing appropriation from general fund,

\*\*\*\*NOTE: This restricts DNR to spending the amounts in the schedule but also keeps the money in the appropriation account so that DNR may later be authorized to expend it. If that was not what you intended, please let me know.

Concept to a continuing appropriation

✓ see above

21 SECTION 5. 281.17 (1) of the statutes is repealed.

Add an amendment to s. 23.11(5) that authorizes the DNR to require an environmental impact report under s. 281.34 (5)(b). (Some high cap wells may cost less than \$25,000)

1 SECTION 6. 281.34 of the statutes is created to read:

2 281.34 Groundwater withdrawals. (1) DEFINITIONS. In this section:

3 (a) "Groundwater protection area" means an area within 1,200 feet of an  
4 outstanding resource water or an exceptional resource water identified under s.  
5 281.15 or

6 (b) "High capacity well" means a well that, together with all other wells on the  
7 same property, has a capacity and rate of withdrawal of more than 100,000 gallons  
8 per day.

9 (c) "Local governmental unit" means a city, village, town, county, regional  
10 ~~planning commission~~, town sanitary district, utility district under s. 66.0827 that  
11 provides water, public inland lake protection and rehabilitation district that has  
12 town sanitary district powers under s. 33.22 (3), <sup>of</sup> joint local water authority created  
13 under s. 66.0823, ~~municipal water district under s. 198.22, or other local public entity~~  
14 ~~that provides water to or for the public.~~

SPR  
above } \*\*\*\*\*NOTE: I modified the definition somewhat, based in part on the definition of  
"local governmental unit" in SB 244, which I believe was developed in consultation with  
DNR. - No consultation

15 (d) "Owner" means a person who owns property on which a well is located or  
16 proposed to be located or the designated representative of such a person. in an aquifer

17 (e) "Potentiometric surface" means a measure of the pressure of groundwater based on  
18 the level to which groundwater will rise in a well placed in the aquifer.

18 (f) "Spring" means an area of concentrated groundwater discharge occurring  
19 at ~~or near~~ <sup>Delete</sup> the surface of the land that results in a current of flowing water with flows  
20 of a minimum of one cubic foot per second at least 80 percent of the time.

21 (g) "Water loss" means a loss of water from the basin from which it is withdrawn  
22 as a result of interbasin diversion or consumptive use or both.

Change PRA  
e-mail  
Notes

DNR staff  
prefer  
this definition  
for  
consistency  
with other  
definitions  
in other  
programs

1 (h) "Well" means any drillhole or other excavation or opening deeper than it is  
2 wide that extends more than 10 feet below the ground surface and is constructed for  
3 the purpose of obtaining groundwater.

4 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. An owner shall apply to the  
5 department for approval before construction of a high capacity well begins. No  
6 person may construct or withdraw water from a high capacity well without the  
7 approval of the department under this section or under s. 281.17 (1), 2001 stats. An  
8 owner applying for approval under this subsection shall pay a fee of \$500.

9 (3) NOTIFICATION REQUIRED FOR OTHER WELLS. An owner shall notify the  
10 department of the location of a well that is not a high capacity well before  
11 construction of the well begins. An owner notifying the department under this  
12 subsection shall pay a fee of \$50.

13 (4) ENVIRONMENTAL REVIEW. The department shall review an application for  
14 approval of any of the following using the environmental review process in its rules  
15 promulgated under s. 1.11 applicable to an action that has the potential to cause  
16 significant environmental effects and that may involve unresolved conflicts in the  
17 use of available resources:

OK  
\*\*\*\*NOTE: Another option would be to cross-reference the rule, but we usually try  
to avoid that.

18 (a) A high capacity well that is located in a groundwater protection area.

19 (b) A high capacity well with a water loss of 95 percent of the amount of water  
20 withdrawn.

21 (c) A high capacity well that may have a significant environmental impact on  
22 a spring.

it should be explicit that

For all types of approvals in sub. (5), the conditions in the approval can cover any of the items in existing s. 201.17(1)(b) (intro.) [our instructions weren't clear on replicating the types of conditions]

1

(5) STANDARDS AND CONDITIONS FOR APPROVAL. (a) *Public water supply* If the department determines that a proposed high capacity well may impair the water supply of a public utility engaged in furnishing water to or for the public, the department may not approve the high capacity well unless it includes in the approval conditions that will ensure that the water supply of the public utility will not be impaired.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

(b) *Groundwater protection area*. 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (3), that an environmental impact report under s. 23.11 (5) or an environmental impact statement under s. 1.11 (2) must be prepared for a proposed high capacity well located in a groundwater protection area, the department may not approve the high capacity well unless it includes in the approval conditions that ensure that the high capacity well does not cause significant environmental impact.

See ss. NR 150.26(1)(c) 2. and 150.25.  
Are these sufficient to respond to your concerns in this note?

\*\*\*\*NOTE: It is not clear to me how DNR decides whether an environmental impact report must be prepared and, therefore, whether that works as a trigger for this requirement and those under pars. (c) and (d) 1.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23

2. Subdivision 1. does not apply to a proposed high capacity well that is located in a groundwater protection area and that is a water supply for a public utility engaged in supplying water to or for the public, if the department determines that there is no other reasonable alternative location for a well and includes in the approval conditions that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

(c) *High water loss*. If the department determines, under the environmental review process in sub. (3), that an environmental impact report under s. 23.11 (5) or an environmental impact statement under s. 1.11 (2) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water



1 withdrawn, the department may not approve the high capacity well unless it  
2 includes in the approval conditions that ensure that the high capacity well does not  
3 cause significant environmental impact.

4 (d) *Impact on a spring.* 1. Except as provided in sub. 2., if the department  
5 determines, under the environmental review process in sub. (3), that an  
6 environmental impact report under s. 23.11 (5) or an environmental impact  
7 statement under s. 1.11 (2) must be prepared for a proposed high capacity well that  
8 may have a significant environmental impact on a spring, the department may not  
9 approve the high capacity well unless it includes in the approval conditions that  
10 ensure that the high capacity well does not cause significant environmental impact.

11 2. Subdivision 1. does not apply to a proposed high capacity well <sup>delete</sup> that that may  
12 have a significant environmental impact on a spring and that is a water supply for  
13 a public utility engaged in supplying water to or for the public, if the department  
14 determines that there is no other reasonable alternative location for a well and  
15 includes in the approval conditions that ensure that the environmental impact of the  
16 well is balanced by the public benefit of the well related to public health and safety.

17 (e) *All high capacity wells.* 1. If s. 281.35 applies to a proposed high capacity  
18 well, the department shall include in the approval conditions that ensure that the  
19 high capacity well complies with s. 281.35.

20 2. The department shall include in the approval for each high capacity well  
21 requirements that the owner identify the location of the high capacity well and  
22 submit an annual pumping report.

23 (6) **PREEXISTING HIGH CAPACITY WELLS.** (a) The owner of a high capacity well for  
24 which the department issued an approval under 281.17 (1), 2001 stats., shall provide

1 to the department information concerning the location of the well and an annual  
2 pumping report.

3 (b) The department shall promulgate rules specifying the date and method by  
4 which owners of high capacity wells shall comply with par. (a).

5 (7) MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS. (a) The  
6 department may modify the approval of a high capacity well issued under this section  
7 or under s. 281.17 (1), 2001 stats., if the owner changes or proposes to change the high  
8 capacity well or the operation of the high capacity well in a manner that is not  
9 authorized under the approval.

10 (b) The department may modify or rescind the approval of a high capacity well  
11 issued under this section or under s. 281.17 (1), 2001 stats., if the high capacity well  
12 or the <sup>operation or</sup> use of the high capacity well is not in conformance with standards or conditions  
13 applicable to the approval of the high capacity well.

see above }  
\*\*\*\*NOTE: Is the difference between "operation" in par. (a) and "use" in par. (b) intentional?

14 (8) GROUNDWATER PROTECTION AREAS. (a) The department shall create accurate  
15 images of groundwater protection areas.

16 (b) A person who proposes to construct a high capacity well may request the  
17 department to determine whether the proposed location of the high capacity well is  
18 within a groundwater protection area.

19 (c) The department shall administer a program to mitigate the effects of wells  
20 constructed before the effective date of this paragraph .... [revisor inserts date], that  
21 are located in groundwater protection areas. Mitigation may include abandonment  
22 of wells, replacement of wells at different locations, and management strategies.  
23 Under the mitigation program, the department may order the owner of a well

DNR staff  
now feel  
that  
(a) isn't  
needed.  
A par. (b)  
review and  
modification  
may be initiated  
by a well owner  
in a DNR enforcement  
action.

5  
6  
7  
8  
9  
12

1 constructed before the effective date of the paragraph .... [revisor inserts date], that  
2 is located in a groundwater protection area to undertake mitigation but only if the  
3 department provides funding for the full cost of the mitigation, except that full  
4 funding is not required if the department is authorized under ch. 280 to require the  
5 well to be abandoned because of issues regarding public health.

6 (9) GROUNDWATER MANAGEMENT AREAS. (a) The department shall, by rule,  
7 designate 2 groundwater management areas including and surrounding Brown  
8 County and Waukesha County consisting of the entire area of each city, village, and  
9 town at least a portion of which is within the area in which, on the effective date of  
10 this paragraph .... [revisor inserts date], the groundwater potentiometric surface has  
11 been reduced 150 feet or more from the level at which the potentiometric surface  
12 would be if no groundwater had been pumped.

13 (b) The department shall assist local governmental units <sup>and regional planning commission</sup> in groundwater  
14 management areas designated under par. (a) by providing advice, incentives, and  
15 funding for research and planning related to groundwater management.

16 (10) RESEARCH AND MONITORING. To aid in the administration of this section the  
17 department shall, with the advice of the groundwater coordinating council, conduct  
18 monitoring and research related to all of the following :

19 (a) Interaction of groundwater and surface water.

20 (b) Characterization of groundwater resources.

21 (c) Strategies for managing water.

22 SECTION 7. 281.35 (1) (a) of the statutes is amended to read:

23 281.35 (1) (a) "Approval" means a permit issued under s. 30.18 or an approval  
24 under s. 281.17 (1), 2001 stats., or s. 281.34 or 281.41.

1           **SECTION 8.** 281.35 (1) (b) 2. of the statutes is amended to read:

2           281.35 (1) (b) 2. If subd. 1. does not apply, the highest average daily water loss  
3 over any 30-day period that is reported to the department or the public service  
4 commission under sub. (3) (c) or s. 30.18 (6) (c), 196.98, 281.17 (1) 281.34, or 281.41  
5 or s. 281.17 (1), 2001 stats.

6           History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.

7           **SECTION 9.** 281.35 (4) (a) 2. of the statutes is amended to read:

8           281.35 (4) (a) 2. A person who is operating a well under an approval issued  
9 under s. 281.17 (1) ~~or who is required to obtain an approval under that paragraph~~  
10 ~~before constructing or installing a well~~, 2001 stats.

11           History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.

12           **SECTION 10.** 281.35 (4) (a) 2m. of the statutes is created to read:

13           281.35 (4) (a) 2m. A person who is operating a well under an approval issued  
14 under s. 281.34 or who is required to obtain an approval under that section before  
15 constructing a well.

16           **SECTION 11.** 281.35 (4) (b) (intro.) of the statutes is amended to read:

17           281.35 (4) (b) (intro.) Before any person specified in par. (a) may begin a new  
18 withdrawal or increase the amount of an existing withdrawal, the person shall apply  
19 to the department under s. 30.18, 281.17 (1) 281.34, or 281.41 for a new approval or  
20 a modification of its existing approval if either of the following conditions applies:

21           History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.

22           **SECTION 12.** 293.65 (3) of the statutes is amended to read:

23           293.65 (3) WITHDRAWAL OF GROUNDWATER; DEWATERING; PERMIT REQUIREMENTS. (a)  
An approval under s. 281.17 (1) 281.34 is required to withdraw groundwater or to  
dewater mines if the capacity and rate of withdrawal of all wells involved in the  
withdrawal of groundwater or the dewatering of mines exceeds 100,000 gallons each

1 day. A permit under s. 283.31 is required to discharge pollutants resulting from the  
2 dewatering of mines.

3 (b) The department may not issue an approval under s. ~~281.17 (1)~~ 281.34 if the  
4 withdrawal of groundwater for prospecting or mining purposes or the dewatering of  
5 mines will result in the unreasonable detriment of public or private water supplies  
6 or the unreasonable detriment of public rights in the waters of the state. No  
7 withdrawal of groundwater or dewatering of mines may be made to the unreasonable  
8 detriment of public or private water supplies or the unreasonable detriment of public  
9 rights in the waters of the state.

10 History: 1977 c. 420; 1979 c. 221; 1981 c. 86 ss. 38 to 54, 64; Stats. 1981 s. 144.855; 1985 a. 60 s. 24; 1987 a. 374; 1993 a. 16; 1995 a. 227 s. 783; Stats. 1995 s. 293.65.

**SECTION 13.** 299.05 (2) (b) of the statutes is amended to read:

11 299.05 (2) (b) Approvals under s. ~~281.17 (1)~~ 281.34.

12 History: 1997 a. 27, 301; 2003 a. 118.

**SECTION 14. Nonstatutory provisions.**

13 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department  
14 of natural resources are increased by ?? PR positions on July 1, 2004, to be funded  
15 from the appropriation under s. 20.370 (4) (cg), as created by this act, for  
16 groundwater quantity management.

17 (2) GROUNDWATER QUANTITY COMMITTEE.

18 (a) In this subsection:

19 1. "Groundwater protection area" has the meaning given in section 281.34 (1)  
20 (a) of the statutes, as created by this act.

21 2. "High capacity well" has the meaning given in section 281.34 (1) (b) of the  
22 statutes, as created by this act.

23 3. "Local governmental unit" has the meaning given in section 281.34 (1) (c) of  
24 the statutes, as created by this act.

1           4. “Spring” has the meaning given in section 281.34 (1) (f) of the statutes, as  
2 created by this act.

3           5. Water loss” has the meaning given in section 281.34 (1) (g) of the statutes,  
4 as created by this act.

5           (b) There is created a groundwater quantity committee consisting of the  
6 following members:

7           1. Four persons appointed by the governor.

8           2. Four persons appointed by the speaker of the assembly.

9           3. Four persons appointed by the majority leader of the senate.

10          4. The secretary of natural resources or the secretary’s designee.

11          (c) Each appointing authority under paragraph (a) 1. to 3. shall appoint one  
12 member representing each of the following interests:

13          1. Industrial.

14          2. Agricultural.

15          3. Environmental.

16          4. Municipal.

17          (d) The speaker of the assembly and the majority leader of the senate shall each  
18 designate one appointee as cochairperson of the groundwater quantity committee.

19          (e) No later than December 31, 2006, the groundwater quantity committee  
20 shall report to the standing committees of the legislature with jurisdiction over  
21 environmental matters, in the manner provided in section 13.172 (3) of the statutes,  
22 recommendations for legislation to address the management of groundwater in the  
23 following areas, and administrative rules to implement the legislation:

24          1. Groundwater management areas, as designated under section 281.34 (9) (a)  
25 of the statutes, as created by this act.

This elaboration clarifies that <sup>many</sup> local gov'ts. have roles as planners & regulators and as water users.

2003 - 2004 Legislature

the state, local governmental units, and <sup>regional planning commissions</sup> public and private

LRB-4302/P1  
RCT.....  
SECTION 14

1           2. Other areas of the state in which the withdrawal of groundwater over the  
2 long term adversely affects the availability of water for use or adversely affects water  
3 quality due to the effects of drawdown of the groundwater and in which there is a  
4 need for a coordinated response among users of groundwater to address the effects  
5 on groundwater availability or quality.

\*\*\*\*NOTE: Have I correctly interpreted this provision?

6           (f) The groundwater quantity committee shall recommend under paragraph (e)  
7 a coordinated strategy for addressing groundwater management issues by affected  
8 local governmental units <sup>and regional planning commissions</sup> with the assistance of the department of natural resources  
9 and other state agencies. The committee shall consult with affected local  
10 governmental units in the preparation of the recommendations under paragraph (e).

11           (g) The groundwater quantity committee shall review the implementation of  
12 section 281.34 of the statutes, as created by this act. No later than December 31,  
13 2007, the groundwater quantity committee shall report to the standing committees  
14 of the legislature with jurisdiction over environmental matters, in the manner  
15 provided in section 13.172 (3) of the statutes, the results of this review and the  
16 committee's recommendations for changes in the regulation of high capacity wells  
17 that are in groundwater protection areas, that have a water loss of 95% or more, or  
18 that have a significant environmental impact on a spring. The committee shall  
19 include in the report recommendations for statutory authorization for groundwater  
20 management strategies that permit regulation of high capacity wells <sup>adaptation of the</sup> to change as  
21 relevant information becomes available or groundwater conditions change.

(see above) \*\*\*\*NOTE: Have I correctly interpreted this provision?

22           (h) The department of natural resources shall staff and provide funding for the  
23 groundwater quantity committee.

We'd like to include "adapt" or "adaptation" in the text. Our drafting instructions incorrectly used "adopt" rather than "adapt."

1 (i) The groundwater quantity committee terminates on December 31, 2007.

2 **SECTION 15. Initial applicability.**

3 (1) HIGH CAPACITY WELLS. The treatment of sections 281.17 (1) and 281.34 (2) of  
4 the statutes first applies to an application for approval of a high capacity well that  
5 is received by the department of natural resources on the day after the effective date  
6 of this subsection.

7

(END)

+ see the e-mail notes on DNR promulgating rules if the  
committee doesn't issue a timely report on GMA's.