

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
 Wanted: As time permits Same as LRB:
 For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
 May Contact: Drafter: rkite
 Subject: Environment - water quality Addl. Drafters:
 Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
 Requester's email: Sen.Kedzie@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	rosrose 4/15/2013		
/P2	rkite 6/10/2013	evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		
/P3	rkite 6/11/2013	evinz 6/10/2013	jmurphy 6/10/2013	_____	mbarman 6/10/2013		State
/1	rkite	evinz	jmurphy	_____	sbasford		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/13/2013	6/12/2013	6/12/2013	_____	6/12/2013		
/2	rkite 8/15/2013	evinz 6/13/2013	lparisi 6/13/2013	_____	lparisi 6/13/2013	lparisi 6/13/2013	State
/3		evinz 8/19/2013	jmurphy 8/19/2013	_____	sbasford 8/19/2013	sbasford 8/19/2013	State

FE Sent For:

<END>

6
10/1/2013

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: rkite
Subject: Environment - water quality Addl. Drafters:
Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	srose 4/15/2013		
/P2	rkite 6/10/2013	evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		
/P3	rkite 6/11/2013	evinz 6/10/2013	jmurphy 6/10/2013	_____	mbarman 6/10/2013		State
/1	rkite	evinz	jmurphy	_____	sbasford		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/13/2013	6/12/2013	6/12/2013	_____	6/12/2013		
/2		evinz 6/13/2013	lparisi 6/13/2013	_____	lparisi 6/13/2013	lparisi 6/13/2013	State

FE Sent For:

13 eev
8/19/13

13 eev 8/19/13 Jm+PH
8/19
<END>

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: rkite
Subject: Environment - water quality Addl. Drafters:
Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	srose 4/15/2013		
/P2	rkite 6/10/2013	evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		
/P3	rkite 6/11/2013	evinz 6/10/2013	jmurphy 6/10/2013	_____	mbarman 6/10/2013		State
/1	rkite	evinz	jmurphy	_____	sbasford		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/13/2013	6/12/2013	6/12/2013	_____	6/12/2013		
/2		evinz 6/13/2013	lparisi 6/13/2013	_____	lparisi 6/13/2013		State

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: rkite
Subject: Environment - water quality Addl. Drafters:
Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	srose 4/15/2013		
/P2	rkite 6/10/2013	evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		
/P3	rkite 6/11/2013	evinz 6/10/2013	jmurphy 6/10/2013	_____	mbarman 6/10/2013		State
/1		evinz	jmurphy	_____	sbasford		State

Vers. Drafted

Reviewed
6/12/2013

Typed
6/12/2013

Proofed

Submitted
6/12/2013

Jacketed

Required

FE Sent For:

12 eev
6/13/13

[Handwritten signature] 6/13

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: rkite
Subject: Environment - water quality Addl. Drafters:
Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	srose 4/15/2013		
/P2	rkite 6/10/2013	evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		
/P3		evinz 6/10/2013	jmurphy 6/10/2013	_____	mbarman 6/10/2013		State

FE Sent For: *Hev*
6/12/13 *DM* *6/12* *Just J* *6/12*
<END>

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
 Wanted: As time permits Same as LRB:
 For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
 May Contact: Drafter: rkite
 Subject: Environment - water quality Addl. Drafters:
 Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
 Requester's email: Sen.Kedzie@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 5/2/2013	evinz 4/15/2013	rschluet 4/15/2013	_____	srose 4/15/2013		
/P2		evinz 5/3/2013	phenry 5/3/2013	_____	mbarman 5/3/2013		

FE Sent For:

*1p3 eev
6/10/13*

*dm
6/10
<END>*

*Jan J
6/10*

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
 Wanted: As time permits Same as LRB:
 For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
 May Contact: Drafter: rkite
 Subject: Environment - water quality Addl. Drafters:
 Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
 Requester's email: Sen.Kedzie@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Limit DNR's authority to regulate 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>
/P1	rkite 4/12/2013	evinz 4/15/2013	rschluet 4/15/2013	<u> </u> <u> </u>	srose 4/15/2013		

FE Sent For: *p2 elev 5/3/13* *5/13 ph* *ph*

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/13/2012 Received By: btradewe
 Wanted: As time permits Same as LRB:
 For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
 May Contact: Drafter: rkite
 Subject: Environment - water quality Addl. Drafters:
 Nat. Res. - nav. waters Extra Copies:

Submit via email: YES
 Requester's email: Sen.Kedzie@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:


Limit DNR's authority to regulate 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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/P1	btradewe	pl eev 4/15/13					
-----	----------	----------------	---	--	--	--	--

FE Sent For:

<END>

Tradewell, Becky

From: Johnson, Dan
Sent: Thursday, December 13, 2012 12:57 PM
To: Tradewell, Becky
Subject: legislative bill drafting request
Attachments: High Capacity Wells - Legislative Request.docx

Hello Becky,

Please see the attached request from Senator Kedzie for a legislative draft. At this time, we would like this done as a preliminary draft. Please let me know if you have any questions.

Thank you!

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635

Legislative Intent:

On July 6, 2011, the Wisconsin Supreme Court decided the Wisconsin Department of Natural Resources retains broad “authority and general duty to protect and manage waters of the state”.
(Lake Beulah Management District v. Wisconsin DNR)

The Courts applied that broad authority to the regulation of high capacity wells, but do not take into consideration the limitations placed on the DNR through 2003 Wisconsin Act 310. Instead, the Courts defer to broad authority described under s. 281.11 and s. 281.12 Wis. Stats, which is a preamble stating a general purpose of the DNR’s authority over the waters of the state.

While the Courts held the Legislature did not place explicit limitations on the DNR’s authority to regulate high capacity wells, we believe it did under Act 310. That said, in light of the Court’s decision, we are asking for revisions to s. 281.34 to expressly limit the authority of the DNR in regards to its review and regulation of high capacity wells, and reaffirm the legislative intent of 2003 Wisconsin Act 310.

Legislative Drafting Request:

Revise s. 281.34, Wis. Stats. to reaffirm limitations on the authority of the Wisconsin Department of Natural Resources (DNR) authority over high capacity wells, as originally intended in 2003 Wisconsin Act 310. Drafting instructions follow.

Drafting Instructions:

281.34 - Definitions

“Existing well” means a well or high capacity well that has been approved by the department prior to the effective date of this chapter.

“Proposed well” or “proposed high capacity well” means a proposal by an applicant to construct a well or high capacity well that creates a new withdrawal. Proposed well or proposed high capacity well does not include an existing well, or the reconstruction or replacement of a well.

“Reconstruction” means modifying the original construction of a well. Reconstruction includes, but is not limited to, deepening, lining, installing or replacing a screen, underreaming, hydrofracturing and blasting. NR 820.12(18)

“Replacement well” means a well or high capacity well that is drilled to replace an existing well or high capacity well in accordance with sub.().

“Withdrawal” has the meaning specified in s. 281.35(1)(m)

281.34 () TRANSFER OF APPROVAL A well owner may transfer an approval issued under this section or under s. 281.17(1), 2001 stats. without department review. No fee shall be required for a transfer of an approval issued under this section or under r under s. 281.17(1), 2001 stats. An owner shall notify the department when transferring an approval issued under this section or under s. 281.17(1), 2001 stats. on a form prescribed by the department.

() REPLACEMENT WELLS. A replacement well must be drilled to substantially the same depth and within a 75 foot radius of the existing well it replaces. Conditions and restrictions may be imposed on a replacement well but shall be limited to the original conditions and restrictions contained in the existing well approval, unless the replacement well is newly located in a groundwater protection area under (5)(b). Replacement wells shall be constructed in accordance with well construction standards that are in effect on the date that the replacement well is drilled.

281.34(4) ENVIRONMENTAL REVIEW

281.34(4)(a) (intro.) The department shall only conduct and environmental review of an application for approval of any of the following proposed high capacity wells. The department shall use using the environmental review process in its rules promulgated under s. 1.11.:

1. A proposed high capacity well that is located in a groundwater protection area, or a replacement well that is newly located in a groundwater protection area.
2. A proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn.
3. A proposed high capacity well that may have a significant environmental impact on a spring.

281.35

70 { 281.34(4)(c) All other proposed high capacity wells that meet the criteria under sub.(5) shall be approved by the department.

70 { 281.34(5) STANDARDS AND CONDITIONS FOR APPROVAL. (intro) The department shall issue an approval for a proposed high capacity well that meets the following standards and conditions. The department's authority to consider the environmental impacts of a proposed high capacity well is expressly limited to proposed wells that meet the following standards and conditions.

281.34(7) MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS. The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the department modifies or rescinds the approval because the high capacity well or the use of the high capacity well is not in conformance with the standards or conditions applicable to the approval of the high capacity well. under sub.(5).

281.34 (11) RULE MAKING. The department's rulemaking authority is explicitly limited to the specific grants of rulemaking authority under subs. (6), (8), and (9).

NONSTATUTORY PROVISION. At the request of a person issued a well approval between July 6, 2011 and the date of publication of this Act, the department shall re-issue the approval to comply with the provisions of s. 281.34 as amended by this Act.

Kite, Robin

From: Johnson, Dan
Sent: Thursday, March 07, 2013 4:28 PM
To: Kite, Robin
Subject: RE: High capacity well drafting request

Hi Robin,

Senator Kedzie and I have conferred and would now like to offer slightly new drafting instructions for revisions to s. 281.34. Please make this a preliminary draft at this time, and of course, let me know if you have any questions or concerns with these instructions.

Thank you!

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635



High Capacity
Wells - Legislat...

From: Kite, Robin
Sent: Thursday, February 21, 2013 11:40 AM
To: Johnson, Dan
Subject: RE: High capacity well drafting request

Thanks for the update, Dan.

Robin

From: Johnson, Dan
Sent: Thursday, February 21, 2013 11:12 AM
To: Kite, Robin
Subject: RE: High capacity well drafting request

Hi Robin,

We're still working on the issue you raised regarding the groundwater bill draft, and wanted to let you know we believe we have resolved the issue of expressly limiting the DNR's authority to review certain proposed high cap wells (GPA wells, wells used for bottling, and wells that impact a spring). In addition, we are working towards a solution for all other types of proposed high capacity wells.

Instead of saying “all other proposed high cap well that meet the criteria under sub.(5) shall be approved”, we’re considering “all other proposed high capacity wells shall be approved by the department, however the department may impose conditions on the approval similar to those under sub(5).” Of course, as you pointed out, the “shall approve” language would probably not apply to those proposed high cap wells under 281.35(4) though (6). But again, we’re still working on this so I’m not submitting a formal drafting request to you at this time. But I just wanted to let you know we’re getting close to where we want this to be.

Thanks again!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Monday, February 11, 2013 4:42 PM
To: Johnson, Dan
Subject: RE: High capacity well drafting request

You’re welcome. Again, feel free to give me a call if you want to discuss this further after you have a chance to confer with Senator Kedzie.

Robin

From: Johnson, Dan
Sent: Monday, February 11, 2013 4:39 PM
To: Kite, Robin
Subject: RE: High capacity well drafting request

Hi Robin,

I understand what you’re saying, and thanks for bringing it to my attention. I’m going to discuss this with Senator Kedzie tomorrow, or the next day, to get his interpretation and intent for this particular provision. I’ll be back in touch once I have it all squared away. Thanks again...

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Monday, February 11, 2013 4:24 PM
To: Johnson, Dan
Subject: High capacity well drafting request

Dan:

As I continue to work on this draft, I wanted to bring some issues to your attention.

In part of the draft language you provided, you specify that DNR may only conduct an environmental review of a high capacity if it falls into one of the 3 categories under s. 281.34 (4) (a). The language indicates that DNR must grant an approval for any **other** high capacity well that meets "the criteria" under s. 281.34 (5). But s. 281.34 (5) does not contain criteria for the issuance of approvals. That is, s. 281.34 does not specify the criteria that an applicant must meet in order to obtain an approval. Instead it imposes requirements on DNR. It requires DNR to include certain conditions in the approval that it issues to ensure that the well meets the standard specified in the relevant provision under sub. (5).

Furthermore, even if there were criteria established in s. 281.34, it would be problematic to provide that if an applicant met those criteria then DNR must issue the approval because there are requirements in other statutes that also must be met by certain applicants, for example, in s. 281.35.

Let me know if perhaps I have misunderstood the intent of your proposed language. I'd be happy, of course, to discuss all of this with you at your convenience.

Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291

Drafting Instructions:

281.34 - Definitions

no approval needed if not high cap just notice see (2) what about fee for notice?

"Existing well" means a well or high capacity well that has been approved by the department prior to the effective date of this chapter.

"Proposed well" or "proposed high capacity well" means a proposal by an applicant to construct a well or high capacity well that creates a new withdrawal. Proposed well or proposed high capacity well does not include an existing well, or the reconstruction or replacement of a well.

"Reconstruction" means modifying the original construction of a well. Reconstruction includes, but is not limited to, deepening, lining, installing or replacing a screen, underreaming, hydrofracturing and blasting.

"Replacement well" means a well or high capacity well that is drilled to replace an existing well or high capacity well in accordance with sub.(.).

"Withdrawal" has the meaning specified in s. 281.35(1)(m)

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

(b) Within 65 business days from the time of receipt of a complete application for any proposed high capacity well, the department shall take action to approve, reject, or conditionally approve the application and shall state in writing any conditions for approval or reasons for rejection. The conditions of any approval are expressly limited to those authorized under sub. (5). Failure of the department to act before the expiration of the time period allowed shall constitute an approval of the proposed well, and upon demand a written certificate of approval shall be issued.

(c) A well owner may transfer an approval issued under this section or under s. 281.17(1), 2001 stats. without department review. No fee shall be required for a transfer of an approval issued under this section or under r under s. 281.17(1), 2001 stats. An owner shall notify the department when transferring an approval issued under this section or under s. 281.17(1), 2001 stats. on a form prescribed by the department.

() REPLACEMENT WELLS. A replacement well must be drilled to substantially the same depth and within a 75 foot radius of the existing well it replaces. Conditions and restrictions may be imposed on a replacement well but shall be limited to the original conditions and restrictions contained in the existing well approval, unless the replacement well is newly located in a groundwater protection area under (5)(b). Replacement wells shall be constructed in accordance with well construction standards that are in effect on the date that the replacement well is drilled.

New well?

NR 812.07 (85)

is this needed? yes

see note

NR 812.07 (85)

OK to add per Dan

look at (5)(b) closely see note

well 281.34 281.35 281.36 281.37 281.38 281.39 281.40 281.41 281.42 281.43 281.44 281.45 281.46 281.47 281.48 281.49 281.50 281.51 281.52 281.53 281.54 281.55 281.56 281.57 281.58 281.59 281.60 281.61 281.62 281.63 281.64 281.65 281.66 281.67 281.68 281.69 281.70 281.71 281.72 281.73 281.74 281.75 281.76 281.77 281.78 281.79 281.80 281.81 281.82 281.83 281.84 281.85 281.86 281.87 281.88 281.89 281.90 281.91 281.92 281.93 281.94 281.95 281.96 281.97 281.98 281.99 281.100

what if 15' then issue... must keep well construction standards

but at least 75 ft 2 could happen per Dan

281.34(4) ENVIRONMENTAL REVIEW

✓ 281.34(4)(a) (intro.) The department's authority to conduct an environmental ~~shall~~ review of an application for approval of a proposed high capacity well is expressly limited to applications for ~~any~~ of the following proposed high capacity wells. The department shall use ~~using~~ the environmental review process in its rules promulgated under s. 1.11 to review such applications:

1. A proposed high capacity well that is located in a groundwater protection area.
2. A proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn.
3. A proposed high capacity well that may have a significant environmental impact on a spring.

281.34(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 proposed high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that will ensure that the water supply of the public utility will not be impaired.

(b) *Groundwater protection area.*

✓ 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well located in a groundwater protection area, the department may not approve the proposed high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use of the proposed well, that ensure that the proposed high capacity well does not cause significant environmental impact to a groundwater protection area.

?
0
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 proposed well and is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use of the proposed well, that ensure that the environmental impact of the proposed well is balanced by the public benefit of the well related to public health and safety.

not accurate
(c) *High water loss.* If the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn, the department may not approve the proposed high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

↑
proposed

(d) *Impact on a spring.*

1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well that may have a significant environmental impact on a spring, the department may not approve the proposed high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use of the proposed well, that ensure that the high capacity well does not cause significant environmental impact to a spring.

(dm) *Water supply service area plan.* If a proposed high capacity well is covered by an approved water supply service area plan under s. 281.348, the department may not approve the proposed high capacity well unless it is consistent with that plan.

(e) *All high capacity wells.*

1. The department shall approve all other high capacity wells subject to any conditions required by the department in the well approval. The department is expressly limited to impose conditions on a well's location, depth, pumping capacity and rate of flow in the approval of any high capacity well not subject to par. (a) through (dm) of this subsection.

2. If s. 281.35 (4) applies to a proposed high capacity well, the department shall include in the approval conditions that ensure that the high capacity well complies with s. 281.35 (4) to (6).

3. The department shall include in the approval for ~~each~~ every proposed high capacity well requirements that the owner identify the location of the high capacity well and submit an annual pumping report.

281.34(7) *MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.*

The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the department modifies or rescinds the approval because the high capacity well or the use of the high capacity well is ~~not in conformance with standards or conditions applicable to the approval of the high capacity well.~~ in violation of its approval.

281.34 (11) *RULE MAKING.* The department's rulemaking authority is explicitly limited to the specific grants of rulemaking authority under subs. (6), (8), and (9).

NONSTATUTORY PROVISION. At the request of a person issued a well approval between July 6, 2011 and the date of publication of this Act, the department shall re-issue the approval to comply with the provisions of s. 281.34 as amended by this Act.

(b)(b)
(8)(a)
(a)(a), (c)

new
replacement
reconstructed
etc

DN

Meeting w/ Dan Johnson in Sen. Kestzie's office 3-25-13
 "Proposed well" - used in case (Lake Beulah)
 wants to use this term

An existing well could become a high cap well

To reconstruct or replace HCP - also need approval

limit conditions - location, depth, ... ultimate
 use - limit just to these (see sub (5))

if put ~~well~~ replacement well in GPA,
 must go thru GPA process

(2) Change first sentence -

An owner shall apply for approval
~~by~~ before construction of proposed
 HCP, or reconstruction or before replacement
 change title to: "Approval Required"

Kite, Robin

From: Johnson, Dan
Sent: Monday, April 08, 2013 10:19 AM
To: Kite, Robin
Subject: RE: High capacity well drafting request

Hi Robin,

Thanks for your questions, my responses are below. In addition, I am including responses to the meeting we had about a week ago. Thanks!

Dan Johnson

Senator Neal Kedzie

11th Senate District

608.266.2635

1. Am I correct that one of the objectives of this proposal is to prohibit (with certain exceptions) DNR from requiring environmental review of an application for approval of a high cap well that is being reconstructed (that is, it is an existing well that is being modified) or a high cap well that is being constructed to replace an existing well?

Yes, that is correct. Although, we would not use the word "prohibit", but rather stick with our current language which says the DNR's review is "expressly limited" to certain types of wells.

2. If so, does the limitation apply to a well that is not a high cap well but that is being replaced by a high cap well? What about a well that is being reconstructed to become a high cap well (assuming this is possible)? Is DNR supposed to allow environmental review of these wells, or not?

No, a well cannot be reconstructed in order to become a high-cap well. Increasing the pumping capacity does not fall under the category of a reconstructed well.

3. Does the 65 day review deadline apply to approvals for replacement wells and reconstructed wells in addition to construction of new wells?

Yes, it does. Thus, new language will need to be added to s. 281.34(2)(b). In addition, please delete "take action" from that section, and change "reject" to "deny".

4. How much change can be made to a well before it is considered to be a reconstructed well for which an approval is required? What if it is being very modestly repaired, for example?

I believe NR 812 covers this. The DNR might know, but I believe the well needs to be at or near collapsing. Honestly, I don't what to set any type of parameters or percentages in statute of how much can be done before being considered a reconstruction. Again, I'd defer to DNR on this and their current rules.

5. In order for a well to be a replacement, must the existing well be "retired"?

By "retired", I assume you mean "abandoned". I believe that would be the case, but will check DNR code closer and get back to you.

6. Your definition of "existing well" is limited to a well that was approved before the new law would take effect. So does this mean that the provisions in the new law that will apply to a replacement well are not supposed to apply if the replacement well replaces an existing well that is constructed after that date? In other words, are the replacement well provisions only intended to apply to the wells that are already in existence? No, this should be the standard for existing wells now, and those yet to be constructed which may eventually be replaced. Thus, the definition of existing well should probably just end at "by the department"

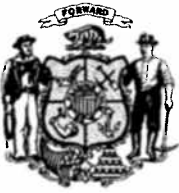
In regards to our meeting a week ago, I have the following responses:

- For the definition of "existing well", do not change it to "existing high capacity well"
- For the definition of "reconstruction", do not remove the words "hydrofracturing and blasting"
- Under (2)(a), that section should read as follows:
 - APPROVAL REQUIRED. An owner shall apply to the department for approval before construction begins of a proposed high capacity well, a reconstruction of a well, or a replacement well. No person may construct or withdraw water from a high capacity well without the approval of the department under this section or under s. 281.17 (1), 2001 stats. An owner applying for approval under this subsection shall pay a fee of \$500.
- Under (2)(c), please insert "high capacity" after 'A' and before 'well' in that first sentence.
- Under 281.34(5)(e), {All high capacity wells}, please delete the first sentence in 1. However, keep the second sentence.

I may have some follow-up questions once I hear from you on these items. Thanks for your help.

Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291



Leev

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAJ
KREF ✓

D-Note

In
4/12

gen cat

1 AN ACT . . . relating to: high capacity well approvals.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

2 SECTION 1. 281.34^x (1) (a) of the statutes is renumbered 281.34 (1) (am).[✓]

3 SECTION 2. 281.34[✓] (1) (ag) of the statutes is created[✓] to read:

4 281.34 (1) (ag) "Existing high capacity well" means a high capacity well that
5 has been approved by the department under this section. "Existing high capacity
6 well" does not include a replacement high capacity well or a reconstructed high
7 capacity well.

8 SECTION 3. 281.34[✓] (1) (eg) of the statutes is created[✓] to read:

9 281.34 (1) (eg) "Proposed high capacity well" means ~~means~~ a new high capacity
10 well that will result in a new withdrawal of groundwater. "Proposed high capacity

1 well” does not include a replacement high capacity well or a reconstructed high
2 capacity well.

3 SECTION 4. 281.34 (1) (eq) of the statutes is created to read:

4 281.34 (1) (eq) “Reconstructed high capacity well” means a high capacity well
5 for which the department has approved reconstruction.

6 SECTION 5. 281.34 (1) (er) of the statutes is created to read:

7 281.34 (1) (er) “Reconstruction” means modification of original construction
8 and includes deepening, lining, installing or replacing a screen, underreaming,
9 hydrofracturing, and blasting.

*) ****NOTE: This definition is problematic. Under this definition, “reconstruction”
means modification. The definition specifies the types of modification that are included
in the definition such as deepening or lining. “Hydrofracturing” and “blasting” are not
types of modifications. They are methods that a person may use to accomplish a
modification. I think these terms should not be included in the definition.

10 SECTION 6. 281.34 (1) (et) of the statutes is created to read:

11 281.34 (1) (et) “Replacement high capacity well” means a high capacity well
12 that is constructed to replace an existing high capacity well.

****NOTE: As a practical matter, would an owner ever seek an approval to replace
a reconstructed well? If so, this definition of “replacement well” needs redrafting.

13 SECTION 7. 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended

14 to read:

15 281.34 (2) (a) An owner shall apply to the department for approval before
16 ~~construction of a high capacity well begins.~~ beginning any of the following:

17 (b) No person may construct a proposed high capacity well, engage in
18 reconstruction of an existing high capacity well, construct a replacement high
19 capacity well, or withdraw water from a high capacity well without the approval of
20 the department under this section or under s. 281.17 (1), 2011 stats.

(d)

1

(c) An owner applying for approval under this subsection shall pay a fee of \$500.

History: 2003 a. 310; 2007 a. 227; 2009 a. 28.

2

SECTION 8. 281.34 (2) (a) 1. of the statutes is created to read:

3

281.34 (2) (a) 1. Construction of a proposed high capacity well.

4

SECTION 9. 281.34 (2) (a) 2. of the statutes is created to read:

5

281.34 (2) (a) 2. Reconstruction of an existing high capacity well.

6

SECTION 10. 281.34 (2) (a) 3. of the statutes is created to read:

7

281.34 (2) (a) 3. Construction of a replacement high capacity well.

8

SECTION 11. 281.34 (2) (c) of the statutes is created to read:

9

281.34 (2) (c) 1. Within 65 business days from the date on which the

10

department receives a complete application for an approval under par. (a), the

11

department shall approve or deny the application and shall notify the applicant of

12

the decision in writing. If the department denies the application, the notification

13

shall include the reasons for the denial.

14

2. The department may include conditions in an approval under par. (a) but

15

only as to location, depth, pumping capacity, rate of flow, and ultimate use, unless

16

the department is authorized to include other conditions in an approval under sub.

17

(5).

18

3. Failure of the department to approve or deny an application under this

19

subsection within 65 days shall constitute the department's approval of the

20

application. Upon the demand of the applicant, the department shall issue a written

21

approval to the applicant.

22

SECTION 12. 281.34 (2c) of the statutes is created to read:

23

281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may not

24

issue an approval for the construction of a replacement high capacity well unless the

1 replacement high capacity well will be drilled to substantially the same depth as the
 2 existing high capacity well, the replacement high capacity well will be located within
 3 a 75-foot radius of the existing high capacity well, and the replacement high capacity
 4 well will be constructed in accordance with department standards that apply to the
 5 construction of high capacity wells on the date that construction of the replacement
 6 high capacity well begins.

****NOTE: The draft expressly limits DNR's rule-making authority in a manner that may limit DNR's ability to establish "standards" for the construction of high capacity wells. You may wish to change the language in the draft to allow DNR to promulgate rules relating to construction standards for high capacity wells. If not, this provision will require redrafting.

7 (b) 1. Except as provided in subd. 2., the department may not include
 8 conditions in an approval for a replacement high capacity well that are different than
 9 the conditions in the approval for the existing high capacity well.

10 2. Subd¹ ^{division} 1. does not apply to an approval for a replacement high capacity well
 11 located in a groundwater protection area if the existing high capacity well was not
 12 located in a groundwater protection area.

13 SECTION 13. 281.34 (2g) of the statutes is created to read:

14 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
 15 a high capacity well is located, and if the owner holds an approval issued under sub.
 16 (2) or under s. 281.17 (1), 2001 stats. for the high capacity well, the owner may
 17 transfer the approval to the person to whom the land is transferred without
 18 department review. The department may not impose a fee for the transfer. The
 19 owner shall notify the department of the transfer on a form prescribed by the
 20 department.

****NOTE: This provision allows for the transfer of any approval issued under sub. (2) including approvals to construct a replacement high capacity well or to reconstruct an existing high capacity well. Is this consistent with your intent?

*

1 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

2 281.34 (4) (a) (intro.) The department shall review an application for approval
3 of any of the following using the environmental review process in its rules
4 promulgated under s. 1.11, subject to par. (am):

5 **History:** 2003 a. 310; 2007 a. 227; 2009 a. 28.

5 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

6 281.34 (4) (am) In its review of an application for approval under par. (a), the
7 the department's use of the environmental review process in its rules promulgated
8 under s. 1.11 is expressly limited to an application for approval of a proposed high
9 capacity well.

10 **SECTION 16.** 281.34 (5) (a) of the statutes is amended to read:

11 281.34 (5) (a) *Public water supply.* If the department determines that a
12 proposed high capacity well may impair the water supply of a public utility engaged
13 in furnishing water to or for the public, the department may not approve the
14 proposed high capacity well unless it is able to include and includes in the approval
15 conditions, which may include conditions as to location, depth, pumping capacity,
16 rate of flow, and ultimate use, that will ensure that the water supply of the public
17 utility will not be impaired.

18 **History:** 2003 a. 310; 2007 a. 227; 2009 a. 28.

18 **SECTION 17.** 281.34 (5) (b) 1. of the statutes is amended to read:

19 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
20 under the environmental review process in sub. (4), that an environmental impact
21 report under s. 23.11 (5) must be prepared for a proposed high capacity well located
22 in a groundwater protection area, the department may not approve the proposed
23 high capacity well unless it is able to include and includes in the approval conditions,
24 which may include conditions as to location, depth, pumping capacity, rate of flow,

1 and ultimate use, that ensure that the high capacity well does not cause significant
2 environmental impact to a groundwater protection area.

3 History: 2003 a. 310; 2007 a. 227; 2009 a. 28. ✕

SECTION 18. 281.34 (5) (d) 1. of the statutes is amended to read:

4 281.34 (5) (d) 1. Except as provided in subd. 2., if the department determines,
5 under the environmental review process in sub. (4), that an environmental impact
6 report under s. 23.11 (5) must be prepared for a proposed high capacity well that may
7 have a significant environmental impact on a spring, the department may not
8 approve the proposed high capacity well unless it is able to include and includes in
9 the approval conditions, which may include conditions as to location, depth, pumping
10 capacity, rate of flow, and ultimate use, that ensure that the proposed high capacity
11 well does not cause significant environmental impact to a spring.

12 History: 2003 a. 310; 2007 a. 227; 2009 a. 28. ✕

SECTION 19. 281.34 (5) (dm) of the statutes is amended to read:

13 281.34 (5) (dm) *Water supply service area plan*. If a proposed high capacity well
14 is covered by an approved water supply service area plan under s. 281.348, the
15 department may not approve the proposed high capacity well unless it is consistent
16 with that plan.

17 History: 2003 a. 310; 2007 a. 227; 2009 a. 28. ✕

SECTION 20. 281.34 (7) of the statutes is amended to read:

18 281.34 (7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The
19 approval of a high capacity well issued under this section or under s. 281.17 (1), 2001
20 stats., remains in effect unless the department modifies or rescinds the approval
21 because the high capacity well or the use of the high capacity well ~~is not in~~
22 ~~conformance with standards or~~ violates the conditions applicable to in the approval
23 of the high capacity well.

History: 2003 a. 310; 2007 a. 227; 2009 a. 28.

1 **SECTION 21.** 281.34 (11) of the statutes is created to read:

2 281.34 (11) **RULE-MAKING AUTHORITY.** The department's authority to
3 promulgate rules ~~regulating high capacity wells~~ *under this section* is expressly limited to the authority
4 granted under subs. (6) (b), (8) (a), and (9) (a) and (c).

~~****NOTE: This limitation might prevent DNR from promulgating any technical rules about the construction of high capacity wells. You may wish to revise this provision.~~

5 **SECTION 22.** 281.344 (4s) (dm) of the statutes is amended to read:

6 281.344 (4s) (dm) *Requiring individual permit.* The department may require
7 a person who is making or proposes to make a withdrawal that averages 100,000
8 gallons per day or more in any 30-day period, but that does not equal at least
9 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
10 under sub. (5) if the withdrawal is located in a groundwater protection area, as
11 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
12 under s. 281.34 (9).

History: 2007 a. 227; 2009 a. 180; 2011 a. 32.

13 **SECTION 23.** 281.346 (4s) (dm) of the statutes is amended to read:

14 281.346 (4s) (dm) *Requiring individual permit.* The department may require
15 a person who is making or proposes to make a withdrawal that averages 100,000
16 gallons per day or more in any 30-day period, but that does not equal at least
17 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
18 under sub. (5) if the withdrawal is located in a groundwater protection area, as
19 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
20 under s. 281.34 (9).

History: 2007 a. 227; 2009 a. 28, 180, 276; 2011 a. 32, 167.

21

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P1dn

RNK:.....

eev

date

Dan Johnson:

1. Please note that in some instances, this draft uses language that is different than the pre-drafted language that you provided. I wasn't always able to use the pre-drafted language in a way that would accomplish what I understand to be the intent of the draft. If you feel that I have misunderstood your intent, I would be happy to meet with you to review the draft and make any changes you require.

2. The draft contains notes that raise issues that will have to be addressed before proceeding with the next version of the draft. Please let me know if you have any questions about these notes.

3. I did not include the nonstatutory language that was included in the drafting instructions. As I understand that language, it allows a person who was issued an approval between July 6, 2011 and the effective date of the bill to request that DNR reissue the approval to conform to the statutes as affected by this draft. The language does not have a deadline by which a person must make this request. If the request can be made later than June 30, 2014, then the language must be drafted in the statutes rather than contained in a nonstatutory provision. Additionally, I don't understand the language in this part of the request. That is, why would a person request that an approval be reissued? I will include this provision in the next version of the draft after we have had a chance to discuss the intent.

If you have any questions about this draft, please feel free to call me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P1dn
RNK:eev:rs

April 15, 2013

Dan Johnson:

1. Please note that in some instances, this draft uses language that is different than the pre-drafted language that you provided. I wasn't always able to use the pre-drafted language in a way that would accomplish what I understand to be the intent of the draft. If you feel that I have misunderstood your intent, I would be happy to meet with you to review the draft and make any changes you require.
2. The draft contains notes that raise issues that will have to be addressed before proceeding with the next version of the draft. Please let me know if you have any questions about these notes.
3. I did not include the nonstatutory language that was included in the drafting instructions. As I understand that language, it allows a person who was issued an approval between July 6, 2011, and the effective date of the bill to request that DNR reissue the approval to conform to the statutes as affected by this draft. The language does not have a deadline by which a person must make this request. If the request can be made later than June 30, 2014, then the language must be drafted in the statutes rather than contained in a nonstatutory provision. Additionally, I don't understand the language in this part of the request. That is, why would a person request that an approval be reissued? I will include this provision in the next version of the draft after we have had a chance to discuss the intent.

If you have any questions about this draft, please feel free to call me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Johnson, Dan
Sent: Monday, April 15, 2013 3:23 PM
To: Kite, Robin
Subject: LRB 0823/P1 revisions

Hi Robin,

Thank you for providing us with LRB 0823/P1, relating to high capacity wells. I offer the following comments and suggestions for revisions:

1. In regards to the drafter's note pertaining to a deadline date for applying to the department for reissuance of a permit, we are fine with adding a deadline of June 30, 2014.
 - a. The purpose of this non-stat provision is to deal with a problem that came up following the July, 2011 court decision. That is, some DNR officials took it upon themselves to re-open existing approvals and add new conditions to the approval, under the authority of the court's decision. Thus, we believed the non-stat provision was necessary in order to allow those individuals who had an approval, but then was altered by the department, to go back and have their original approval re-issued. Basically, we want to give them the ability to hit the 'reset' button. But placing a deadline on which to do so is fine with us.
2. Page 2, line 16 – Delete “hydrofracturing, and blasting.” We agree with your assessment of the definition.
3. Page 2, Note after line 19 – The owner of a reconstructed well certainly may seek an approval to replace a reconstructed well. I suppose if reconstruction did not work, then replacement may be the next option. Thus, the definition for replacement well should be redrafted.
4. Page 3, line 22 – Delete “and ultimate use”
5. Page 4, Note after line 13 – We agree that DNR should have rule-making authority relating to construction standards for high capacity wells.
6. Page 5, Note after line 5 – Transfers of reconstruction and replacement well approvals is consistent with our intent.

Please let me know if you have any additional questions or concerns. Thank you!

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635

Kite, Robin

From: Johnson, Dan
Sent: Thursday, April 18, 2013 8:44 AM
To: Kite, Robin
Subject: LRB 0823 - one item

Hi Robin,

Just one more thing on the high-cap well bill. Senator Kedzie and I were looking at the provision in Section 12 and thought it might read better as a positive rather than a negative. Currently, it reads:

The department **may not issue** an approval for the construction of a replacement high capacity well **unless** the replacement high capacity well will be drilled to substantially the same depth as the existing high capacity well, the replacement high capacity well will be located within a 75-foot radius of the existing high capacity well, and the replacement high capacity well will be constructed in accordance with department standards that apply to the construction of high capacity wells on the date that construction of the replacement high capacity well begins.

But, we thought this might be better:

The department **shall issue** an approval for the construction of a replacement high capacity well **only if** the replacement high capacity well will be drilled to substantially the same depth as the existing high capacity well, the replacement high capacity well will be located within a 75-foot radius of the existing high capacity well, and the replacement high capacity well will be constructed in accordance with department standards that apply to the construction of high capacity wells on the date that construction of the replacement high capacity well begins.

Do you think we can make that work?

Dan

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

Kite, Robin

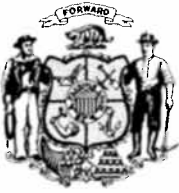
From: Johnson, Dan
Sent: Thursday, April 25, 2013 11:43 AM
To: Kite, Robin
Subject: Follow up on section 12 of LRB 0823

Hi Robin,

Earlier this week, I sent you message regarding a revision to section 12 of LRB 0823. In that, I asked that section be revised to say the Department "shall issue an approval...". I would like to change that to "may issue an approval", but then of course change "unless" to "only if".

If you have any question, please call or write. Thanks!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0823/P19
RNK:ee/rs

Rm
run
P2
↓

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF

purv

In
5/2

regen

1 AN ACT *to renumber* 281.34 (1) (a); *to renumber and amend* 281.34 (2); *to*
2 *amend* 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b) 1., 281.34 (5) (d) 1.,
3 281.34 (5) (dm), 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s) (dm); and *to*
4 *create* 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (eq), 281.34 (1) (er), 281.34 (1)
5 (et), 281.34 (2) (a) 1., 281.34 (2) (a) 2., 281.34 (2) (a) 3., 281.34 (2) (c), 281.34 (2c),
6 281.34 (2g), 281.34 (4) (am) and 281.34 (11) of the statutes; **relating to:** high
7 capacity well approvals.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

8 SECTION 1. 281.34 (1) (a) of the statutes is renumbered 281.34 (1) (am).

9 SECTION 2. 281.34 (1) (ag) of the statutes is created to read:

1 281.34 (1) (ag) "Existing high capacity well" means a high capacity well that
2 has been approved by the department under this section. "Existing high capacity
3 well" does not include a replacement high capacity well or a reconstructed high
4 capacity well.

5 SECTION 3. 281.34 (1) (eg) of the statutes is created to read:

6 281.34 (1) (eg) "Proposed high capacity well" means a new high capacity well
7 that will result in a new withdrawal of groundwater. "Proposed high capacity well"
8 does not include a replacement high capacity well or a reconstructed high capacity
9 well.

10 SECTION 4. 281.34 (1) (eq) of the statutes is created to read:

11 281.34 (1) (eq) "Reconstructed high capacity well" means a high capacity well
12 for which the department has approved reconstruction.

13 SECTION 5. 281.34 (1) (er) of the statutes is created to read:

14 281.34 (1) (er) "Reconstruction" means modification of original construction
15 and includes deepening, lining, installing or replacing a screen, ^{and} underreaming,
16 hydrofracturing, and blasting.

****NOTE: This definition is problematic. Under this definition, "reconstruction" means modification. The definition specifies the types of modification that are included in the definition, such as deepening or lining. "Hydrofracturing" and "blasting" are not types of modifications. They are methods that a person may use to accomplish a modification. I think these terms should not be included in the definition.

17 SECTION 6. 281.34 (1) (et) of the statutes is created to read:

18 281.34 (1) (et) "Replacement high capacity well" means a high capacity well
19 that is constructed to replace an existing high capacity well. ^{or a reconstructed high capacity well}

****NOTE: As a practical matter, would an owner ever seek an approval to replace a reconstructed well? If so, this definition of "replacement well" needs redrafting.

20 SECTION 7. 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
21 to read:

1 281.34 (2) (a) An owner shall apply to the department for approval before
2 ~~construction of a high capacity well begins.~~ beginning any of the following:

3 (b) No person may construct a proposed high capacity well, engage in
4 reconstruction of an existing high capacity well, construct a replacement high
5 capacity well, or withdraw water from a high capacity well without the approval of
6 the department under this section or under s. 281.17 (1), 20¹⁰11 stats.

7 (e) ~~(d)~~ An owner applying for approval under this subsection shall pay a fee of
8 \$500.

9 **SECTION 8.** 281.34 (2) (a) 1. of the statutes is created to read:

10 281.34 (2) (a) 1. Construction of a proposed high capacity well.

11 **SECTION 9.** 281.34 (2) (a) 2. of the statutes is created to read:

12 281.34 (2) (a) 2. Reconstruction of an existing high capacity well.

13 **SECTION 10.** 281.34 (2) (a) 3. of the statutes is created to read:

14 281.34 (2) (a) 3. Construction of a replacement high capacity well.

15 **SECTION 11.** 281.34 (2) (c) of the statutes is created to read:

16 281.34 (2) (c) 1. Within 65 business days from the date on which the department
17 receives a complete application for an approval under par. (a), the department shall
18 approve or deny the application and shall notify the applicant of the decision in
19 writing. If the department denies the application, the notification shall include the
20 reasons for the denial.

21 2. The department may include conditions in an approval under par. (a) but
22 only as to location, depth, pumping capacity, ^{and} rate of flow, ^{or} and ultimate use, unless
23 the department is authorized to include other conditions in an approval under sub.
24 (5).

1 3. Failure of the department to approve or deny an application under this
2 subsection within 65 days shall constitute the department's approval of the
3 application. Upon the demand of the applicant, the department shall issue a written
4 approval to the applicant.

5 **SECTION 12.** 281.34 (2c) of the statutes is created to read:

6 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may ~~not~~
7 issue an approval for the construction of a replacement high capacity well ~~unless~~ *if*
8 the replacement high capacity well will be drilled to substantially the same depth as the
9 existing high capacity well, the replacement high capacity well will be located within
10 a 75-foot radius of the existing high capacity well, and the replacement high capacity
11 well will be constructed in accordance with department standards that apply to the
12 construction of high capacity wells on the date that construction of the replacement
13 high capacity well begins.

****NOTE: The draft expressly limits DNR's rule-making authority in a manner that may limit DNR's ability to establish "standards" for the construction of high capacity wells. You may wish to change the language in the draft to allow DNR to promulgate rules relating to construction standards for high capacity wells. If not, this provision will require redrafting.

14 (b) 1. Except as provided in subd. 2., the department may not include conditions
15 in an approval for a replacement high capacity well that are different than the
16 conditions in the approval for the existing high capacity well.

17 2. Subdivision 1. does not apply to an approval for a replacement high capacity
18 well located in a groundwater protection area if the existing high capacity well was
19 not located in a groundwater protection area.

20 **SECTION 13.** 281.34 (2g) of the statutes is created to read:

21 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
22 a high capacity well is located, and if the owner holds an approval issued under sub.

1 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may
2 transfer the approval to the person to whom the land is transferred without
3 department review. The department may not impose a fee for the transfer. The
4 owner shall notify the department of the transfer on a form prescribed by the
5 department.

***NOTE: This provision allows for the transfer of any approval issued under sub.
(2), including approvals to construct a replacement high capacity well or to reconstruct
an existing high capacity well. Is this consistent with your intent?

6 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

7 281.34 (4) (a) (intro.) The department shall review an application for approval
8 of any of the following using the environmental review process in its rules
9 promulgated under s. 1.11, subject to par. (am):

10 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

11 281.34 (4) (am) In its review of an application for approval under par. (a), the
12 department's use of the environmental review process in its rules promulgated under
13 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
14 well.

15 **SECTION 16.** 281.34 (5) (a) of the statutes is amended to read:

16 281.34 (5) (a) *Public water supply.* If the department determines that a
17 proposed high capacity well may impair the water supply of a public utility engaged
18 in furnishing water to or for the public, the department may not approve the
19 proposed high capacity well unless it is able to include and includes in the approval
20 conditions, which may include conditions as to location, depth, pumping capacity,
21 rate of flow, and ultimate use, that will ensure that the water supply of the public
22 utility will not be impaired.

23 **SECTION 17.** 281.34 (5) (b) 1. of the statutes is amended to read:

1 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
2 under the environmental review process in sub. (4), that an environmental impact
3 report under s. 23.11 (5) must be prepared for a proposed high capacity well located
4 in a groundwater protection area, the department may not approve the proposed
5 high capacity well unless it is able to include and includes in the approval conditions,
6 which may include conditions as to location, depth, pumping capacity, rate of flow,
7 and ultimate use, that ensure that the high capacity well does not cause significant
8 environmental impact to a groundwater protection area.

9 **SECTION 18.** 281.34 (5) (d) 1. of the statutes is amended to read:

10 281.34 (5) (d) 1. Except as provided in subd. 2., if the department determines,
11 under the environmental review process in sub. (4), that an environmental impact
12 report under s. 23.11 (5) must be prepared for a proposed high capacity well that may
13 have a significant environmental impact on a spring, the department may not
14 approve the proposed high capacity well unless it is able to include and includes in
15 the approval conditions, which may include conditions as to location, depth, pumping
16 capacity, rate of flow, and ultimate use, that ensure that the proposed high capacity
17 well does not cause significant environmental impact to a spring.

18 **SECTION 19.** 281.34 (5) (dm) of the statutes is amended to read:

19 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
20 is covered by an approved water supply service area plan under s. 281.348, the
21 department may not approve the proposed high capacity well unless it is consistent
22 with that plan.

23 **SECTION 20.** 281.34 (7) of the statutes is amended to read:

24 281.34 (7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The
25 approval of a high capacity well issued under this section or under s. 281.17 (1), 2001

1 stats., remains in effect unless the department modifies or rescinds the approval
2 because the high capacity well or the use of the high capacity well is ~~not in~~
3 conformance with standards or violates the conditions applicable to in the approval
4 of the high capacity well.

other than rules governing ^{construction} standards
for the ~~construction~~ of high capacity wells,

5 SECTION 21. 281.34 (11) of the statutes is created to read:

6 281.34 (11) RULE-MAKING AUTHORITY. The department's authority to
7 promulgate rules under this section is expressly limited to the authority granted
8 under subs. (6) (b), (8) (a), and (9) (a) and (c).

9 SECTION 22. 281.344 (4s) (dm) of the statutes is amended to read:

10 281.344 (4s) (dm) *Requiring individual permit.* The department may require
11 a person who is making or proposes to make a withdrawal that averages 100,000
12 gallons per day or more in any 30-day period, but that does not equal at least
13 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
14 under sub. (5) if the withdrawal is located in a groundwater protection area, as
15 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
16 under s. 281.34 (9).

17 SECTION 23. 281.346 (4s) (dm) of the statutes is amended to read:

18 281.346 (4s) (dm) *Requiring individual permit.* The department may require
19 a person who is making or proposes to make a withdrawal that averages 100,000
20 gallons per day or more in any 30-day period, but that does not equal at least
21 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
22 under sub. (5) if the withdrawal is located in a groundwater protection area, as
23 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
24 under s. 281.34 (9).

INS. →
7-24 25

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P2ins.
RNK:.....

INSERT 7-24

1 ~~SECTION 7.~~ **Nonstatutory provisions.**

2 (1) (a) In this subsection:

3 1. "Department" means the department of natural resources.

4 2. "Owner" has the meaning given in section 281.34 (1) (d) of the statutes.

5 (b) If the department issued an approval to an owner of a high capacity well
6 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., on
7 or before July 11, 2011, and if the department added new or more restrictive
8 conditions to that approval on or after July 11, 2011, and before the effective date of
9 this paragraph, the department shall, upon a request made by the owner on or before
10 June 30, 2014, remove the new or more restrictive conditions from the approval if
11 those new or more restrictive conditions are not required to be included in the
12 approval under section 281.34 of the statutes, as affected by this act.

Kite, Robin

From: Johnson, Dan
Sent: Thursday, May 16, 2013 9:18 AM
To: Kite, Robin
Subject: LRB 0823/P2

Hi Robin,

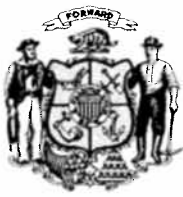
I have one minor revision to LRB 0823/P2. Once this change is made, I think we're ready to go to an introducible /1.

Under Section 11, line 12, it reads, "Within **65 business days** from the date...." However, on line 21 of that same section, it reads, "...within **65 days** shall constitute..."

We believe those should mirror each other, thus please add "business" before "days" on line 21.

Thank you!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635



STAYS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
6/10

D-Note

regr n

1 AN ACT *to renumber* 281.34 (1) (a); *to renumber and amend* 281.34 (2); *to*
 2 *amend* 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b) 1., 281.34 (5) (d) 1.,
 3 281.34 (5) (dm), 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s) (dm); and *to*
 4 *create* 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (eq), 281.34 (1) (er), 281.34 (1)
 5 (et), 281.34 (2) (a) 1., 281.34 (2) (a) 2., 281.34 (2) (a) 3., 281.34 (2) (c), 281.34 (2c),
 6 281.34 (2g), 281.34 (4) (am) and 281.34 (11) of the statutes; **relating to:** high
 7 capacity well approvals.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

INS.
Analysis

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

8 SECTION 1. 281.34 (1) (a) of the statutes is renumbered 281.34 (1) (am).

9 SECTION 2. 281.34 (1) (ag) of the statutes is created to read:

1 281.34 (1) (ag) “Existing high capacity well” means a high capacity well that
2 has been approved by the department under this section. “Existing high capacity
3 well” does not include a replacement high capacity well or a reconstructed high
4 capacity well.

5 **SECTION 3.** 281.34 (1) (eg) of the statutes is created to read:

6 281.34 (1) (eg) “Proposed high capacity well” means a new high capacity well
7 that will result in a new withdrawal of groundwater. “Proposed high capacity well”
8 does not include a replacement high capacity well or a reconstructed high capacity
9 well.

10 **SECTION 4.** 281.34 (1) (eq) of the statutes is created to read:

11 281.34 (1) (eq) “Reconstructed high capacity well” means a high capacity well
12 for which the department has approved reconstruction.

13 **SECTION 5.** 281.34 (1) (er) of the statutes is created to read:

14 281.34 (1) (er) “Reconstruction” means modification of original construction
15 and includes deepening, lining, installing or replacing a screen, and underreaming.

16 **SECTION 6.** 281.34 (1) (et) of the statutes is created to read:

17 281.34 (1) (et) “Replacement high capacity well” means a high capacity well
18 that is constructed to replace an existing high capacity well or reconstructed high
19 capacity well.

20 **SECTION 7.** 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
21 to read:

22 281.34 (2) (a) An owner shall apply to the department for approval before
23 ~~construction of a high capacity well begins.~~ beginning any of the following:

24 (b) No person may construct a proposed high capacity well, engage in
25 reconstruction of an existing high capacity well, construct a replacement high

1 capacity well, or withdraw water from a high capacity well without the approval of
2 the department under this section or under s. 281.17 (1), 2001 stats.

3 (e) (d) An owner applying for approval under this subsection shall pay a fee of
4 \$500.

5 **SECTION 8.** 281.34 (2) (a) 1. of the statutes is created to read:

6 281.34 (2) (a) 1. Construction of a proposed high capacity well.

7 **SECTION 9.** 281.34 (2) (a) 2. of the statutes is created to read:

8 281.34 (2) (a) 2. Reconstruction of an existing high capacity well.

9 **SECTION 10.** 281.34 (2) (a) 3. of the statutes is created to read:

10 281.34 (2) (a) 3. Construction of a replacement high capacity well.

11 **SECTION 11.** 281.34 (2) (c) of the statutes is created to read:

12 281.34 (2) (c) 1. Within 65 business days from the date on which the department
13 receives a complete application for an approval under par. (a), the department shall
14 approve or deny the application and shall notify the applicant of the decision in
15 writing. If the department denies the application, the notification shall include the
16 reasons for the denial.

17 2. The department may include conditions in an approval under par. (a) but
18 only as to location, depth, pumping capacity, and rate of flow, unless the department
19 is authorized to include other conditions in an approval under sub. (5).

20 3. Failure of the department to approve or deny an application under this
21 subsection within 65 ^{business} days shall constitute the department's approval of the
22 application. Upon the demand of the applicant, the department shall issue a written
23 approval to the applicant.

24 **SECTION 12.** 281.34 (2c) of the statutes is created to read:

*for a proposed high capacity well
or for reconstruction of an
existing well*

1 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may issue
2 an approval for the construction of a replacement high capacity well if the
3 replacement high capacity well will be drilled to substantially the same depth as the
4 existing high capacity well, the replacement high capacity well will be located within
5 a 75-foot radius of the existing high capacity well, and the replacement high capacity
6 well will be constructed in accordance with department standards that apply to the
7 construction of high capacity wells on the date that construction of the replacement
8 high capacity well begins.

9 (b) 1. Except as provided in subd. 2., the department may not include conditions
10 in an approval for a replacement high capacity well that are different than the
11 conditions in the approval for the existing high capacity well.

12 2. Subdivision 1. does not apply to an approval for a replacement high capacity
13 well located in a groundwater protection area if the existing high capacity well was
14 not located in a groundwater protection area.

15 **SECTION 13.** 281.34 (2g) of the statutes is created to read:

16 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
17 a high capacity well is located, and if the owner holds an approval issued under sub.
18 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may
19 transfer the approval to the person to whom the land is transferred without
20 department review. The department may not impose a fee for the transfer. The
21 owner shall notify the department of the transfer on a form prescribed by the
22 department.

23 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

1 281.34 (4) (a) (intro.) The department shall review an application for approval
2 of any of the following using the environmental review process in its rules
3 promulgated under s. 1.11, subject to par. (am):

4 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

5 281.34 (4) (am) In its review of an application for approval under par. (a), the
6 department's use of the environmental review process in its rules promulgated under
7 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
8 well.

9 **SECTION 16.** 281.34 (5) (a) of the statutes is amended to read:

10 281.34 (5) (a) *Public water supply.* If the department determines that a
11 proposed high capacity well may impair the water supply of a public utility engaged
12 in furnishing water to or for the public, the department may not approve the
13 proposed high capacity well unless it is able to include and includes in the approval
14 conditions, which may include conditions as to location, depth, pumping capacity,
15 rate of flow, and ultimate use, that will ensure that the water supply of the public
16 utility will not be impaired.

17 **SECTION 17.** 281.34 (5) (b) 1. of the statutes is amended to read:

18 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
19 under the environmental review process in sub. (4), that an environmental impact
20 report under s. 23.11 (5) must be prepared for a proposed high capacity well located
21 in a groundwater protection area, the department may not approve the proposed
22 high capacity well unless it is able to include and includes in the approval conditions,
23 which may include conditions as to location, depth, pumping capacity, rate of flow,
24 and ultimate use, that ensure that the high capacity well does not cause significant
25 environmental impact to a groundwater protection area.

1 **SECTION 18.** 281.34 (5) (d) 1. of the statutes is amended to read:

2 281.34 (5) (d) 1. Except as provided in subd. 2., if the department determines,
3 under the environmental review process in sub. (4), that an environmental impact
4 report under s. 23.11 (5) must be prepared for a proposed high capacity well that may
5 have a significant environmental impact on a spring, the department may not
6 approve the proposed high capacity well unless it is able to include and includes in
7 the approval conditions, which may include conditions as to location, depth, pumping
8 capacity, rate of flow, and ultimate use, that ensure that the proposed high capacity
9 well does not cause significant environmental impact to a spring.

10 **SECTION 19.** 281.34 (5) (dm) of the statutes is amended to read:

11 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
12 is covered by an approved water supply service area plan under s. 281.348, the
13 department may not approve the proposed high capacity well unless it is consistent
14 with that plan.

15 **SECTION 20.** 281.34 (7) of the statutes is amended to read:

16 281.34 (7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The
17 approval of a high capacity well issued under this section or under s. 281.17 (1), 2001
18 stats., remains in effect unless the department modifies or rescinds the approval
19 because the high capacity well or the use of the high capacity well ~~is not in~~
20 ~~conformance with standards or~~ violates the conditions ~~applicable to~~ in the approval
21 of the high capacity well.

22 **SECTION 21.** 281.34 (11) of the statutes is created to read:

23 281.34 (11) **RULE-MAKING AUTHORITY.** The department's authority to
24 promulgate rules under this section, other than rules governing construction

INS
-14

1 standards for high capacity wells, is expressly limited to the authority granted under
2 subs. (6) (b), (8) (a), and (9) (a) and (c).

3 **SECTION 22.** 281.344 (4s) (dm) of the statutes is amended to read:

4 281.344 (4s) (dm) *Requiring individual permit.* The department may require
5 a person who is making or proposes to make a withdrawal that averages 100,000
6 gallons per day or more in any 30-day period, but that does not equal at least
7 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
8 under sub. (5) if the withdrawal is located in a groundwater protection area, as
9 defined in s. 281.34 (1) ~~(a)~~ (am), or a groundwater management area designated
10 under s. 281.34 (9).

11 **SECTION 23.** 281.346 (4s) (dm) of the statutes is amended to read:

12 281.346 (4s) (dm) *Requiring individual permit.* The department may require
13 a person who is making or proposes to make a withdrawal that averages 100,000
14 gallons per day or more in any 30-day period, but that does not equal at least
15 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
16 under sub. (5) if the withdrawal is located in a groundwater protection area, as
17 defined in s. 281.34 (1) ~~(a)~~ (am), or a groundwater management area designated
18 under s. 281.34 (9).

19 **SECTION 24. Nonstatutory provisions.**

20 (1) (a) In this subsection:

- 21 1. “Department” means the department of natural resources.
22 2. “Owner” has the meaning given in section 281.34 (1) (d) of the statutes.

23 (b) If the department issued an approval to an owner of a high capacity well
24 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., on

25

or before July ~~1~~⁶, 2011, and if the department added new or more restrictive

1 conditions to that approval on or after July ~~11~~^{ca 6}, 2011, and before the effective date of
2 this paragraph, the department shall, upon a request made by the owner on or before
3 June 30, 2014, remove the new or more restrictive conditions from the approval if
4 those new or more restrictive conditions are not required to be included in the
5 approval under section 281.34 of the statutes, as affected by this act.

6

(END)