

2019 DRAFTING REQUEST

Assembly Amendment (AA-AB56)

For: Legislative Fiscal Bureau Drafter: mpfotenh
By: Bonderud Secondary Drafters:
Date: 5/29/2019 May Contact:

Same as LRB:

Submit via email: YES
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Pre Topic:

LFB:.....Bonderud -

Topic:

Well compensation grant program

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 5/29/2019	kfollett 5/29/2019			
/P1			mbarman 5/29/2019		

FE Sent For: <END>

Pfotenhauer, Mary

From: Bonderud, Kendra
Sent: Wednesday, May 29, 2019 10:45 AM
To: Pfotenhauer, Mary
Subject: drafting request - well comp

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Mary,

JFC took action on DNR-Environmental Quality on May 28. Please see Motion 105, #12, for action on well compensation. Please prepare a budget amendment draft to maintain current law on well compensation. The motion also puts money in the JFC supplemental appropriation, but I don't need to request any legislative language from you for that, as I will take care of that in chapter 20 file maintenance.

Thank you.

Kendra Bonderud
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NATURAL RESOURCES -- DEPARTMENTWIDE AND ENVIRONMENTAL
QUALITY AND AGRICULTURE, TRADE AND CONSUMER PROTECTION

Omnibus Motion
[LFB Papers #510 thru #537]

Motion:

Move to adopt the following provisions:

Natural Resources -- Departmentwide

1. *Natural Resources Science Bureau (Paper #510)*. Take no action on creation of a Bureau of Natural Resources Science. Adopt Alternative B3 to provide the Department of Natural Resources with 2.0 research scientist positions funded at \$123,200 environmental fund SEG (environmental management account) in 2019-20 and \$164,200 SEG in 2020-21.

2. *Transfers Between Appropriations (Paper #511)*. Approve the Governor's recommendation, as modified, to make several transfers between appropriations.

3. *Standard Budget Adjustments (Page 293, #1)*. Approve the Governor's recommendation to provide adjustments to the base budget totaling \$8,798,600 in 2019-20 and \$8,988,800 in 2020-21 for turnover reduction, removal of non-continuing elements from the base, full funding of salaries and fringe benefits, reclassifications and semi-automatic pay progression, overtime, and full funding of leases and directed moves.

4. *Debt Service Reestimate (Page 294, #3)*. Approve the Governor's recommendation to delete \$1,104,500 (-\$298,700 GPR and -\$805,800 SEG) in 2019-20 and \$6,598,200 (-\$4,152,300 GPR and -\$2,445,900 SEG) in 2020-21 to reflect a reestimate of debt service payments on bonds issued for various DNR programs.

5. *Transfers Within Appropriations (Page 297, #5)*. Approve the Governor's recommendation to transfer positions and funding between budgetary subprograms within the same appropriation to reflect current allocations of program responsibilities.

Natural Resources -- Environmental Quality

6. *Environmental Fund Overview (Paper #525)*. Transfer \$6,150,000 annually from the environmental management account to the nonpoint account of the environmental fund on an ongoing basis.

7. *Contaminated Sediment Bonding (Paper #526)*. Provide \$4,000,000 to increase from \$32 million to \$36 million the amount of SEG-supported general obligation bonding authority for contaminated sediment cleanup.

8. *Lake and River Protection Grants (Paper #527)*. Take no action.

9. *Multi-Discharger Variance Implementation (Paper #528)*. Take no action.

10. *Nonpoint Source Water Pollution Funding (Paper #530)*. Adopt Alternatives 2 and 5, which would provide \$100,000 nonpoint SEG for nonpoint source water pollution abatement grants on a one-time basis during the 2019-21 biennium.

11. *Nonpoint Source Contracts (Paper #531)*. Adopt Alternatives 2 and 3, which would provide an additional \$500,000 nonpoint SEG annually for nonpoint contracts on a one-time basis during the 2019-21 biennium. Nonpoint contracts would be budgeted at \$767,600 each year, the same amount as the 2017-19 biennium.

12. *Well Compensation Grant Program (Paper #532)*. Take no action on sections A, B, C, D, E, and G. Provide \$400,000 environmental management SEG for the well compensation grant program, and place the funding in the Joint Committee on Finance supplemental appropriation. DNR could submit a request to the Committee under s. 13.10 for release of the funding.

13. *PFAS Model and Study (Paper #533)*. Adopt Alternative 2, to provide \$200,000 environmental management SEG in 2019-20 (instead of GPR), including \$150,000 for a departmentwide PFAS model and \$50,000 for a survey to determine the level of use of PFAS-containing firefighting foam.

14. *Transfer Abandoned Tank Removal Program from DNR to DATCP (Paper #534)*. Take no action.

15. *PECFA Program Sunset (Paper #535)*. Adopt Alternative 4 to maintain the current PECFA claim submittal deadline of June 30, 2020. In addition, transfer \$7,500,000 from 2020-21 to 2019-20 for claims, to maintain \$15 million for claims in 2019-21, and provide all of it in 2019-20, in the current biennial appropriation.

16. *Dam Safety Bonding (Page 302, #2)*. Provide \$4,000,000 in GPR-supported general obligation bonding authority for dam safety grants.

17. *Total Maximum Daily Load Implementation Positions (Page 304, #5)*. Provide 1.0 FED, 1.0 PR, and 2.0 water resources (conservation fund) SEG four-year project positions within the Division of Environmental Management to facilitate implementation of total maximum daily load (TMDL) plans. No new funding is provided for the positions, which would be funded by a reallocation of existing supplies and services, and LTE salary and fringe benefits costs.

18. *Rural Nonpoint Source Bonding (Page 306, #8)*. Provide \$6,500,000 in nonpoint SEG-supported general obligation bonding for rural nonpoint source water pollution abatement grants.

Bond proceeds support the targeted runoff management (TRM) program and the notice of discharge and notice of intent (NOD/NOI) program.

19. *Urban Nonpoint Source Bonding (Page 306, #9)*. Provide \$4,000,000 in nonpoint SEG-supported general obligation bonding for the urban nonpoint source and storm water management (UNPS) and municipal flood control and riparian restoration (MFC) programs.

Agriculture, Trade and Consumer Protection

1. *Soil and Water Resource Management Funding (Paper #536)*. Adopt Alternatives A2, B2, and C2. Alternative A2 would provide an additional \$850,000 nonpoint SEG annually for soil and water resource management (SWRM) grants, primarily associated with nutrient management planning. Alternative B2 would provide an additional \$250,000 nonpoint SEG annually for producer-led watershed protection grants, and increase DATCP's authorization to award SWRM grants for producer-led watershed protection grants to \$500,000 annually. Alternative C2 would provide \$7,000,000 in general obligation bonding authority supported by the nonpoint account of the environmental fund to support cost-sharing grants to landowners for installation of structural practices that produce or prevent nonpoint pollution. SWRM grants (including producer-led watershed grants) would be budgeted at \$4,175,000 nonpoint SEG annually.

2. *County Conservation Staffing (Paper #537)*. Provide an additional \$475,000 nonpoint SEG annually on a one-time basis during the 2019-21 biennium for grants to county conservation staff. Grants would be budgeted at \$3,027,200 GPR and \$6,411,900 nonpoint SEG annually during the 2019-21 biennium.

[Change to Base: \$233,600 GPR, \$14,411,500 SEG, \$1,100,200 PR, \$2,347,000 FED in 2019-20 and -\$3,588,300 GPR, -\$2,269,400 SEG, \$1,100,200 PR, \$2,387,300 FED in 2020-21, and 4.0 SEG, 1.0 PR, and 1.0 FED positions. \$25,500,000 BR.]

[Change to Bill: -\$676,000 GPR and \$5,001,700 SEG in 2019-20 and -\$476,000 GPR and -\$10,301,400 SEG and -3.0 SEG positions. -\$28,000,000 BR.]



Legislative Fiscal Bureau

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May, 2019

Joint Committee on Finance

Paper #532

Well Compensation Grant Program (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 307, #12]

CURRENT LAW

The well compensation grant program was created in 1984 to provide financial assistance for replacing, reconstructing, or treating contaminated wells that serve certain private residences or are used for watering livestock. Grants can also pay costs of well abandonment. The Department of Natural Resources (DNR) determines that the well meets certain eligibility criteria related to contamination from substances such as chemicals, heavy metals, volatile organic compounds, industrial solvents, gasoline, fuel oil, paint, and pesticides. Under certain circumstances, eligibility includes contamination from arsenic, livestock fecal bacteria, or nitrates. Grant recipients must have family income that does not exceed \$65,000. The maximum for eligible costs is \$16,000 and the grant is 75% of eligible costs, equaling a maximum grant of \$12,000. Grant recipients must pay a \$250 copayment, unless the grant is for well abandonment.

The program is funded from a continuing appropriation in the segregated (SEG) environmental management account of the environmental fund, which means appropriated unexpended funds are carried forward for expenditure in subsequent years. The program is appropriated \$200,000 SEG in 2018-19, and in addition had an available carry-in balance of \$653,500 from 2017-18. Any funds not spent in 2018-19 will carry forward and be available for expenditure in 2019-20.

GOVERNOR

Make the following changes in the well compensation grant program:

- a. Increase the maximum annual family income of the landowner or lessee of the

property on which the contaminated well is located from \$65,000 to \$100,000.

b. Delete the requirement that the grant is reduced by 30% of the amount by which the claimant's family income exceeds \$45,000. Maintain the requirement that a project's maximum eligible costs is \$16,000. Maintain the requirement that the maximum award would be 75% of eligible costs, which is \$12,000. Under the bill, any eligible applicants with income up to \$100,000 who have the maximum eligible costs of \$16,000 would receive the maximum grant of \$12,000.

c. As an exception to providing an award of 75% of eligible costs, authorize (but do not require) DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median family income for the state, as determined by the U.S. Bureau of the Census. Maintain the current requirement that the claimant pay a \$250 copayment unless the claim is solely for well abandonment. (According to the U.S. Census Bureau American FactFinder, the estimated 2017 Wisconsin median family income was \$72,542.)

d. Delete the current requirement that if a claim is based on contamination by nitrates and not by any other substance, DNR may make a well compensation award only if the well: (1) is used as a source of drinking water for livestock or for both livestock and a residence; (2) is used at least three months of each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock; and (3) produces water containing nitrates exceeding 40 parts per million (ppm) nitrate nitrogen. This would make residential wells that are not also used to water livestock, and that have nitrate contamination, eligible for the program.

e. Add to the definition of contaminated well or contaminated private water supply a well or private water supply that produces water with a concentration of at least 10 parts per billion of arsenic or 10 parts per million of nitrate nitrogen.

f. Create an exception to the current requirement that DNR must allocate money for the payment of claims according to the order in which completed claims are received. The exception would specify that if the well compensation grant appropriation has insufficient funds to pay claims, DNR would be authorized (but not required), for claims based on nitrate contamination, to allocate money for the payment of claims in the following order of priority: (1) claims based on water containing more than 40 ppm nitrate nitrogen; (2) claims based on water containing more than 30 but not more than 40 ppm nitrate nitrogen; (3) claims based on water containing more than 25 but not more than 30 ppm nitrate nitrogen; (4) claims based on water containing more than 20 but not more than 25 ppm nitrate nitrogen; and (5) claims based on water containing more than 10 but not more than 20 ppm nitrate nitrogen.

g. The Governor's Budget in Brief states that the appropriation would be increased by \$800,000 SEG in each of 2019-20 and 2020-21, but the bill does not do this. On May 1, 2019, the Secretary of the Department of Administration (DOA) submitted a request to the Co-Chairs of the Joint Committee on Finance to amend the bill to provide an increase of \$800,000 SEG annually to correct an error.

DISCUSSION POINTS

Current Program

1. The well compensation grant program includes two types of grants. First, it provides financial assistance for replacing, reconstructing, or treating contaminated wells that serve certain private residences or are used for watering livestock. Second, grants can also pay costs of well abandonment. An owner or lessee of the property on which the contaminated well is located may submit a claim. Eligible wells include private water supplies used for potable water and that are: (a) a residential water supply, which is a well used for humans or humans and livestock and is connected to 14 or fewer dwelling units; or (b) a livestock water supply well used only for livestock. To be considered contaminated, the water supply must have been tested twice, at least two weeks apart, according to specified procedures, and the results exceed state or federal water standards for contaminants. In the past 15 years, well compensation grants have addressed contamination from livestock fecal bacteria, arsenic, metals, benzene, gasoline additives, nitrates, and pesticides.

2. Under certain circumstances, current eligibility includes contamination from nitrates. The statutes specify that if a claim is based on contamination by nitrates and not by any other substance, DNR may make a well compensation award only if the well: (a) is used as a source of drinking water for livestock or for both livestock and a residence; (b) is used at least three months of each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock; and (c) produces water containing nitrates exceeding 40 parts per million expressed as nitrate-nitrogen. Residential wells contaminated by nitrates and not by any other substance are not eligible unless they are also used for livestock as described above.

3. Bacterial contamination is eligible if it is from livestock fecal contamination and in an area DNR has declared to be an area of special eligibility. DNR has declared 30 areas of special eligibility since 2006, seven of which were in Kewaunee County. Of this total, DNR declared six areas in 2016 through 2018, including four in Kewaunee County, one in Fond du Lac County, and one in Washington County. The statutes specify that a claim is ineligible if the contaminated private water supply is a residential water supply, is contaminated by bacteria or nitrates or both, and is not contaminated by any other substance, except if it is in an area of special eligibility.

4. The statutes specify that a claim is ineligible if all of the contaminants upon which the claim is based are naturally occurring substances and the concentration of the contaminants in water produced by the well does not significantly exceed the background concentration of the contaminants in groundwater at that location. Contamination from arsenic is currently eligible under the program only if it is equal to or exceeds a concentration of 50 parts per billion (ppb), also described as 50 micrograms per liter, which DNR has determined is the background concentration statewide.

5. Under administrative code Chapter NR 738, funds from a separate state-funded spills response appropriation from the environmental management account of the environmental fund are used to provide a permanent replacement water supply if the owner of the contaminated well is otherwise eligible for a well compensation grant and demonstrates financial hardship beyond the amount of financial assistance available through a well compensation grant. This appropriation is primarily used for DNR-led cleanups of contaminated sites where the responsible party is unknown

or cannot or will not clean up the site. In cases where the owner of the contaminated well meets financial hardship criteria, the grant recipient first receives a grant under the well compensation grant appropriation. Supplemental expenditures are made through the state-funded spills response appropriation rather than the well compensation grant appropriation. When supplemental financial hardship assistance is provided, the sum of assistance provided to a recipient sometimes exceeds the maximum eligible costs of \$16,000 and maximum grant of \$12,000 under the well compensation grant program.

6. When DNR makes a financial hardship payment from the state-funded spills response appropriation for a permanent replacement private water supply, the Department bases the payment on the annual family income of the well owner as follows: (a) if the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, DNR may pay 100% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; (b) if the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, DNR may pay 50% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; and (c) if a well owner has received a well compensation grant, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, DNR may pay the remaining eligible costs not covered by a well compensation grant, less a deductible amount of 5% of the annual family income.

7. Table 1 shows expenditures under the well compensation grant program appropriation for the prior 10 fiscal years, and for 2018-19 to date. Expenditures can occur in the same or subsequent year as the year of the grant award. The number of well compensation awards for replacement, reconstruction, or treating the contaminated well ranged from six to 22 per year during the 10 years. The number of well abandonment awards ranged from 54 to 115 per year during the same time period. Table 1 also shows expenditures for supplemental financial hardship assistance for well compensation under the separate state-funded response appropriation. Annual expenditures have averaged almost \$180,000 for the prior 10 fiscal years for the combined well compensation and supplemental financial assistance programs. DNR indicates it is unable to estimate how many wells are eligible for well compensation grants under current program eligibility requirements.

8. The well compensation grant appropriation has \$976,800 available during the 2017-19 biennium for expenditures, including \$200,000 in 2017-18 and \$200,000 in 2018-19, and an unencumbered carry-in balance of \$576,800. As shown in Table 1, expenditures were \$123,300 in 2017-18. Thus, \$853,500 remains available for expenditure in 2018-19. Any funds not expended during 2018-19 will carry forward to be available for expenditure during the 2019-21 biennium.

TABLE 1**Well Compensation Expenditures
2008-09 Through 2018-19**

<u>Fiscal Year</u>	<u>Well Compensation Grant Appropriation Expenditures</u>	<u>Supplemental Financial Hardship Expenditures*</u>	<u>Total</u>
2008-09	\$171,301	\$60,128	\$231,429
2009-10	197,172	33,539	230,711
2010-11	154,050	50,398	204,448
2011-12	113,274	41,843	155,117
2012-13	130,772	81,348	212,120
2013-14	88,579	25,584	114,163
2014-15	153,260	41,979	195,239
2015-16	115,585	35,910	151,495
2016-17	97,692	4,854	102,546
2017-18	123,288	61,350	184,638
2018-19**	97,903	12,876	110,779

* Expenditures made from SEG state-funded spills response appropriation.

** As of May 6, 2019.

Arsenic and Nitrate Contamination

9. Arsenic is an element that occurs naturally in soil and bedrock formations, and can be released into the groundwater and drawn into wells. The federal and state drinking water standards are 10 parts per billion (ppb). High levels of arsenic can increase the risk of some types of cancer, and may increase the negative health effects of blood vessel damage, high blood pressure, nerve damage, anemia, stomach upsets, and skin changes. DNR and the Department of Health Services (DHS) recommend that no one drink water that exceeds the drinking water standard of 10 ppb.

10. Nitrate is a compound made up of nitrogen and oxygen. Typical sources of nitrate include nitrogen fertilizers, animal manure, and human waste from septic systems or wastewater treatment facilities. The state and federal nitrate drinking water standards are 10 parts per million (ppm). High levels of nitrates can negatively impact the ability of blood in a person's body to carry oxygen, which, in infants can cause a harmful health condition known as "blue baby syndrome." Studies suggest that high levels of nitrates may also increase the risk of certain other health problems, such as thyroid disease, diabetes, and some types of cancer. DNR and DHS recommend that no infant or any female who is or may become pregnant should consume any water that exceeds the nitrate standard, either by drinking or eating foods prepared with the water (such as formula, juices, and coffee). In addition, DHS recommends that all people avoid long-term consumption of water that has a nitrate level greater than 10 ppm.

11. DNR believes arsenic is being released into groundwater at elevated levels in the areas of Outagamie, Winnebago and Brown Counties, at least partly because people are using more water than many years ago. This has lowered the water table, drawing more arsenic into groundwater. High levels of arsenic have been found in wells in most areas of the state. Recent studies of private wells have identified high levels of nitrates in wells in the northeastern, western, and southwestern areas of Wisconsin. It is uncertain how many wells have water exceeding both the arsenic and nitrate standard.

12. The well compensation grant program was created in 1983 Wisconsin Act 410, the groundwater act, after a 1982 Legislative Council study committee made several recommendations related to groundwater. There was discussion during the development of the legislation about which contaminants were of great enough concern to be eligible for compensation. The original authorizing language created the limitation on eligibility for residential wells contaminated by nitrates and not used for livestock, and this provision has existed since then. The state nitrate standard went into effect prior to creation of the program, and the federal standard went into effect several years after the program was created.

13. In the 1980s, it was sometimes considered acceptable to address nitrate contamination by providing bottled drinking water for infants and pregnant women. DNR currently considers provision of bottled water a temporary solution to drinking water quality issues and not a viable long-term solution because it is cumbersome and expensive. NR 738 authorizes provision of temporary emergency water supplies for up to six months when a water supply is adversely affected by environmental pollution or a hazardous substances discharge. However, this code provision specifically excludes contamination by nitrates.

14. DNR recommends, but does not require, that private well owners test their water annually. The state does not require private well owners to take any specific action if their well produces water with arsenic concentrations above 10 ppb or nitrate concentrations above 10 ppm. If a well owner wants to reduce the consumption of water containing arsenic or nitrate, the owner generally has the following options: (a) replace the well by constructing a new deeper well; (b) install a treatment system designed to remove nitrates; (c) connect to a community water supply (a public water system that serves at least 15 service connections used by year-round residents) instead of continuing to use the well; (d) reconstruct the well by deepening it, adding a liner, replacing the pump or making other physical modifications; or (e) temporarily use bottled drinking water. There is no specific nitrate or arsenic concentration threshold that determines which of these options a well owner should take. The well owner's decision on how to respond to arsenic or nitrate contamination is based on factors such as the owner's level of concern about the health risks of nitrates or arsenic, whether infants or pregnant women are consuming the water, the cost and affordability of options, the expected timeframe for a residence to be using the well, nearby land uses that may produce nitrates affecting the well, the well depth necessary to obtain water that does not exceed the drinking water threshold, the ability of a treatment system to treat the specific arsenic or nitrate level at the well, and the availability and proximity of a nearby community water supply.

15. The administration's rationale for expanding grant eligibility to residential well contamination from nitrates that exceeds 10 ppm and arsenic that exceeds 10 ppb is that these are the federal and state standards, and arsenic and nitrates can contribute to the health problems described

earlier.

16. DNR does not track how many residential wells have nitrate contamination above 10 ppm, but the Department estimates approximately 42,000 wells (6% of approximately 700,000 private wells in the state) produce water with nitrate contamination above the 10 ppm standard. DNR does not track how many wells have arsenic contamination above 10 ppb, but the Department estimates approximately 40,000 wells (5.7% of approximately 700,000 private wells in the state) produce water with arsenic contamination above the 10 ppb standard and below the currently eligible 50 ppb background concentration threshold.

17. The income amount of households with contaminated wells is unknown, but DNR estimates that owners of approximately half of the wells with nitrate contamination exceeding 10 ppm (21,000) and half of the wells with arsenic contamination between 10 ppb and 50 ppb (20,000) would meet the proposed maximum income threshold of \$100,000. These estimates mean that the recommended program expansions for nitrate contamination, arsenic contamination, and household income between \$65,000 and \$100,000 could result in roughly 41,000 additional private wells becoming eligible under the program. However, since the median family income in 2017 was an estimated \$72,542 and the median household income was \$56,759, it is possible that more than half of households with wells contaminated with nitrates or arsenic, and income up to \$100,000, would become eligible under the bill. Table 2 shows the potential number of wells that might become eligible under the bill. As mentioned earlier, it is uncertain how many wells have water exceeding both the nitrate and arsenic standards. A later section of the paper discusses the potential eligibility of currently eligible wells where owners have income between \$65,000 and \$100,000, and would become eligible under the bill.

TABLE 2

Proposed Well Compensation Program Expansions

<u>Well Type</u>	<u>Number of Wells</u>
Residential wells with nitrate contamination exceeding 10 ppm, that do not also water livestock	42,000
Wells with arsenic contamination exceeding 10 ppb and less than 50 ppb	40,000
Households with income between \$65,000 and \$100,000	<u>uncertain</u>
Subtotal	82,000
Subset of Well Type with income up to \$100,000	
Nitrate Contamination	21,000
Arsenic Contamination	20,000
Currently eligible contamination with income between \$65,000 and \$100,000	<u>uncertain</u>
Total potential additional wells	> 41,000

18. Under 2019 Assembly Bill 21, introduced on February 11, 2019, the well compensation grant program would be expanded to cover residential well nitrate contamination (but not arsenic) in

the same way as the Governor's recommendation, and would increase the maximum household income to \$100,000. In DNR's fiscal estimate for AB 21, the Department estimated that: (a) there are 700,000 private wells in the state; (b) of those, 6%, or 42,000, are estimated to produce drinking water with nitrates above 10 ppm; (c) half of them, or 21,000, would meet the new income eligibility threshold of \$100,000; (d) the average cost to replace a nitrate contaminated well is \$10,600; and (e) the statewide cost to address 21,000 contaminated wells would be \$223,000,000.

19. If approximately half of the wells contaminated with nitrates or arsenic have income up to \$100,000, the estimated total cost to address the contamination at the estimated 41,000 additional potentially eligible wells would be \$435 million, based on a DNR estimate of \$10,600 for the average replacement cost for a well. This cumulative total cost would include: (a) \$223 million to address the contamination at the estimated 21,000 wells with nitrate contamination; and (b) \$212 million to address the contamination at the estimated 20,000 wells with arsenic contamination. The cost to replace a specific well can vary widely, based on the local geology and depth that nitrate penetrates into the groundwater.

20. Table 3 shows the cumulative state well compensation grant expenditures under the bill could approach \$318 million, including: (a) \$163 million for wells with nitrate contamination; and (b) \$155 million for wells with arsenic contamination. This estimate assumes: (a) DNR would make all grants for 75% of the replacement cost, rather than the optional 100% of costs recommended under the bill; and (b) a well replacement grant would average \$7,763, after applying the \$250 copayment. However, this estimate does not account for the unknown number of wells that would meet eligibility requirements under the bill for both nitrate and arsenic. Any such wells would lower the estimated effect of the bill expansion provisions. DNR indicates that if a household has income up to the median family income (\$72,542 in 2017), DNR would award a grant for 100% of eligible costs as authorized under the bill. Thus, the cumulative state grant expenditures would likely exceed \$318 million because DNR would probably make a significant percentage of grant awards for 100% of eligible costs rather than 75% of costs.

TABLE 3
Potential Funding Need for Program Expansions

<u>Type</u>	<u>Demand (\$ Millions)</u>
Wells with nitrate contamination	\$163
Wells with arsenic contamination	155
Currently eligible wells with household income between \$65,000 and \$100,000	<u>unknown</u>
Total Potential Demand Exceeds	\$318

21. It is uncertain how many households would become eligible under the bill because they have income between \$65,000 and \$100,000 and wells that have contamination eligible under current law, as compared with households that have income up to \$100,000 and have a residential well

contaminated by nitrates or arsenic that is not currently eligible but would become eligible under the bill. Further, it is likely that if expansion for arsenic or nitrate contamination would be approved, but no increase would be approved in the income limits, a significant number of households with income up to \$65,000 would become eligible.

22. It is uncertain how many owners of the estimated 41,000 newly eligible additional wells would submit well compensation grant applications during the 2019-21 biennium or in subsequent biennia if the recommended program expansions were approved. DNR indicates it is not able to estimate the number of applications that might be submitted during the next few years. If a significant portion of the anticipated \$318 million in additional costs would be submitted to DNR for reimbursement during the coming two to six years, it would create a significant workload and potential backlog of eligible claims waiting for funding to become available. On the other hand, it is likely some owners of contaminated wells would seek other means of replacing their well rather than wait an indefinitely long period of time to address their contaminated drinking water supply with limited grant funding.

23. Some may argue that the recommended expansion of eligibility for arsenic contamination [Alternative A1] and nitrate contamination [Alternative B1] should be approved in recognition of the public health concerns about drinking water with nitrate or arsenic concentrations exceeding the federal and state standards included in the bill. While the bill would expand eligibility to nitrate and arsenic contamination, the eligibility expansion would conflict with two provisions in current law. The bill would not exempt arsenic or nitrate contamination from the requirement that DNR must deny claims that exceed the background level of contamination. Currently, DNR uses this statutory provision to deny claims with arsenic concentration less than 50 ppb. In addition, the bill does not exempt arsenic or nitrate contamination from the requirement that DNR must deny claims if the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance. If the Committee chooses to expand eligibility for arsenic [Alternative A1] or nitrates [Alternative B1], it would be appropriate to include these exemptions from the current provisions for denial of claims to make it clear that arsenic and nitrate contamination are eligible.

24. Each household that discovers it has a well contaminated with arsenic or nitrates has to make an individual decision about what to do to provide drinking water for the household. As mentioned earlier, DNR and DHS recommend that when nitrate contamination is found to exceed the drinking water standard, household members who are infants or pregnant women should not drink the contaminated water, and that when arsenic contamination is found to exceed the drinking water standard, no one in the household should drink the contaminated water. The household makes a decision about whether or which members of the household will drink the contaminated water, how high the concentration will be before they stop drinking the well water, or how high the concentrations of contaminants will reach before the well needs to be replaced.

25. Under 2017 Wisconsin Act 69, the statutes authorize a city, village, town, or county to remediate a private water supply as defined in the well contamination statute, with the agreement of the owner of the well. The local government may make a loan at or below the market interest rate, including an interest-free loan, and may recover its costs or collect the loan repayment as a special

charge or special assessment. The authority under Act 69 does not currently include the arsenic or nitrate contamination levels recommended to become eligible for a well compensation grant under the bill. If the Governor's recommendation to expand well compensation to arsenic or nitrate contamination were enacted, local governments could also provide loans to owners of wells contaminated with these substances.

26. The Committee could choose to expand eligibility to include arsenic contamination or nitrate contamination, or both. Some might argue that if contamination from one of the substances becomes eligible for state financial assistance, both of them should. Others might argue that there is a higher health priority to provide eligibility for one or the other of the two contaminants. However, others might suggest that the recommended expansion of eligibility for arsenic and nitrate contamination should not be approved because: (a) contaminated wells should be replaced by the owner as a normal part of the responsibility of owning a property; and (b) households that do not have sufficient funds on hand to pay for the cost of replacing a contaminated well have the option of seeking a loan from a financial institution. Further, it could be argued the state should not use financial resources from current program funding to pay for what could be a large program expansion of over \$318 million [Alternatives A2 and B3].

27. The bill would allow, but not require, DNR to prioritize claims for wells with nitrate contamination to give priority to claims with higher levels of nitrate contamination. It would not provide a higher priority for claims with nitrate contamination than for claims with contamination from arsenic that would become eligible under the bill, or with contamination from other substances that are currently eligible. The Committee could choose to approve this approach of providing DNR with the flexibility of prioritizing claims with higher levels of nitrate contamination [Alternative B1].

28. DNR anticipates it would not prioritize claims by contaminant, and would continue the Department's current practice of making awards as it receives and processes applications, regardless of which contaminant caused the contamination of the well or the level of nitrate contamination. The optional prioritization could be removed from the bill, to recognize that DNR would continue the practice of processing all claims as they are received, regardless of the level of nitrate contamination or the type of contamination [Alternative B2b]. Alternatively, it could be argued that DNR should be required to prioritize claims with nitrate contamination according to the level of contamination [Alternative B2a]. Under this alternative, DNR could be directed to annually determine how much of the available funding would be allocated to claims with nitrate contamination, in order to ensure that there would continue to be sufficient funds for wells contaminated with substances other than nitrates.

Income Limit and Grant Formula Changes

29. The administration's rationale for increasing the maximum household income from \$65,000 to \$100,000 is that the maximum income had not been increased since 1995 and the increase would make more households eligible for the program. According to the administration, providing grants of up to 75% of costs instead of phasing the grant down by 30% of the amount by which income exceeds a threshold (such as the \$45,000 current law threshold) as income increases is preferable because calculating the grant phase out at higher income levels is an administrative burden to DNR program staff. DNR indicates that it is difficult to explain to currently eligible households that have income between \$45,000 and \$65,000 that their grant would be reduced by 30% of the amount by

which their income exceeds \$45,000. Further, DNR indicates the grant reduction formula often results in no, or a minimal, well abandonment award, because the average well abandonment cost is approximately \$900.

30. Under 2019 Assembly Bill 21, the well compensation grant program would be expanded to increase the maximum household income to \$100,000, the same as recommended under the bill. However, it would reduce the grant for households with family income between \$65,000 and \$100,000 by 30% of the amount by which the income exceeds \$65,000. AB 21 would not make any changes in supplemental financial hardship assistance.

31. Table 4 shows the maximum grant amount for various income levels under current law, AB 21, and the Governor's recommendation to provide assistance of 75% of costs and optional 100% of costs.

TABLE 4

Maximum Well Compensation Grant - Current Law, AB 21, and the Budget Bill *

<u>Household Income</u>	<u>Current Law Maximum Grant</u>	<u>2019 AB 21 Maximum Grant</u>	<u>Budget Bill Maximum Regular Grant</u>	<u>Budget Bill Maximum Potential Hardship Grant</u>
\$45,000	\$12,000	\$12,000	\$12,000	\$16,000
55,000	9,000	12,000	12,000	16,000
65,000	6,000	12,000	12,000	16,000
72,542**	0	9,737	12,000	16,000
75,000	0	9,000	12,000	12,000
85,000	0	6,000	12,000	12,000
95,000	0	3,000	12,000	12,000
100,000	0	1,500	12,000	12,000
Above 100,000	0	0	0	0

* Current law, AB 21, and the budget bill require the claimant to pay a \$250 copayment.

** According to the U.S. Census Bureau American Community Survey 2013-17 average estimates, the estimated Wisconsin median family income was \$72,542 in 2017.

32. It is uncertain how many wells have contamination that is eligible under current law, but the owners have income between \$65,000 and \$100,000, which exceeds current income limits, but would become eligible under the increased income limits recommended under the bill. DNR indicates that the Department sometimes learns of households who have eligible wells, but their income exceeds \$65,000 so they are not able to receive funding under the program. A decision on whether to increase the maximum income limit could be made separately from the decision on whether to change the eligibility for arsenic and nitrate contamination. Some might argue that the maximum eligible income should be increased to \$100,000 to benefit additional households with moderate incomes [Alternative C1]. This would also recognize the financial difficulty that a household with income between \$65,000 and \$100,000 might experience in paying for the \$10,600 average well replacement

cost estimated by DNR. A \$100,000 maximum eligibility income may also be appropriate given \$65,000, when adjusted for inflation by either the national or Midwest Consumer Price Index since July, 1995, would equate to \$108,900 or \$103,800 respectively.

33. Alternatively, some might argue that households with income between \$65,000 and \$100,000 should be able to save or borrow funds to pay for the costs of a well replacement as a normal part of the responsibility of owning a property. Under this argument, the current maximum income of \$65,000 could be considered sufficient to fund households most in need of state assistance to replace their contaminated well [Alternative C2].

34. Table 4 shows that under the bill's provision of a grant of 75% of costs to all eligible applicants, there would be a large increase in the grant amount for households with income between \$45,000 and \$100,000. While an applicant with income of \$100,000 would receive a maximum grant of \$12,000, an applicant with income of \$100,000 would not be eligible for a grant. Some may argue that all applicants should receive grants of at least 75% of costs. The Committee could choose to approve the Governor's recommendation to delete the phasing down of grant awards for higher incomes [Alternative D1].

35. Some might suggest that households with incomes at higher levels of eligibility should pay a higher portion of the costs of the well replacement, and should receive a lower grant as a percentage of well replacement costs than households with a lower income. In addition, it could be argued that retaining a formula that phases down the grant by 30% of income above a threshold would allow limited program financial resources to assist a greater number of households than the bill's recommendation to fund all grants at 75% of costs. The Committee could choose to continue use of a grant formula that phases down the grant by 30% of income above a threshold. For example, Table 4 shows the grant at various incomes under the 2019 AB 21 proposal to phase down the grant by 30% of income above \$65,000. Approval of this grant formula would continue to provide some grant eligibility for households at higher income levels, but at a reduced portion of costs [Alternative D2].

36. If the maximum income is increased above the current \$65,000 maximum, and no action is taken to increase or delete the income threshold above which the grant amount is phased down by 30%, the grant for a household eligible for the maximum grant before applying the 30% reduction would phase out to a \$0 grant if income equals or exceeds \$85,000 [Alternative D3]. If current law is maintained with regard to maximum eligible income, the \$45,000 threshold for grant phase out, and the current 30% phase down of the grant amount, a household with the current maximum income of \$65,000 would continue to receive a maximum grant of \$6,000 [Alternative D3].

37. The administration's rationale for authorizing DNR to provide a grant of up to 100% of costs for households with up to the statewide median family income (estimated at \$72,542 in 2017), and for using the statewide median family income rather than the median household income (estimated at \$56,759 in 2017), is that the proposed funding would provide additional financial support to families. It could be argued that contaminated wells are a health problem that justifies state financial resources to pay for up to 100% of the costs of households with income up to the statewide family median [Alternative E1].

38. The administration indicates that the bill would allow, but not require, DNR to provide

grants of up to 100% of costs instead of 75% of costs, so DNR may coordinate grants made under the well compensation grant program with the requirements of the financial hardship assistance provided by the NR 738 provision under the separate state-funded spills response appropriation. DNR also indicates that if this recommendation were adopted, DNR would be able to pay these costs from the well compensation grant appropriation, rather than using the supplemental financial assistance currently available under the NR 738 provision.

39. The median family income is often larger than median household income because the median family income considers only households occupied by two or more people related by birth, marriage or adoption. In comparison, household income considers the incomes of all people ages 15 years or older occupying the same housing unit. Other DNR grant programs, such as the clean water fund program and safe drinking water loan program, use a measurement of the median household income (\$56,759 in 2017) to calculate the threshold of providing financial assistance for lower-income households. DNR indicates it may be administratively easier to use a grant reduction threshold with the same income measurement used by other DNR programs. In addition, some may argue that if the maximum well compensation grant is increased to 100% of costs for some portion of lower-income households, it would be more appropriate to establish a threshold of median household income (\$56,759) rather than the bill's higher threshold of median family income [Alternative E2].

40. Almost 70% of the 26 well compensation grants awarded in 2014-15 through 2017-18 qualified for supplemental financial hardship and received additional funding under the state-funded spills responses appropriation because their income was less than \$45,000. Table 1 shows the expenditures under the well compensation grant program and the supplemental financial assistance provisions. Another potential way to provide financial hardship assistance under the well compensation grant appropriation would be to put the formula currently in the NR 738 provision into the well compensation statute. This would pay all of the financial hardship expenditures from the well compensation appropriation instead of from the state-funded spills response appropriation [Alternative E3]. This could more accurately make all well compensation expenditures from the well compensation appropriation, rather than make some of them from the state-funded spills response appropriation.

41. If no action is taken to provide more than 75% of costs for some households with income below a specified threshold, DNR could continue to make financial hardship expenditures for eligible well compensation grant recipients under the spills response appropriation [Alternative E4].

Total Funding

42. The administration intended to add \$800,000 SEG annually to the current \$200,000 funding for the grant appropriation, but it was not included in the bill. The Secretary of DOA submitted a request to the Committee to add the recommended funding. The administration believes that adding \$800,000 annually to provide total funding of \$1,000,000 annually would properly fund the program. The Committee could choose to provide an additional \$800,000 SEG annually to provide a total of \$1,000,000 annually, equaling \$2,000,000 for the biennium, as intended by the Governor [Alternative F1].

43. A separate budget paper describes environmental fund revenues and expenditures. The

environmental management account of the environmental fund is expected to have a closing balance on June 30, 2021, of approximately \$26.6 million, based on Committee action to date and the inclusion of the Governor's recommended \$800,000 annual increase in well compensation grant funding. This is expected to provide a sufficient account balance under the bill to fund the Governor's recommended increase in the well compensation grant appropriation.

44. The current law expenditures summarized under Table 1 have funded a range of six to 22 grants per year. DNR estimates that \$1 million per year could provide up to approximately 126 well compensation grant awards per year. This assumes approximately \$20,000 of the \$1 million would be reserved for well abandonment grants, and the remaining \$980,000 would be awarded as a grant of 75% of eligible costs, rather than the optional 100% of costs under the bill. However, DNR intends to award grants at the optional 100% of costs when applicants meet the median family income threshold. If most grants would be awarded for 100% of costs, to households with income less than the state median family income (\$72,542), it is likely fewer than 100 grants would be awarded per year. If the program would fund an estimated 100 to 126 grants per year, this would mean that less than 0.3% of the potential \$318 million in state grant costs for 41,000 newly-eligible wells under the bill could be funded annually.

45. If some or all of the recommended program expansions are approved, it is uncertain how many applications would be submitted during the 2019-21 biennium. However, it would likely result in a significant increase in demand for funding under the program. The Committee could choose to provide more funding than recommended by the Governor. For example, the appropriation could be increased by \$1,200,000 rather than \$800,000, for a total of \$1,400,000 in annual funding (\$2,800,000 for the biennium). However, this would be expected to fund up to perhaps 0.4% of the potential \$318 million for 41,000 newly eligible wells under the bill [Alternative F2].

46. If the Committee approves any program expansions, but wishes to provide lower levels of program funding than the Governor intended, it could choose to increase grant appropriation funding by a more modest amount than recommended under the bill. For example, the appropriation could be increased by \$400,000 annually, to provide \$600,000 per year, or \$1,200,000 for the biennium [Alternative F3]. Another option would be to increase the well compensation appropriation by \$200,000 annually, to provide \$400,000 per year, or \$800,000 for the biennium [Alternative F4].

47. As noted earlier, the well compensation grant appropriation has \$853,500 in available funding for 2018-19, including the carryforward balance from the end of 2017-18. As of May 6, 2019, the appropriation had expended \$97,900 for well compensation grants in 2018-19. Thus, it is likely the appropriation will carry a significant balance forward for expenditure in 2019-20.

48. If no additional funding is provided, the program can use any funding carried forward from 2018-19, and the \$200,000 in annual base funding included in the bill [Alternative F5]. In addition, under current law and the bill, if grant applications exceed available funding, DNR is authorized to request additional funds from the Joint Committee on Finance under s. 13.10 of the statutes.

49. DNR estimates that the recommended increase of \$800,000 in annual funding would increase the number of well compensation grants anticipated to be funded under the bill from an

average of 12 to 126 per year. DNR indicates that workload to process these claims would increase by an additional 1.6 full-time equivalent of staff time. The Department anticipates if no additional staff is provided to process the additional anticipated applications, it would take longer to process applications, or the Department would need to reallocate staff from other grant programs, which would result in longer grant processing times for those programs. The administration has not estimated from what activities it would expect DNR to reallocate in order to accomplish processing the additional well compensation grant applications received under the bill.

50. If the Committee chooses to approve expansions of income eligibility, or for arsenic or nitrate contamination under the program, the Committee could choose to provide additional staff for the additional workload under the program. For example, the Committee could provide \$74,200 SEG in 2019-20 and \$98,800 SEG in 2020-21 with 1.0 SEG position beginning in 2019-20 to process well compensation grants [Alternative G1]. If the Committee approves program expansions and takes no action to provide additional staff, DNR would choose how to allocate current staff resources to process additional applications under the well compensation grant program and applications received under other current grant programs administered by the Department [Alternative G2].

ALTERNATIVES

A. Eligibility for Arsenic Contamination

1. Approve the Governor's recommendation to add to the definition of eligible contaminated well or private water supply a well that produces water containing arsenic of at least 10 parts per billion. In addition, exempt wells with arsenic contamination of at least 10 parts per billion from the current requirements that: (a) a claim shall be denied if the concentration exceeds the background concentration of the contaminant; and (b) the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance.

2. Take no action. (Wells with contamination from arsenic of at least 10 ppb and less than 50 ppb would continue to be ineligible for the program.)

B. Eligibility for Nitrate Contamination

1. Approve the Governor's recommendation to: (a) add to the definition of eligible contaminated well or private water supply a well that produces water containing nitrates of at least 10 parts per million; (b) delete the current limitations on claims for contamination by nitrates, making residential wells with nitrate contamination eligible; and (c) authorize DNR to prioritize claims for nitrate contamination based on five categories of concentration of parts per million nitrate nitrogen, with higher priority provided to higher concentrations. In addition, exempt wells with nitrate contamination of at least 10 parts per million from the current requirements that a claim be denied if: (a) the concentration exceeds the background concentration of the contaminant; and (b) the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance.

2. Approve Alternative B1 as modified in one of the following ways:

a. Require (rather than authorize) DNR to prioritize eligibility for higher concentrations of nitrates. In addition, direct DNR to annually determine how much of the available funding would be allocated to claims with nitrate contamination.

b. Delete the bill's authorization for DNR to prioritize eligibility for higher concentrations of nitrates. (DNR would continue the current practice of processing eligible claims as they are received.)

3. Take no action. (Residential wells with nitrate contamination that do not also provide water to livestock would continue to be ineligible for the program.)

C. Maximum Income

1. Approve the Governor's recommendation to increase the maximum annual family income to \$100,000.

2. Take no action. (This would maintain the current \$65,000 maximum annual family income.)

D. Grant Formula

1. Approve the Governor's recommendation to delete the current requirement that the grant is reduced by 30% of the amount by which the claimant's family income exceeds \$45,000.

2. Modify the Governor's recommendation by reducing the grant by 30% of the amount by which the claimant's family income exceeds \$65,000 (instead of \$45,000 under current law).

3. Take no action. (This would maintain the current law reduction of the grant by 30% of the amount by which the claimant's family income exceeds \$45,000.)

E. Eligibility for 100% Grant

1. Approve the Governor's recommendation to authorize DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median family income of the state (\$72,542 in 2017).

2. Modify the Governor's recommendation by authorizing DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median household income of the state (\$56,759 in 2017) instead of the proposed median family income of the state (\$72,542 in 2017).

3. Instead of approving the Governor's recommendation to authorize DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median household income of the state, authorize DNR to award a grant from the well compensation grant appropriation for more than 75% of costs under the same formula in administrative rule NR 738 that

the Department currently uses to fund supplemental financial assistance from the state-funded spills response appropriation. Include the following formula provisions: (a) if the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, DNR may pay 100% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; (b) if the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, DNR may pay 50% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; and (c) if a well owner has received a well compensation grant, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, DNR may pay the remaining eligible costs not covered by a well compensation grant, less a deductible amount of 5% of the annual family income.

4. Take no action. (DNR could continue to utilize the current administrative code provisions of NR 738 for supplemental financial assistance beyond the amounts provided from the well compensation grant appropriation.)

F. Funding for Grants

1. Provide \$800,000 SEG annually for the well compensation grant program from the environmental management account of the environmental fund. (This would provide a total of \$1,000,000 annually, and is the amount intended by the Governor, but not included in the bill.)

ALT F1	Change to	
	Base	Bill
SEG	\$1,600,000	\$1,600,000

2. Provide \$1,200,000 SEG annually for the program. (This would provide \$1,400,000 annually.)

ALT F2	Change to	
	Base	Bill
SEG	\$2,400,000	\$2,400,000

3. Provide \$400,000 SEG annually for the program. (This would provide \$600,000 annually.)

ALT F3	Change to	
	Base	Bill
SEG	\$800,000	\$800,000

4. Provide \$200,000 SEG annually for the program. (This would provide \$400,000

annually.)

ALT F4	Change to	
	Base	Bill
SEG	\$400,000	\$400,000

5. Take no action. (This maintains current funding of \$200,000 SEG annually and any carry forward balance from 2018-19.)

G. Funding for Staff

1. Provide \$74,200 SEG in 2019-20 and \$98,800 SEG in 2020-21 with 1.0 SEG position beginning in 2019-20 from the environmental management account of the environmental fund to administer the program expansions.

ALT G1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$173,000	1.00	\$173,000	1.00

2. Take no action.

Prepared by: Kendra Bonderud



State of Wisconsin
2019 - 2020 LEGISLATURE

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MCP:..
[Signature]

In 5/29

LFB:.....Bonderud - Well compensation grant program

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 983, line 20: delete the material beginning with that line and ending
3 with page 985, line 23.

4 (END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0255/P1
MCP:kjf

LFB:.....Bonderud - Well compensation grant program

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