



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 926

**Assembly
Amendments 1, 4, and 5**

Memo published: March 11, 2004

Contact: Mark C. Patronsky, Senior Staff Attorney (266-9280)
John Stolzenberg, Chief of Research Services (266-2988)

Current law contains limited provisions related to groundwater quantity. A person who wishes to construct or operate a high capacity well (a well which, together with all wells on the same property, has a capacity and rate of withdrawal in excess of 100,000 gallons per day) must obtain an approval from the Department of Natural Resources (DNR). DNR is required to withhold approval or impose conditions on the approval to ensure that the proposed high capacity well will not impair the water supply of any public utility engaged in furnishing water to the public, that the well will meet grounds for approval related to inter-basin diversions, and that the well may only be used to produce bottled drinking water if the DNR specifically approves the use of the well for that purpose. In addition, each person who obtains DNR approval of a high capacity well must report the volume and rate of withdrawal of the well, and the volume and rate of water loss. (Water loss is the loss of water from the basin from which it is withdrawn, either by inter-basin diversion or consumptive use, or both.)

Assembly Bill 926 retains the current law on groundwater quantity, except for the provision regarding bottled water, and imposes a variety of new regulations on high capacity wells. The bill potentially expands the number of high capacity wells that may be subject to conditions as to location, depth, pumping capacity, rate of flow, and ultimate use. The bill makes these conditions applicable to the following high capacity wells: a high capacity well proposed in a groundwater protection area, as defined in the bill; a high capacity well with water loss of more than 95% of the amount of water withdrawn; and a high capacity well that may have a significant environmental impact on a spring.

The bill creates a groundwater quantity committee to review implementation of the program created under the bill and to make certain recommendations to the Legislature.

Assembly Amendments 1, 4, and 5

Assembly Amendment 1 makes the following changes to the bill.

Environmental Impact Report

The bill authorizes the Department of Natural Resources (DNR) to require an applicant for a high capacity well to submit an environmental impact report. The amendment restricts this provision to only those high capacity wells that are within 1,200 feet from an outstanding or exceptional resource water or trout stream, that have more than 95% water loss, or that may have a significant environmental impact on a spring.

Class III Trout Streams

Class III trout streams are added to the streams that are used for the delineation of groundwater protection areas. The bill includes only Class I and Class II trout streams. The amendment requires DNR to identify Class III trout streams by rule, as is provided under the bill for Class I and Class II trout streams. The amendment includes a definition of Class III trout streams that is identical to the definition used by the DNR in its current publication “Wisconsin Trout Streams.”

Definition of “Spring”

The amendment makes minor changes to the definition of “spring” in order to clarify the definition. Under the amendment, the new definition is “any area of concentrated groundwater discharge occurring at the surface of the land that results in a flow of at least one cubic foot per second at least 80% of the time.”

Dewatering of Construction Sites

The amendment requires DNR to issue a single approval for all high capacity wells used for the temporary dewatering of one construction site (such as buildings, roads, or utilities). The applicant pays a single \$500 fee for the approval. DNR will determine the scope of what is a “project” under this provision and DNR is required to allow amendments to the scope of the project.

Environmental Review

The bill requires DNR to review an application for a high capacity well that is located in a groundwater protection area, that has a water loss exceeding 95% or that may have a significant environmental impact on a spring, using the environmental review process for type II or type III actions under current DNR environmental review rules. The amendment deletes the type II environmental review process, and retains the type III process.

Approval Conditions

The bill provides that the DNR “may not approve the high capacity well [in a groundwater protection area, with more than 95% water loss, or that may have a significant environmental impact on a spring] unless it includes in the approval conditions...to ensure that the high capacity well does not cause significant environmental impact.” Some concerns have been raised that this language could be construed to prevent the DNR from denying an approval, when a high capacity well, with conditions, will still cause significant environmental impact. The amendment clarifies this provision (and other

similar provisions) to provide that the DNR “may not approve the high capacity well unless it is able to include and includes in the approval conditions that ensure....”

Environmental Impact Report Contents

Under the bill, one result of the DNR’s environmental review may be that the DNR directs the applicant to prepare an environmental impact report. The amendment restricts the information that the DNR may request in the environmental impact report to that information relating to the DNR decisions under s. 281.34, the new statute created by the bill.

Existing High Capacity Wells

The bill defines circumstances under which the DNR may modify or rescind the approval of an existing high capacity well, if the approval was issued under either the new statute or the prior statute. Under the bill, DNR may take this action if 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.” Concerns have been raised regarding the applicability of the existing approval and scope of the DNR’s authority under this provision. The amendment clarifies this provision by stating that the approval of a high capacity well “remains in effect unless the department modifies or rescinds the approval because the high capacity well or use of the high capacity well is not in conformance with standards or conditions applicable to the approval of the high capacity well.”

Mitigation in Groundwater Management Areas

The bill provides for a program of mitigation of the effects of wells previously constructed that are located in groundwater protection areas (areas within 1,200 feet from an outstanding or exceptional resource water or trout stream). The bill provides that DNR may not order an owner to undertake mitigation unless the full cost of mitigation can be paid by the DNR. Concerns have been raised that DNR might order abandonment of an existing well but not fund replacement of the well, if replacement is necessary. The amendment clarifies that replacement of wells is provided as a method of mitigation “if necessary.” In addition, the amendment provides that if DNR includes mitigation in any rules it promulgates after January 1, 2007 (in the event that the groundwater advisory committee fails to make the required recommendations), the same requirement of full funding applies to mitigation in groundwater management areas.

Groundwater Advisory Committee

The bill creates a groundwater quantity committee, the name of which is changed in the amendment to the groundwater advisory committee. In the bill, membership on the committee includes four appointees of the Governor and four appointees each by the Speaker of the Assembly and the Majority Leader of the Senate. The Secretary of Natural Resources or the secretary’s designee is also a member of the committee. The amendment changes this so that the Governor appoints three members, one of whom must represent well drillers, and the minority leader of the two houses each appoint one member. The amendment further requires the Governor and the two minority leaders to consult regarding the four appointees to assure that there is one representative from each of the four categories of members (industrial, agricultural, environmental, municipal).

Recommendations of the Advisory Committee

The bill requires the groundwater advisory committee to make certain investigations and recommendations. The amendment adds to the committee's charge, directing it to make recommendations on whether to designate other areas facing chronic groundwater management problems as groundwater management areas (in addition to the two areas established by the bill) and methods for removing the designation as a groundwater management area, recommendations regarding the definition of a spring, recommendations regarding the potential for the use of general permits for high capacity wells, and recommendations for factors to be considered by the DNR in determining whether a high capacity well causes a significant environmental impact for purposes of the new statute.

Assembly Amendment 4 deletes the five positions for the DNR for groundwater quantity management authorized by the bill.

Assembly Amendment 5 directs the groundwater advisory committee, as renamed by Assembly Amendment 1, to include in its recommendations on groundwater management areas and other areas with chronic groundwater management problems recommendations for a mitigation program for groundwater management areas similar to the mitigation program for groundwater protection areas created by the bill.

Legislative History

On March 5, 2004, the Assembly Committee on Natural Resources introduced Assembly Amendment 1. This committee recommended adoption of Assembly Amendment 1 and passage of Assembly Bill 926, as amended, on March 5, 2004, on separate votes of Ayes, 10; Noes, 0.

On March 8, 2004, the Joint Committee on Finance took the following actions: recommended adoption of Assembly Amendment 1 on a vote of Aye, 16; Noes, 0; introduced and recommended adoption of Assembly Amendment 4 on a vote of Ayes, 15; Noes, 1; introduced and recommended adoption of Assembly Amendment 5 on a vote of Ayes, 16; Noes, 0; and recommended passage of Assembly Bill 926, as amended, on a vote of Ayes, 15; Noes, 1.

On March 10, 2004, the Assembly adopted Assembly Amendments 1, 4, and 5 on separate voice votes and passed Assembly Bill 926, as amended, on a vote of Ayes, 99; Noes, 0.

MCP:JES:ksm:wu:rv