

# State of Wisconsin

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ASSEMBLY CHAIR  
**John Nygren**

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## Joint Committee on Finance

### MEMORANDUM

To: Members  
Joint Committee on Finance

From: Senator Alberta Darling  
Representative John Nygren

Date: December 11, 2017

Re: s. 16.515/16.505(2), Stats. Request

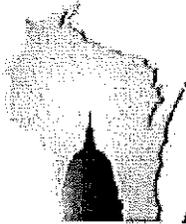
Attached is a copy of a request from the Department of Administration, received December 11, 2017, pursuant to s. 16.515/16.505(2), Stats., on behalf of the Department of Natural Resources.

Please review the material and notify **Senator Darling** or **Representative Nygren** no later than **Friday, December 29, 2017**, if you have any concerns about the request or if you would like the Committee to meet formally to consider it.

Also, please contact us if you need further information.

Attachments

AD:JN;jm



WISCONSIN DEPARTMENT OF  
ADMINISTRATION

SCOTT WALKER  
GOVERNOR  
SCOTT A. NEITZEL  
SECRETARY  
Office of the Secretary  
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Voice (608) 266-1741  
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**Date:** December 11, 2017  
**To:** The Honorable Alberta Darling, Co-Chair  
Joint Committee on Finance  
The Honorable John Nygren, Co-Chair  
Joint Committee on Finance  
**From:** Scott A. Neitzel, Secretary  
Department of Administration  
**Subject:** s. 16.515/16.505(2) Request(s)

DEC 11 2017  
JF. Finance

Enclosed are request(s) that have been approved by this department under the authority granted in s. 16.515 and s. 16.505(2). The explanation for each request is included in the attached materials. Listed below is a summary of each item:

| AGENCY               | DESCRIPTION                            | 2017-18 |      | 2018-19 |      |
|----------------------|--|---------|------|---------|------|
|                      |  | AMOUNT  | FTE  | AMOUNT  | FTE  |
| DNR<br>20.370(4)(cg) | Groundwater quantity<br>administration |         | 1.0* |         | 1.0* |

\*Permanent position which replaces a project position ending June 2018.

As provided in s. 16.515, the request(s) will be approved on January 3, 2018, unless we are notified prior to that time that the Joint Committee on Finance wishes to meet in formal session about any of the requests.

Please contact Kirsten Grinde at 266-1353, or the analyst who reviewed the request in the Division of Executive Budget and Finance, if you have any additional questions.

Attachments

**Date:** November 30, 2017  
**To:** Waylon G. Hurlburt  
**From:** Caitlin Morgan Frederick  
**Subject:** Section 16.515/16.505(2) Request

Attached is a s. 16.515/505(2) request analysis for your approval and processing. Listed below is a summary of each item:

**DOA RECOMMENDATION:**

| <u>AGENCY</u>        | <u>DESCRIPTION</u>                  | <u>2017-18</u> |            | <u>2018-19</u> |            |
|----------------------|-------------------------------------|----------------|------------|----------------|------------|
|                      |                                     | <u>AMOUNT</u>  | <u>FTE</u> | <u>AMOUNT</u>  | <u>FTE</u> |
| DNR<br>20.370(4)(cg) | Groundwater quantity administration |                | 1.0*       |                | 1.0*       |

\* Permanent position which replaces a project position ending June 2018.

**AGENCY REQUEST:**

| <u>AGENCY</u>        | <u>DESCRIPTION</u>                  | <u>2017-18</u> |            | <u>2018-19</u> |            |
|----------------------|-------------------------------------|----------------|------------|----------------|------------|
|                      |                                     | <u>AMOUNT</u>  | <u>FTE</u> | <u>AMOUNT</u>  | <u>FTE</u> |
| DNR<br>20.370(4)(cg) | Groundwater quantity administration |                | 1.0*       |                | 1.0*       |

\* Permanent position which replaces a project position ending June 2018.

WGH APPROVAL WRH (FORWARD TO GAIL TAPPEN)



**WISCONSIN DEPARTMENT OF  
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**Date:** November 30, 2017

**To:** Scott A. Neitzel, Secretary  
Department of Administration

**From:** Caitlin Morgan Frederick  
Executive Policy and Budget Manager

**Subject:** Request under s. 16.505 from the Department of Natural Resources for  
Creation of a 1.0 FTE Permanent Position

**Request:**

The Department of Natural Resources requests the creation of a 1.0 FTE permanent position to serve as a water supply specialist. This position would cost \$57,400 PR annually in salary and fringe benefits. This position would focus on reviewing applications submitted to the department for the establishment of high capacity wells and would replace a water supply specialist project position that will expire June 23, 2018, and is currently vacant.

**Revenue Sources for Appropriation(s):**

Revenue for the department's groundwater quantity administration appropriation under s. 20.370(4)(cg) comes from high capacity well application fees and well notification fees. Each application for high capacity well construction requires a \$500 fee and well notification fees are \$50. The department expects that these fees will generate enough revenue to cover additional costs related to the requested position. In 2016, the department received 189 applications for well construction. This compares with 370 applications in 2013.

**Background:**

The department is responsible for regulating the waters of the state, including groundwater. As part of that larger duty the department is responsible for regulating high capacity wells, to ensure the wells do not have significant impacts on surface and groundwater in the area. "High capacity wells" have a capacity of at least 100,000 gallons of water per day, when combined with all the other wells on the property.

These wells are often used to provide drinking water for municipalities, for irrigation on farms or for industrial purposes that need significant amounts of water. Under current law, anyone who intends to construct a new high capacity well must obtain a permit from the department.

However, 2017 Wisconsin Act 10 made several changes to the permitting process to eliminate and clarify circumstances under which a permit is required. A permit for a high capacity well is not required under the following conditions:

- When repair and maintenance of an existing high capacity well is being performed;
- When there is construction of a new high capacity well to replace an existing high capacity well, if the existing high capacity well is filled and sealed, and when the new high capacity well meets certain standards similar to the well being replaced;
- When an existing high capacity well is being constructed to substantially the same depth; or
- When ownership of an existing high capacity well is being transferred to a new owner.

Instead, the owners involved must notify the department when any of those activities are taking place.

There have been increased time demands on review of high capacity well applications, but since the time the position was originally created, the number of applications received has remained steady. The following table shows the number of applications received, as well as the number and percentage of those reviewed completed by the water supply specialist project position:

| <b>Year</b> | <b>Applications Received</b> | <b>Total Reviews Conducted by High Cap Team</b> | <b>Total Reviews Completed by Intake Position</b> | <b>% Reviews Completed by Intake Position</b> |
|-------------|------------------------------|---|---|---|
| 2012        | 450                          | 330   | --  | --  |
| 2013        | 370                          | 382   | --  | --  |
| 2014        | 275                          | 300   | --  | --  |
| 2015        | 182                          | 116   | 32  | 28%   |
| 2016        | 189                          | 297   | 98  | 33%   |
| 2017        | 180                          | 186   | 70  | 38%   |

The requested water supply specialist position would continue to perform the work previously done by the project position, which includes preliminary review to determine if additional review work is necessary. The position's activities would include:

- Recording well location, verification of property ownership and other application intake processes;

- Screening the initial application to identify the underlying environmental conditions, which includes identifying nearby waters of the state and assembling groundwater layers to identify potential groundwater threats;
- Responding to requests for information related to pending well applications and approvals; and
- Preparing records and recordkeeping related to approved wells.

For approximately one-third of the applications, the position can complete the full groundwater quantity impact review. The more complex reviews are sent on to the department's hydrogeologists. The preliminary screening process allows the hydrogeologists to conduct a more thorough review of the complex applications, as well as continue to manage larger water projects, which now includes the study of the Central Sands region required under Act 10.

#### **Analysis:**

Administrative rules require the department to complete reviews of high capacity wells in 65 days or fewer. The department has indicated that the amount time required to complete a review may vary, depending on the complexity of the application. After reviewing the trends in well applications, and the utilization of the project position, the department has determined that a permanent position is necessary because of the well application review process and changes in industry practices that have reverted to long-term trends.

The high capacity well review process has been the subject of several court decisions and opinions by the Wisconsin Attorney General's Office. In 2011, the Wisconsin Supreme Court in *Lake Beulah Management District v. DNR*, 2011 WI 54, determined that the department must consider the environmental impact and deny the permit for a high capacity well if there is significant scientific evidence that the proposed well would harm the waters of the state. Subsequent to that decision, on May 10, 2016, in his opinion, OAG 01-16, the Attorney General determined that the Supreme Court's decision did not consider the effect of 2011 Wisconsin Act 21, which stated:

*No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter.*

More recently, a Dane County judge ruled that the department must consider the cumulative impacts of high-capacity wells on other water resources. As a result, the judge invalidated seven permits that had previously been issued. The position will be required to navigate the current regulations and policies, as well as the evolving regulatory framework, and apply those principles to the application review process.

Scott A. Neitzel, Secretary  
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This request reflects the intent of the department's original request, which was to seek a permanent position if deemed necessary at the end of the project position term. Approving the request as a permanent position will allow the department to meet the objective of protecting the waters of the state on an ongoing basis, and improve on efficiencies in the high capacity well application process.

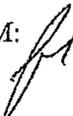
**Recommendation:**

Approve the request.

**CORRESPONDENCE/MEMORANDUM**

DATE: November 9, 2017

TO: Waylon Hurlburt, State Budget Director  
Department of Administration

FROM:  Daniel L. Meyer, Secretary   
Department of Natural Resources

SUBJECT: Request for Program Revenue-Funded 1.0 FTE Water Supply Specialist - Entry Position

Pursuant to Wis. Stat. s. 16.505/515, the Department requests authority for one permanent position and associated spending authority of \$24,000 in FY 2018 and \$57,400 in FY 2019 and beyond. The position would be used to conduct high capacity well application intake activities, perform initial screening on each application and communicate with the regulated community. In addition, this position would coordinate responses to requests for information related to the status of high capacity well processing and coordinate all recordkeeping related to the approvals.

This permanent position is needed to replace a project position with similar job duties that was authorized in 2014, was recently vacated due to a staff departure, and is slated to end on June 23, 2018. The work associated with this position is ongoing and best addressed by a permanent FTE.

**Funding Source**

The proposed position and spending authority would reside in appropriation s. 20.370 (4)(cg) and would be funded from high capacity application review fees and well notification fees. Based on a review of the condition of this funding source, the Department believes there is sufficient revenue for this additional position.

**Background**

The DNR is the state agency with primary responsibility for regulating high capacity well activities. Within DNR, the Drinking Water and Groundwater (DG) Program has the lead role in reviewing applications for high capacity wells.

In accordance section 281.34 of the Wisconsin Statutes, no person may construct or withdraw water from a high capacity well without DNR approval. A "high capacity well" is a well, except for a residential well or fire protection well, that, together with all other wells on the same property, except for residential wells and fire protection wells, has a capacity of more than 100,000 gallons per day.

In 2012 the DG program completed a lean project that focused on streamlining the high capacity well application process. The lean project identified the need for a new position to be solely dedicated to high capacity application intake, application screening, and to serve as a resource for external and internal customers. That need was temporarily met through a Water Supply Specialist 4-year project position that was created in November 2014. The position's value was reaffirmed during the department's 2015-2017 strategic alignment process. In Fiscal Year 2017 the Water Supply Specialist project position processed 211 high capacity well applications and conducted the preliminary review of 116 high capacity well applications while responding to all customer inquiries. The position has successfully helped the DG program meet alignment goals. The position has improved the management of the program's high

capacity well workload by documenting, prioritizing and efficiently managing application intake and review while delivering reliable customer service for an externally focused program.

Legislative concerns and actions related to groundwater use issues continue to arise and impact the workload of the DG program. In June 2017, section 281.34 of the Wisconsin Statute was modified requiring the DG program to model and evaluate specific water bodies in Wisconsin's Central Sands region. The workload associated with this effort will require significant time from the program. The Water Supply Specialist position will prevent disruption of high capacity well application processing and ensure customer requests are responded to immediately.

### **Position Classification & Responsibilities**

The proposed position would be classified as a Water Supply Specialist. Activities of the position would include:

- Conducting intake activities for high capacity well system applications.
  - Recording proposed well location and assign well number
  - Verify property ownership
  - Process application fee
  - Verify complete application
- Performing initial screening on each application.
  - Using a Geographical Information System application, identify nearby waters of the state for potential impacts (including, e.g., municipal wells, certain streams, springs and lakes.)
  - Assemble groundwater quality layers for identifying potential groundwater threats
  - Identifying the status of all other wells on the applicant's property, including historical withdrawal data
  - Identifying areas of endangered or threatened resources near the well
  - Notifying DNR field staff of the application
  - Keying material information from the application into the DNR's Water Use database
- Responding to requests for information related to high capacity well applications, approvals, and modifications as well as changes in high capacity well laws.
- Coordinating all high capacity well approval record keeping.
- Review high capacity well construction reports.
- Contribute to discussions with high capacity well team meetings and identify process improvements for the water use data system.

### **Justification**

The position is key to the success of the DG program's core work effort to increase the efficiency and effectiveness of the high capacity well application and review process. The position serves as a primary interface between high capacity well applicants and the program staff, ensuring timely and consistent responses to our customers. Over the past 2+ years this position has filled a critical role by facilitating the program's adoption of an evolving regulatory framework.

### **Contact Information**

If you have questions regarding this request or need more information please contact Steve Elmore of the Drinking Water and Groundwater Program (264-9246) or Paul Neumann of the Bureau of Management & Budget (266-0818).

cc:

Caitlin Frederick, DOA

Pat Stevens, EM/8

Jim Zellmer, EM/3

Steve Elmore, DG/5

Adam Freihoefer, DG/5

Jim McLimans, DG//5

Joe Polasek, MB/8

Paul Neumann, MB/8

Gabriel Nankee, FN/2