



State Senator

Neal J. Kedzie

11th Senate District

**Testimony of Senator Neal Kedzie
Senate Bill 302
Senate Natural Resources Committee
September 26, 2013**

Good morning Mr. Chairman and members of the Senate Natural Resources Committee. Thank you for your consideration of Senate Bill 302, relating to approvals for high capacity wells.

Before I get into the specifics of the bill before you, I believe it is important for the Committee to understand the history and my experience with groundwater law and the regulation of high capacity wells in Wisconsin.

In the late 1990s and early 2000, an international water bottling interest, Perrier, had preliminary plans to site a high capacity well on state land near the Mican Springs, the headwater of one of Wisconsin's most renowned trout streams.

A ground-swell of public opposition to the project reversed plans for Perrier, and the bottler has since moved on. During this time, the Wisconsin Department of Natural Resources was pressed by both lawmakers and the public as to its regulatory authority to deal with situations like Perrier.

While the DNR did have some regulatory measures in place to review such high capacity well applications, the Department expressed concerns that it may not have all the tools it needed to make the appropriate determinations of the environmental impact certain high capacity wells may have on sensitive bodies of water.

Because of that, in 2003, Representative DuWayne Johnsrud – the former Chair of the Assembly Natural Resources Committee – and I were approached by varying interest groups on the issue of high capacity well regulation.

The groups, representing both industry and environmental interests, believed that even though Perrier itself was no longer an issue, a much larger issue of how to go forward and deal with the next Perrier was necessary. We agreed.

Representative Johnsrud and I shared a concern that the DNR did not have the appropriate statutory authority to better scrutinize certain high capacity wells located in environmentally sensitive areas and that changes were in order to create stronger protections for those areas.

At the time, we understood that it would be a serious challenge for both us and the Legislature as a whole to address this concern.

Recognizing that, we convened a series of informative work group meetings comprised of individuals representing business, municipal, environmental, and agricultural organizations, along with various officials with the Department of Natural Resources, University of Wisconsin, Legislative Council staff, and the Legislative Reference Bureau.

Representative Johnsrud and I led this large working group with a mission of finding a legislative solution to a very difficult problem. Our intent was to be proactive in our response and not simply place a moratorium on high capacity wells in Wisconsin.

We knew that was unrealistic, and instead, asked members of the group to provide constructive, workable, and realistic options for consideration to include into a comprehensive high capacity well regulation and protection bill.

This group of dedicated individuals spent days, weeks, and months working hundreds of hours collaboratively on draft legislation to specifically define the authority of the Department of Natural Resources over certain types of wells that may be located in sensitive areas.

And while we did not always agree on the particulars of the legislation, the dialogue and discourse was positive and continually moved forward towards a bill which took all concerns into consideration and created regulatory certainty for both the DNR and current and prospective high capacity well users.

In the end, the working group emerged with a bill that gave the authority to the DNR to provide a higher standard of environmental review for any proposed high capacity well which may be located in close proximity to a spring, a trout stream, an exceptional resource water, outstanding resource water, or for use by a water bottler, such as Perrier.

The bill created groundwater protection areas (GPAs) which allow for the higher standard of environmental review by the DNR for any proposed high capacity well located within 1200 feet of those waters, and also creates regional groundwater management areas (GMAs) in the state.

We believed the environmental standards created in the bill were fair and adequate to provide the appropriate regulatory authority to the DNR to review certain types of high capacity wells under the Wisconsin Environmental Policy Act. We believed that then and I believe that to this day.

The bill was advanced through both Houses of the Legislature after lengthy hearings by both standing committees, and eventually received the approval of 99 Representatives and 31 Senators. One Senator voted 'no' and one was absent.

For an issue of this magnitude affecting so many competing interests, that was a significant feat which we can all take pride in. On April 22, 2004 (Earth Day) the Groundwater Protection Act was enacted into law as Wisconsin Act 310.

While some may have considered it a "first step" in groundwater protection, I considered it a giant leap.

In signing the bill into law, Governor Doyle said the bill, “establishes a comprehensive system for the regulation of high capacity wells and groundwater quantity in the state. This bill will result in vital protections for our state's groundwater resources and reflects the hard work and dedication of the Legislature and individuals representing agriculture, the environment, municipalities and business. The thoroughness of this bill and the consensus that affected interests have achieved should be models for future accomplishments in state government.”

Again, the new law was initiated and intended to respond to a situation where the Department of Natural Resources may not have had the appropriate regulatory authority to deal with situations like Perrier.

The Legislature and Governor responded accordingly, and for the last ten years, our intent has carried forward, providing regulatory certainty to both regulators and the regulated, and the necessary environmental protections to sensitive waters of the state.

As you may all know, on July 6, 2011, the Wisconsin Supreme Court handed down a decision which I believe has created ambiguity in the review and regulation of all high capacity wells.

In the decision – commonly referred to as the Lake Beulah decision – the Court said the DNR retains broad authority and general duty to protect and manage waters of the state.

Further, the Court said “finding no language expressly revoking or limiting the DNR’s authority and general duty to protect and manage waters of the state, we conclude that the DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state.”

The Court applied that broad authority to the regulation of high capacity wells, but did not take into consideration the limitations placed on the DNR through 2003 Wisconsin Act 310.

Instead, the Court deferred to the broad authority under sections 281.11 and 281.12, which is a preamble stating a general purpose of the DNR’s authority over the waters of the state.

By doing so, the DNR may have been granted unlimited regulatory authority of high capacity wells, which was never the intent of Act 310.

In short, the Court held the Legislature did not expressly limit the DNR’s authority to regulate high capacity wells. However, as the co-author of 2003 Wisconsin Act 310, I believe it did.

That said, in light of the Court’s action, Senate Bill 302 is a response to the Court’s decision both 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.

While this bill clearly expresses the limits of the DNR’s regulatory authority for high capacity wells, it does not change any of the environmental standards created in Wisconsin Act 310.

SB 302 revises sections 281.34 of statute to reaffirm the appropriate level of regulatory authority for the Department of Natural Resources' authority over high capacity wells, as originally intended in 2003 Wisconsin Act 310.

The bill expressly limits the DNR's ability to apply the higher standard of environmental review only to a proposed high capacity well which may be located in a groundwater protection area, may impact a spring, or may be used for the purpose of bottling water.

In addition, the bill sets criteria for the following:

Replacement High Cap Wells

Replacement wells in substantially the same location, drilled to substantially the same depth and same pumping rates may not trigger new conditions, modifications, or higher standard of environmental review. New building codes and standards may be applied to the construction of a replacement well.

However, a replacement well may not be more than 75 feet from the well being replaced. If the replacement well is subsequently located in a groundwater protection area (GPA) or is determined to impact a spring, this provision does not apply, and instead, the replacement well would be subject to the higher standard of environmental review.

Reconstructed Wells

A person seeking to reconstruct an existing well must receive approval from the DNR, however the DNR may not impose conditions in an approval for the reconstruction of an existing high capacity well other than those relating to location, depth, pumping capacity, and rate of flow.

Change in Ownership

No new conditions, modifications, or environmental review may be applied to wells based solely on the condition the wells are changing ownership. There is no fee to transfer ownership, however, the owner must notify the DNR on a form, which the Department would have to create if this bill is enacted.

Previously Approved Wells

No new environmental review of a previously approved well may be performed unless the owner of a well violates the conditions of their approval.

Approval Time Limits

Within 65 business days from the date on which DNR receives a complete application for approval for construction of a proposed high capacity well, or for reconstruction or replacement of an existing high capacity well, the DNR must approve or deny the application.

If DNR denies the application, the denial must include the reasons for the denial. If DNR fails to approve or deny the application within the deadline established, then the application is considered approved.

Right to Appeal

If the department issued an approval to an owner of a high capacity well before July 6, 2011, but added new or more restrictive conditions to that approval on or after July 6, 2011, and before the effective date of the bill, the well owner may request the new or more restrictive conditions be removed.

The department shall do so for any request made prior to June 30, 2014 if those new or more restrictive conditions are not required to be included in the approval under section 281.34 of the statutes, as affected by this act.

I believe these additional provisions within the bill are necessary to ensure the Department has a clear understanding of their authority over existing high capacity wells, and that well owners may effectively keep what they have in regards to their approval, so long as they do not violate the conditions of their approval.

To reiterate, Senate Bill 302 does not repeal or reduce any of the important environmental standards created in 2003 Wisconsin Act 310. In addition, the bill offers the appropriate safeguards to ensure existing, reconstructed, or replaced wells maintain those standards.

Further, if the Department believes a high capacity well is doing harm to navigable waters or infringing on the public rights relating to navigable waters, the Department has very broad authority to seek recourse in such situations, as specified under section 30.03(4)(a). Nothing in Senate Bill 302 changes that authority of the Department.

Ten years ago, Representative Johnsrud and I were challenged to create the appropriate and necessary regulatory authority for the DNR over high capacity wells, and we met that challenge.

Now, another task is before us, one which requires us to reaffirm the legislative intent of a good environmental protection law, Wisconsin Act 310.

As the co-author of Act 310, I have a duty and obligation to restate and reaffirm the intent of the original legislation now that the Court has offered its opinion.

I believe Senate Bill 302 clarifies that intent, maintains environmental safeguards, and offers certainty to well owners acting within the parameters of their approval that the terms of their approval will not be arbitrarily changed.

Thank you for your time and consideration today and I am happy to answer any questions you may have.



Wisconsin Department of Natural Resources Testimony on 2013 Senate Bill 302
September 25, 2013

My name is Eric Ebersberger; I'm the Section Chief of the Water Use Section within the DNR's Bureau of Drinking Water & Groundwater. I appreciate the opportunity to offer comments on SB 302 on behalf of the Department of Natural Resources.

SB 302 affects high capacity well approvals. By way of background, a high capacity well is a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day.

I have some brief comments regarding a few provisions of SB 302.

65-Day Review Period

SB 302 prescribes a 65 business day presumptive approval for high capacity wells. That is, the department must approve or deny the application within 65 business days of receipt of a complete application; and the failure to do so constitutes an approval. Currently, under Wisconsin Administrative Codes NR 820 and NR 812, the department is to approve wells within 65 business days of a complete application—but there is no presumptive approval provision. The department understands the need to adhere to reasonable timelines for reviewing applications, and would work to implement the provision as effectively as it has in other permitting contexts, such as Ch. 30 permitting.

Property Transfers

SB 302 also provides that high capacity well approvals may be transferred to persons to whom the surrounding land is sold without department review. Currently, under Wisconsin Administrative Code NR 812, the new owner must obtain a new high capacity well approval before continuing to use the well. Although the department has been recording ownership transfers, the department has not been conducting new reviews of the previously approved wells. This provision makes it clear that this practice will continue.

Limitation on Approval Conditions

SB 302 generally limits the conditions that the department may include in high capacity well approvals to conditions affecting location, depth, pumping capacity, and rate of flow. The department assumes that groundwater monitoring conditions, which it has imposed in certain circumstances, would no longer be permitted.

On a technical note, the definition of "existing high capacity well" refers only to wells approved under s. 281.34, and not to wells approved under s. 281.17 (1) – the section under which high capacity wells were approved until 2003 Wisconsin Act 310 took effect.

Thank you. I am happy to answer any questions.



To: Senate Committee on Natural Resources
From: Nick George, Midwest Food Processors Association
Date: September 25, 2013
Re: Senate Bill 302 - High Capacity Well Approvals – Support

The Midwest Food Processors Association (MWFPA) supports Senate Bill 302, which clarifies the ability of the Wisconsin Department of Natural Resources (DNR) to regulate high capacity wells.

This legislation is necessary due to the 2011 Wisconsin Supreme Court decision in *Lake Beulah Management District v. State*. The Court decision created ambiguity and suggested that despite Wisconsin's groundwater law and existing permitting regulations, the DNR may have broad authority to regulate high capacity wells beyond the scope of those regulations.

SB 302 provides clear direction to the DNR as to how and when it can apply higher environmental review standards as originally envisioned in 2003 Wisconsin Act 310 – which created new standards of environmental review for certain high capacity wells in Wisconsin. This clarification is important as growers, processors, and other high capacity well owners make business decisions.

It is important to note that while this bill clearly expresses the DNR's regulatory authority for high capacity wells, **it does not change any of the environmental standards contained within current law.**

A reliable source of water is essential to Wisconsin's food processing industry. Producers rely on high capacity wells for irrigation of lands to produce a steady supply of raw product for fresh and processed consumption. Food processors use water throughout the processes to rinse, cook, chill, and sanitize their facilities. SB 302 clearly states how regulators review high capacity wells and provides a level of certainty that the industry will be treated fairly and objectively by regulators.

MWFPA respectfully requests that you support SB 302. Thank you for your consideration of this matter.



**Testimony of Amber Meyer Smith, Director of Government Relations
SB 302
Senate Natural Resources and Environment Committee
September 25, 2013**

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air and clean energy issues. We were founded forty three years ago as Wisconsin's Environmental Decade and have thousands of members around the state.

I am speaking today in opposition to SB 302 because it rolls back existing groundwater protections and jeopardizes DNR's ability to adequately protect the resource. We should be here talking today about how we move forward with groundwater protection, not backward. In 2004, the Groundwater Protection Act (Act 310) addressed some concerns about groundwater protection in Wisconsin based on recommendations developed after careful analysis and debate among a group of diverse stakeholders. At the time it was a positive step forward to be sure. But it was acknowledged by everyone who was part of that compromise process to be only the first step towards sustainable groundwater management. SB 302 sets Act 310 as the ceiling for groundwater protection, when in fact it should be the floor.



Clean Wisconsin was a supporter of Act 310. However, Act 310 left many of Wisconsin's groundwater problems unaddressed. In fact, the 2007 Groundwater Advisory Council's report to the Legislature unanimously recommended that as a next step, the state develop "water management legislation" and a "comprehensive statewide water management policy" for the long-term management of our water resources. That unanimous recommendation of the GAC (which included representatives from agriculture, municipalities, environmentalists, well drillers, regulators and industrial interests) should not be taken lightly. As you can imagine it was not a group that agreed on a lot, but they UNANIMOUSLY recommended that the State develop water management legislation and policy to:

- *balance competing water uses, including environmental protection;*
- *rely on sound science and the principles of adaptive management;*
- *encourage efficient water use while discouraging waste;*
- *provide for coordination among state and local government agencies; and*
- *seek to ensure adequate water supplies for future generations*

Even the cover letter of the 2007 report refers to Act 310 as a first step in integrated water management, but acknowledges "further work remains to be done to build upon the successes of Act 310."

It is nearly ten years since Act 310 passed, and Wisconsin's problems with groundwater are only getting worse. Lakes and rivers are still drying up, private wells are being impacted, and people are concerned about their access to water. People are so concerned, in fact, that they are taking their case to the courts since the Legislature has failed to take the necessary next steps to protect their access to water.

One weakness of the 2004 groundwater bill is that it didn't adequately protect surface water. It is this weakness that led residents around Lake Beulah to challenge the DNR's issuance of a high capacity well permit to the

Village of East Troy which ended in a UNANIMOUS Supreme Court decision in 2011 that DNR must consider surface waters when evaluating high-capacity wells permits. This unanimous decision recognized the constitutional right in Wisconsin that our water resources belong to everyone, and that giving water use rights to one group over another is unconstitutional in Wisconsin. In 10 years, this has been the only step forward for groundwater protection, and SB 302 only takes us back. This bill will leave people with few options to prevent impacts to their own property.

There are very serious groundwater problems in many areas of the state, and this bill will make those problems even worse. **There are 40% more high-capacity well applications in Wisconsin than just two years ago, and the trend does not seem to be slowing.** By now, the stories of lakes and rivers drying up in central Wisconsin are well known, but problems exist in other areas; Waukesha, Madison and Green Bay have all had groundwater issues in the last 10 years.

The central sands area of Wisconsin has certainly become the poster child for groundwater quantity issues. One third of the 288 billion gallons of groundwater withdrawn annually in Wisconsin comes from the central sands – which covers just 5% of the state's area. The Little Plover River has dried up, and some residents are watching their once-lakefront properties dry up on other lakes in central Wisconsin. The frac sand mining boom in western Wisconsin has raised new concerns about cumulative impacts of high capacity wells. In one known instance a frac sand mine operation ended up digging a new well for a farmer after his ran dry. Groundwater is a finite resource that must be protected against overuse.

In addition to moving us backward, SB 302 puts a strain on resources at DNR that are already stretched thin. The 65 day presumptive approval will be difficult to meet with the increased volume of permits and required review under the *Lake Beulah* decision. Although the language of the bill is unclear about the circumstances under which DNR could deny a permit, there is little doubt in our minds that the bill will at least lead to more court challenges, which serves to strain DNR resources even more. SB 302 also takes away the flexibility DNR has to work with an applicant to apply conditions to a permit that will help balance property rights for lakefront homeowners, farmers, and people with private drinking wells. Common sense permit conditions like monitoring a well's impact and preventing significant adverse impacts that have been applied to permits since the Lake Beulah decision would no longer be allowed under this bill.



The impact of SB 302 on private property rights is unclear, but the bill does create permanent water use permits that run with the land. This is at the very least a new approach to water management in Wisconsin, one that basically assigns water resources to existing well owners at the expense of neighbors or new wells. Under that provision, new industry coming in may not have the same access to the groundwater resource that others enjoy. It also means that as more problems are discovered with groundwater quantity, those permits can never really be altered – a private right to that groundwater is basically guaranteed. And while DNR under Ch. 30.03(4)(1) has authority to “pursue relief regarding possible infringements of public rights to navigable waters,” that is an authority that DNR has never used with respect to high capacity wells, despite the problems that exist in areas of the state. Besides being administratively unrealistic and burdensome, this authority allows DNR only to deal with problems AFTER they occur, and our vision of groundwater management should be to prevent problems from occurring in the first place.

For these reasons we respectfully ask that you oppose SB 302 today.



Wisconsin Potato and Vegetable Growers Association Groundwater Task Force: Accomplishments 2012-2013

Background: The Wisconsin Potato and Vegetable Grower Association (WPVGA) Groundwater Task Force was formed in 2009 in response to growing concerns over the potential impact of irrigated agriculture, climate, urbanization, and other factors on the groundwater aquifer and surface waters of the Central Sands. The focus of the Task Force is to bring together resources and expertise to foster the sustainable use of water resources. The Task Force is chaired by Nick Somers (Plover River Farms) and Jeremie Pavelski (Heartland Farms).

Task Force Goals:

- Be an advocate for responsible water use practices and informed, science-based public policy that will protect the Central Sands groundwater aquifer and its associated streams, lakes and wetlands.
- Promote and maintain a sustainable agricultural industry.
- Foster vibrant rural communities.



Objective 1: Consolidate and build on the extensive existing knowledge-base related to the hydrogeology of the Central Sands and the potential impacts of water use, drainage, climate and other factors on the groundwater aquifer and associated surface water bodies.



- Established a program to monitor groundwater elevations in privately owned irrigation wells both across the Central Sands and over time.
 - ✓ Sampling now in 2nd season with 473 samples in database.
 - ✓ Reports for trends in water elevation over time and land use overlays in development.
- Purchased and installed equipment to continuously monitor groundwater fluctuations in nested groups of wells placed in areas designated as high risk for surface water impacts (Little Plover, Long Lake, Pleasant Lake).
 - ✓ 20 wells installed in transects of priority areas. Data posted at wisa.cals.wisc.edu/central_sands_water
 - WPVGA provided \$15,000 for purchase and \$15,000 for installation of wells.
- Commissioned a study of the hydrogeology of Long Lake by the UW-Extension Wisconsin Geological and Natural History Survey (WGNHS) to improve understanding of the formation of tunnel channel lakes and the impact of clay layers deposited in their formation on groundwater-surface water interaction.
 - ✓ WPVGA funded \$15,000 study with WGNHS. Masters degree study to be completed December 2013 (PI's: Bradbury and Bussan). PhD follow-up project now funded through NRCS (PI's: Potter and Bussan).
- Volunteered staff time to work with the DNR to monitor stream flow and lake levels (2013-14).
- Engaged independent hydrogeologist Charlie Andrews to assess strengths and weaknesses of ongoing Task Force activities and examine groundwater issues and solutions in other parts of the US that may be applicable to the Central Sands.
 - ✓ Andrews assisting in evaluation of potential approaches to increasing efficiency of water use. Funded by the WPVGA, \$25,000.

Objective 2: Identify, implement and evaluate strategies to increase the efficiency of irrigation.



- Conducted a water management survey to establish a baseline of grower practices in irrigation and identify areas for potential improvement.
 - ✓ Survey completed by 30 growers in 2012.
- Commissioned, tested, and implemented new irrigation scheduling software.
 - ✓ WPVGA funded \$15,000 project (UW Biosystems Engineering, 2012) to develop new irrigation scheduling software.
 - ✓ WPVGA funding integration of scheduling into grower-friendly farm management software (projected \$10,000, 2013).
- Evaluated site-specific, precision irrigation based on variability of soil moisture holding capacities across fields.
 - ✓ Evaluated commercial sweet corn field in Adams, County, 2013.
- Conducted on-farm research on potential for deferred irrigation.
 - ✓ Demonstrated potential for water savings of one inch in field corn and three inches in soybean, both without negative yield impact.
- Conducted research on drip irrigation for high water use crops.
 - ✓ On-farm and experiment station research in 2011/2012 showed 15% reduction in water use on potatoes.
- Investigated the potential for re-designing the century old drainage system in the Central Sands to reduce water loss and increase recharge.
 - ✓ Assessment of drainage impacts currently in progress (WPVGA, \$5,000, 2013).

Objective 3: Investigate evaporation from crops, natural landscapes and bare soil and its relationship to climate, irrigation, recharge, and fluctuations in groundwater.



- Investigated year-round water consumption of irrigated crops, natural vegetation, and bare soil.
 - ✓ Evaluation in progress on Portage County farm (Nelson Institute, 2013).
- Established a digital data-base that tracks land use across the Central Sands from 2003–present to identify changes in landscapes and potential relationships to water fluctuations.
 - ✓ Cropland data layers now available by watershed from 2003. Proposed map overlays of water elevation database (Objective 1, 2014).

Objective 4: Communicate Task Force activities and accomplishments to the farming community, the citizens of the Central Sands, and the people of Wisconsin, and seek broad input from all concerned parties to determine potential solutions.



- In 2013, the Task Force continued to communicate activities and accomplishments to farmers and citizens of Wisconsin and seek input on potential solutions.
 - ✓ Assisted in development of a white paper outlining broad approaches to water management (PI's: Bussan, Colquhoun, Bradbury and Potter, 2013 (in review)).
 - ✓ Created a website to communicate water-related activities (wisa.cals.wisc.edu/central_sands_water).
 - ✓ Conducted a tour for state NRCS staff. The tour focused on water issues and farming practices (July 2013).
 - ✓ Commissioned 30 blogs targeted at general audiences to educate on farming practices and water issues in Central Wisconsin (WPVGA, \$6000, 2013).

Funding Sources: The activities described in this report were funded through a combination of research grants and direct grower funding. We acknowledge the contributions of the following grants and organizations: WPVGA, MWFPFA, CALS Hatch, Wisconsin Institute for Sustainable Agriculture, Midwest SARE Program, UWEX, Wisconsin Geological and Natural History Survey, NRCS CIG program, SCRI Block Grant program, Wisconsin Groundwater Coordinating Council and Wisconsin DNR.

WISCONSIN WILDLIFE FEDERATION

September 25, 2013

Testimony before Senate Natural Resources Committee relative to "SB 302"

Senator Kedzie & committee members, thank you for this opportunity for the Wisconsin Wildlife Federation and its 185 affiliate hunting, fishing, trapping & related sporting organizations to weigh in on this proposed legislation.

Adequate stream flow and lake levels are an increasing concern for our member affiliates who share a variety of outdoor interests who rely on Wisconsin's natural resources. The Wisconsin Waterfowl Hunters need good wetlands and appropriate habitat for the wide variety of waterfowl found in this state. Our anglers and especially trout fishermen & women need continuous stream flow adequate to provide proper habitat. Our trappers want to maintain habitat for an even wider variety of species of interest to their sporting needs. Without proper long-term management of our streams and lakes, we would be putting at risk not only the millions of dollars that come from the citizens of Wisconsin, but also those additional millions of tourist income from out-of-state and even from out-of-country visitors.

The Lake Beulah Judicial Decision recognized a flaw in our permitting process. That court ruling should be a wake-up call for legislation that recognizes a need for action and agrees that the long-term impact of High Capacity Well "HCW" pumping needs to be addressed with each well permit as we move forward. Landowners, homeowners and visitors who expect to see strong stream flow and adequate lake levels can expect no less than strong support from our legislators & government agencies.

The Wisconsin Wildlife Federation and the thousands of outdoor sportsmen and women are strong in their opposition to SB 302.

Submitted by "The Wisconsin Wildlife Federation"



Jerry Knuth, Past President
Chair of the WiWF Forests, Parks & Recreation Committee
911 – 4th Street, Plover, Wisconsin 54467

Wisconsin Potato & Vegetable Growers Association, Inc.

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Telephone: 715/623-7683 • Fax: 715/623-3176 • e-mail: wpvga@potatowis.org • web: www.potatowis.org



September 25, 2013

Dear Members of the Senate Natural Resources Committee,

I am Duane Maatz, Executive Director of the Wisconsin Potato and Vegetable Growers Association (WPVGA). The Wisconsin Potato and Vegetable Growers Association represents 300 farm operations and related business associate members. Wisconsin ranks third in the US in potato production behind Idaho and Washington State. We are generally number one in canning vegetable production, typically ranking number 1, 2 or 3 in the production of sweet corn, snap beans and peas.

The Wisconsin potato and vegetable industry provides 35,000 jobs within the state of Wisconsin and generates \$7.5 billion in gross state product.

During the past 15 years, Wisconsin farmers have reduced our potato acres by over 20% (from 80,000 acres to 63,000). But, our productivity has increased. We are producing the same volume of the crop, over 25 million hundredweight, on fewer acres. This allowed us to increase the production of other vegetable crops. These crops are shorter season crops, using less water, nutrients and active ingredients across our productive acres. These changes are significant as we have improved the efficiency of our cropping systems and maintained our economic viability, supplying food to east coast markets with fewer food miles and a smaller carbon footprint than other growing regions. Our food producers are good stewards of our resources.

Three years ago we formed our WPVGA Water Task Force to identify ways to improve or reduce water used in crop irrigation. Our goals and objectives are consistent with our stewardship practices. We focus on utilization of our resources while being cognizant of protecting those resources for future generations. The motto of one of our producers is "Farming for the Future". This is indicative of the thinking within our organization.

Our Water Task Force meets monthly. It is a science-based group of thinkers including farmers, UW Researchers, experts, municipality persons as well as industry and business representatives. Much of our work has been related to improving efficiencies in our practices. We also monitor and record static water levels and changes in those levels throughout the year. We are creating a data base of information in an effort to determine possible impacts of irrigation on the aquifer as well as the recharge capabilities of this incredible resource. We have installed automated water sensors and created an automated reporting tool to facilitate building this database. On a regular basis, we are monitoring over 250 high capacity wells across the state. We search for answers and solutions, attempting to solve problems where there are concerns within specific areas and watersheds. We are actively working with the DNR on the Little Plover River groundwater modeling project. We recognize the need to create a better model through the inclusion of a greater number of facts, reducing and eliminating assumptions wherever possible.

We need regulatory certainty restored to the high capacity well permitting program in Wisconsin. Accordingly, we ask you to support S.B. 302.

If you have any questions, please contact me at 715 610-1496.



To: Members of the Wisconsin Legislature
From: Dairy Business Association (DBA)
Re: Support for SB 302, relating to High Capacity Well Approvals

The Dairy Business Association (DBA) is an industry organization comprised of Wisconsin dairy producers, processors and allied corporate members. Our mission is to promote the growth and success of all dairy businesses. We are writing to you, the members of the Wisconsin legislature, to express our strong support for SB 302, relating to high capacity well approvals. This bill clarifies the regulatory environment for businesses seeking approval for high capacity wells, and ensures continued environmental protection of groundwater. A thriving dairy industry requires not only access to this valuable resource, but a clear understanding of what will be required of high capacity well applicants and owners. This bill enhances this regulatory certainty without affecting any environmental standards of protection, and we strongly urge you to support it.

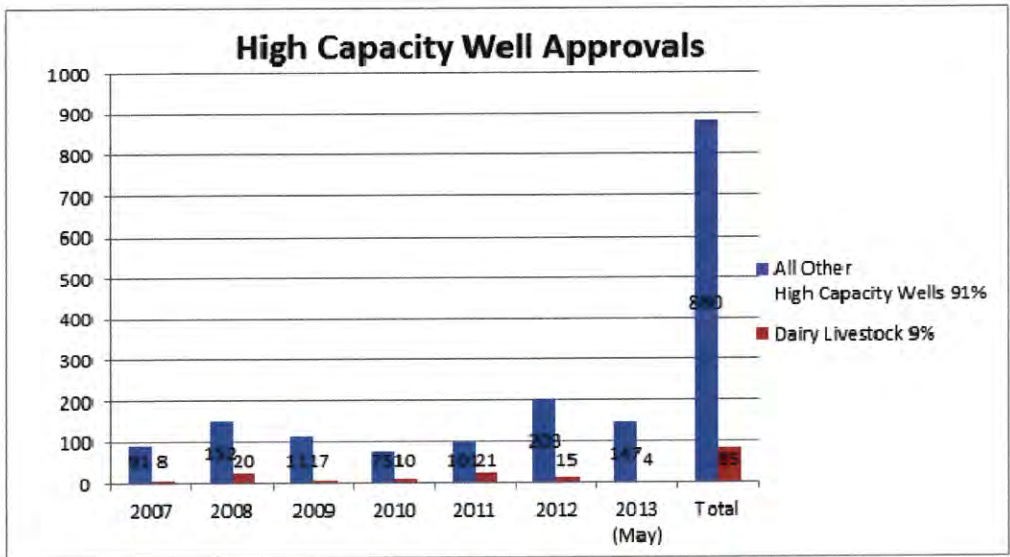
Wisconsin has a long history of recognizing the value of its resources, first passing groundwater protection standards in 1983. After several years of discussion on groundwater quantity issues in the state, and as the result of bipartisan legislative effort and support, the Wisconsin Legislature passed groundwater quantity legislation in 2003 Wisconsin Act 310. This law took nearly two years to achieve, and required a consensus of business, agricultural and municipal groups, as well as environmental advocates, officials with the Wisconsin Natural Resources (WDNR), members of the academic and scientific community, and the public at large. In recognizing the link between surface water and groundwater, and the impact wells may have on groundwater quality and quantity, Act 310 established a higher scrutiny of review for any wells proposed within 1200 feet of sensitive water bodies. This law created clear guidelines for both regulators and the regulated public regarding new and existing high capacity wells, and offered strong protections to environmentally sensitive areas of the state.

On July 6, 2011, the Wisconsin Supreme Court handed down a decision commonly referred to as the Lake Beulah decision which concluded that “finding no language expressly revoking or limiting the DNR’s authority and general duty to protect and manage waters of the state, we conclude that the DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state.” This judicial decision effectively converted the regulations painstakingly established by Act 310 into minimum guidelines, and created significant uncertainty in both the regulated community and within DNR regarding high capacity well applications. In SB 302, Senator Kedzie – as author of the original Act 310 and this proposed legislation – seeks only to clarify the intent and purpose of that law, and once again establish regulatory certainty.

This law does nothing to change any environmental standards created in Act 310 for considering applications for high capacity wells. WDNR still retains authority to deny or impose conditions on wells that may impact other resources, and citizens still retain all of their rights to pursue claims against well owners that may have affected their property values. Instead, this bill expressly limits the DNR’s ability to apply the higher standard of environmental review to those instances provided by Act 310. In addition, the law further clarifies that some changes to wells, such as reconstruction of a failing well, do not require additional conditions on the approval other than those relating to location, depth, pumping capacity, and rate of flow.

Every Wisconsin industry relies on access to groundwater resources, including the dairy industry, which is a \$26.5 billion industry in Wisconsin. Dairy farm wells provide water to our livestock and keep our critical dairy industry producing milk for fluid and cheese production across Wisconsin, and the United States. Although since 2007, dairy farmers have received just under 10% of all high capacity well approvals issued by the DNR, dairy farmers support and rely on Wisconsin's agriculture industry, which is a \$59 billion industry in Wisconsin. . We stand with Wisconsin agricultural producers that utilize groundwater resources to produce corn, potatoes, and other foods that drive our state's economy. We are not seeking to change Wisconsin's long-established history of groundwater protection. We are only asking to better understand the rules of the game. We think SB 302 provides this kind of clarification, and we urge you to support it.

We urge you to support SB 302.



Re: Testimony related to SB 302 related to high capacity well approvals

September 25, 2013

Kenneth R. Bradbury, PhD.
Hydrogeologist and Assistant Director,
Wisconsin Geological and Natural History Survey,
Professor, University of Wisconsin-Extension
608-263-7921
krbradbu@wisc.edu

Good Morning:

Senator Miller requested that I appear before your committee to offer testimony about proposed bill SB302 related to high capacity well approvals.

I am here for information only and am not taking a position on this bill.

The Wisconsin Geological and Natural History Survey (<http://wisconsingeologicalsurvey.org/>) conducts research on and evaluation of Wisconsin's water, rocks, and minerals throughout the state, including the state's groundwater resources. The Survey is ready to assist your committee's deliberations with technical support as needed. We understand these resources and continually develop and compile groundwater data from across the state and make this information available to the public. We also develop sophisticated analytical tools to help assess groundwater systems across the state.

I want to thank in particular Senator Kedzie for his long interest in groundwater issues and in particular for developing the 2003 Groundwater Law, which was a big step forward in protecting Wisconsin's water resources.

I would like to make several points that I hope will be useful in your deliberations.

1. The geology of Wisconsin varies widely across the state, and our groundwater resources vary accordingly. For example, I am sure your committee is aware that the hydrogeologic setting in Waukesha County, where the main aquifer is a deep, confined sandstone, is far different than in the central sands region, where a shallow, unconfined aquifer occurs. For this reason, our state regulators need to have flexibility in developing well approval policies tailored for specific hydrogeologic settings. I believe one-size-fits-all policies are not very workable given Wisconsin's varied geology.
2. I have been told that the central sands area is the nexus of the reason for SB 302, especially as it relates to high capacity irrigation wells. In this part of the state the water table is generally shallow, and groundwater and surface water are very directly connected. As far as I can tell, Wisconsin's scientific groundwater community is in

agreement that the many irrigation wells in central Wisconsin are having an impact on groundwater levels, lake levels and streamflows in some parts of this region. The problem in this region is not any particular well, because the impact of each individual well is rather small. Instead, the problem is the cumulative impact of hundreds of wells in the same region. I believe that Wisconsin needs to develop a policy for managing groundwater in this region that goes beyond looking at one well at a time. Hydrogeologists can use modern computer simulations to evaluate well siting to support this kind of decision making.

3. I note that the bill, in Sections 11 and 12, speaks to approval conditions of a well and mentions location, depth, pumping capacity, rate of flow and ultimate use as potentially part of the approval conditions. I suggest that depth of the well casing be added to these criteria. The depth of the well casing can have a huge impact on well performance, drawdown, yield, and water quality protection. Our research over the last few years has shown many instances where wells were not appropriately cased. Often, better casing criteria can extend the life of a well and ultimately save the well owner significant costs while protecting aquifers and other wells from contamination.
4. I would like to make a plea for additional long-term monitoring of groundwater levels in areas of current or expected future high groundwater withdrawals. Only by obtaining long-term data can we develop benchmarks to determine exactly what impact our groundwater use is having on the state's water resources. In the absence of data, people speculate.

I hope these thoughts are useful to the Committee. I would be pleased to respond to any questions you have today or in the future.

Thank you.

Testimony Before the Senate Committee on Natural Resources and the Environment

By Todd L. Ambs

September 25, 2013

Good Afternoon. My name is Todd Ambs. I currently serve as Director of the Healing Our Waters – Great Lakes Coalition, a regional conservation collaborative.

The views that I will be expressing today though are my own. I come here to express my opposition to SB 302 in its current form. My insight regarding this matter comes from working in the environmental field for more than 30 years and, as most of you know, from having the honor of serving as the Water Division Administrator at the Wisconsin DNR for eight years (2003-2010). In that capacity, I worked closely with the Committee Chairman and other legislators on both sides of the aisle to craft Act 310, the first significant ground water quantity law ever passed by this Legislature.

When that bill was signed into law on April 22, 2004, it marked the culmination of a legislative process that was a model for legislative process. A committee of key stakeholders met for months to explore the issues and propose remedies. Those stakeholders worked in part off from a white paper on the subject that was jointly prepared by the River Alliance of Wisconsin and the Wisconsin Potato and Vegetable Growers, with the assistance of scientists in the University of Wisconsin system. Each version of the draft legislation was shared on Senator Kedzie's website and people were encouraged to comment on line. Predictably, the end result did not solve all of the issues regarding the challenge of groundwater depletion in this state but everyone involved on that Earth Day in 2004 called the new Act a good first step in this important work. Chairman Kedzie deserves much credit for his efforts then and his shared belief that one day that first step of legislation could be followed with other actions as we learned more about how to address the challenges.

Unfortunately, SB 302 does not represent another step forward in our efforts to protect our groundwater resources. The bill is at best a step sideways and could certainly constitute a step or two backwards.

Other folks testifying today have addressed a number of concerns with the bill. I will focus on two areas:

The presumptive approval provision, and; the prohibition on DNR requiring additional conditions in individual well permits.

Requiring the DNR to render a decision on a high capacity well permit in 65 days is arbitrary, short sighted and will force the DNR to pick and choose which permit applications that they will actually review, because they simply won't have the resources to review them all adequately.

Before any action of this sort is contemplated, there should be a comprehensive review of the staffing needed to process all permit requests thoroughly AND in a timely manner. Such a review will likely result in a finding that the DNR needs more staff to process permits in a few weeks. Those staff could be paid for by raising the fees for wells drilled in Wisconsin. The fee of \$50 for all

new wells and \$500 for high capacity wells has not been increased in a decade and at the time they were imposed, representatives of the affected regulated industries said that they could have absorbed higher fees.

Those same DNR staff should then be allowed to condition any well permit as needed to protect the groundwater and surface water resources nearby from excess pumping. Additional monitoring of impacts, a change in the well proximity to water resources and other conditions should be left to the scientific staff at the DNR, not legislated by this body.

Especially when to date I have not heard of a single instance of these conditions doing anything other than protecting the very water supplies that the applicants themselves need. Why must we tie the hands of the science staff that we have entrusted to protect our natural resources?

Act 310 is working. We have many people to thank for that, including the Committee Chair. We now need to take another step forward to further protect our groundwater resources – resources that many experts say are some of the most plentiful in the world.

So let's follow the model built by Senator Kedzie and others a decade ago. Let's reconvene the key stakeholders in an open, transparent process and find real solutions that give applicants timely permits AND protect our water resources.

We can do this. Already our neighbors to either side of us, Michigan and Minnesota, are well ahead of us in this regard. We can learn from their regulatory experiences. We can make progress together.

Many people in this room like to quote the great conservationist Aldo Leopold and I am no exception. One of my favorite quotes of his is:

“One of the penalties of an ecological education is that one lives alone in a world of wounds.”

If Aldo were alive in 2003, he would see the Little Plover River and Bloody Run Creek as the wounds inflicted by inadequate regulation of groundwater pumping. Ten years later we have added Long and Huron Lakes as more open sores on the collective Wisconsin water body.

We don't have to live alone in this growing world of groundwater depletion wounds. Let's take additional steps to suave the wounds. Pull back SB 302, sit down as you did a decade ago and let's find real common ground.

Thanks for your time. I would be happy to answer any questions.

Respectfully submitted,

Todd L. Ambs
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Madison, WI 53711
608 692-9974
ddotla@yahoo.com

SB 302 Hearing Testimony

September 25, 2013

Frances Rowe
W13475 Czech Lane
Coloma, Wisconsin 54930

Good morning

I have come this morning to speak with you regarding my objection to SB 302 – the proposed 2013 groundwater legislation.

I oppose SB 302 because

1. I live in the Central Sands; central Wisconsin residents have serious water problems - this legislation is pouring salt in an already deep and painful wound.
2. SB 302 handicaps the DNR to carry out its constitutional charge to protect the “waters of the state”
3. SB 302 takes away the right of every Wisconsin citizen to protect his or her property.

Groundwater is an everyday problem for residents of the Central Wisconsin. We have serious water problems both with water quality and quantity. Unlike the rest of Wisconsin we have over 3000 high capacity wells in our neighborhood: Portage, Wood, Waushara, Marquette, and Adams counties. The number of requests for new high capacity wells¹ in this area of Wisconsin has increased dramatically. To give you an idea of the concentration of high capacity wells in central Wisconsin, I direct your attention to the High Capacity Well map prepared by the WDNR and the UW-Stevens Point Watershed Science & Education Department attached to this testimony.

SB 302 will make our groundwater problems in central Wisconsin worse not better.

Competing water users in the Central Sands include vegetable and fruit growers, municipalities, riparian property owners, and recreational users (boating, fishing). Recently, two new users of enormous quantities of groundwater have entered the scene: large-scale dairies, known as confined animal feed operations (CAFOs), and “frac” sand miners, who use water for mining and processing of the extracted sand. The process for the permitting of high capacity wells, the process SB 302 seeks to change, impacts all these water users.

¹ A “high capacity” well is a groundwater well with a pumping capacity equal to or greater than 100,000 gallons per day.

For several years I have been part of a building a coalition of central Wisconsin residents committed to addressing the stress on our groundwater aquifer: Specifically, the potato & vegetable growers, lake residents, cranberry growers, and more recently those seeking to preserve central Wisconsin woodlands. The goal is to find common ground to save our stressed aquifer, our properties, and our businesses. SB 302 does not help, in fact hinders these efforts.

Rather than the heavy hand of state government seeking to control our future I request that local efforts working toward a water solution be given a chance

In June, Motion 375, legislated with the Budget Bill, was amended to provide a year to work on Wisconsin's groundwater challenges. Now, two months, later SB 302 has appeared and has snatched our opportunity for a local solution. It has been presented with complete disregard for the work going on in the Central Sands to develop a solution for the central sands groundwater problems. Moreover, the construction of SB 302 did not include any input from those it will affect the most – the citizens of the Central Sand Plain. I am a member of multiple citizen groups working currently in central Wisconsin on groundwater – none of the work groups were consulted or contacted – CSWAC, WCWLC, Marquette County Lakes Associating, or Representative Krug's Groundwater task force, a bipartisan effort to find a groundwater solution for the Central Sands.

SB 302 impacts our future, our children, our water – yet no one knocked at our door during its preparation. This feels very much like the “haves” southeast Wisconsin telling “the havenots” central Wisconsin, you don't have a problem, you don't need water. Southeastern Wisconsin doesn't have 3,000 high capacity wells pumping its aquifer dry, drying up its lakes streams and private wells. I direct your attention to the photo gallery found at the end of this testimony.

Given the action of the state legislature in June and the Governor's support in signing the Budget Bill, we would like the 365 days promised to develop a plan to manage our aquifer – our groundwater. SB 302 takes that away.

SB 302 Handicaps the DNR

The Department of Natural Resources is charged by our Wisconsin Constitution to protect the waters of the state. SB 302 handicaps the DNR to carry out this responsibility. In July, 2011 Wisconsin's Supreme Court affirmed this charge to the DNR in the *Lake Beulah vs. Village of East Troy* unanimous Supreme Court Decision .

SB 302 is an effort to legislate away the *Lake Beulah* Supreme Court Decision. With its decision the Wisconsin Supreme court reaffirmed the DNR's “authority and general duty to consider whether a proposed high capacity well may harm the waters of the state”. Moreover, the Court held that “to comply with this general duty, the DNR must consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state.”

How does SB 302 handicap the DNR?

1. It does so by limiting the environmental review of high capacity wells to only new wells located in ground water protection areas (there are two of these), those that have a water loss of more than 95% of the amount of groundwater withdrawn, or have a significant environmental impact on a spring. This leaves a good many of Wisconsin's navigable waters unprotected from the ravages of pumping.
2. It does so by excluding replacement wells, the reconstruction of existing wells, and well permit transfers from the well review process. Here SB 302 creates a recipe for disaster. These loop holes enable owners of existing high capacity wells to increase pumping volume, avoid environmental review, and drill deeper into the aquifer with no evaluation of the changes.

Furthermore, these exclusions appears to be an attempt to adopt western groundwater law in Wisconsin by allowing those "first into" the aquifer to have an advantage over those yet to sink their pipe.

3. It does so by establishing unreasonable time limits on high capacity well review and automatic permitting of wells that have not been reviewed.

The number of requests for new high capacity wells in central Wisconsin has exploded in the last three years. In Adams, Marquette, and Waushara counties alone the numbers are staggering.

Adams = 169
Marquette = 70
Waushara = 118

If the goal of review is to protect Wisconsin waters, than an adequate review is essential. To expect DNR employees to complete a comprehensive review of a high capacity well application in 65 days is unreasonable.

4. It does so by limiting the DNR's rule-making authority.

I find myself asking, why? Why would our legislature want to pass a law that limits the DNR's ability to carry out its Constitution responsibilities? What is the motivation behind SB 302? Certainly this legislation is not serving the vast majority of Wisconsin's citizens. To limit environmental review of groundwater extraction, and in turn surface water protection is not in the best interest of Wisconsinites. Wisconsinites like to swim, boat, sail, hunt, even fish standing on ice in weather 20° below zero. The roots of the public trust doctrine reach back to the founding of the Northwest Territories –the waters between the Mississippi and the St. Lawrence were to be common and forever free. The changes proposed in SB 302 to Wis. Stat. § 281 put every body of water in this state in jeopardy by taking away the DNR's ability to thoughtfully consider the environmental impact of a proposed high capacity wells.

SB 302 takes away the right of every Wisconsin citizen to protect his or her property

Finally, SB 302 is not only an assault on Wisconsin's waters, it is also an assault on its citizens. Most Wisconsin residents own property, property that they have worked very hard to purchase and maintain. Many of these properties are dependent on groundwater either because they border water resources or because they pump their drinking water from the underground aquifer. The *Lake Beulah vs. Village of East Troy* unanimous Supreme Court Decision affirmed a citizen's right to protect their property by outlining a procedure to request an environmental review of a proposed high capacity well. If able to present to the DNR sufficient concrete, scientific evidence that the proposed high capacity well will pose harm to the waters of the state a citizen may ask for and the DNR is obliged to grant an environmental review. SB 302 takes that option away. In other words, it takes away a citizen's opportunity to protect their home, their investment, and their drinking water.

Final Remarks

Groundwater has been perceived as a virtually unlimited resource in Wisconsin. However, over the past decade, it has become painfully apparent that this is not the case. In the Central Sands region of Wisconsin, approval and installation of hundreds of agricultural high capacity wells per year has contributed to substantial depletion of water levels in lakes, rivers, and streams. Patrick Lake, Fish Lake, Huron Lake, Pleasant Lake, Chaffee Creek, Carter Creek, Tagatz's Creek, and the Little Roche-a-Cri are all currently threatened by groundwater pumping.

I ask you today to kill SB 302, to give local initiatives to manage groundwater a chance, to heighten our state's water watch not relax it, and to protect the waters of Wisconsin both above and below ground.



Figure 1. Pleasant Lake north shore point August 24, 1996

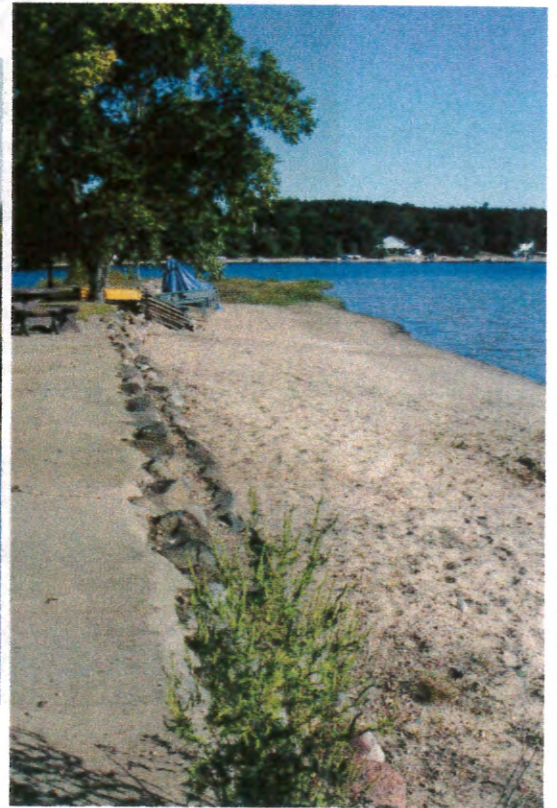


Figure 2. Pleasant Lake north shore point September 22, 2013.



Figure 3. Patrick Lake east shore August 30, 2012.



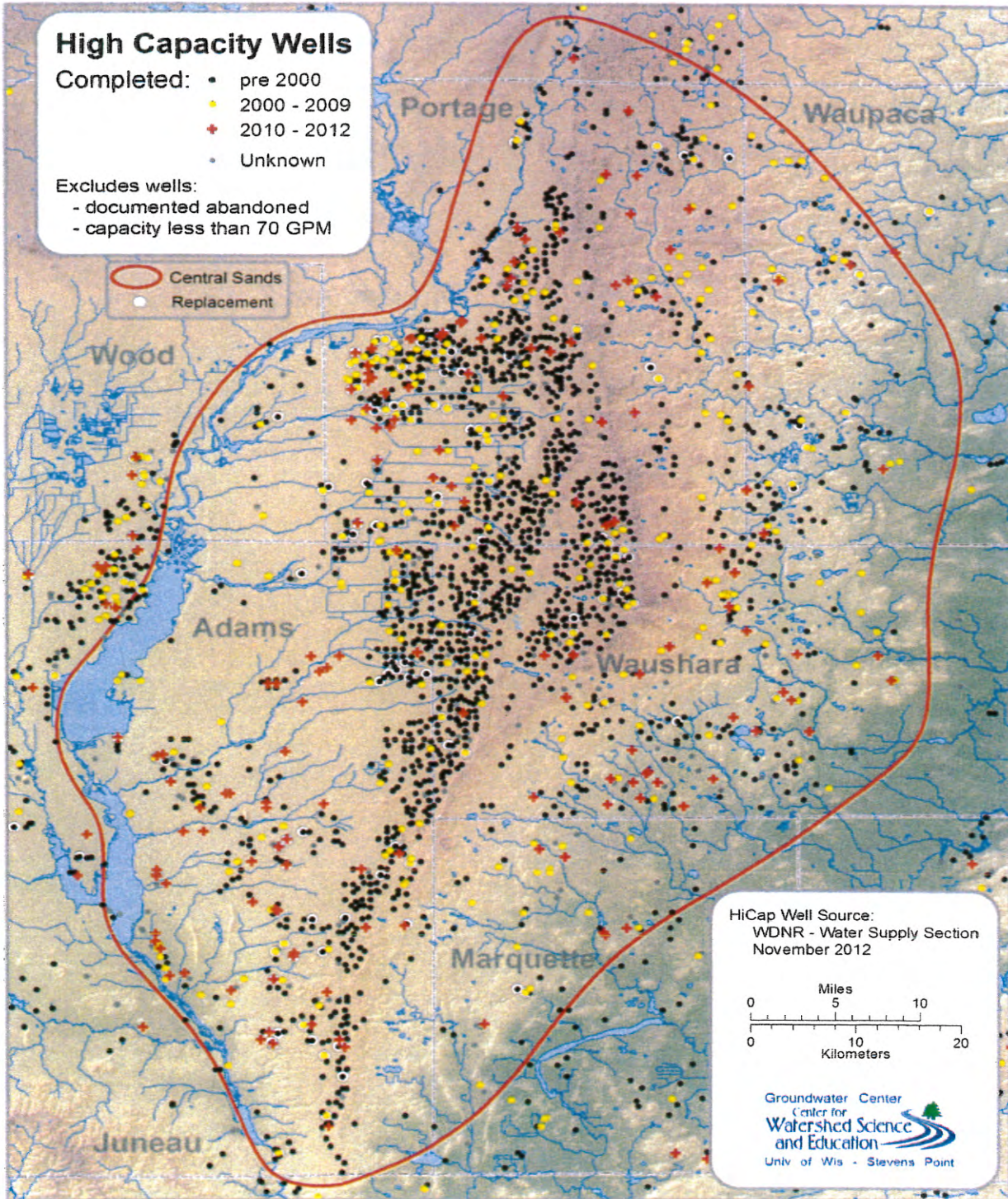
Figure 4. Huron Lake July 28, 2010.

High Capacity Wells

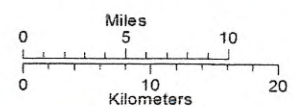
- Completed:
- pre 2000
 - 2000 - 2009
 - 2010 - 2012
 - Unknown

- Excludes wells:
- documented abandoned
 - capacity less than 70 GPM

- Central Sands Replacement



HiCap Well Source:
WDNR - Water Supply Section
November 2012



Groundwater Center
Center for
Watershed Science
and Education
Univ of Wis - Stevens Point

My name is Don Ystad. I live in the Town of Rome in Adams County. I'm a member of a committee formed by Assembly Representative Scott Krug to deal with the groundwater issues in our area.

The central sands area was formed when Glacial Lake Wisconsin drained over a period of 7 days, creating the Wisconsin Dells and leaving a large area of sandy soil across a 7 county area in central Wisconsin. This is a fragile environment. The loose sandy soil is very attractive to irrigated vegetable growers. The conditions that make for easy application of water, pesticides and fertilizer also make it very susceptible to declining groundwater levels and potential water quality issues because of the high rate at which contaminants flow through sandy soils and into our groundwater.

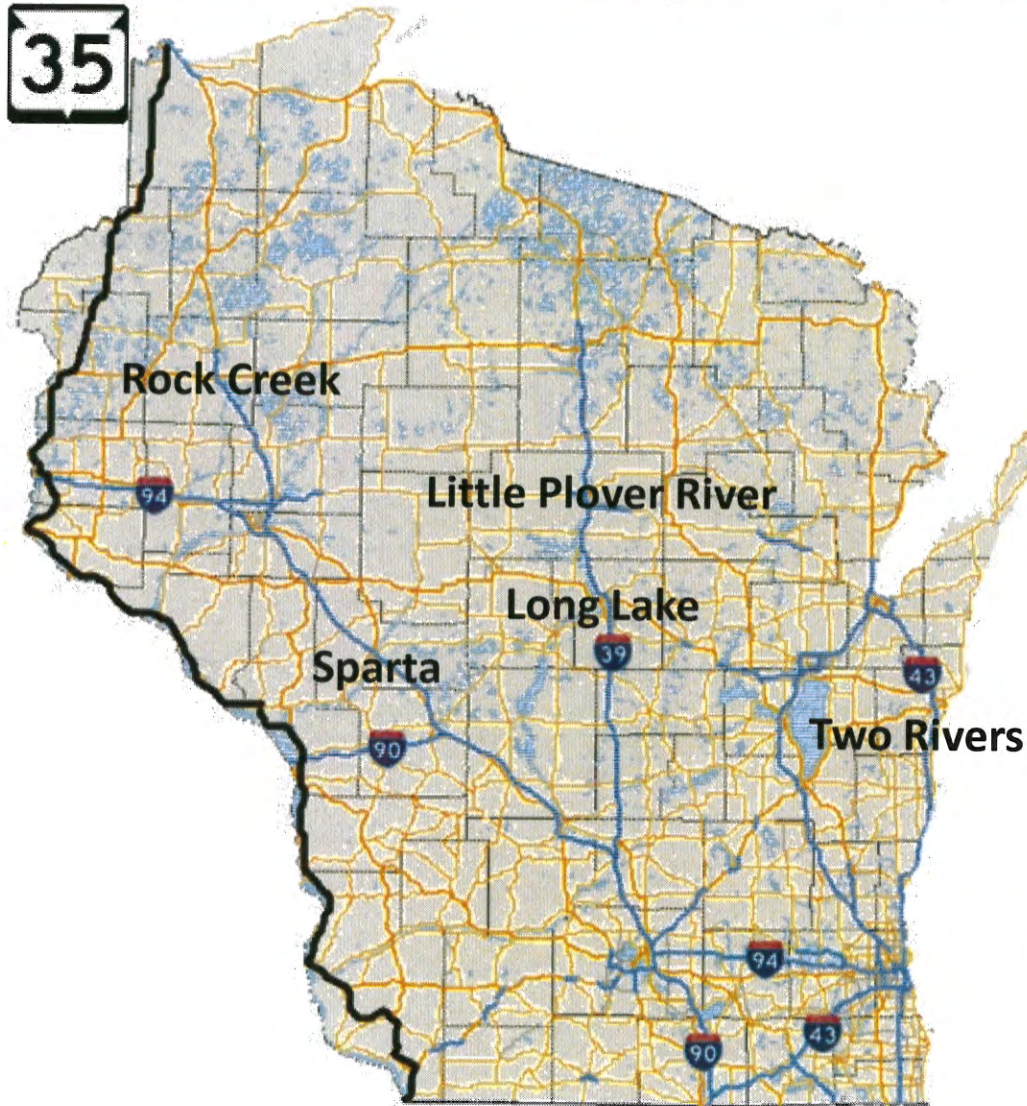
The central sands area has the highest concentration of high cap wells in the state. As of 2010, there were 3,621 wells; with many more permits being drawn as Ag interests try to beat the rising level of public resistance. The Little Plover River in Stevens Point has been decimated by the large number of high cap wells in the area, as has Pine Lake in Hancock, and Long lake in Plainfield to name a few.

The group formed by our Assembly Representative Scott Krug is comprised of local farmers and residents who recognize that we do not have an endless supply of water and it needs to be shared. We understand that our soil structure and the already overwhelming number of high cap wells in our area makes us unique. The central sands group under Scott Krug's direction is moving forward with recommendations that deal with the conditions unique to our area to protect a reasonable level of groundwater supporting the needs of residential, agricultural, and recreational interests.

The discord over water use in the State of Wisconsin has become a prominent issue affecting many areas of our state. More and more citizens are becoming aware of the problems and have expressed their concerns to various government agencies and elected representatives. To that end, Assembly Speaker Robin Voss has requested that the efforts spearheaded by Representative Scott Krug be expanded to the level of a Legislative Council with a broader mandate than originally envisioned. Representative Krug has indicated that he is more than willing to take on the broader mandate. To that end, he has asked our ground water advisory committee to assist in this expanded effort. There was wide agreement that the committee would take on the task while at the same time continue efforts to protect the aquifers of the Central Sands.

Let's not rush into a piece of legislation that does not consider the rights of all water users in Wisconsin.

Instances of high-capacity well impacts on neighboring wells and water bodies



Rock Creek (Dunn County)

Well owners experiencing drops in water levels in areas with new high-cap wells

Little Plover River (Portage County)

The Little Plover River has been named one of America's most endangered streams due to diminished water levels

Long Lake (Waushara County)

Lakefront property values have dropped precipitously due to receding water levels

Sparta (Monroe County)

the well on the Jorgenson dairy farm in Sparta went dry when the adjacent U.S. Silica mine began running its high-capacity well

Two Rivers (Manitowoc County)

The depletion of over a dozen neighboring wells precipitated a lawsuit against Wilfert Farms, a commercial carrot grower



RIVER ALLIANCE OF WISCONSIN

Senator Neal Kedzie, Chair
Senate Natural Resources Committee
Room 313 South
State Capitol

September 25, 2013

Good afternoon Senator Kedzie and members of Natural Resources Committee

My name is Helen Sarakinos and I am with the River Alliance of Wisconsin. The River Alliance of Wisconsin is a non-profit organization with nearly 2,000 individual, business and organizational members around the state of Wisconsin, dedicated to the protection, enhancement and restoration of our rivers and watersheds. The River Alliance recognizes the fundamental connection between our ground and surface water resources, and have been at the table with other stakeholders, DNR and lawmakers to advocate for reasonable and science-based groundwater management policy since the drafting of the Groundwater Protection Act in 2004.

Our membership supported the signing of Act 310 in 2004 as an important first recognition by the state that groundwater is undeniably linked to surface water and that unsustainable groundwater withdrawals can in fact impair surface waters. This law, however, only requires consideration of impacts to rivers and lakes in very limited circumstances.

In the 10 years since this law was passed, groundwater problems have multiplied around the state. In the Central Sands area, the Little Plover River, a trout stream, has disappeared every summer since 2006. Lakefront owners on some impacted lakes have gotten more beach than they ever bargained for. In one case, Long Lake in Waushara County, the lake has disappeared almost entirely. Many of these problems have cropped up with the rise in high capacity wells for irrigation in the Central Sands. But this isn't only about the Central Sands and a few dry lakes. Private drinking water wells in the Fox Valley have been running dry with the increase in irrigation wells in the surrounding area. Excessive groundwater use in areas of eastern Wisconsin: Brown County on down to Waukesha demonstrate how naturally-occurring toxins like radium and arsenic have been drawn into public drinking water supplies as groundwater levels have dropped. In western Wisconsin, the rapid increase in high capacity wells in frac sand country are starting to dry up both drinking water and agricultural wells in Trempeleau and Chippewa counties.

In addition, fishing, hunting, trapping, boating and many other recreational opportunities essential to our quality of life and multi-billion dollar tourism industry are

We Save Rivers

all at risk when groundwater resources are depleted and wells, rivers and lakes begin to dry up.

The current Groundwater Protection Act, Act 310, represented the first step toward addressing this conflict. But even then, the legislature recognized that this law just that: only a first step.

This is why we are deeply concerned about SB302. The intent of the bill is not to move us forward in responsible groundwater management but to tlock us in to 2004, when 99% of lakes, 92% of rivers and 100% of wetlands had no protection whatsoever from being dried up by excessive groundwater pumping.

But in the ensuing ten years, the problem of excessive groundwater pumping has gotten broader and more complex. We use our groundwater for drinking water, agriculture, industry, replenishment of lakes and rivers.

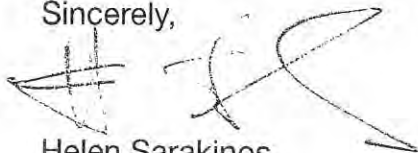
Rolling back the ability of DNR to balance these uses and to protect people from their tap running dry or the lake or river in their backyard disappearing is irresponsible. Groundwater is a finite resource and we are all going to have to share it. Overuse by one entity or interest affects everyone else,

Tying the hands of the DNR to issue reasonable permits will result in either more high capacity well permits being rejected outright or more permits being granted with known harm to rivers, lakes and private wells. This bill will create more problems than solutions.

Nothing is more critical to the future of this state and its citizens than the protection of our groundwater supplies, but the proposed bill is not up to the task. We need to look at the different areas of concern around the state and support regional efforts that address regional problems, which is why we support the idea of a legislative study committee to look at groundwater management.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen Sarakinos', written over a faint grid background.

Helen Sarakinos
Policy Director



John Muir Chapter

Sierra Club - John Muir Chapter
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Oppose SB 302 to Decrease Groundwater Protection, Before the Senate Natural Resources Committee September 25, 2013

Thank you for accepting our comments today. The Sierra Club – John Muir Chapter represents over 15,000 Wisconsin citizens working to explore, enjoy, and protect Wisconsin’s water, air, and land resources. We’re here today to urge you to oppose SB 302 in order to preserve DNR’s authority to protect Wisconsin’s precious groundwater resources. Our specific concerns are detailed below.

During the 2009-10 legislative session the Sierra Club and other groups urged legislators to update Wisconsin’s groundwater law to incorporate science-based recommendations from the Groundwater Advisory Committee. Key sections of this proposal would have allowed local communities with chronic drawdown problems to form groundwater management areas, afforded increased protection for springs, and expanded statewide water conservation measures. Had it passed, this bill would have also increased the DNR’s authority to review high capacity well permits by allowing them to consider impacts to valuable surface waters in considering new permits, and allowed DNR to change a permit if negative impacts to surface waters were observed after the installation of a high capacity well (defined as a well pumping at least 100,000 gallons of water per day).

Unfortunately, that proposal didn’t pass, and today we’re here to consider a bill that would erode, rather than enhance the DNR’s authority to protect Wisconsin’s groundwater. One of the most concerning provisions of this bill is that it would require DNR to remove existing conditions on high capacity well permits since July 6, 2011. This undermines our judicial branch by negating water protections afforded by the Lake Beulah case, which directs the DNR to “consider the environmental impact of a proposed high capacity well” and gives the agency “authority and general duty to consider whether a proposed high capacity well may harm water of the state.” Other provisions of the bill that we strongly oppose include limiting DNR’s ability to conduct an environmental impact review of high capacity well proposals, pressuring the DNR to make a high capacity well decision within 65 days (without regard for staffing levels, site conditions, or permit complexity), preventing the DNR to alter requirements for replacement wells, and preventing any permit changes in the event of property ownership changes. SB 302, along with state budget Motion 375 to limit the DNR’s ability to consider cumulative impacts of high capacity wells chip away at Wisconsin’s longstanding Public Trust Doctrine, the critical provision in our state Constitution that intends for our waters to be held in trust for all Wisconsinites.

At the same time SB 302 is being proposed, pressure on our water resources is at an all-time high, with applications for high capacity wells soaring from 276 in 2011 to 416 in 2012.¹ The six county Central Sands region now has over 3,000 high capacity wells, more than anywhere else in the state. The

scientific link between overpumping and surface water drawdowns has been clearly shown by UW-Stevens Point professor George Kraft, whose research shows that lake water levels near high-capacity wells have declined each year since 2000 while waters farther away from wells have not.² We can therefore predict that enacting bills like SB 302 would lead to more catastrophic drawdowns like the ones observed at Long Lake and the Little Plover River, one of the country's 10 most endangered rivers. Enacting SB 302 would also cause lakefront property values to decline, jeopardize drinking water, and diminish fishing, swimming, and boating opportunities. Groundwater depletion also impacts species like the federally-endangered Hine's Emerald Dragonfly, whose predatory aquatic larvae require calcium-rich, spring-fed wetlands to develop for four years before becoming adults.³

So, again, the Sierra Club urges all of you on the Senate Natural Resources Committee to oppose or seriously reconsider your support for SB 302, in the spirit of upholding Wisconsin's longstanding constitutional Public Trust Doctrine and respecting Wisconsin's proud, bipartisan tradition of protecting our fragile, finite water resources. Protecting groundwater is critical for our economic and environmental well-being, now and for future generations. Thank you for considering our comments on this important matter.

Selected Sources:

¹ http://host.madison.com/news/local/environment/high-capacity-wells-possibly-lowering-some-lake-levels/article_21b14f00-dd4e-5ed5-9ac1-a5d41e1f399f.html#ixzz2fqj6ZvIS

² Kraft, G. J., K. Clancy, D. J. Mechenich, J. Haucke. 2012. Irrigation Effects in the Northern Lake States: Wisconsin Central Sands Revisited. *Groundwater*, Volume 50, Issue 2, pages 308–318, March/April 2012

³ <http://www.wgwa.org/storage/WGWA%20Newsletter%20Vol%2027%20No%203.pdf>



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September 25, 2013

To: Chairman Kedzie and Members, Senate Committee on Natural Resources

From: Bill Oemichen, President & CEO & John Manske, Director of Government Relations

RE: Support for Senate Bill 302

Thank you for scheduling a hearing on Senate Bill 302 as it relates to high capacity wells, an important subject for Wisconsin agriculture. Cooperative Network members in Wisconsin include four cooperatively owned farm credit associations that lend to farmers and rural residents across the state: AgStar Financial Services, Badgerland Financial, GreenStone Farm Credit Services and United FCS. Together they provide credit and financially related services to more than 21,500 Wisconsin member-owners and provide, on average, \$4.75 billion in loans to support Wisconsin agriculture.

The farm credit associations' elected Wisconsin board members, acting through the Wisconsin Farm Credit Legislative Committee, approved a policy resolution pertaining to "High Capacity Well Regulation." The resolution reads in part:

The DNR has implemented regulatory hurdles for owners of existing and proposed new wells, without going through the normal administrative rule-writing process, resulting in confusion and frustration, and cessation of new investments to grow their business. As a result, the Wisconsin Farm Credit Legislative Committee supports legislative and other remedies to ensure that Wisconsin's production agriculture and agribusiness will have access to, and the ability to utilize the water they need to produce crops and animals for the consumer marketplace.

Farm Credit association staff have witnessed the "chilling" effect that the permit delays have created for farmers who have needed approvals for replacement, reconstructed or new high capacity wells. Investment in modernized or expanded operations has been averted or postponed due to the uncertainty about permit approvals and looming environmental review potential impacts for well projects.

For these reasons, Cooperative Network and the Wisconsin Farm Credit community support SB 302. The bill reaffirms the legislative intent of 2003 Wisconsin Act 310, which focuses the higher standard of environmental review over proposed wells that may negatively impact sensitive waters or are being used for bottling purposes. This is critical in light of the Supreme Court's decision in *Lake Beulah Management District vs. DNR*. Wisconsin's diverse agriculture provides the entire state with real economic strength that sets us apart from many other states. To ensure this continues, our producers and processors alike have a common need to access a

reliable water source for their crops and animals without unbearable regulatory burdens. Without that, our continued success in agricultural productivity and competitiveness will be reversed.

The Wisconsin Farm Credit associations, as member-owned and member-led cooperatives, will continue to be strong financial partners for Wisconsin farmers and their related businesses. They will be able to do even more to advance the success of Wisconsin agriculture if regulatory certainty, timeliness and reasonableness are restored to the high capacity well permit process.

In addition to the support of these farm credit association members, we add the considerable support of our dairy and farm supply cooperative members, who understand their member-producers' needs for predictable and timely sources of groundwater for their operations. Our dairy cooperatives process more than 85% of the milk produced in the state, and our farm supply cooperatives provide the large majority of seed, fertilizer, pesticide and fuel inputs for Wisconsin agriculture, including critical infrastructure for planting and harvesting Wisconsin's agricultural crops. As such, these cooperatives provide a necessary foundation for the health of the Wisconsin economy.

Thank you for considering our request for positive action on SB 302.