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## WISCONSIN LEGISLATIVE COUNCIL

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TO: SENATOR NEAL KEDZIE AND REPRESENTATIVE DUWAYNE JOHSNRUD

FROM: Mark C. Patronsky, Senior Staff Attorney, and John Stolzenberg, Chief of Research Services

RE: Summary of 2003 Senate Bill 524 and Assembly Bill 926, Relating to Regulation of High Capacity Wells

DATE: March 5, 2004

This memorandum contains a brief summary of 2003 Senate Bill 524 and Assembly Bill 926, identical bills relating to the regulation of high capacity wells (referred to in this memorandum as “the bill”). This memorandum describes the bill, and not any amendments to the bill.

### **CURRENT LAW**

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 (Water loss is the loss of water from the basin from which it is withdrawn, either by inter-basin diversion or consumptive use, or both.)

### **SENATE BILL 524 AND ASSEMBLY BILL 926**

The bill retains the current law on groundwater quantity, except for the provision regarding bottled water, and imposes a variety of new regulations on high capacity wells. The bill also imposes some regulations on wells that are below the cutoff for high capacity wells.

The bill retains the current definition of a high capacity well, and creates a requirement for the owner (which includes the person representing the owner) to apply for a high capacity well approval

prior to construction. A high capacity well may not be constructed or operated without DNR approval. Upon application, the owner must pay a one-time fee of \$500. For any well that is not a high capacity well, the bill requires the owner to notify DNR of the location of the well and pay a one-time fee of \$50.

The bill continues the current statutory protection for water supplies of a public utility engaged in furnishing water to the public. The DNR is required to include conditions in the approval of any high capacity well, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, to ensure that the water supply of the public utility will not be impaired.

The bill potentially expands the number of high capacity wells that may be subject to conditions as to location, depth, pumping capacity, rate of flow, and ultimate use. The bill makes these conditions applicable to the following high capacity wells:

- A high capacity well proposed in a groundwater protection area. Under the bill, a groundwater protection area consists of an area within 1,200 feet of an outstanding resource water or exceptional resource water identified under current ch. NR 102 and any class I or class II trout stream as currently defined by DNR, but excluding trout streams that consist of a farm drainage ditch with no prior stream history. DNR will promulgate class I and class II trout stream designations by rule.
- A high capacity well with water loss of more than 95% of the amount of water withdrawn (which means that more than 95% of the water withdrawn will either be diverted from the basin or consumed) and the water loss may have a significant environmental impact.
- A high capacity well that may have a significant environmental impact on a spring, which is defined in the bill as an area of concentrated groundwater discharge at the land's surface that results in a flow of water of at least one cubic foot per second for at least 80% of the time.

The bill requires DNR to impose conditions on approvals for these three classes of high capacity wells if the DNR determines pursuant to its environmental review process under ch. NR 150 that the action to issue the approval for a particular well should be treated as a type II or III action, and the DNR determines, pursuant to that review process, that an environmental impact report must be prepared by the applicant for the proposed high capacity well.

The bill requires DNR to impose conditions on these approvals to assure that the high capacity wells do not cause significant environmental impact. However, if a the proposed high capacity well will be a public utility water supply, and the well is proposed for either a groundwater protection area or may have a significant environmental impact on a spring, different standards of approval apply to the well. In this case, DNR may not base its approval of the well on whether the well causes a significant environmental impact if DNR determines that there is no other reasonable alternative location for the well and the DNR imposes conditions regarding location, depth, pumping capacity, rate of flow, and ultimate use that ensure a balance between the environmental impact of the well and the public benefit of the well related to public health and safety.

The bill retains the requirement in current statutes that the high capacity well must comply with the statute on large-scale diversions of water, if applicable, and adds new conditions requiring the owner to identify the location of the high capacity well and submit an annual pumping report. The owner of a

high capacity well who received an approval for the well under prior statutes is also required to provide the DNR with information concerning the location of the well and an annual pumping report. DNR is required to promulgate rules specifying the date and method by which owners of existing high capacity wells must comply with this requirement.

DNR is authorized under the bill to modify or rescind the approval of a high capacity well, whether approved under the new statute or the prior statute, if the high capacity well or use of the well is not in conformance with standards or conditions applicable to the approval of the high capacity well.

In addition to the provisions described above regarding groundwater protection areas and the approval of individual high capacity wells in those areas, the bill requires DNR to create accurate images (such as maps) of groundwater protection areas and authorizes any person who proposes to construct a high capacity well to request DNR to determine whether the proposed location is within a groundwater protection area. DNR is directed to administer a mitigation program under which it may require abandonment of wells, replacement of wells at different locations, and management strategies in order to mitigate the effects of wells constructed before the effective date of the legislation in groundwater protection areas. DNR may only require mitigation if DNR can provide funding for the full cost of mitigation. However, DNR may order abandonment of a well if necessary due to issues regarding public health.

The bill requires DNR to designate, by rule, two groundwater management areas in the area surrounding Brown and Waukesha Counties, and consisting of each city, village, and town at least a portion of which is within the area determined by DNR in which greater than a 150-foot decline in the level to which groundwater will rise in a well placed in the aquifer has occurred. In groundwater management areas, DNR is directed to assist local government units (a term defined broadly to include all governmental entities and special purpose districts that provide public water supply services) and regional planning commissions, by providing advice, incentives, and funding for research and planning relating to groundwater management.

The bill establishes a nonstatutory groundwater quantity committee consisting of 13 members: four appointed by the Governor; four appointed by the Speaker of the Assembly; four appointed by the Majority Leader of the Senate and the Secretary of Natural Resources or a designee. Each appointing authority is directed to appoint a member representing the interests of industry, agriculture, the environment, and municipalities. The bill directs that committee, no later than December 31, 2006, to report to the environment standing committees of the Legislature with recommendations for legislation and administrative rules to address management of groundwater in groundwater management areas and any other areas of the state where long-term withdrawal of groundwater adversely affects water quality and quantity. The groundwater quantity committee is further directed to review the implementation of the new statute created by the bill and directs it to make further recommendations regarding changes in the regulation of high capacity wells that are in groundwater protection areas, that have a water loss of 95% or more, or that have a significant environmental impact on a spring. If the groundwater quantity committee fails to submit the first of these reports, DNR is authorized to promulgate rules using its existing statutory authority to address the management of groundwater in groundwater management areas.

The bill directs DNR, with the advice of the groundwater coordinating council, to conduct monitoring and research related to interaction of groundwater and surface water, characterization of groundwater resources, and strategies for managing water.

The bill appropriates the funds collected from permit applicants under the bill for DNR administration of the program, groundwater quantity research, groundwater mitigation, and local assistance. The bill authorizes five positions for this purpose.

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