

Groundwater Advisory Committee  
Options Paper  
for  
November 15 Ballot

Date: November 14, 2007

From (list GAC members): Ron Kuehn

Title (Subject): A Balancing Test for Spring Protection

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**DISCUSSION:**

NR 820.29(2) “High Capacity Wells Near Springs” sets the standard for creating a protection zone for 1-CFS springs under the groundwater protection law. The zone of protection is “near” springs, defined as “in the vicinity of...” springs.

The rather ambiguous term “near” is undefined by the Act. NR 820 attempts to define “near” with the phrase “in the vicinity of” (Sec. NR 820.31(1)). This ambiguity creates a create disparity of opinion as to what “near” or “in the vicinity of” means. Some believe that it should mean the standard established for other GPA waters, which is 1,200 feet. Others believe that the radius of protection provided by the “near” standard should extend for miles around a spring. This ambiguity creates regulatory and citizen uncertainty that is unacceptable.

The citizen landowners of this state (both private and municipal) have legal rights to groundwater that generally do not extend to surface waters under Wisconsin law. Some of those rights were abdicated to the State by the passage of Act 310 in 2003.

Prior to the passage of that Act, citizens had the right to withdraw groundwater subject to very limited exceptions. The new law greatly expanded those exceptions.

This Committee is charged with the duty of determining whether Act 310 is or is not working. We believe it is working – no wells have been approved by the Wisconsin DNR since the adoption of this Act which have been illustrated to have resulted in any significant harm to any surface water (GPA protected water) or a spring, as defined by the law.

Nonetheless, there are those who insist that the protection of springs be extended to springs smaller than 1-CFS despite the protections that have been provided and despite the existing ambiguity of what constitutes the concept of spring protection. By expanding such protections, and retaining this exceptionally ambiguous phrase, great swaths of land within the state of Wisconsin might, as a result, have imposed new limitations on their owners’ ability to withdraw groundwater for either municipal, industrial, or agricultural use. No such expansion of the definition of spring can or should even be considered until such time as the ambiguity of the protective zone “near” or “in the vicinity of” springs is resolved.

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We believe that a balancing of our citizen landowners' rights to groundwater with the perceived need to reduce those rights in the name of protecting additional springs using an exceptionally ambiguous term must be approached very cautiously.

**RECOMMENDATION:**

We therefore propose the following as a "balanced" solution to the reduction of these water rights.

We offer for consideration the following amendment to the law, which would strike the current concept of protecting "near" springs, and replace it with an approach that balances our citizens' rights to groundwater with environmental protection needs.

High capacity well applicants have the right to construct and operate wells on their property. However, in this application process, both the high capacity well water needs of the applicant and the potential for impact of withdrawal of that well water on an adjacent spring will be considered by the Wisconsin DNR in determining the reasonable location and depth of such well at a site on the applicant's property in a manner that allows the applicant the opportunity to secure the necessary water necessary for the applicant's needs at a reasonable cost.