



**DEWITT  
ROSS & STEVENS**<sup>SC</sup>  
L A W F I R M

**MEMORANDUM**

**TO:** THE GAC

**FROM:** Ron Kuehn

**DATE:** October 29, 2007

**RE:** A Proposal to Resolve the Ambiguity of the Term “Near” (a Spring)

**I. CURRENT LAW.**

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.

**II. PROBLEM WITH CURRENT LAW.**

The rather ambiguous term “near” is undefined by the Act. NR 820 attempts to address the subject by using 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.

**III. DISCUSSION.**

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.

Now there are those who would further restrict our right to groundwater by expanding the ambiguous term “near” to an even broader definition of what constitutes a protected “spring.”

## MEMORANDUM

**TO:** THE GAC **Error! Reference source not found.**  
**FROM:** Ron Kuehn  
**DATE:** October 29, 2007  
**PAGE:** 2

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. Furthermore, we do not believe any evidence has been provided to suggest that any well approved by the Wisconsin DNR since the adoption of the Act has affected any other surface water (protected or unprotected) or any spring smaller than 1-CFS. These smaller springs, many of which are located in either a GPA or a wetland, already enjoy substantial protection.

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 “near” to such a spring. 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 is resolved. The issue of what constitutes “near” or “in the vicinity of” a spring must first be resolved.

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.

### **IV. RESOLUTION.**

We therefore propose the following as a “balanced” solution to the reduction of these water rights in consideration of unproven surface water impacts resulting from high capacity wells that have been approved by the Wisconsin DNR since the adoption of Act 310. We further believe that the expenditure of funds to determine the location of all of the springs within the state of Wisconsin should not be undertaken until this ambiguity of protection definition is resolved. This is especially true in view of the complete lack of evidence that any spring, regardless of size, being substantially harmed by any high capacity well approved by the DNR since the adoption of Act 310.

## MEMORANDUM

**TO:** THE GACError! Reference source not found.  
**FROM:** Ron Kuehn  
**DATE:** October 29, 2007  
**PAGE:** 3

We offer for consideration an amendment to the law, which would strike the current concept of protecting “near” springs, and replace it with a more balanced approach in recognition of our citizens’ rights to groundwater and a perceived environmental protection need. We are not thoroughly convinced that the following is the approach that should be taken, but we are convinced that the existing ambiguity will not do.

We suggest the following language be considered in lieu of the “near” protection of springs concept.

High capacity well applicants have the right to construct and operate a well 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 at a reasonable cost, not to exceed 50% of the cost that would have been incurred at the site and depth requested in the original application.