



**DEWITT  
ROSS & STEVENS**<sup>SC</sup>  
LAW FIRM

**MEMORANDUM**

**TO:** THE GAC

**FROM:** Ron Kuehn

**DATE:** October 29, 2007

**RE:** The Question of a Definition of a Spring and the Necessity of a Spring's Study

**I. CURRENT LAW.**

Wisconsin Statute § 281.34(1)(f) defines a spring as follows:

- (f) "Spring" means an area of concentrated groundwater discharge occurring at the surface of the land that results in a flow of at least one cubic foot per second at least 80% of the time.

Another statutory section requires the Department of Natural Resources to very closely evaluate any high capacity well that is sought "near" a spring. If impacts resulting in a significant environmental impact results, then the well permit is either denied or adjusted so as to appropriately make those impacts insignificant. No study of existing springs is called for in the current law..

**II. PROBLEM WITH THE CURRENT LAW.**

At least one problem with the current law is that the concept of "near" a spring is exceptionally ambiguous. Unlike the 1,200 foot standard for measuring wells that might impact other GPA surface waters, this standard for spring protection is exceptionally broad. Providing greater specificity, or some other solution to this problem of "near" ambiguity should be a priority.

Some members of the Committee object to the limitation on the size of the spring protected by the law (1-CFS) and have asserted that smaller springs should be covered by the law, some even suggesting that all springs be covered by the law. There was considerable disagreement among the Committee members regarding this concept.

## **MEMORANDUM**

**TO:** The GAC  
**FROM:** Ron Kuehn  
**DATE:** October 29, 2007  
**PAGE:** 2

### **III. DISCUSSION.**

During the course of the GAC's analysis of the application of the current law (Act 310, Laws of 2003), the GAC learned the following:

- That the vast majority of smaller springs (smaller than 1-CFS) that occur at the surface of the land exist in relation to either waters protected under the GPA standard or within wetlands that are protected primarily under § 271.37 of Wisconsin Statutes. There are clearly some smaller springs that do not enjoy the protections of GPA wetland status currently, but it is believed that those are in the vast minority.
- That approximately 18% of Wisconsin's entire land mass is designated by the Wisconsin DNR as a wetland. Wisconsin has approximately 15,000 trout streams and many hundreds of other outstanding and exceptional resource waters. Therefore, regardless of whether small springs are covered by the definition, the vast majority of small springs enjoy protections within the existing 1,200 foot GPA limit or under the protections against wetland disturbance.
- That during the nearly two years of testimony, discussions and reports provided to the GAC, not one example was offered to suggest that since the inception of Act 310, a single spring (as defined by the existing law), or a smaller spring (which enjoys protection within the 1,200 foot limit or the wetland protections referred to above), has been negatively impacted by a high capacity well approved since the adoption of Act 310 by the Wisconsin DNR.

### **IV. RECOMMENDATION.**

The GAC finds:

1. That the existing groundwater law is very adequately protecting springs in Wisconsin, as defined by Act 310.
2. That the existing groundwater law in combination with Wisconsin wetland protection law is protecting a vast number of smaller springs not defined as a spring under the groundwater protection law.
3. That the high capacity well permitting process currently being operated by the Wisconsin DNR in compliance with Act 310 has not

**MEMORANDUM**

**TO:** The GAC  
**FROM:** Ron Kuehn  
**DATE:** October 29, 2007  
**PAGE:** 3

resulted in the approval of a single well since the adoption of that law which has significantly impacted either a small or large spring in this state.

It is therefore recommended that: (1) the definition of a spring not be amended; and (2) the expenditure of state funds for a study to identify all of the springs, regardless of size throughout the state of Wisconsin is unnecessary.