



# Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

October 7, 2013

## High Capacity Well Legislation Introduced

*By Jordan Lamb, DeWitt Ross & Stevens*

In response to the Wisconsin Supreme Court decision in *Lake Beulah Management District v. Wisconsin DNR*, Senator Neal Kedzie (R-Elkhorn) has introduced legislation 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." [Senate Bill 302](#) was introduced on September 18, 2013.



In 2003, Senator Kedzie and then Representative DuWayne Johnsrud convened a large stakeholder group to establish a permitting program for high capacity wells in Wisconsin. The legislation, [2003 Wisconsin Act 310](#), required the DNR to apply a higher standard of environmental review to three categories of high capacity wells: (1) a well that is within 1,200 feet of an exceptional resource water, an outstanding resource water or a trout stream; (2) a well with a water loss of more than 95 percent of the amount of water withdrawn; and (3) a high capacity well that may have a significant environmental impact on a spring.

In July of 2011, the Wisconsin Supreme Court considered a case in which a municipal high capacity well approved by the DNR for the Village of East Troy was challenged by a group of lake front property owners, who alleged that DNR should have applied a higher standard of review when considering the high capacity well application even though the well did not trigger the requirements under the 2003 groundwater protection act. The Court's decision stated that the DNR retains broad authority and a general duty to engage in a heightened environmental

review of all high capacity well applications, not just those wells deemed by the legislature in Act 310. By questioning the standards for review established in the groundwater protection statute, this decision has created uncertainty and ambiguity in Wisconsin's high capacity well permitting program.

Accordingly, Senator Kedzie's legislation, 2013 Senate Bill 302, aims to restore regulatory certainty to this program. The legislation creates several new definitions aimed at clarifying the application of the DNR's review process. It clarifies that certain new withdrawals are subject to review, but that applications to repair or replace a previously approved well triggered a reduced review process. This should speed the DNR review needed to repair or replace existing high capacity wells.

In addition, the legislation establishes a 65-day timeline for the DNR to review high capacity well applications and explicitly states that a change in ownership (i.e., sale or succession transfer to children) of a high capacity property *does not* trigger a new approval process or a re-opening of all of the approved wells on the property. This change is critical for farmers who need certainty that they can sell or transfer their farms with their approved wells as a part of the property.

The legislation also clarifies that the environmental review process is limited to the wells that the legislature identified in 2003 as triggering that review (i.e., (1) a well that is within 1,200 feet of an exceptional resource water, an outstanding resource water or a trout stream; (2) a well with a water loss of more than 95 percent of the amount of water withdrawn; and (3) a high capacity well that may have a significant environmental impact on a spring.) It also makes well approvals permanent such that the only grounds for revocation or revision of a well permit are if the permit-holder fails to comply with the terms of the permit. This is critical for lenders who evaluate the value of a property and need to know whether a high capacity well and the associated irrigation infrastructure is a part of the property.

Importantly, the legislation does not affect the State's right, or any private right of action that individuals may have, if a navigable water is affected by a well or if a private well is effected by a well. Those rights are vested in other statutes and case law and are not impacted by this legislation. Rather, this legislation is aimed at restoring regulatory certainty to Wisconsin's high capacity well permit review and approval process.

The Senate Natural Resources Committee held a public hearing on SB 302 on September 25, 2013. It is expected that the Legislature will take action on this legislation this fall.

## **Final Implements of Husbandry Recommendations Sent to Legislature**

*By Jordan Lamb, DeWitt Ross & Stevens*

The Implements of Husbandry Study Group has collected and analyzed information from statewide Town Hall Meetings and online survey responses and has submitted final comments to the Legislature. The group has made several recommendations for legislative changes to the regulations governing the operation of agricultural implements on the state roadways.

The recommendations include:

- Create a clearer, simpler definition of IoH to reflect today's agricultural equipment, which would also include a definition for commercial motor vehicles used exclusively for agricultural operations.
- Require all IoH that cross over the centerline of the roadway during operation to meet the lighting and marking standards of the American Society of Agricultural Engineers (ASAE S279).



- Create a 60-foot limit for a single loH and a 100-foot limit for combinations of two loH. For combinations of three loH the limit is 70 feet, but a three loH combination may operate at lengths exceeding 70 feet, to a limit of 100 feet, at a speed no greater than 20 miles per hour.
- Create a new loH weight limit which is up to 15 percent weight allowance more than currently established by the federal bridge formula. This equates to a maximum single axle weight of 23,000 pounds and a maximum gross vehicle weight of 92,000 pounds except where posted and during periods of spring thaw.
- Require written authorization to exceed weight limits. Each year, loH operators may submit a travel or route plan and request written authorization to exceed the weight limit from the maintaining authority of the roadways. A nominal fee may be charged and additional conditions may be set by each maintaining authority. loH vehicles operating in excess of the 15 percent allowance will be fined for the amount in excess of standard gross motor vehicle weight or individual axle weight.
- Support exploration of best practices to assist in reducing the wear of roadways and structures. This includes the development of emerging innovations and best practices in manure management.
- Develop further training requirements for the operation of large loH equipment. Age requirements are to remain as presently allowed in statute, but the group recommends developing advanced training for operating larger and heavier loH.

The loH Study Group Phase II Addendum Report, with the detailed recommendations, is available online at [www.dot.wisconsin.gov/business/ag/index.htm](http://www.dot.wisconsin.gov/business/ag/index.htm).

## Special Elections Set for Two Assembly Seats

*By Jordan Lamb, DeWitt Ross & Stevens*



A special election has been called by Governor Walker to fill the Assembly seats vacated by Representatives Scott Suder (the 69th District) and Mark Honadel (the 21st District). The elections will take place on November 19, 2013.

[Link to Executive Order #111](#) establishing the timeline for the election in the 69th District.

[Link to Executive Order #113](#) establishing the timeline for the election in the 21st District.

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Jordan Lamb is a partner at DeWitt Ross & Stevens' Capitol Square office in Madison.

Jordan's law practice focuses on government relations and administrative law. She concentrates on legislative drafting, legislative research, and facilitating communication between clients and state government including administrative agencies and the State Legislature. Ms. Lamb also offers litigation support for administrative law issues. Jordan can be contacted at 608-252-9358 or at [jkl@dewittross.com](mailto:jkl@dewittross.com). For more information about DeWitt Ross & Stevens, go to [www.dewittross.com](http://www.dewittross.com).

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820 N Main Street Suite D Juneau, WI 53039  
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