

April 2008

Great Lakes Compact Deal Reached – Special Legislative Session Called

By Jordan Lamb

On April 9, 2008, Governor Doyle announced that a deal had been reached on the ratification and implementation of the Great Lakes Compact in Wisconsin. He called the State Legislature into a special legislative session, beginning on April 17th, to pass the agreed-upon Compact legislation. Although the Legislature has not yet convened, as the statutory language is still being drafted, it is expected that the Compact legislation will be approved shortly.

The State Senate did approve a version of the Great Lakes Compact ratification and implementation legislation prior to the conclusion of the regular legislative session. However, the State Assembly, led by Speaker Mike Huebsch (R-West Salem) and Representative Scott Gunderson (R-Waterford), chair of the Assembly Committee on Natural Resources, pledged to take additional time to consider the legislation before passing it in the Assembly. Accordingly, the Legislature, the Doyle Administration and the Department of Natural Resources have been working on additional amendments to the Compact legislation to address issues raised by Wisconsin farmers and other water users that were not addressed in the Senate's version of the legislation.

The following is a summary of the amendments that have been agreed-to by the Department of Natural Resources (DNR), the Doyle Administration, the Assembly leadership and the Senate leadership and that are important to Wisconsin agriculture:

- *Public Trust Doctrine Clarified.* The Senate's version of the Compact legislation left it unclear as to whether the language in the Compact changed the application and interpretation of the public trust doctrine in Wisconsin, especially with regard to groundwater. The agreed-upon amendment takes a leap forward in further clarifying this ambiguity by stating that nothing in this legislation may be interpreted to change the application of the public trust doctrine under the Wisconsin Constitution or create any new public trust rights.
- *Statewide Water Conservation and Efficiency Program Defined.* The Senate's Compact legislation provided for a very broad, undefined grant of rulemaking authority to the DNR that would have allowed them to presumably create unlimited statewide restrictions through a "water conservation" program. The agreed-upon amendment clarifies that (a) the statewide portion of the water conservation program is strictly *voluntary* and (b) the in-basin portion of the water conservation program must be limited to effectuate the defined permitting and decision-making standards that are defined in the Compact and in the water-use permitting program. In short, the amendment provides more definite parameters for DNR's rulemaking authority with regard to water conservation programs.

- *Increased Legislative Oversight of Governor's Vote on Regional Council.* The Senate version of the Compact legislation provided for quite limited legislative review of the Governor's vote on the Regional Council with regard to certain rulemaking and Compact interpretation issues. The regional Council, which is created under the Compact and upon which Wisconsin's Governor will serve, is granted broad rulemaking authority to enact rules that will enforce and implement the Compact across the Great Lakes States. In order to preserve our system of checks and balances, the agreed-upon amendment requires active review of the Governor's vote on this Council with regard to all Council rulemaking proposals by the Joint Committee on Legislative Oversight.
- *Grandfathering Existing Diversions for Irrigation.* After the Senate adopted their Compact legislation, it was discovered that the legislation, which provided protection for existing public water supply diversions, failed to extend these protections to existing diversions used for irrigation purposes. Accordingly, the agreed-upon amendments to the legislation provide protection to agricultural irrigators who currently pump water from the Great Lakes Basin and irrigate using that water into the Mississippi River basin (*i.e.*, "divert" the water from the Great Lakes Basin.) Farmers who have current high capacity wells that irrigate in this manner will have to take affirmative steps following the enactment of this legislation to preserve that use of the water. However, as provided under the Compact itself, "new or increased" diversions of water for agricultural purposes are prohibited.
- *Appeals Process Created.* In the Senate version of the Compact legislation, it was unclear how applicants for water use permits could appeal decisions on those permits made by the DNR. The agreed-upon amendments contain a specified appeals process that is modeled after the current appeals process that is a part of Wisconsin's air permit program.

[Click here](#) to learn more about the Great Lakes Compact. A complete article is available on www.pdpw.org, which we will continue to update. Providing the latest information to you is PDPW's priority.

Conservation Congress Votes on Questions of Interest to Farmers

By Jordan Lamb

Approximately 6,400 people attended the 2008 Spring Fisheries and Wildlife Rules Hearings and Wisconsin Conservation Congress County Meetings that were held in all 72 counties statewide on Monday, April 14. These hearings allowed citizens to comment and vote on proposed fish and wildlife rule changes, Conservation Congress and Natural Resources Board advisory questions, and to submit resolutions for rule changes they would like to see in the future. Three of the questions posed to voters at these meetings were of particular importance to Wisconsin farmers.

First, voters at the April 14th hearings voted *in favor* of a statewide ban on baiting and feeding deer.

However, voters overwhelmingly *turned down* a question that asked, "Do you support legislation that would require all future Managed Forest Law contracts to allow public access as currently defined in state statute?"

Finally, voters also expressed strong *support* for developing a hunting season to maintain and manage the State's wolf population. This question was approved in every Wisconsin county.

Capitol Link Details

The PDPW *Capitol Link* monthly e-newsletter is sponsored by DeWitt Ross & Stevens law firm. DeWitt Ross & Stevens is a Wisconsin law firm whose members are leaders in their areas of practice and in their communities. Founded in 1903, today there are more than 80 attorneys in our offices in Madison and Milwaukee. Nominated by peers as top lawyers nationally and locally, DeWitt's attorneys offer numerous services including strategic counseling, advocacy, collaboration, alternative dispute resolution, negotiation, mediation, lobbying, and litigation.

This newsletter is a periodic publication produced by PDPW and DeWitt Ross & Stevens. The information provided in this newsletter is provided for educational and informational purposes only. PDPW does not attempt to influence legislation or administrative rules at any level. The contents of this newsletter are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific situation. You are urged to consult an attorney concerning your own situation and any legal questions you may have.

Jordan Lamb is an associate 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. For more information about DeWitt Ross & Stevens, go to www.dewittross.com.



Brought to you by:
Professional Dairy Producers of Wisconsin
N5776 US Hwy 151, Suite 1
Fond du Lac, WI 54937
Phone: 800-947-7379
mail@pdpw.org
www.pdpw.org