



## Tributary Groundwater

### LRB-0058/P1

Page 9, lines 10-12, § 281.343(1)(x):

(x) “Waters of the basin” or “basin water” means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, *including tributary groundwater*, within the basin.

Page 9, line 7, § 281.343(1)(v):

“Water” means groundwater or surface water contained within the basin.

Page 4, lines 16-18, § 281.343(1)(c):

“Basin” or “Great Lakes—St. Lawrence River Basin” means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

Page 34, lines 19-21, § 281.343(4t)(e):

*Groundwater*. The basin *surface water divide* shall be used for the purpose of managing and regulating *new or increased* diversions, consumptive uses, or withdrawals of surface water and groundwater.

Page 43, lines 4-7, § 281.343(7):

ADDITIONAL PROVISIONS. (a) *Effect on existing rights*. 1. Nothing in this compact shall be construed to affect, limit, diminish, or impair any rights validly established and existing as of the effective date of this compact under state or federal law governing the withdrawal of waters of the basin.

### Legal analysis:

§ 281.343(4t)(e) says the *surface* water divide is used for regulating *new or increased* diversions (only). No provision in the proposed compact says the surface water divide is used in any other circumstance.

“Waters of the basin” must be interpreted to *include tributary groundwater that is outside the surface water divide (but within the groundwater divide)*. The alternative – to interpret the proposed compact as only applying to groundwater within the surface water divide – would make § 281.343(4t)(e) and its specific limitation on the use of the surface divide to new or increased activities superfluous, violating the rules of statutory interpretation.

Wisconsin and U.S. Supreme Court law is well settled that in construing statutes, effect should be given to each word, clause and sentence in a statute and that a construction that would render any portion of a statute superfluous should be avoided whenever possible. *See, e.g., Kollasch v. Adamany*, 104 Wis.2d 552, 563 (1981); *State v. Dept. of Industry, Labor and Human Relations*, 101 Wis.2d 396 (1981); *Cooper v. Aviall*, 534 U.S. 157, 167 (2004); *US v. Nordic Village*, 503 U.S. 30, 35-36 (1992); *Hoffman v. Conn. Dept. of Income Maintenance*, 492 U.S. 96, 103 (1989); and *US v. Menasche*, 348 U.S. 528, 538-39 (1955).

Likewise, in interpreting various statutory sections, courts must, if it is possible, harmonize and reconcile them. *Fontana v. Fontana-On-Geneva Lake*, 69 Wis. 2d 736,742 (1975). Sections of a statute relative to the same subject should be construed to give effect to each provision. *In re Schrank's Estate*, 202 Wis. 107, 108 (1930).

#### **Practical analysis:**

Some committee members may argue that the deep groundwater below Waukesha County is no longer tributary groundwater, arguing it now flows toward the cone of depression, instead of toward the lake, because of pumping. But the same argument would then apply to deep groundwater below *Milwaukee County*, meaning that groundwater *would also not be considered to be tributary* and could not then be covered by the proposed compact.

***It makes more sense to interpret or define “tributary groundwater” by its natural flow toward the Great Lakes, not the flow that is influenced by human activities.*** If the natural flow is *not* used, the reach of the Annex will need to be constantly redetermined, as human activities alter groundwater flows.