



WISCONSIN LEGISLATIVE COUNCIL

GREAT LAKES WATER RESOURCES COMPACT

Room 411 South
State Capitol

August 7, 2007
9:00 a.m. – 4:15 p.m.

[The following is a summary of the August 7, 2007 meeting of the Special Committee on Great Lakes Water Resources Compact. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Kedzie called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Neal Kedzie, Chair; Sen. and Mary Lazich; Reps. John Steinbrink and Karl Van Roy; and Public Members Kevin Crawford, Dan Duchniak, Hallet Harris, Andrew Lisak, William Mielke, Matthew Moroney, Keith Reopelle, Jodi Habush Sinykin, James Surfus, and Edward Wilusz.

COMMITTEE MEMBERS EXCUSED: Sens. Robert Cowles and Robert Wirsch; Reps. Scott Newcomer and Jon Richards, and Public Member Ann Beier.

COUNCIL STAFF PRESENT: John Stolzenberg, Chief of Research Services; and Rachel Letzing, Senior Staff Attorney.

Approval of the Minutes of the July 18, 2007 Meeting

Committee members suggested the following changes in the minutes of the July 18, 2007 meeting:

- In the second to last sentence of the fourth full paragraph on page 4, Mr. Lisak requested that “only” be deleted in recognition that committee members were still reviewing whether the legislative review should apply to reviews conducted by the Great Lakes-St. Lawrence River Basin Water Resources Council (the “council”) under proposed s. 281.343 (4z) in LRB-0058/P1.

- In the first and second paragraphs on page 5, Mr. Mielke requested that the references to 100,000 gallons be clarified to be on a daily basis.
- In the last paragraph on page 7, Mr. Duchniak requested that text be added to the minutes indicating that the committee still has to define “hydrologically interconnected.”

The minutes of the committee’s July 18, 2007 meeting, as amended in the above requests, were approved by unanimous consent.

Following approval of these minutes, Chair Kedzie introduced Jeff Ripp, Water Conservation Coordinator, Public Service Commission.

Discussion of Subcommittee and Committee Recommendations, as Set Forth in WLC: 0141/P1, Relating to Implementing the Compact

Chair Kedzie stated that the committee would continue its discussion of the subcommittee and committee recommendations in WLC: 0141/P1 starting with the provision on the “conservation and efficient use of existing water supplies” in WLC: 0141/P1, page 25, lines 3 to 14. Mr. Stolzenberg began the discussion by providing an overview of the various provisions in WLC: 0141/P1 relating to water conservation, including the requirements for the conservation and efficient use of existing and new water supplies by applicants for withdrawals, diversions, and consumptive uses, and the general requirements in the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) for a water conservation program for existing and new water users within the Great Lakes basin. Ms. Habush Sinykin noted that the approach adopted by the Subcommittee on Water Conservation and Bottled Water is to require an applicant to go through a three-step process regarding water conservation: planning; evaluation of alternative water conservation measures, as specified in the applicable tier; and implementation of the measures that are environmentally sound and economically feasible for the applicant. In the ensuing discussion, the committee, by consensus, requested that staff substitute a different term for “baseline” on page 25, line 9 to avoid confusion with the baseline established in WLC: 0141/P1, page 11, line 17. The committee also requested that the reference to measures 2. and 3. on page 25, line 11, be corrected to measures b. and c.

In response to a question on how the Department of Natural Resources (DNR) intends to apply the definition of “environmentally sound and economically feasible water conservation measures” in WLC: 0141/P1, page 7, line 19 to page 8, line 7, Mr. Ledin replied that DNR staff have reviewed this definition and are considering applying the four elements in the definition based upon the model used in the approval of new wastewater treatment plants using a total present worth analysis. At this time, DNR staff have not factored in the avoided cost analysis required in the fourth element in this definition.

Next, the committee reviewed the “water conservation and efficiency tiers” in WLC: 0141/P1, page 33, line 11 to page 35, line 8. Mr. Duchniak requested the committee consider the proposed changes to the water conservation provisions in WLC: 0141/P1 set forth in a memorandum previously distributed to the committee from Lawrie Kobza, MEG Municipal Drinking Water, dated July 18, 2007. These proposed changes include deleting the enumeration of the tiers in WLC: 0141/P1 and directing the water conservation advisory committee created by the draft to recommend legislation for water conservation and administrative rules to implement the legislation. In discussing the tiers, Mr. Wilusz indicated that he will propose language to clarify the phrase “comparable measure of water use” in

WLC: 0141/P1, page 34, line 1. He also stated his understanding that the water supply system for purposes of the accounting and assessment of water flows and losses in WLC: 0141/P1, page 34, line 5, stops at the first use of the water by the owner or operator of the system. Mr. Mielke raised the broader issue of clarifying who is the permittee or applicant that will be subject to the water conservation and other requirements for a diversion under WLC: 0141/P1 (e.g., the entity withdrawing the water used in the diversion versus the entity providing the public water supply using water from the diversion, which, depending on the diversion, may be different entities). Mr. Ledin stated that the application of the tiers, as well as other requirements under the compact, will vary depending upon whether they are applied to regulated entities on a project basis or on the basis of a longer term planning process, such as a 20-year regional development plan.

Following discussion of the tiers and their use under the water conservation framework in WLC: 0141/P1, the committee, by consensus, decided to keep the specific water conservation and efficiency measures in the tiers in WLC: 0141/P1; explicitly authorize the water conservation advisory committee created by the draft to recommend modifications or additions to the water conservation and efficiency measures in these tiers; and authorize the DNR to modify or add measures to the tiers based on experience in the upcoming water conservation pilot program that the department will be participating in and on the recommendations of the water conservation advisory committee created by the draft. The committee did not act on the issues raised by Mr. Mielke and Mr. Ledin noted above.

The committee also decided, by consensus, to expand the responsibilities of the water conservation advisory committee in WLC: 0141/P1, page 42, lines 19 to 23, to include advising the DNR on the development of the statewide water conservation program pursuant to the instructions in Memo No. 12; and to direct the DNR to create the statewide water conservation program specified in Memo No. 12 as part of the department's responsibilities on water conservation and efficiency in WLC: 0141/P1, page 32, line 1 to page 33, line 6.

In discussing the membership of the water conservation advisory committee in WLC: 0141/P1, page 41, line 16 to page 42, line 16, the committee agreed, by consensus, to remove the designation that one gubernatorial appointment represent well drillers, at the request of Chair Kedzie, and to add the chair of the PSC and the Secretary of the Department of Commerce, or their designees, at the request of Mr. Duchniak. The committee also accepted Mr. Ledin's request that committee staff ensure that there is a clear demarcation between the responsibilities of this advisory committee and the Groundwater Coordinating Council. At the request of Mr. Ledin, the committee by consensus, deleted the provision on the DNR promoting environmentally sound and economically feasible water conservation measures in WLC: 0141/P1 page 33, lines 7 to 10.

In discussing the water conservation related requirements in the decision-making standard in WLC: 0141/P1, page 29, line 1 to page 30, line 2, Mr. Mielke noted that the Subcommittee on Water Conservation and Bottled Water included the criterion based upon the percentage of the applicant's annual withdrawal on page 29, lines 10 and 11, to account for the varying significance of a given amount of consumptive use by a large water utility with large withdrawals, versus by a small water utility with small withdrawals. The committee decided to defer acting on these requirements until after it has set the threshold for withdrawals and consumptive uses subject to the decision-making standard.

After reviewing the provisions on "tribal consultation and public participation" in WLC: 0141/P1, page 35, line 9 to page 37, line 19, the committee requested that committee staff and Mr. Ledin

propose alternative language to subd. 2. on page 37, lines 17 to 19, that accommodates the time needed for a regional review or council approval of a diversion or large consumptive use proposal. The committee accepted the other text on these provisions by consensus.

After discussing provisions on “information, reports, and assessments” in WLC: 0141/P1, page 38, line 1 to page 39, line 16, the committee, by consensus, directed that the provisions relating to the water resources inventory be modified to require one statewide inventory within three years after the effective date of the provision and reports to the council on water resources, withdrawals, and consumptive uses in the Great Lakes basin, and diversions commencing within five years of the compact’s effective date.

During the committee’s discussion of the definition of “aggrieved” in WLC: 0141/P1, page 40, lines 1 to 3, Mr. Wilusz requested an opportunity to revisit that definition at a subsequent meeting and potentially limit its scope, pending further review of the term, and the committee directed committee staff to research how this term could be applied under the compact. The committee then accepted, by consensus, the provision on available remedies in WLC: 0141/P1, page 40, lines 4 and 5.

During the committee’s discussion on penalties in WLC: 0141/P1, page 40, line 6 to page 41, line 7, Mr. Reopelle indicated that he would be further researching the appropriateness of the minimum forfeiture of \$10 for each violation specified on page 40, line 7, and possibly recommending a higher amount at a subsequent meeting.

The committee then discussed the definitions in WLC: 0141/P1, page 5, line 1 to page 10, line 15. By consensus, the committee adopted these definitions with the following modifications or actions:

- “Community within a straddling county” and “straddling community,” page 5, lines 5 to 7, and page 10, lines 1 to 3: the committee asked committee staff to list all general and special purpose units of local government that can provide public water supply, including a regional water supply. The committee also decided to not include in these definitions any date on which the boundaries of these entities are based. Mr. Reopelle requested the opportunity to present at a subsequent meeting an alternative to using a date certain for establishing the boundaries.
- “Consumptive use,” page 6, lines 5 to 7: Mr. Stolzenberg indicated that staff may be proposing clarification in this definition to address the fact that the definition is expressed as an amount of water withdrawn or withheld and that the compact uses the term as either an amount of water use or a type of water use.
- “Cumulative impacts,” page 6, lines 12 to 17: Mr. Lisak expressed concern over the definition of this term in both the compact and the implementing legislation. Chair Kedzie indicated that since his concern relates to text in the compact, the committee should defer discussing it until its final discussion on approval of the committee’s bill draft.
- “Diversion” and “divert,” page 7, lines 1 to 18: Mr. Stolzenberg noted that the phrase “product produced in the basin” in these definitions is redundant with the phrase “produced in the basin” in the definition of “product” on page 8, line 15 to page 9, line 2. He indicated that staff would address this duplicative language in the next version of the draft.

- “Public water supply,” page 9, lines 3 to 6: the committee asked committee staff to review the basis for deleting from this definition the second sentence in the corresponding term in the compact.
- “Source watershed,” page 9, lines 14 to 21: the committee decided to retain the entire definition of this term, as presented in WLC: 0141/P1.

With the exception of deferring the provision of drafting instructions on the baseline determination on page 11, line 17, the committee adopted, by consensus, provisions on “determinations concerning applicability of requirements” in WLC: 0141/P1, page 11, line 1 to page 13, line 12.

Review of Remaining Compact Implementation Issues

Chair Kedzie directed committee staff to prepare a list of outstanding issues and of various tasks assigned to, or assumed by, committee members, agency staff, and committee staff at the July 18, 2007 committee meeting and this committee meeting.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Tuesday, August 21st, at 9:00 a.m., in Room 411 South, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 4:15 p.m.

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