



WISCONSIN LEGISLATIVE COUNCIL

GREAT LAKES WATER RESOURCES COMPACT

Room 411 South
State Capitol

August 21, 2007
9:00 a.m. – 4:50 p.m.

[The following is a summary of the August 21, 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; Sens. Robert Cowles, Mary Lazich, and Robert Wirsch; Reps. Scott Newcomer, Jon Richards, John Steinbrink, and Karl Van Roy; and Public Members Ann Beier, Dan Duchniak, Hallet Harris, Andrew Lisak, William Mielke, Matthew Moroney, Keith Reopelle, Jodi Habush Sinykin, James Surfus, and Edward Wilusz.

COMMITTEE MEMBERS EXCUSED: Public Member Kevin Crawford.

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

Approval of the Minutes of the August 7, 2007 Meeting

The minutes of the committee's August 7, 2007 meeting, were approved by unanimous consent.

Description of Materials Distributed

Mr. Stolzenberg described the following materials that were included in the mailing:

- WLC: 0141/P2, relating to ratifying and implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact.
- Memo No.16, *Administrative Hearing and Judicial Review Under the Compact and the Committee Draft* (August 14, 2007)
- Memo No. 17, *Great Lakes-St. Lawrence River Basin Water Resources Compact Implementation Issues and Related Projects* (August 14, 2007) (Revised August 15, 2007).
- Memo No. 18, *Alternative Means of Legislative Oversight Regarding the Governor's Vote on the Great Lakes-St. Lawrence River Basin Water Resources Compact Council* (August 16, 2007).
- The following items distributed at the request of Senator Mary Lazich:
 - Memorandum to Ohio Senator Grendell from Ohio Representative Bill Seitz, regarding Great Lakes Compact, dated February 26, 2007.
 - Memorandum to Steve Stover, OSBA, from Louis L. McMahon, regarding Great Lakes Compact Legislation Analysis, dated April 9, 2007.
 - Open letter to Great Lakes Legislators from Ohio Senator Timothy J. Grendell, entitled *Protect Your State and the Waters of the Great Lakes!*, dated July 31, 2007.

Discussion of Major Remaining Compact Implementation Issues #1, 2, 5, 6, and 13 and Projects #1, 2, and 11 in Revised Memo No. 17

Chair Kedzie stated that the committee would begin by discussing some of the major unresolved issues identified in Revised Memo No. 17 as listed on the agenda. He noted that since this was the second to last committee meeting, decisions on these issues must be made today in order to provide sufficient time for committee staff to prepare a new draft and for the committee to review the new draft.

Mr. Stolzenberg began the discussion of the baseline for determining a new or increased diversion, withdrawal, or consumptive use by noting that p. 55 of WLC: 0141/P2, provides a list of options regarding criteria for the baseline that were carried over from suggestions provided by the subcommittee. Chuck Ledin, Department of Natural Resources (DNR), then offered a new proposal, under which the baseline would be established in a water use approval issued by DNR. Mr. Ledin's proposal consisted of the following steps: (1) the DNR would propose a baseline for a water user based on DNR's understanding of the maximum capacity of the smallest component of the water supply system (from the point of withdrawal up to the first point of use or distribution in the treatment process); (2) the water user could then negotiate a different baseline based on new information offered by the user; and (3) the baseline would then be established in a new water use permit issued by DNR. In response to a comment from Mr. Wilusz, Mr. Stolzenberg noted that the third step in the DNR proposal is determining existing capacity based upon approval limits, which would comply with the compact language on p. 32, lines 13 to 17 in WLC: 0141/P2. Mr. Lisak expressed concern that the proposal does not address industry's economic fluctuations. Mr. Ledin stated that in the negotiation process, an applicant would be able to make a demonstration regarding seasonal use or an event related use. In the

ensuing discussion, committee members stated that there should be flexibility for an applicant and that the items which DNR and an applicant could negotiate should be listed in the statute. In response to a question from Mr. Mielke, Mr. Ledin stated that the baseline for a water utility would be based on the design flow of the utility's 20 year plan and part of the interactive process with DNR would be to determine what other information should be considered in setting the baseline. He further explained that the baseline will consider a utility's approved facility plan, which represents both history and a growth factor. Mr. Ledin also noted that DNR currently lacks the water intake information from industry that will be necessary to set the baseline for industrial users, so it will need to work with each user to determine the baseline in that circumstance. After a lengthy discussion, the committee, by consensus, requested that staff draft Mr. Ledin's three-step proposal and include a list of items which DNR and a water user may negotiate to determine the user's baseline.

Next, the committee discussed the threshold level for determining which new or increased withdrawals and consumptive uses are subject to the compact's decision-making standard. In response to a comment from Mr. Mielke, Mr. Stolzenberg said that staff would clarify the term "begin" on p. 67, line 15 in WLC: 0141/P2 in a subsequent draft.

The committee then engaged in a lengthy discussion of whether the threshold should be set in terms of withdrawals or consumptive uses. Mr. Harris referred to his handout distributed at the July 18, 2007 meeting and noted that whatever threshold number the committee chooses, it should be conservative. Mr. Ledin suggested that the threshold for new withdrawals should be 1 million gallons. Some committee members agreed that the threshold should be for withdrawals, while others preferred that the threshold be based on consumptive use, either by having one threshold number for all types of consumptive uses or establishing different thresholds for different types of consumptive uses (such as noncontact cooling water at power plants). Other committee members said that separate thresholds should be set for withdrawals and consumptive uses, while others preferred that the threshold be set for withdrawals, but that consumptive use should be considered in evaluating the withdrawal. Mr. Ledin explained that consumptive use cannot be measured on a new proposal and that the DNR does not have accurate information about current consumptive use in the state, so would have no way to administer a threshold based on consumptive use. Mr. Todd Ambs, DNR, noted that the threshold is connected to the baseline, which could be set for facilities in a way that allows for flexible implementation of the compact's requirements, that a threshold of 1 million gallons for withdrawals is appropriate, and that consumptive use could be looked at as part of reviewing the withdrawal.

In the ensuing discussion, the following proposals were offered: (1) withdrawals over 500,000 gallons would be subject to the decision-making standard, while withdrawals of 100,000 to 500,000 gallons would be subject to general permits; (2) withdrawals over 1 million gallons would be subject to the decision-making standard and withdrawals of between 100,000 and 1 million gallons would be subject to current law; and (3) consumptive uses of 2 million gallons would be subject to the decision-making standard. During the discussion, it was also suggested that the DNR be directed to report back to the Legislature in the future with any recommendation to change the threshold number. By a show of hands, committee members determined that the threshold should be 2 million gallons of consumptive use. Ms. Habush Sinykin stated that the committee had chosen an unworkable approach according to DNR, noting that 2 million is so high that the decision-making standard will probably never apply as only one power plant has approached the 2 million gallon per day water loss trigger under current law. Mr. Mielke and Senator Lazich disagreed with Mr. Ledin about whether it is possible to measure consumptive use.

The committee then discussed the averaging period that should apply for the 2 million gallon consumptive use threshold. Again, by a show of hands, the committee determined that the threshold would be 2 million gallons per day of consumptive use averaged over 90 days and that the DNR must report to the Legislature regarding any changes in this threshold in five years. Mr. Ledin then stated that because the baseline is based on existing withdrawals, he was unsure of the methodology to translate a consumptive use threshold to the baseline. Mr. Stolzenberg then offered that the baseline could specify both withdrawals and consumptive uses and the committee endorsed that addition. Finally, Mr. Ledin noted that the DNR opposes the committee's decision regarding the threshold.

Following discussion of the compact's requirement that state programs for regulating new or increased withdrawals and consumptive uses must be "consistent" with the decision-making standard and the criteria listed in the decision-making standard on pp. 70 to 73 in WLC: 0141/P2, the committee, by consensus, decided to approve a proposal offered by Mr. Ledin. Under Mr. Ledin's proposal, all the factors under the decision-making standard will be concurrently evaluated and balanced using a present worth cost-effective analysis and environment assessment based on models provided in ss. NR 110.09 (sewage treatment facilities project approvals) and NR 121.05 (area wide water quality management plans), Wis. Adm. Code. Mr. Ledin noted that these models would apply to public water supplies and that they would need to be simplified for other types of water users. Mr. Stolzenberg then noted that in light of the committee's decisions today, par. (c) on p. 71 in WLC: 0141/P2 should be deleted and pars. (cr) and (cm) will be coordinated in a subsequent draft, and that staff would seek input from Chair Kedzie regarding any policy questions that may need to be addressed in drafting this proposal.

Mr. Stolzenberg began discussion of the effective date of new regulations under the compact by clarifying that the committee has already decided that some sections of the compact, such as registration and reporting requirements, will become effective on the effective date of the bill. He noted that, today's discussion of effective dates focuses on the effective dates of the regulatory programs applicable for diversions subject to the exception standard and withdrawals and consumptive uses subject to the decision-making standard. Mr. Ledin proposed that the provisions regarding straddling communities should be implemented on the effective date of the bill, regardless of the Water Resources Development Act (WRDA). He explained that under this option, the state could recover the jurisdiction it currently lacks under WRDA, and would be able to argue that it is operating within state law that is consistent with the compact, which has defined standards and procedures, as opposed to the vague standards under WRDA. In the ensuing discussion, it was noted that in Minnesota and Illinois, which both ratified the compact and will implement the compact within their existing state laws, the compact regulations became effective on the effective dates of their legislation. Senator Lazich said that the state has nothing to gain by implementing the compact's regulations before the effective date of the compact. By a show of hands, the committee determined that the regulatory programs applicable for diversions subject to the exception standard and withdrawals and consumptive uses subject to the decision-making standard will be implemented on the effective date of the compact. Mr. Ledin noted that the DNR opposes the committee's decision.

Ms. Letzing then explained Memo No. 18, *Alternative Means of Legislative Oversight Regarding the Governor's Vote on the Great Lakes-St. Lawrence River Basin Water Resources Compact Council* August 16, 2007, and noted that the last page of the Memo provides a list of options for the committee to consider regarding legislative oversight procedures of the Governor's vote on the council to amend the standard of review and decision. Senator Lazich proposed that the Governor's request be in the form of a bill that must be approved by both houses of the Legislature in order for the Governor to vote on the

council regarding changing the standard of review and decision. She further proposed that legislative action should not be mandated within a certain timeframe. Senator Cowles said that this procedure would allow a few legislators to effectively kill the bill and that the bill should be heard before the entire Legislature. However, Senator Lazich argued that the presiding officer could pull the bill out of committee and re-refer it to a different committee. Senator Lazich then proposed that the Legislature should be able to amend the bill. In the ensuing discussion of the scope of the phrase “reviews as outlined in subs. (4) to (4z),” in the compact’s definition of “standard of review and decision,” Mr. Wilusz proposed that in addition to including all the items provided in Mr. Lisak’s list contained on pp. 3 to 5 in Memo No. 18, these “reviews” should include any council review that is substantive in nature, and is not related to the internal management of the council. The committee, by consensus, determined that the Governor’s request should be in the form of a bill that must be approved by both houses of the Legislature in order for the Governor to vote on the council to amend the standard of review and decision; legislative action on the bill is not required within a certain timeframe; the Legislature may amend the bill; and that these procedures apply to council actions to amend the exception standard, the decision-making standard, and any reviews of the council [under s. 281.343 (4) to (4z)] that do not relate to the internal management of the council.

Senator Lazich requested that the issue of the one Governor veto under the compact be discussed at the next committee meeting. Mr. Duchniak stated that because he has not received a response from Ms. Habush Sinykin regarding one of their assigned projects (Project 5. in Revised Memo No. 17), he requested that Mr. Ledin’s proposal regarding evaluation of the factors under the decision-making standard be applied to the exception standard and included in a subsequent draft and the committee approved this request. At Senator Lazich’s request, an excerpt from an International Joint Commission report regarding consumptive use was distributed to the committee.

Chair Kedzie noted that he will work with staff to address the remaining issues and projects in Revised Memo No. 17, and the committee will review a new draft at the next 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, September 4th, at 9:00 a.m., in Room 411 South, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 4:50 p.m.

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