



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 13

TO: MEMBERS OF THE SUBCOMMITTEE ON REGULATION OF WITHDRAWALS, CONSUMPTIVE USES, AND DIVERSIONS OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT

FROM: Rachel Letzing, Senior Staff Attorney, and John Stolzenberg, Chief of Research Services

RE: Drafting Instructions from the Subcommittee on Regulation of Withdrawals, Consumptive Uses, and Diversions - Version 2

DATE: January 10, 2007 (Revised January 26, 2007)

This Memo lists the drafting instructions provided by your subcommittee at its January 4, 8, 11, and 16, 2007 meetings. The Memo will be revised to include additional drafting instructions developed by the subcommittee at subsequent meetings.

The last page in the Memo contains the proposed sequence of issues for consideration by the subcommittee that we presented at the subcommittee's January 4 meeting.

DRAFTING INSTRUCTIONS

- I. Registration
 - A. Goal of Having One Uniform, Statewide Registration System
 - B. Required Information:
 1. Require all registrants to submit the information specified in the compact to the Department of Natural Resources (DNR) (registrant's name and address; date of registration; locations, sources, and daily capacities of withdrawals and diversions; amount withdrawn or diverted from each source; uses made of the water; and places of use and discharge).
 2. Registrants must also specify whether the registrant holds a WPDES permit and whether the water use (withdrawal or diversion) is continuous or intermittent.
 3. Authorize DNR to request other information by rule, provided information is related to purposes of the compact. Authorize DNR to take into account homeland security

concerns when determining what information regarding locations of withdrawals and diversions to release to the public.

Comment: Discussed defining “capacity” for purposes of the registration requirement as “projected service life of a facility,” or “projected total quantity of water use in a one-time period.”

C. Applicability - Amount and Location

1. Registration requirement applies to persons withdrawing or diverting the least amount of water specified in the compact (withdrawals of 100,000 gallons per day or greater average in a 30-day period, including consumptive uses, and any amount of diversion).
2. Registration requirement applies to statewide [i.e. to persons withdrawing or diverting water within the Great Lakes basin and also in the part of the state outside the basin].

Comment: The subcommittee should review this section in conjunction with the applicability and location of reporting requirements under II. B. 2. and 3. to ensure these sections reflect the subcommittee’s intent.

D. Registration Deadline

1. Require existing water users to register by approximately three years after the effective date of the bill [i.e. to allow time for rule-making and then delayed implementation to allow for public education, etc.].

II. Reporting

A. Required Information

1. Require all registrants to report minimum information specified in the compact (monthly volumes of the withdrawal, consumptive use, or diversion in gallons, reported annually).
2. Authorize DNR to create different reporting frequencies or required information based on categories of users by administrative rule.
3. Limit DNR rule-making on other types of required information to relevant information which must be related to withdrawal, consumptive use, or diversion.

B. Applicability and Location

1. Apply the reporting requirements to persons subject to the registration requirements.
2. If in the Great Lakes basin, and current law requires reporting, will be required to report the above information. If in the basin and current law does not require reporting, and withdrawal is 100,000 gallons per day or greater average in any 30-day period, will be required to report the above information.
3. If outside the basin and current law requires reporting, will be required to report the above information. If outside the basin and current law does not require reporting, will not be required to report the above information.

Comment: The subcommittee should review items 2. and 3. to ensure they reflect the subcommittee’s intent.

III. Inventory

A. Content

1. Direct DNR to prepare the inventory containing the information specified in the compact (location, types, quantity, and use of the water resources of the state, and the location, type, and quantity of withdrawals, diversions, and consumptive uses), plus require DNR to base the inventory on information it receives from the registry.
2. Specify that DNR may only provide inventory information to the council from water resources and registrants with withdrawals of 100,000 gallons per day or greater average in any 30-day period in the basin.

B. Development

1. Direct DNR to develop the inventory in cooperation with the entities specified in the compact (the council and local, state, federal, tribal, and other private agencies and entities).

C. Deadline

1. Direct DNR to prepare the inventory for the Great Lakes basin by the deadline in the compact (within five years of the compact's effective date). Direct DNR to prepare the inventory for the rest of the state by three years after the effective date of the bill.

IV. Diversions - Exception to Prohibition on Diversions to Communities in Straddling Counties

- A. Define condition that the water must be used solely for public water supply purposes of the community within a straddling county that is “without adequate supplies of potable water” to mean “a water supply that is inadequate due to physical supply, or water quality, or long term sustainability.” [Proposed s. 281.343 (4n) (c) 1. a., in LRB-0058/P1.]

Comment: The subcommittee received, but did not act on, the following proposal from Dan Duchniak:

“Without adequate supplies of potable water” means not having a water supply that is economic and environmentally sustainable in the long-term to meet reasonable demands for a water supply that is fully protective of public health and welfare and is without substantial adverse environmental impacts.

- B. Define condition that the exception should not be authorized unless it can be shown that is will not “endanger the integrity of the basin ecosystem” to mean “no significant adverse impact to the basin ecosystem.” [Proposed s. 281.343 (4n) (c) e., in LRB-0058/P1.]

Comment: Examples of where the phrase “significant adverse impacts” is used in current law include s. 281.35 (5) (d) 4. and 7. c., Stats., and chs. NR 142.06 (3) (d) and (4) (c) and 216.47 (6).

V. Exception Standard

- A. Define “quantities that are considered reasonable for purposes of the proposal” to mean “the amount needed for the anticipated use of the service life of the project.” [Proposed s. 281.343 (4n) (d) 2., in LRB-0058/P1.]

- B. Define “precedent-setting consequences” to mean those impacts, positive and negative, on the sustainable management of the waters of the basin.” [Proposed s. 281.343 (4n) (d) 4., in LRB-0058/P1.]

UNRESOLVED ISSUES FOR CONSIDERATION BY THE FULL COMMITTEE

I. Baseline Determination

A. Subcommittee consensus.

- 1. Base this determination on water intake and treatment and not wastewater treatment or discharge facilities.
- 2. Authorize two methods for setting a facility's baseline:
 - a. If DNR has specified an amount of withdrawal or capacity of one or more components in the facility’s water system in a permit or plan approval, direct DNR to propose the baseline using information in the permit or approval based on the to-be-determined baseline criteria (see item I. B., below) and allow the facility to request a review and modification of the proposed baseline.

Comment: The subcommittee did not address the grounds for modifying the baseline in this process. The subcommittee discussed this method in the context of establishing baselines for municipal water utilities.

- b. If item a. does not apply, direct the facility to propose its baseline to DNR and require DNR to review and accept or modify the proposed baseline.

Comment: The subcommittee did not address the grounds for modifying the baseline in this process. The subcommittee discussed this method in the context of establishing baselines for industrial facilities.

B. No Subcommittee Consensus

- 1. No consensus on the criteria for making the baseline determination.

Comment: The subcommittee developed the following options regarding these criteria:

- a. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the most restrictive component in the system.
- b. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the largest component in the system.
- c. Determine baseline by evaluating the maximum capacities of “brick and mortar” components at intake point of a system.
- d. Determine baseline by evaluating the capacities of individual components (peak daily flows) of a system, taking the maximum capacity of the most restrictive component, and establishing this as the “biggest average day.” Then, if at least

one other component in the system has a capacity above the biggest average day, the baseline would be the lessor of double the biggest average day capacity or the capacity of the largest system component. This baseline would reflect the “biggest peak day.”

- e. Determine baseline by evaluating the capacities of all components in a system, taking the component that has the maximum capacity, and assigning it as the “biggest peak day.” Then, take one-half of the biggest peak day to be the baseline. This baseline would reflect the “biggest average day.”

Subcommittee on Regulation of Withdrawals, Consumptive Uses and Diversions

*Proposed Sequence of Issues**

[Citations to applicable provisions in LRB-0058/P1 in brackets]

- Registration and reporting by existing and new water users.
- State water resources inventory.
- Baseline determination.
- Exceptions to the prohibition on new or increased diversions, including the exception standard.
- Regulation of new withdrawals subject to the decision-making standard, including interpretation of the standard.
- Council revision of the exception standard or decision-making standard (“standard of review and decision”).
- Assessment of cumulative impacts.
- Other issues.

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* Includes applicable definitions in the compact.