



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 17

TO: MEMBERS OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT

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

RE: Great Lakes-St. Lawrence River Basin Water Resources Compact Implementation Issues and Related Projects

DATE: August 14, 2007 (Revised August 15, 2007)

This Memo, prepared at the request of Senator Neal Kedzie, chair of your committee, lists the following:

- Projects relating to developing specific provisions in the committee's bill draft implementing the Great Lakes-St. Lawrence River Basin Water Resource Compact (the "compact") that were assigned to or assumed by committee members, committee staff, or agency liaisons to the committee at the July 18 and August 7, 2007 meetings of the committee.
- Issues relating to the implementation of the compact that have not yet been resolved by the committee and are not addressed in any of the projects identified under the preceding point. These issues include issues identified in our February 6, 2007 memorandum to Senator Kedzie that the committee has not addressed and additional issues identified at the last two meetings of the committee.

The statutory references in these lists are to relevant provisions in the latest version of the committee's bill draft, WLC: 0141/P2, which will be distributed to the committee prior to its August 21, 2007 meeting. This draft will include provisions that ratify the compact in proposed s. 281.343 and provisions that implement the compact in proposed ss. 14.95 and 281.344 and nonstatutory provisions.

Projects

1. Identification of alternative means for legislative oversight of the voting by the Governor on the Great Lakes-St. Lawrence River Basin Water Resources Council (the "council") to revise the

“standard of review and decision” and of reviews included in the standard of review and decision (committee staff). [Proposed ss. 14.95 (4) and 281.343 (1e) (rm) and (3) (a) 2.]

2. List of general and special purpose local units of government that can provide public water supplies under current statutes for potential use in the definitions of “community within a straddling county” and “straddling community” (committee staff); and, as appropriate, a proposal for specifying the dates for establishing the boundaries of these communities (Mr. Reopelle). [Proposed s. 281.344 (1) (d) and (t).]

3. Review of why the second sentence in the definition of “public water supply” in the compact is not included in the corresponding definition in the implementing legislation (committee staff). [Proposed ss. 281.343 (1e) (pm) and 281.344 (1) (pm).]

4. Identification of where the term “cost effective” is used in the compact and implementing legislation (committee staff). This project was prompted by the use of this term in the exception for intrabasin transfers. [Proposed s. 281.344 (4) (d) 2. b.]

5. Proposal for alternative implementing language in the requirement for “without adequate supplies of potable water” for a diversion to a community within a straddling county (Ms. Habush Sinykin and Mr. Duchniak). [Proposed ss. 281.343 (4n) (c) 1. a. and 281.344 (4) (e) 1. a.]

6. Proposal for alternative implementing language in the requirement for “no reasonable water supply alternatives within the basin in which the community is located” for a diversion to a community within a straddling county (Ms. Habush Sinykin, Mr. Duchniak, and Mr. Ledin). [Proposed ss. 281.343 (4n) (c) 1. d and 281.344 (4) (e) 1. d.]

7. Proposal for alternative implementing language in the criterion in the exception standard relating to the quantity of the diversion, as expressed in the service life of the project that reflects planned growth in water usage (Mr. Ledin and committee staff). [Proposed ss. 281.343 (4n) (d) 2. and 281.344 (4) (f) 2.]

8. Information on the screening worksheet used by the Department of Natural Resources (DNR) under the Wisconsin Environmental Policy Act to assess the environmental impact of new wastewater treatment plants, as a model for the DNR’s environmental assessment of the location of the return flow to the Great Lakes basin of water diverted under the compact (Mr. Ledin for Ms. Habush Sinykin). [Proposed s. 281.344 (4) (f) 3.]

9. Proposal for alternative implementing language on the “comparable measure of water use” in the first Tier 1 water conservation and efficiency measure (Mr. Wilusz). [Proposed s. 281.344 (8) (c) 1. a.]

10. Proposal for alternative implementing language in the DNR’s deadline for acting on an approval under the compact that addresses the time necessary for a regional review or council approval (Mr. Ledin and committee staff). [Proposed s. 281.344 (9) (f) 2.]

11. Analysis of the definition of “aggrieved” in the implementing legislation on dispute resolution, including examples of how the term may be applied under the draft (committee staff); and, as

appropriate, a proposal for narrowing this definition (Mr. Wilusz). [Proposed ss. 281.343 (7r) (a) and (c) 1. and 281.344 (11) (a) 1.]

12. Research of the minimum forfeiture amount for each violation in the implementing legislation, and, as appropriate, a proposal to modify the minimum \$10 forfeiture in this legislation (Mr. Reopelle). [Proposed s. 281.344 (11) (b) 1.]

Remaining Implementation Issues

1. Criteria for establishing the baseline for determining a new or increased diversion, withdrawal, or consumptive use. [Proposed ss. 281.343 (4t) (b) and 281.344 (2) (d).]

2. Threshold level or levels for determining which new or increased withdrawals and consumptive uses are subject to the compact's decision-making standard. [Proposed ss. 281.343 (4p) (a) and (b) and 281.344 (5) (a) 1. and 2.]

3. Clarification of who is the applicant subject to the regulatory requirements for a new or expanded withdrawal, diversion, or consumptive use under the compact (e.g., the entity withdrawing the water used in the new diversion versus the entity providing the public water supply using water from the diversion). [Proposed s. 281.344 (4) (a) and (b) and (5) (a) and (b).]

4. Application of the regulatory requirements under the compact to a water utility for a new or expanded withdrawal, diversion, or consumptive use on a project or longer term planning process, such as a 20-year regional development plan. [Proposed s. 281.344 (4) and (5).]

5. Interpretation of the requirement that state programs for regulating new or increased withdrawals and consumptive uses must be "consistent" with the decision-making standard. [Proposed ss. 281.343 (4p) (a) and 281.344 (6) (a) to (e).]

6. Interpretation and application of the tests in the decision-making standard, especially the no significant cumulative adverse impacts test. [Proposed ss. 281.343 (4r) (a) to (e) and 281.344 (6) (a) to (e).]

7. Enforcement of new regulations under the compact, including the duration, modification, and revocation of approvals issued under the draft.

8. Application of the decision-making standard to a proposal to withdraw water for bottled water in containers of 5.7 gallons or less and specification of the threshold level that would trigger this application. [Proposed s. 281.343 (4t) (j).]

9. Requirement that an application for a new or increased surface water withdrawal include an analysis of whether the withdrawal will result in 95% or greater consumptive use (similar to the requirement in proposed s. NR 820.32, regarding new groundwater withdrawals via high capacity wells with high water loss). [Proposed s. 281.343 (4p) (a).]

10. Definition of "hydrologically interconnected" and interpretation of "substantive consideration" in the optional consideration of a diversion to a community within a straddling county

under the regulation of a new or increased diversion under the compact. [Proposed ss. 281.343 (4n) (c) 2. and 281.344 (4) (e) 2.]

11. Procedures and criteria for implementing adaptive management provisions in the compact. [Proposed ss. 281.343 (4) (f), (4b) (b), (c), and (e), (4p) (a) and (c), and (4z) (a), and 281.344 (10) (d) and (e).]

12. Certification by an association of its member's water conservation practices. [Proposed ss. 281.343 (4b) (b) and (e) and (4r) (c) and 281.344 (8).]

13. Effective date or dates of new regulations under the compact. [Proposed nonstatutory SEC. 5 and references to the compact's effective date in s. 281.344 (2) (d) 2., (4) (a), (5) (a) 1. and 2., (8) (a) 2., and (10) (a) 2. and (c).]

14. Funding and position authorizations for agencies implementing the compact, especially the DNR.

If you have any questions on any of the projects or issues identified in this memorandum, please feel free to contact us at the Legislative Council staff offices.

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