



WISCONSIN LEGISLATIVE COUNCIL

GREAT LAKES WATER RESOURCES COMPACT

Room 411 South
State Capitol

November 13, 2006
9:00 a.m. - 4:00 p.m.

[The following is a summary of the November 13, 2006 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 Wirch; Reps. Scott Newcomer, John Steinbrink, and Karl Van Roy; and Public Members Ann Beier, Kevin Crawford, Dan Duchniak, Hallet Harris, William Mielke, Matthew Moroney, Keith Reopelle, Jodi Habush Sinykin, James Surfus, and Edward Wilusz.

COMMITTEE MEMBERS EXCUSED: Rep. Jon Richards; and Public Member Andrew Lisak.

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

APPEARANCES: Travis A. Dahl, Chief Watershed Hydrology Branch, U.S. Army Corps of Engineers, Detroit, Michigan; Todd Ambs, Administrator, Division of Water; Chuck Ledin, Director, Office of Great Lakes; Jill Jonas, Director, Bureau of Drinking Water and Groundwater, Department of Natural Resources; Eric Callisto, Executive Assistant to the Chairperson; David Sheard, Assistant Administrator, Division of Water, Compliance, and Consumer Affairs, Public Service Commission; Lynita Docken, Program Manager, Division of Safety and Buildings, Department of Commerce; Dan Duchniak, Waukesha Water Utility; Nicholas George, Midwest Food Processors Association; Lawrie Kobza, Municipal Environmental Water Group – Water Division; Keith Reopelle, Clean Wisconsin; Jodi Habush Sinykin, HS Law, Midwest Environmental Advocates; and Ed Wilusz, Wisconsin Paper Council.

Approval of the Minutes of the October 4, 2006 Meeting

Mr. Mielke moved, seconded by Ms. Habush Sinykin, to approve the minutes of the committee's October 4, 2006 meeting. The motion carried on a voice vote.

Description of Materials Distributed

Mr. Stolzenberg noted that Memo No. 5, revised and corrected according to suggestions made at the October 4 meeting, Memo No. 6 and Memo No. 7 were sent to committee members prior to today's meeting. Also included in the mailing to committee members were the following:

- Memorandum from Daniel Feinstein, U.S. Geological Survey, and Ken Bradbury, University of Wisconsin Extension, Wisconsin Geological and National History Survey, *Clarification of Results of Model Simulations Conducted by USGS and WGNHS in Statement Made by the GeoSyntec Consultants in Report Dated March 23, 2006*, submitted to the City of Waukesha, (October 17, 2006).
- Report to Governor Doyle, *A Menu of Demand Side Initiatives for Water Utilities*, by the Public Service Commission and the Department of Natural Resources (September 2006).
- Report, *Waukesha Water Utility, Water Conservation and Protection Plan*, distributed at the request of committee member Dan Duchniak.

Mr. Stolzenberg explained that the following three items were distributed at the meeting:

- Memorandum, *A Conservation Toolkit for Wisconsin: A Summary of MEA's Protecting Wisconsin's Water Report with Appendixes of National Conservation Models*, distributed at the request of committee member Jodi Habush Sinykin (November 7, 2006).
- Memorandum, *Interstate Compact Law; Ability of Congress to Change Compacts*, from Mike McCabe, Director, CSG Midwestern Office (November 8 2006).
- Memo No. 8, *Information on Major Water Withdrawals and Users in Wisconsin* (November 13, 2006).

Mr. Wilusz then reported on the conference call he had with staff from the Council of Great Lakes Governors (CGLG), Legislative Council staff and staff from the Department of Natural Resources (DNR), regarding issues raised in his September 26, 2006 memo. Mr. Wilusz stated that the most significant points of discussion were the following:

- The ability of the Council to unilaterally change the Great Lakes-St. Lawrence River Basin Water Resources Compact ("compact") and its decision-making standards [page 15, lines 11 to 14, in LRB-0058/P1]. According to CGLG staff, the intent of this section is to let states decide whether to place restrictions on its Council member (the Governor), and the committee can establish criteria or a procedure to guide Wisconsin's member on the Council in making changes to these standards.
- The scope and impact of the rules the Council may develop [page 32, lines 11 to 14, in LRB-0058/P1]. CGLG staff stated that the intent of this provision is that the rules be for internal

operation of the Council, but Mr. Wilusz noted that the plain language appears to give the council broader rule-making authority than that.

- The impact assessment within the decision-making standard, specifically the concern that under the plain language of the Compact, it appears to be a daunting challenge for an applicant to demonstrate no significant adverse impact [page 32, lines 11 to 14, in LRB-0058/P1]. CGLG staff referenced a memo from Sam Speck, chair of the water management working group, which explains that the intent of this section is to look at the impacts of an activity on the Great Lakes basin as a whole. Mr. Wilusz noted that this interpretation is different from the plain language of the Compact.

Invited Speaker

Travis Dahl, Chief, Watershed Hydrology Branch, U.S. Army Corps of Engineers (ACE), Detroit, Michigan, provided an overview of Great Lakes hydrology and current significant withdrawals and diversions into or out of the Great Lakes basin. He explained that there are five major operating diversions in the Great Lakes system: Ogoki, Long Lac, Chicago, Welland Canal, and New York State Barge Canal, and noted that more water is currently being diverted into the Great Lakes basin than is being diverted out of the basin. Mr. Dahl provided an outline of the International Joint Commission's new Upper Lakes Study, which will examine whether the regulation of the Lake Superior outflow needs improvements to meet the needs of various resource groups and the ecosystem, and what physical changes have occurred in the St. Clair River and how those changes affect Great Lakes water levels. The study will take up to five years to complete and has not begun its work. Mr. Dahl then explained the major influences on Great Lakes water levels, including precipitation, runoff and evaporation, and described the seasonal and long-term fluctuations of Great Lakes water levels.

In response to questioning from committee members, Mr. Dahl made numerous responses, including the following:

- Because the Great Lakes system is so large and complex, it is difficult to state with certainty which outflows or withdrawals may have an effect on the system. The ACE is concerned about the cumulative effects of allowing removal of water from the basin, but identifying a "tipping point" is difficult, if not impossible. There is a lot of variability in the system, but it is important to be aware that it is hard to take water back once it is given.
- It does not appear to be necessary to wait for the results of the Upper Lakes study before states act on the compact. Much of the data on Lake Superior outflows already exists and the ACE does not foresee that the results of the study will dramatically affect how Lake Superior outflows are regulated. The study is expected to take five years to complete and the cost of the study will be split between Canada and the United States.
- It is difficult to specify the best indicator of change in the lake due to withdrawals and diversions; changes in lake levels are used as a surrogate for water flows. Measurements of lake levels are difficult to measure due to the size of the Great Lakes system. Therefore, there is uncertainty about the projections of future lake levels, especially if the climate changes.
- Physical changes in the St. Clair River will be investigated in the new Upper Lakes study as one factor that might be affecting water levels and flows. The current concern is fairly recent

and is driven by a report commissioned in Canada which found that water levels are starting to decrease. The ACE is examining this data and agrees it merits further study. Depending on the nature and extent of the physical changes of the lakes, and their potential impact on water levels and flows, the study may also explore potential remediation options.

State Agency Panel on Water Conservation

Eric Callisto, Executive Assistant to the Chairperson of the Public Service Commission (PSC), provided background information about the development of the Report to Governor Doyle from the PSC and DNR, *A Menu of Demand Side Initiatives for Water Utilities* (“report”). As part of Governor Doyle’s Conserve Wisconsin agenda which began in August, 2005, a water conservation symposium was held in Sheboygan, Wisconsin on May 23, 2006. The report was generated from this symposium with the involvement of a stakeholders group which included PSC, DNR, the water industry, regional government, environmental groups, and agricultural and industrial groups. Water utilities were the focus of the symposium and the report because public water utilities account for a significant portion of water withdrawals in the state. The menu of strategies in the report is divided into five major areas: water conservation education, water use accountability, water saving hardware and other physical restrictions, water rates and related issues, and water reuse and recycling, and the report recognizes that flexibility is key and that not all measures in each category are suited to all situations. Mr. Callisto noted that the PSC currently has water loss standards for Class AB utilities (15% water loss) and Class C and D utilities (25% water loss) but that the average water loss is 10% statewide. Future steps regarding water conservation that will be taken include providing more water conservation education to utilities and consumers, creating a water conservation officer within the PSC, and working with DNR to gather water use data by watershed in order to create benchmark water use data.

David Sheard, Assistant Administrator, Division of Water, Compliance, and Consumer Affairs, PSC, provided an overview of water utility rates, conservation efforts, the opt out law, loss prevention, data collection and benchmarks. Mr. Sheard stated that Wisconsin is one of 14 states that sets rates for municipal water utilities and Wisconsin’s rates are generally attractive nationwide.

Mr. Sheard then provided an overview of the ratemaking process and general classes of rates. The PSC uses the declining block rate as its statewide pricing structure, so that the user is charged less as usage increases. Rates are designed based on a cost of service study, so that each class is paying the full cost of their service and there is one rate structure in place for all classes of customers.

Mr. Sheard noted that water utilities have a disincentive to promote water conservation because almost all large systems have extra capacity, which means that as customers conserve, utilities face declining revenues and increasing capital costs. In addition, no utilities are currently applying water conservation rate structures or using conservation incentive programs, and although there is some industrial water recycling, there is very little water reuse. Mr. Sheard then explained that if the opt out law which authorizes large industrial water users to opt out of the municipal water system and drill a private well if the company meets high capacity well approval requirements, were removed or limited, it could provide water utilities with more certainty about their customer base, but could also force large water users to move out of the state. This in turn leaves the utilities’ remaining customers to absorb water rate increases. Mr. Sheard then summarized the current water metering standards and the water loss program, under which PSC contacts utilities that are outside its water loss standards and assists them in reducing their water loss percentage.

Lynita Docken, Program Manager, Division of Safety and Buildings, Department of Commerce, summarized the options and requirements in the state plumbing code related to water conservation. Ms. Docken noted that currently federal law, state law, and ASME/ANSI standards affect the plumbing code. The state uniform plumbing code, under ch. Comm 84, is applied statewide. Ms. Docken explained that ch. Comm 84, the plumbing products section, applies to installation, while the federal rule applies to manufacturers. Finally, Ms. Docken noted that ch. Comm 82 is being revised to include language regarding recycling, dispersing, or holding wastewater, as well as provisions regarding wastewater treatment devices, labeling requirements, cross connection control, and stormwater infiltration and reuse.

Chuck Ledin, Director, Office of Great Lakes, DNR, provided an overview of DNR's conservation efforts since the adoption of the Great Lakes Charter in 1985. Mr. Ledin explained that Wisconsin implemented the concepts in the charter, including water conservation, through legislation. This legislation then directed DNR to develop administrative rules, a water quantity management plan, and to set up a process for a water use fee system. The DNR then created ch. NR 142 and developed a water quantity plan; however the fee program the DNR created was not implemented by the Legislature and as a result, the DNR's capability to implement the statute and rule was less than anticipated. The water quantity management plan contained provisions regarding water conservation, the objectives for which were framed as protecting the water resources of the state, rather than focusing on facilities management.

DNR then looked at conservation practices to apply to new requests for withdrawals, which at that time were requests for large projects such as power plants and the water supply pipeline between Manitowoc and Green Bay suburbs, but determined that conservation was not realistic for those projects. During the 1987 drought, DNR drafted a response plan which included a water conservation component, but the plan was not implemented after rain relieved the immediate drought conditions. Mr. Ledin noted that water conservation was one of the biggest concerns raised during the public hearings on the Great Lakes Annex agreement, and that the compact reflects an incremental approach to water conservation.

Jill Jonas, Director, Bureau of Drinking Water and Groundwater, DNR, described on-going efforts and programs that involve water conservation. Ms. Jonas stated that she is the cochair of the staff committee for the regional body formed by the CGLG to develop broad regional goals and objectives for water conservation, which will be used to inform state and provincial efforts to shape their water conservation programs, either voluntary or mandatory, under the compact. In the second phase of this committee's work, Wisconsin will develop state goals and objectives as a pilot program, which will be an opportunity for the state to influence and guide the process.

Ms. Jonas also noted that the Groundwater Advisory Committee, created under 2003 Act 310, the groundwater quantity law, must complete, by December 2006, a report that includes recommendations on how to implement water use management in groundwater management areas. Based on current committee discussions, water conservation and efficiency will be a component of water use management plans in groundwater management areas. Ms. Jonas reported that the DNR will be holding public hearings in December on the recently completed administrative rule, ch. NR 820, which implements Act 310.

Ms. Jonas then noted that the safe drinking water loan program is the only loan program DNR administers that allows funding for water conservation and efficiency programs such as water main

replacement and metering, utilizing reclaimed water, and installing or retrofitting devices. The DNR also administers the wellhead protection program, which mandates that municipalities developing new high capacity wells must complete and implement a wellhead protection plan containing nine elements, including the development of a water conservation program, as a condition of receiving the well approval. She reported that currently 300 communities have wells with these protection plans and that the two largest water utility associations in the state have active programs to assist their members on water conservation.

Responders Panel on Water Conservation

Dan Duchniak, Waukesha Water Utility and public committee member, summarized Waukesha's water conservation efforts and noted that the Waukesha Water Utility has adopted a water conservation plan. Waukesha's water conservation efforts involve short, midterm, and long range objectives, which include meeting with school groups and developing a water conservation program for the classroom, working with the PSC on the water utility's rate structure, continuing to implement a sprinkling ban, working with a stakeholder group to look at a regional water conservation effort, and looking at ways to collaborate with other groups such as the Focus on Energy program, restaurants, and the local housing authority, and the replacement of the fixtures in the Waukesha City Hall. Mr. Duchniak stressed that the main theme of the report is that a toolbox of alternatives should be available to develop a water conservation program, rather than requiring a "one size fits all" approach. In response to questions, Mr. Duchniak noted that the City of Waukesha's goal is a 20% reduction in per capita water use by 2020, and Waukesha has seen a 10 to 15% reduction throughout this year.

Nicholas George, Midwest Food Processors Association, stated that he appreciated Mr. Duchniak's message that one size does not fit all regarding water conservation. Mr. George noted that Wisconsin has a number of large food processing companies which are facing increasing foreign competition, so keeping access to water supplies is becoming a more important issue. Mr. George stated that his members generally have good relationships with their utilities, and that although high end users pay less, they remain important users.

Lawrie Kobza, Municipal Environmental Group – Water Division, noted that she is also the past chair of the Wisconsin Water Association and has had many discussions with the executive director of the Rural Water Association regarding water conservation. Ms. Kobza stated that although the report's recommendations apply only to municipal water utilities, there is no reason utilities should be the only entities that should adopt water conservation programs, and the toolbox of options should eventually be applied to everyone. Ms. Kobza explained that municipal water utilities have high fixed costs for facilities and treatment plants, and that these costs are passed on to residents. Due to this structure, one cannot expect to see water rates decrease proportionate to water use, although water conservation as a way to avoid installing new capacity may be a good approach. Ms. Kobza stated that amending or eliminating the customer opt out provision is a major concern for municipal water utilities. She noted that if water rates are too high or water conservation requirements are too onerous, large water users will opt out, plus new residential and business users will go elsewhere for water. Ms. Kobza reiterated that one size does not fit all and that all users should be treated similarly regarding water conservation requirements; however, water conservation efforts could be tailored to specific geographic regions, so that different water conservation requirements would apply to areas with insufficient groundwater resources.

Keith Reopelle, Clean Wisconsin and public committee member, reminded the committee that water conservation is mentioned in the following three areas of the compact: the exceptions to the prohibition on diversions, new or expanded withdrawals within the basin, and the requirement that within two years the state must have a basin or statewide water conservation program, either voluntary or mandatory. Mr. Reopelle stated that water conservation should be a mandatory, statewide program, but agreed with previous speakers that one size does not fit all. However, Mr. Reopelle clarified that any water conservation program should be comprehensive, goal-oriented, measure progress, require reporting after the plan is in place, and be integrated with other statewide efforts. Mr. Reopelle noted that his only criticism of the report is that it created a menu instead of reaching a consensus on what should be included in a water conservation plan.

Mr. Reopelle then read from a handout he received from Ms. Habush Sinykin, who was unable to participate in the responders panel. In her written remarks, Ms. Habush Sinykin noted four points about water conservation: require measurable goals, require conservation as a condition precedent to a diversion application, require conservation for large users and eliminate the opt out provision for large water users that do not have a water conservation program, and identify the best available technologies and management practices.

Edward Wilusz, Wisconsin Paper Council and public committee member, said the report should be viewed as a first step and should apply to everyone, not just municipal water utilities, at least within the Great Lakes basin. He noted that most of his members have their own wells, but that the members who use municipal water would be concerned about repealing the opt out provision. Mr. Wilusz stated that inclining water rates may cause problems for large industries because rate increases can affect the cost of raw materials, which cannot necessarily be passed on to the consumer.

Discussion of Options Memos

Ms. Letzing explained Memo No. 6, *Options on the Governor's Alternates and Advisors to the Great Lakes-St. Lawrence River Basin Water Resources Council*. The committee first discussed the provisions regarding the Governor's alternate to the council.

Senator Cowles moved, seconded by Mr. Mielke, that Options 1. on Term, 1. on Appointment Process, and 2. on Minimum Qualifications in Memo No. 6 (the Governor's alternate must: serve at the pleasure of the Governor, receive Senate confirmation, and be the Secretary of the DNR, or his or her designee who has knowledge of and experience with Great Lakes water management issues) be approved. The motion was approved by unanimous consent.

The committee then discussed the options in Memo No. 6 relating to the Governor's advisor.

Mr. Crawford moved, seconded by Ms. Beier, that Options 1. on Term, 2. on Appointment Process, and 4. on Minimum Qualifications (the Governor's advisor would serve at the pleasure of the Governor, does not require Senate confirmation, and no minimum qualifications specified) be approved.

Senator Wirch moved, seconded by Senator Lazich, to amend Mr. Crawford's motion to require that the appointment of the Governor's advisor be made with the advice and consent of the Senate. The motion was approved on a vote of Ayes, 8 (Sens. Kedzie, Lazich, and Wirch; Reps. Newcomer and Van Roy; and Public Members Duchniak, Mielke, and Surfus); Noes, 6 (Sen. Cowles; and Public Members Beier, Crawford, Harris, Moroney, and Reopelle), and Absent, 5 (Reps. Richards and Steinbrink; Public Members Lisak, Habush Sinykin, and Wilusz).

Representative Van Roy moved, seconded by Senator Wirch, to amend the motion to require that the Governor's advisor have knowledge of and experience with Great Lakes basin water management issues. The motion was approved on a vote of Ayes, 8 (Sens. Kedzie, Lazich, and Wirch; Reps. Newcomer and Van Roy; and Public Members Duchniak, Harris, and Surfus) and Noes, 6 (Sen. Cowles; and Public Members Beier, Crawford, Mielke, Moroney, and Reopelle) and Absent, 5 (Reps. Richards and Steinbrink; Public Members Lisak, Habush Sinykin, and Wilusz).

Representative Van Roy moved, seconded by Mr. Harris, that the amended motion to require that the Governor's advisor serve at the pleasure of the Governor, require Senate confirmation, and have knowledge of and experience with Great Lakes basin water management issues be approved. The amended motion was approved on a vote of Ayes, 14 (Sens. Kedzie, Cowles, Lazich, and Wirch; Reps. Newcomer and Van Roy; and Public Members Beier, Crawford, Duchniak, Harris, Mielke, Moroney, Reopelle, and Surfus), Noes, 0, and Absent, 5 (Reps. Richards and Steinbrink; Public Members Lisak, Habush Sinykin, and Wilusz).

Mr. Stolzenberg described Memo No. 8. After discussing whether new or existing withdrawals were included in the table of groundwater withdrawals, Mr. Duchniak asserted that under the compact's definition of "waters of the basin," read together with the groundwater provision on p. 34 of LRB-0058/P1, the surface water divide does not have to be used to determine an existing use, and distributed a legal analysis prepared for the Waukesha Water Utility to support this argument. Mr. Pete Johnson, CGLG staff, noted that tributary groundwater is not a defined term in the compact and said that the compact drafting committee did not engage in a specific discussion regarding the treatment of existing groundwater uses. Regarding Memo No. 8, Mr. Mielke asked that more information be provided regarding transfers from groundwater wells located outside of the Great Lakes Basin to Basin.

Mr. Stolzenberg began explaining Memo. No. 7 and noted that one policy question for the committee is whether the registration requirements in the compact should be applied statewide or in the Great Lakes Basin. Ms. Beier asked for additional information regarding the differences between the registration information required under current law and what the compact requires.

Mr. Duchniak moved, seconded by Mr. Moroney, that "tributary groundwater" be defined in the compact to mean groundwater that naturally flows toward the Great Lakes in the absence of human activity that influences that flow.

The motion was later withdrawn.

After briefly discussing whether the compact's registration requirements should apply statewide, committee members moved into a discussion of whether Mr. Duchniak's motion should be addressed at this meeting or a subsequent meeting when all committee members are present. Chair Kedzie stated that the committee would defer voting on the tributary groundwater issue until additional information could be obtained addressing the effect of adding this definition to the compact. Mr. Duchniak withdrew his motion. Chair Kedzie asked committee members to send comments to Legislative Council staff regarding the tributary groundwater issue and any other issues or problems regarding any provisions of the compact. Mr. Duchniak said he will ask staff to distribute a revised document from Waukesha's consultant that responds to Mr. Feinstein and Dr. Bradbury's comments on an earlier version of the report regarding Waukesha groundwater flow.

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 *Friday, December 15, 2006, at 9:00 a.m., in Room 411 South, State Capitol.*

Adjournment

The meeting was adjourned at 4:00 p.m.

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