



WISCONSIN LEGISLATIVE COUNCIL

GREAT LAKES WATER RESOURCES COMPACT

Legislative Council Conference Room
Madison, Wisconsin

October 4, 2006
9:00 a.m. - 4:00 p.m.

[The following is a summary of the October 4, 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: Sens. Neal Kedzie; Robert Cowles, Mary Lazich, and Robert Wirsch; Reps. Scott Newcomer, Jon Richards, John Steinbrink, and Karl Van Roy; and Public Members Ann Beier, Kevin Crawford, Dan Duchniak, Hallet Harris, Andrew Lisak, William Mielke, Matthew Moroney, Keith Reopelle, Jodi Habush Sinykin, James Surfus, and Edward Wilusz.

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

APPEARANCES: Dr. Kenneth R. Bradbury, Hydrogeologist, Wisconsin Geological and Natural History Survey, University of Wisconsin-Extension, on groundwater flows in Southeastern Wisconsin; David Naftzger, Executive Director, Council of Great Lakes Governors; Peter Johnson, Program Director, Council of Great Lakes Governors; and Todd Ambbs, Administrator, Division of Water, Department of Natural Resources.

Approval of the Minutes of the September 7, 2006 Meeting

The minutes of the September 7, 2006 meeting of the Special Committee were approved by unanimous consent.

Description of Materials Distributed

Mr. Stolzenberg and Ms. Letzing identified the staff Memos and other materials they had distributed to the committee as well as new materials distributed at the request of Mr. Duchniak and Ms. Habush Sinykin.

Staff Briefing on Status of Legislation on the Compact and Concerns on the Compact in Other Great Lakes State Legislatures

Ms. Letzing reported that the Indiana Legislature intends to take up ratification of the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) after the executive branch develops a proposal to address the details of implementing the compact. She stated that the State Assembly in New York had passed a bill ratifying the compact with minimal implementation details and that the New York Senate was expected to act on the bill later this year. She also reported that the Legislatures in Minnesota and Pennsylvania have taken no action on the compact.

Mr. Stolzenberg reported that the Ohio Legislature was actively considering a bill to ratify the compact, though the Legislature had taken no action on it since holding hearings on it last May. He reported that Ohio legislative staff expect the bill to be taken up by the Ohio Legislature after the fall elections in November. Mr. Stolzenberg quoted from the testimony of Sam Speck, Director, Ohio Department of Natural Resources on HB 574 before the Ohio House Committee on Economic Development and Environment on May 10, 2005, that Ohio has 17 communities that straddle the divide, eight of which draw water from the Lake Erie basin and transfer some water outside the basin and that there are about 60 communities within straddling counties, as defined in the compact, in Ohio. Mr. Stolzenberg also reported two concerns on the compact raised in a letter dated May 16, 2006 to Representative Tim Schaffer from Carol Caruso, the Greater Cleveland Partnership (this group represents the “interest’s of Northeast Ohio’s business community”). One related to the authority of the Great Lakes-St. Lawrence River Basin Water Resources Council (the council) created by the compact to modify the standard of review. The second dealt with an ambiguity in the cumulative adverse impacts criterion in the compact’s standard of review. The Partnership’s recommendation for reducing this ambiguity is to replace the last “and” with “of” in this criterion (page 32, line 14 in LRB-0058/P1).

Mr. Stolzenberg also reported that the Michigan Legislature had passed a consensus package of five bills on water resources during the previous winter and that this legislation included the compact’s definition of “diversion” and “consumptive use.” Mr. Stolzenberg noted that legislation had been introduced in the Illinois Legislature early in 2006 to ratify the compact but that to date no formal action had been taken on that bill.

Staff Briefings On Party State Flexibility in Implementing the Compact

Ms. Letzing and Mr. Stolzenberg provided a detailed briefing to the committee on how the compact affords the party states flexibility in implementing the compact based on Memo No. 4. This Memo and the briefing are based on the three types of flexibility identified in the introduction to Memo No. 4. At the beginning of the briefing, Mr. Stolzenberg alerted committee members to the distinction in statutory language between a governmental entity being assigned a duty to perform a particular function or the power to implement a function. He noted that duties are required actions and denoted in

statutory language by use of the word “shall.” A power authorizes an entity to perform the specified function but does not require it and is denoted in statutory text by the use of the word “may.”

In the course of this briefing, the following additional points on the compact not covered in Memo No. 4 were provided to the committee (page and line references to the provision in LRB-0058/P1 are noted in brackets):

- In the provision on the council’s authority to revise the standard of review and decision, Mr. Johnson noted that the requirement that a council member act in accordance with his or her respective statutory authorities and applicable procedures was based on language in other interstate compacts and that this provision authorizes a state to specify that any such revision could be subject to the state’s regulatory review process, such as those used in the promulgation of an administrative rule. [Page 15, lines 13 and 14.]
- With respect to the authority of the party state to adopt and enforce rules and regulations to implement and enforce the compact, Mr. Johnson indicated that because the compact will ultimately be consented to by Congress, the text of the compact will become federal law. Thus, if there are any conflicts between the compact and state regulations, the compact’s language will supersede the relevant state regulation. [Page 16, lines 13 to 16.]
- With respect to the provision on aggregated information in the Great Lakes-St. Lawrence River water use database repository being made publicly available, Mr. Johnson stated the intent of this provision is that the council will make this information available through this repository rather than individual states making it available. He also noted that nothing in the compact precludes a state from making aggregated information on water use within the state publicly available. [Page 18, line 18 to page 19, line 2.]
- In response to a question on how the council is likely to deal with party states having differing interpretations of the terms in the exceptions standard, Mr. Johnson indicated the council would use the standards as stated in the compact, which could result in the council interpreting the standards differently than an individual state. [Page 30, line 1 to Page 31, line 4.]
- In response to a question on the applicability of the remedies provision at the bottom of page 42 in LRB-0058/P1, Mr. Johnson stated that these remedies apply to actions under the preceding provisions in sub. (7r) (c). [Page 42, lines 20 to 23.]

Invited Speakers

Dr. Kenneth Bradbury, Wisconsin Geological and Natural History Survey, University of Wisconsin-Extension, provided a summary of the analysis that Daniel Feinstein, U.S. Geological Survey, Wisconsin Water Science Center, and he had recently conducted on regional hydrogeology and groundwater flow modeling in Southeastern Wisconsin. (Since Mr. Feinstein was unable to attend the meeting, Dr. Bradbury’s presentation covered both his remarks and Mr. Feinstein’s prepared remarks.)

In summarizing their work, Dr. Bradbury made the following points:

- Onshore pumping has significantly lowered deep groundwater levels adjacent to Lake Michigan.
- In some areas, historical groundwater fluid directions have reversed.
- But...the impact on Lake Michigan itself is vanishingly small.
- More significant impacts occur as flow reductions in the onshore streams.

Dr. Bradbury also elaborated on the summary of their groundwater flow modeling and provided the following findings from this modeling effort (these points are reproduced from Dr. Bradbury's presentation slides available at the committee's webpage).

1) How much of the water pumped today from SEWI deep wells is actually Lake Michigan water? **None**

2) How much of the water pumped today from SEWI deep wells would have flowed toward Lake Michigan if there were no wells? **All**

But wait: pre-1900, only about 3 mgd was flowing toward the Lake, just 1/10th of the 33 mgd pumped today!

3) How much of the water that flows into the deep aquifer to replenish 33 mgd of pumped water is flowing out of Lake Michigan itself? **4%**

4) How much of the water that flows into the deep aquifer to replenish 33 mgd of pumped water originates anywhere in the Lake Michigan Basin, as opposed to the Mississippi River Basin? **30%**

Or to say it another way:

- When deep wells in SE Wisconsin turn on, they capture water that **was** on its way, slowly, toward Lake Michigan and **now** is curling back and moving much more quickly towards the deep wells.
- But those wells are just taking the water that is at the "head of the line".
- Very little of the water "joining the back of the line" is or will be from Lake Michigan – because of the thick, resistant shale between it and the deep aquifer.
- Most of the water "joining the line" is redirected from streams in the **Mississippi River Basin** where the shale is absent.

In addition, Dr. Bradbury distributed to committee members a U.S. Geological Survey Fact Sheet entitled, *Great Lakes Basin Water Availability and Use*. Representative Richards distributed a

press release entitled, *Water Resources in Southeastern Wisconsin: Hydrologic Realities and Misperceptions*, prepared by a number of University of Wisconsin-Milwaukee faculty and others.

In the ensuing discussion and responding to committee members' questions, Dr. Bradbury made the following points:

- If the deep wells in Southeastern Wisconsin were turned off, it would take about 70 years for groundwater levels to return to approximately 90% of their presettlement levels. He noted that such recovery would be a nonlinear process, though the groundwater system would eventually recover and the groundwater divide would move east accordingly.
- Whether groundwater flow in the deep aquifer east of the current groundwater divide is tributary to Lake Michigan, depends on one's legal definition of "tributary."
- Groundwater pumping in Southeastern Wisconsin has had a much greater impact on tributaries of the Mississippi River than on Lake Michigan itself.

Staff Report on Approvals and Reviews for Great Lakes Basin Water Withdrawals and Diversions Required Under Current Law and Under the Compact

Ms. Letzing and Mr. Stolzenberg described Memo No. 5 and indicated that it was intended to provide a "high level" summary of the authorities that have jurisdiction to review and approve different types of new or increased water withdrawals and diversions under current law versus under the compact. At the suggestion of Mr. Johnson, they agreed to amend the table attached to Memo No. 5 to include a row for a project involving a public water supply to straddling communities under 100,000 gallons per day with return flow.

Committee Discussion of the Compact

Chair Kedzie asked committee members to explain the materials they had distributed to the committee. Mr. Wilusz stated that the major concerns he raised in his memorandum to the committee related to the following topics: the burden that may be imposed upon an applicant for a withdrawal to complete an impact assessment; the ability of the council to modify the decision-making standard; uncertainty on the meaning of a number of the provisions in the decision-making standard; and concern if the water conservation provisions in the compact could lead to the Department of Natural Resources (DNR) second guessing manufacturers' decisions on how they design and operate their manufacturing processes. Subsequently, Mr. Naftzger indicated that all of the issues raised in Mr. Wilusz's memorandum had been brought up during the development of the compact and that Mr. Johnson and he would be willing to meet with Mr. Wilusz to discuss his concerns.

Mr. Duchniak indicated that he had distributed two letters to the Governor's staff written on behalf of the Waukesha Water Utility so that all committee members would be aware of his correspondence. In the ensuing discussion of these letters, Dr. Bradbury stated that he disagreed with some of the statements interpreting Mr. Feinstein's and his groundwater modeling by the Waukesha Water Utility's consultant, GeoSyntec Consultants, and that they would provide the committee additional information on their concerns. Mr. Duchniak noted that the positions in these letters reflects some of the options being pursued by his utility to deal with its water supply and radium issues, as the

utility has an obligation to Waukesha citizens to pursue all available options, and that ultimately the Waukesha Common Council will make the decision on how to address these concerns. In response to questions, Mr. Duchniak stated that the Waukesha Chamber of Commerce's position objecting to the provision in the compact granting one Governor the power to veto a proposed diversion, does not reflect the City of Waukesha's position.

Mr. Mielke noted that the committee has not articulated if it feels the state would be better off with the compact or not and that it would be desirable to have a document with talking points on the pros and cons of the compact. Ms. Beier agreed on the need for the committee to talk more about the benefits of the compact. She feels that it gives more certainty than current law, and the compact's process for addressing withdrawals and diversions will work better than the approval process under the Water Resources Development Act (WRDA), which lacks transparency. Mr. Harris stated that the compact forces the state to look at water resources on a system-wide basis and that the state cannot begin to manage these resources unless it is done on this basis. He suggested that the committee should move forward with developing implementing legislation with the ultimate "prize" at the end of its process being the development of procedures to better manage these resources based on better science.

Ms. Habush Sinykin described the documents in the *Our Water Series* prepared by the University of Wisconsin-Milwaukee Water Institute that she distributed to the committee. She also summarized the Midwest Environmental Advocates report that she co-authored, *Realizing the Promise of the Great Lakes Compact: A Policy Guide for State Implementation*. Mr. Duchniak noted that the case study on the City of Waukesha's water supply starting on page 28 in the report was not authorized by the city but was prepared by the Great Lakes Protection Fund. In discussing these materials, Senator Cowles asked if there were particular initiatives the committee could recommend to help communities in Southeast Wisconsin address their problems with radium in their drinking water.

Following the discussion of materials distributed to committee, Chair Kedzie opened the committee discussion to other topics. Mr. Naftzger observed that committee members are asking the right question, namely "is the state better off under current law versus under the compact." In response to a question on what would happen if the committee develops legislation to implement the compact and other states do not accept Wisconsin's interpretation, Mr. Naftzger said he was not sure what would happen as the compact reflects a delicate compromise. He opined that any significant change from the compact would likely undo the process for a regional compact for the foreseeable future. He also reiterated his observation previously made to the committee that Great Lakes water management issues will be resolved in one of three ways, through the compact, through action of Congress, or through the courts.

At Chair Kedzie's request, Mr. Naftzger explained the evolution of the provisions in the compact that provide the Governor of a Great Lakes state veto power for diversions reviewed by the council. Mr. Naftzger responded that the provision evolved during the course of negotiations and was eventually restricted to two types of water diversions. Mr. Johnson noted that these provisions are part of a balance in the compact, as compared to the current authority of Governors under WRDA. Mr. Moroney observed that the compact does not contain any mechanism to override the Governor's veto of an application for an excepted diversion.

The committee also discussed whether the federal government could change the compact by either an act of Congress or through a treaty negotiated by the President. Mr. Naftzger noted that in

2001 members of Congress had asked Great Lakes Governors to develop an initiative to manage Great Lakes waters. Chair Kedzie asked staff to seek the opinion of Michael McCabe, Director, Midwest Region, Council of State Governments (who had testified at the committee's first meeting on compact law) on whether Congress or the President could make such changes to the compact without the consent of the Great Lakes states.

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 *Monday, November 13, 2006, at 9:00 a.m., in Room 411 South, State Capitol.*

Chair Kedzie also scheduled the subsequent committee meeting for *December 13* at the State Capitol.

Adjournment

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

JES:tlu