

To: John Stolzenberg and Rachel Letzing, Wisconsin Special Committee on the Great Lakes Water Resources Compact

From: Keith Reopelle, Clean Wisconsin

Re: In-Basin Water Management and Regulation

Date: December 6, 2006

MEMORANDUM

Under the Compact, Wisconsin's legislature is authorized to "create a program for the management and regulation of new or increased withdrawals." This program must be consistent with the "decision-making standard," meaning that elements (a) through (e) must be present in any such program at a minimum. The decision-making standard criteria are broadly applicable to any state but don't necessarily address the protection needs for resources or industries of particular importance to Wisconsin. Since this is a new regulatory program, it deserves broad consideration of impacts and Wisconsin's unique water needs.

First, regarding the threshold of which users the program applies to, we strongly urge the adoption of 100,000 gallons per day, effective when the program is put in place. This is the ultimate default level in the Annex agreement, and as such, has the consensus of a broad spectrum of stakeholders. Secondly, Wisconsin law already uses this threshold as it applies to the regulation of groundwater withdrawals under Wisconsin's "Groundwater Protection Act" (Wis. Stats. 281.34(5)(e)(2)).

The following sections are recommendations on implementing certain requirements of the Compact.

- (4r) WATER MANAGEMENT AND REGULATION: DECISION-MAKING STANDARD.*
- (a) All water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use;*

The phrase "allowance for consumptive use" is not only broad but needs further definition to avoid inconsistent application. A standard would need to be developed for different industry classes and municipalities, and should be based on the consumptive use of a percent of the best performing facilities. We recommend a standard of an allowance for consumptive use equal to or less than the average of the top 50 percent of users in that industry class. This would be similar, but significantly less restrictive than, the concept of Best Available Control Technology (BACT).

(b) The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed;

The phrase “significant individual or cumulative adverse impacts” would benefit from further definition both to target and maximize protection for the resource and to give the regulated community certainty. There are several ways to narrow this broad phrase and establish a more certain standard. In a parallel process the Groundwater Advisory Committee approved a definition for inclusion in the draft NR 820 rules currently in development:

“Significant Adverse (Environmental) Impact” means alteration of groundwater levels, groundwater discharge, surface water levels, surface water discharge, groundwater temperature, surface water temperature, groundwater chemistry, surface water chemistry, or other factors that cause significant degradation of environmental quality such as the health of aquatic flora and fauna.” This definition would create a more definitive standard for interpretation for the DNR which makes similar determinations on a regular basis when applying WEPA.

(c) The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;

We recommend that the phrase “environmentally sound and economically feasible” be made more easily applied by including compliance requirements with all applicable municipal, state, and federal laws as well as regional interstate and international agreements including the Boundary Water Treaty of 1909.

The proposed use is reasonable considering:

- i. Planning for efficient use of water that will minimize waste;
- ii. Efficient use of existing water supplies;
- iii. Balance between economic development, social development, and environmental protection of the proposed withdrawal;
- iv. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;
- v. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use,...to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts;
- vi. If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

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(4t) WATER MANAGEMENT AND REGULATION; APPLICABILITY

(a) This standard of review and decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard.

Finally, this is a very broad area to implement, and the administration of the regulatory program will be difficult to establish and manage if it is inconsistent with other regulatory programs in Wisconsin. There are several options, from grafting it to the WPDES wastewater discharge permit program, or creating a new permit program. Either will take a significant amount of analysis and discussion. This is one where the legislation might best focus on broad parameters, while leaving the details up to rulemaking.

Furthermore, there are ancillary issues to a regulatory process such as this that this legislation should address. For example, these new and increased existing withdrawals within the basin should be referenced in the NR 150 “action type list” for treatment under WEPA. We propose that withdrawals of over 100,000 gallons per day be classified as Type II actions, not needing an automatic environmental impact statement (EIS), but requiring an environmental assessment (EA) to determine whether further analysis is warranted. We look forward to fleshing out these issues related to a regulatory program for new and increased withdrawals and consumptive uses as this committee’s work progresses.