

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

From: Clean Wisconsin

Re: Recommendations Regarding the Compact's Public Participation Process for Inclusion in a Legislative Council Option Memo

Date: December 6 2006

MEMORANDUM

In furtherance of the Compact's clear directives on public participation, we strongly recommend that Wisconsin develop appropriate rules and procedures to ensure that in conducting its duties and responsibilities under the compact, the state proceeds in an open and transparent manner maximizing the availability for meaningful public participation and involvement.

Specifically with respect to decisions on matters involving withdrawals from the basin subject to the requirements of subs.(4) to (4z), the state shall specifically provide that the public will be afforded notification of applications and proposals by communities governed by these sections and have the ability to comment on such applications and proposals and also have full access to the record of comments by citizens, other governmental institutions, and the deliberations of the state, the Great lakes Compact's "Council" and "Regional Body" concerning such applications and proposals. As articulated in greater detail below, the state shall also give appropriate notice and hold public hearings on proposed applications for new or expanded withdrawals of water from the Basin.

Wisconsin implementing legislation should articulate a public participation process that ensures that the process for considering basin withdrawals and diversion applications will be open and transparent to the public throughout the application process, including public notification of all applications for water diversions and any notice of intent to file such applications, as well as public access to all documents necessary for meaningful, well-informed public participation.

The Compact gives great respect to public involvement and ownership in water usage of Great Lakes. Specifically, the Compact finds that, "The Waters of the Basin are precious public natural resources shared and held in trust by the States." This is important because the public realizes that the Great Lakes is vital to, indeed the backbone of, the economy and quality of life of the communities who are in the Great Lakes Basin. The Great Lakes is the quintessential shared commons, sustaining the lives of 40 million people.

For this reason, the Great Lakes States holds navigable waters in trust and should manage those waters for the benefit of the public. In order for the Wisconsin government to protect the Great Lakes for the public trust, Wisconsin's process in determining what should happen to Great Lakes water must be open to the public for participation and comment.

The parties to the Compact considered this, and at the Regional Review level, set the following public participation requirements:

- Public representatives may be part of advisory committees to the Council, and the Compact invites the public to weigh in on promulgation and enforcement of rules through public notice and hearing requirements;
- requires databases of recorded information be publicly available;
- requires states to make annual reports available to the public;
- requires states to give the public "timely" notice of proposals that require Regional Review;
- articulates strides to ensure "adequate public participation;"
- requires the Regional Body to give the public notification of proposals under Regional Review and an opportunity to comment on said proposal through written comments and at a public hearing;
- requires the Regional Body to open its decision-making process up to the public

While the Compact lays out bare public notice requirements for Regional Review in Article 4, in Article 6, the Compact lays out a clear mandate for diversion application processes to be open to the public. Specifically, § 6.2 states that proposals subject to the Standard of Review and Decision (all proposals for more than 100,000 gallons per day), shall "provide public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon," "assure public accessibility to all documents relevant to an application, including public comment received," provide guidance on standards for determining whether to conduct a public meeting, and provide the record of decision for public inspection.

Given the direction of the Compact, Wisconsin must take the following actions:

- * **Provide public notification of receipt of all applications and any notice of intent to file applications.** Applications for diversions are complex, expensive processes in which applicants hire expert technical firms, expensive public relations firms, and hold lawyers on retainer. In order to have a balanced process, the public should be aware of upcoming applications in order to be educated on the science and policy surrounding the proposal.
- * **Allow the public reasonable opportunity to submit comments before applications are acted upon by the State.** To have a balanced process, the public must be involved to meaningfully participate through public comment periods early in the application process.

*** Assure public accessibility to all documents relevant to an application, including public comment received.** Access to all documents is necessary for meaningful, well-informed participation in any process.

*** Open the decision-making process up to the public.** The decision-making process should invite the public to participate and have access to the process.

The Compact recognizes that the Great Lakes are “precious *public* natural resources,” calls for “adequate public participation,” and encourages states to implement legislation allowing great public access and input to the application process. For these reasons, Wisconsin should implement legislation that notifies and invites the public to meaningfully comment both on diversion applications and on proposed matters involving critical withdrawals from the basin.