

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

From: Jodi Habush Sinykin, Of Counsel, Midwest Environmental Advocates

Re: Recommendations Regarding Water Conservation Provisions for Inclusion in a Legislative Council Option Memo

Date: December 6, 2006

MEMORANDUM

I. The Compact's Conservation Ethic:

The Great Lakes Water Resources Compact provides a valuable opportunity to bring water conservation to the forefront in Wisconsin. The Compact provides:

Within 2 years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin-wide goals and objectives and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction, *based on the party's goals and objectives.*

(Compact Section 4.2 (2); Wisconsin draft legislation 281.343 sec (4b)(b))

The Compact further provides that communities seeking diversions of Great Lakes water must meet the Exception Standard, which, in addition to other criteria, requires the applicant to demonstrate that the proposed diversion will incorporate "environmentally sound and economically feasible" water conservation measures in order to minimize water withdrawals or consumptive use.

Likewise, the Compact's Decision Making Standard includes as one of its mandatory criteria, "The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures." [See Wisconsin Legislation 281.343 (4r)(c)]

As another important impetus for conservation under the Exception Standard, the Compact requires applicants for diversions to demonstrate "that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake

watershed to which the water will be transferred, *including conservation of existing supplies.*” [Wisconsin Draft Legislation 281.343 (4r)(c)]

II. Policy and Implementing Legislation Language Recommendations:

1. **Wisconsin Implementing Legislation Should Require Measurably Successful Implementation of Water Conservation Measures and Programs Prior to a Community’s Application for a Diversion**

Common sense and experience dictates that while it is easy to set lofty goals, it is far more difficult to achieve them. As such, only by requiring communities to implement conservation measures and programs, demonstrating *measurable* savings *prior* to their application for a diversion of Great Lakes Basin water, can we be assured that the conservation goals of the Compact will be realized. It is on this basis that Wisconsin’s implementing legislation should include either of the following provisions:

- Consistent with Wisconsin’s discretion under the Compact, Wisconsin determines that the Exception Standard as set forth at Wisconsin Legislation 281.343 (4r)(c) shall be interpreted to require that the need for all or part of the proposed Consumptive Use, Withdrawal or Exception cannot be reasonably avoided through the *demonstrated* conservation and efficient use of existing water supplies.

(or)

- Consistent with Wisconsin’s discretion under the Compact, Wisconsin determines that the Exception Standard as set forth at Wisconsin Legislation 281.343 (4r)(c) shall be interpreted to require that an application for a diversion may proceed only after the implementation of a measurably effective conservation program has demonstrated that the need for all or part of the proposed Consumptive Use, Withdrawal or Exception cannot be reasonably avoided through conservation and efficient use of existing water supplies.

2. **Wisconsin Implementing Legislation Should Clarify the Compact’s “Economically Feasible” Caveat**

The Compact’s core conservation ethic lies at risk of being compromised by the caveat that conservation measures and incentives be “economically feasible.” As demonstrated time and again in other legal contexts, the application of a cost-benefit analysis to “free” natural resources like water leads to the undervaluation of the resource. Accordingly, if left unaddressed, the practical result of this caveat will be to undermine the implementation of conservation programs both inside and outside the Basin, as communities will undoubtedly rely upon it to limit any water conservation measures deemed “too costly.” Given political reality, when environmental benefits are pitted against budgetary constraints and costs to the populace, it will be the environment that

will lose every time unless there is some mechanism in place to require verification by the applicant of any claimed “economic infeasibility.”

It is on this basis that Wisconsin’s implementing legislation should include the following provisions:

(i) Regarding Application of the Exception Standard:

Consistent with state discretion under the Compact, it will be incumbent upon the applicant for a diversion to assess and to justify the economic feasibility or infeasibility of available water conservation measures pursuant to the Compact’s Exception Standard.

(ii) Regarding Application of the Decision-Making Standard:

Consistent with state discretion under the Compact, it will be incumbent upon the applicant for a new or increased withdrawal to assess and to justify the economic feasibility or infeasibility of available water conservation measures pursuant to the Compact’s Decision-making Standard.

3. Wisconsin’s Conservation Program Should Be Comprehensive

As stated above, while each party state’s water conservation and efficiency goals and objectives are to be consistent with the basin-wide goals articulated by the regional council, nonetheless, the Compact provides states with the flexibility to develop a water conservation program that reflects the state’s own goals and objectives.

Wisconsin should take this opportunity to explore an array of conservation strategies for the state, rather than limit its scope to demand-side or voluntary measures. An important component of water conservation that is often overlooked regards the re-use and reclamation of water for such beneficial uses as groundwater recharge, irrigation and wetlands restoration. Wisconsin should be sure to include water recycling systems and water reclamation programs within the state’s examination of available water conservation objectives and goals.