



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Great Lakes Compact Law (2007 Wisconsin Act 227): New State Water Use Regulations

2007 Wisconsin Act 227 (the “act”) creates water use regulations primarily in the Wisconsin portion of the Great Lakes basin prior to Congressional consent to the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) and implements the compact in Wisconsin with similar, though distinct, regulations once the compact takes effect. This memorandum summarizes these new state water use regulations.

This memorandum is one of a series of memoranda summarizing Act 227. Other memoranda in this series address the following topics:

- IM-2008-03: *Executive Summary of the Act.*
- IM-2008-04: *Summary of the Compact.*
- IM-2008-06: *Water Supply Planning.*
- IM-2008-07: *Water Loss, Legislative Oversight, and Other Provisions.*
- IM-2008-08: *DNR Rule-Making.*

2007 Wisconsin 227 (the “act”) creates one set of water use regulations that apply before the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) takes effect, and a second set of regulations that apply after the compact takes effect. These regulations are described in this memorandum. The tables in the appendix to the memorandum summarize the water use permitting requirements for existing, new and increased withdrawals in the Great Lakes basin required under these water use regulations.

As set forth in the text of the compact (see IM-2008-04), the compact becomes effective when ratified through legislation by the Great Lakes states and consented to by the U.S. Congress.

PRE-COMPACT STATE REGULATIONS

Some of the water use regulations created by the act take effect before the compact is ratified by the states and approved by Congress. These provisions stay in effect if the compact never goes into effect. They are “sunset” when the compact goes into effect. The act places these provisions in one section of the statutes, s. 281.344, that is referred to in this memorandum as the pre-compact implementation statute.

DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS

The act specifies a number of determinations concerning the applicability of requirements in the pre-compact implementation statute, including the following:

- The surface water divide shall be used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.
- The interbasin transfer or withdrawal of water from one or more sources within the Great Lakes basin to supply a single “facility” or “public water supply” system shall be considered one interbasin transfer or withdrawal.
- Nothing in this statute may be interpreted to change the application of the public trust doctrine under Wis. Const. art. IX, s. 1, or to create any new public trust rights.
- The Department of Natural Resources (DNR) may not change its historic interpretation or application of the federal law created by the federal Water Resources Development Act of 1986 (WRDA), that prohibits a diversion of water from the Great Lakes for use outside of the Great Lakes basin unless such diversion is approved by the governor of each of the Great Lakes states, until that provision is amended. The DNR must evaluate all applications for interbasin transfers using the requirements in the pre-compact implementation statute applicable to interbasin transfers and shall apply those requirements uniformly. In this provision, “historic” means made before the provision’s effective date, June 11, 2008.

STATEWIDE REGISTRATION AND REPORTING OF WITHDRAWALS AND INTERBASIN TRANSFERS

The act requires any person in this state who, on June 1, 2011, has a water supply system with the capacity to make a withdrawal of water that averages 100,000 gallons per day (GPD) or more in any 30-day period (such as a high capacity well) to register the withdrawal with DNR and provide the specified information about the system and the withdrawal. A person may register an existing withdrawal before this deadline. Any person who proposes to start a withdrawal with that capacity or increase a withdrawal after that date must also register with DNR.

If a person who is required to register a withdrawal actually withdraws an average of 100,000 GPD or more in any 30-day period, the person must annually report to DNR information about the withdrawal, including the monthly volume of water withdrawn.

In addition, the act requires any person who transfers water out of the Great Lakes basin or transfers water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes to register with DNR. The act calls such a transfer an “interbasin transfer” in the portions of the act that apply before the compact takes effect and a “diversion” in the parts of the act that apply once the compact takes effect. A person who makes an interbasin transfer must also annually report information about the transfer to DNR.

REGULATION OF INTERBASIN TRANSFERS

Approval Required

Beginning on the date of enactment, the act generally prohibits new interbasin transfers, other than those for which DNR is required to issue automatic approvals, and also generally prohibits increases in existing interbasin transfers. There are three exceptions to the prohibition, which generally apply in the same situations as the exceptions to the prohibition on diversions in the compact, described in IM-2008-04. The act requires an approval from DNR for any of these exceptions.

Each interbasin transfer approval must specify an interbasin transfer amount. Any increase in the amount of an interbasin transfer over the interbasin transfer amount is subject to the restrictions described below on increases in interbasin transfers.

Automatic Approval for Existing Interbasin Transfers

The act requires DNR to automatically issue an approval to a person who operates a public water supply system receiving water from an interbasin transfer that begins before the compact takes effect if the public water supply system delivers the water to customers in an area that is outside of the Great Lakes basin and that is in a sewer service area that provides for return of wastewater to the Great Lakes basin, as authorized in the sewer service area provisions of an areawide water quality management plan approved by DNR before December 31, 2007.

The DNR must determine the initial interbasin transfer amount for a public water supply system entitled to an automatic approval to be the amount of water necessary to provide water for public water supply services in the area described above.

The act also directs DNR to automatically issue before the compact's effective date an approval for a person making an interbasin transfer that begins before the act's effective date on June 11, 2008, and that is not for a public water supply. An example of such a transfer is an irrigation system that withdraws water in the Lake Michigan basin and sprays the water on a field in the Upper Mississippi River basin. The DNR must specify an initial interbasin transfer amount in these approvals using the process and standards to determine an initial withdrawal amount, described below.

New and Increased Interbasin Transfers, Generally Applicable Provisions

Some public water supply systems buy water from other entities, which actually withdraw the water. For an interbasin transfer made for the purpose of supplying water to the public, the act requires the person operating the public water supply system that receives the water from the transfer to obtain the approval from DNR.

If an applicant for approval of a new or increased interbasin transfer will not be the person who withdraws the water from the Great Lakes basin, the act requires the applicant to identify any entities that may withdraw the water and provide evidence of support from each of these entities. Similarly, if an applicant for a new or increased interbasin transfer will not directly return the water to the Great Lakes basin, the applicant must identify any entities that may

return the water and provide evidence of support from these entities. In both of these situations, the evidence of support maybe in the form of a letter or resolution.

If DNR receives an application for a permit or approval for a structure on the bed of a navigable water, a water supply or wastewater facility plan, or a discharge to the waters of the state that relates to the return of water transferred from the Great Lakes basin under an interbasin transfer and if this return flow is to the source watershed through a stream tributary to one of the Great Lakes, then DNR must provide notice of the application to the governing body of each city, village, and town through or by which the stream flows downstream from the point at which the return flow would enter the stream. The provisions implementing this requirement also apply to return waters returned from a diversion after the compact's effective date and are not part of the pre-compact implementation statute.

If a proposal for a new or increased interbasin transfer is used to provide water to a public water supply system, the proposal must be consistent with an approved water supply plan, described in IM-2008-06, that covers the system.

The interbasin transfer amount for a new or increased interbasin transfer is the quantity of water that DNR determines is reasonable for the purposes for which the interbasin transfer is made.

The act also provides procedures for public participation in the review of proposals for new and increased interbasin transfers.

Straddling Communities

The first exception to the prohibition on new or increased interbasin transfers allows the transfer of water to the part of a straddling community that is outside of the Great Lakes basin.

In the pre-compact implementation statute, a "straddling community" is a city, village, or town that is partly within the Great Lakes basin and partly outside of the basin, but that is wholly within a county that is partly within the basin.¹

The exception only applies if the specified requirements are met, which are the same as the requirements in the compact for a diversion to a straddling community as described in IM-2008-04, including that all of the transferred water is used to supply water to the public. If the proposed new or increased interbasin transfer would result from a new or increased withdrawal that averages 100,000 GPD or more in any 90-day period, the interbasin transfer must also meet the exception standard, described on page 6.

¹ The definition of a straddling community in this statute also includes a city, village, or town partially within the watersheds of two of the Great Lakes based on the compact's definition of "straddling community," but that situation would require a physically split community to occur in Wisconsin because the Lake Superior and Lake Michigan basins do not share a common divide in Wisconsin. Maps showing the locations of straddling communities and communities within straddling counties in Wisconsin are presented in Legislative Council Staff Memo No. 3 to Members of the Special Committee on Great Lakes Water Resources Compact, *Maps of the Great Lakes Basin*, Revised October 4, 2007. This Memo is posted on the website for this study committee at the Legislative Council's website at www.legis.state.wi.us/lc.

The act specifies that DNR must determine whether a proposal is consistent with an approved water supply plan that covers the public water supply system, described in IM-2008-06. The application of the exception standard in this process to a proposal for transferring water to a straddling community is described on page 6.

Intrabasin Transfers

The second exception to the prohibition on new or increased interbasin transfers authorizes DNR to approve an intrabasin transfer from the Lake Superior watershed to the Lake Michigan watershed or vice versa. The DNR may approve such a transfer that will average less than 100,000 GPD over 90 days if the proposal satisfies the requirements under laws related to high capacity wells, the withdrawal of water from streams, or the approval of plans for public water supply systems or, if none of those laws apply, if the proposal satisfies the requirements set by DNR by rule. In addition, if the water will be used for public water supply purposes, the proposal must be consistent with an approved water supply plan.

For a larger intrabasin transfer, the exception standard applies, except that the transferred water is not required to be returned to the watershed from which it was withdrawn (unless there is a new or increased water loss averaging at least 5,000,000 GPD in any 90-day period), and it must be shown that there is no feasible, cost-effective, and environmentally sound alternative for obtaining water in the watershed to which the water will be transferred including conservation of existing water supplies. If the water will be used for public water supply purposes, the proposal must be consistent with an approved water supply plan.

Communities Within Straddling Counties

The third exception to the prohibition on new or increased interbasin transfers is to provide water for a public water supply to: (1) a community within a straddling county; or (2) to the portion of a community that is in a straddling county if the community is located partly within a straddling county and partly outside the Great Lakes basin. A “community within a straddling county” is a city, village, or town, no part of which is in the Great Lakes basin, but that is wholly within a county that is partly in the Great Lakes basin. A “straddling county” is a county that lies partly within the Great Lakes basin. Examples of the second type of community for which the portion in a straddling county could receive water under this exception include Watertown, Mukwonago, and Burlington.²

An interbasin transfer to one of these types of communities is only allowed under the act if all of the following apply:

- All of the water is used to supply water to the public.

² Maps showing the locations of straddling communities and communities within straddling counties in Wisconsin are presented in Legislative Council Staff Memo No. 3 to Members of the Special Committee on Great Lakes Water Resources Compact, *Maps of the Great Lakes Basin*, Revised October 4, 2007. This Memo is posted on the website for this study committee at the Legislative Council’s website at: www.legis.state.wi.us/lc.

- The community is “without an adequate supply of potable water,” as defined in the pre-compact implementation statute.
- The interbasin transfer meets the exception standard.
- The proposal maximizes the amount of water that originated in the basin that is returned to the basin and minimizes the amount of water that originated outside of the basin that is returned to the basin.
- There is no “reasonable water supply alternative,” as defined in the pre-compact implementation statute, in the basin in which the community is located, including conservation of existing water supplies.
- The proposal is consistent with an approved water supply plan.

The act specifies that DNR must determine whether a proposal meets these requirements through the water supply planning process for public water supplies described in IM-2008-06. The application of the exception standard in this process to a proposal for transferring water to one of these communities is described in the next section.

Exception Standard

As explained previously, many of the interbasin transfers that may be approved under the exceptions must meet the exception standard as a condition of the approval. The exception standard in the pre-compact implementation statute contains requirements identical or similar to those in the exception standard in the compact, described in IM-2008-04, and two additional requirements. First, the place at which the water is returned to the Great Lakes basin must be as close as practicable to the place at which the water is withdrawn, unless that would not be cost-effective, environmentally sound, or in the interest of public health. Second, if the water is returned through a stream tributary to Lake Michigan or Lake Superior, the physical, chemical, and biological integrity of the stream must be protected and sustained, as required under laws relating to the placement of structures on the beds of navigable waters, water quality standards, and discharges to waters of the state (ss. 30.12, 281.15, and 283.31, Stats.), considering the state of the receiving water before the proposal is implemented, and both high and low flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings caused by this return flow.

The act establishes two approaches for DNR to determine whether a proposal meets the exception standard. For a proposal to transfer water to a straddling community; a community within a straddling county; or a portion of a community partly in a straddling county, where another part of the community is outside of the Great Lakes basin; DNR must consider the items in the exception standard as factors in the cost-effectiveness analysis in the water supply planning process for public water supplies applicable to the proposal. For a proposal for an intrabasin transfer, DNR must apply the items in the exception standard individually to the proposal.

REGULATION OF WITHDRAWALS IN THE GREAT LAKES BASIN

Permit Requirement

The act prohibits a person from making a withdrawal of water from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period unless the withdrawal is covered by a general water use permit (i.e., for a class of withdrawals) or an individual water use permit (i.e., for that particular withdrawal). This requirement takes effect on June 1, 2015. The act authorizes DNR to begin issuing permits for existing withdrawals before this date.

Withdrawal Amounts – Purpose and Initial Amounts

Each withdrawal that is covered by a permit must have a withdrawal amount. The withdrawal amount on the compact's effective date is the baseline for the withdrawal. Withdrawal amounts are used to determine when a withdrawal has increased by the threshold amount that triggers certain requirements, and are not regulatory limits that specify the maximum amount of water that a withdrawal may withdraw. In particular, the act specifies that it is not a violation of the water withdrawal provisions in the pre-compact implementation statute to withdraw an amount of water that exceeds the withdrawal amount for a withdrawal.

The act requires DNR to determine initial withdrawal amounts for existing withdrawals. Generally, the department estimates an initial withdrawal amount based on the maximum capacity of the most restrictive part of an existing water supply system. If DNR has issued an approval for the water supply system under another statute and that approval contains a limit on the amount of water that may be withdrawn, DNR provides an estimate equal to that limit. If a facility is supplied by water from more than one source, then DNR must add their respective capacities or limits together in developing its estimate of the initial withdrawal amount.

After a person making a withdrawal receives an estimate from DNR, the person may provide information to DNR relating to matters such as plans for expanding the capacity of the water supply system and successful water conservation efforts by persons using the water that is withdrawn. The DNR then determines an initial withdrawal amount for a withdrawal based on the estimate and its evaluation of any relevant information provided by the person making the withdrawal.

For a public water supply system that has approval prior to the act to transfer water from the Great Lakes basin to supply water to the public in an area outside of the basin and that has approval to return the wastewater that results from the use of that water to the Great Lakes basin through its sewage system, the initial withdrawal amount is the amount of water necessary to provide water for public water supply purposes in the sewer service area for that sewage system specified in the areawide water quality management plan approved by DNR before December 31, 2007.

General Permits

The act requires DNR to issue one or more general water use permits to cover withdrawals from the Great Lakes basin that average 100,000 GPD or more in any 30-day period, but that

do not equal 1,000,000 GPD for any 30 consecutive days. The DNR may waive the requirement to obtain coverage under a general water use permit for a person making a withdrawal that is covered by a permit issued under s. 30.18 (2) (a), Stats., for diversion of water from a stream in the state for the purposes of agriculture, irrigation, or to maintain and restore the normal level of a navigable lake or the normal flow of a navigable stream.

A general permit covers numerous withdrawals with similar characteristics, as specified by DNR. A general permit has a 25-year term. The DNR is required to include in each general permit:

- A reference to its database of withdrawal amounts for withdrawals covered by the permit.
- Requirements, as provided in rules promulgated by DNR, for:
 - Estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring.
 - Water conservation.

The act requires DNR to automatically issue a notice of coverage under a general permit to every person who makes a withdrawal from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period, but that does not equal 1,000,000 GPD for any 30 consecutive days and who complies with the registration and reporting requirements in the act before June 1, 2015, the date on which the permit requirement applies. In the automatic notice of coverage, DNR specifies a withdrawal amount equal to the initial withdrawal amount determined under the procedures described above.

A person who proposes to begin a withdrawal, after June 1, 2015, but before the compact takes effect, that averages 100,000 GPD or more in any 30-day period, but that does not equal 1,000,000 GPD for any 30 consecutive days must apply to DNR for coverage under a general permit. Generally, if DNR determines that the withdrawal qualifies for coverage under a general permit and DNR has issued any approvals that are required under other laws for the withdrawal, such as high capacity well approvals or approvals for any structures on the bed of a navigable water that are needed for the withdrawal, DNR must issue a notice of coverage under the general permit. In the notice, DNR specifies a withdrawal amount equal to the lesser of the capacity of the most restrictive component that will be used in the water supply system or any limit on the amount of water that may be withdrawn specified in other approvals needed for the withdrawal. If a facility is served by withdrawals from more than one source, the withdrawal amounts for each source are added together to establish the withdrawal amount for the facility.

If the withdrawal is for the purpose of providing water to a public water supply system that is covered by an approved water supply plan³, the requirement for previous issuance of other approvals that are needed for the withdrawal does not apply, but DNR may not issue a notice of coverage unless the withdrawal is consistent with that plan. For such a withdrawal, DNR specifies a withdrawal amount equal to the withdrawal amount in the water supply plan. The withdrawal amount in a water supply plan is generally the amount that DNR determines is needed to provide a public water supply in accordance with the plan during the period covered by the plan.

The act authorizes DNR to require a person who would otherwise qualify for coverage under a general permit to obtain an individual permit if the withdrawal is located in a groundwater protection area or a groundwater management area, as identified in the groundwater withdrawal statute, s. 281.34, Stats.

If a person making a withdrawal that is covered by a general permit proposes to increase the amount of the withdrawal over the withdrawal amount specified by DNR, but does not propose to withdraw at least 1,000,000 GPD for any 30 consecutive days, the person must apply to DNR for modification of the withdrawal amount. The conditions for increasing the withdrawal amount are the same as the conditions for granting coverage under a general permit.

Coverage under a general permit ends on the date that the term of the general permit ends. A person who intends to continue a withdrawal covered by a general permit must apply for redetermination of coverage under a new general permit at least 180 days before the end of the term of the current general permit. If the person is in substantial compliance with the current general permit and the withdrawal qualifies for coverage under the new general permit, DNR must issue a notice of coverage under the new general permit.

Individual Permits

The act requires a person who makes a withdrawal from the Great Lakes basin that equals at least 1,000,000 GPD for any 30 consecutive days to have an individual water use permit. DNR must include in an individual permit a withdrawal amount, and, in accordance with rules promulgated by DNR, requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, reporting the results of the estimating and monitoring, water conservation, and limits on the locations, dates, and seasons of the withdrawal and on the allowable uses of the water.

The act requires DNR to automatically issue an individual permit to every person who makes a withdrawal from the Great Lakes basin that equals 1,000,000 GPD for any 30 consecutive days and who complies with the registration and reporting requirements in the pre-compact implementation statute before June 1, 2015. In the permit, DNR specifies a withdrawal amount equal to the initial withdrawal amount determined as described above.

³ This situation could arise, for example, if the public water supply system voluntarily prepared a plan and the plan is approved by DNR before the compact's effective date or if the system is covered by a regional water supply plan approved before the compact's effective date.

A person who proposes to begin a withdrawal, after the date on which the permit requirement applies, that equals 1,000,000 GPD for any 30 consecutive days, must apply to DNR for an individual permit. Generally, if DNR has issued any approvals that are required under other laws for the withdrawal, such as high capacity well approvals or approvals for any structures on the bed of a navigable water that are needed for the withdrawal, DNR must issue an individual permit. In the permit, DNR specifies a withdrawal amount that is determined in the same manner as for general permits, as described above.

If the withdrawal is for the purpose of providing water to a public water supply system that is covered by an approved water supply plan, the requirement for previous issuance of other approvals that are needed for the withdrawal does not apply, but DNR may not issue a permit unless the withdrawal is consistent with the water supply plan. For such a withdrawal, DNR specifies a withdrawal amount equal to the withdrawal amount in the water supply plan.

If a person with an individual permit proposes to increase the amount of the withdrawal over the withdrawal amount in the permit, the person must apply to DNR for modification of the permit to increase the withdrawal amount. The conditions for increasing the withdrawal amount are the same as the conditions for issuing the individual permit.

An individual permit has a 10-year term. A person who intends to continue a withdrawal covered by an individual permit must apply for reissuance of the permit at least 180 days before the end of the current permit term. If DNR determines that the person is in substantial compliance with the individual permit and that the withdrawal continues to qualify for an individual permit, DNR must reissue the permit.

An individual permit is not transferable except after notice to DNR and after the person who proposes to assume control over a permitted withdrawal files with DNR a permit application and a statement of acceptance of the permit. The DNR may require modification or revocation and reissuance of the permit to change the name of the permittee.

Interim Approvals

The act specifies that, if a person making a withdrawal subject to the water use permitting requirements in the pre-compact implementation statute registers the withdrawal and files the required reports and DNR does not automatically issue a notice of coverage under a general water use permit or an individual water use permit for the withdrawal before the compact's effective date, the registration of the withdrawal constitutes an approval for the purposes of the compact's requirement that a baseline for an existing withdrawal be established as of the effective date of the compact. The withdrawal amount under this approval is the sum for each water supply system used for the withdrawal of the lower of the estimated maximum hydraulic capacity of the most restrictive component in the system, as reported in the registration, or any limit on the amount of the withdrawal by the system in an approval under other state water regulations.

Emergency Orders

The act authorizes DNR to issue an emergency order to a person who has been issued an individual water use permit or notice of coverage under a general water use permit to

immediately stop the withdrawal if the department determines that there is a danger of imminent harm to the public health, safety, or welfare, to the environment, or to the water resources or related land resources of the state.

STATEWIDE WATER CONSERVATION AND EFFICIENCY

The act requires DNR to specify water conservation and efficiency goals for all of the waters of this state. The act also requires DNR to develop and implement a statewide water conservation and efficiency program that includes:

- The promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.
- Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement interbasin transfer approvals and general and individual water use permits under the pre-compact implementation statute and the water supply planning process described on page 31.
- Water conservation and efficiency measures required or authorized by the Department of Commerce in the state plumbing code and other regulations and by the Public Service Commission (PSC) for water utilities.

The DNR must consult with Commerce and the PSC in specifying the goals and objectives and in developing and implementing the program.

The act also requires DNR to promulgate rules specifying water conservation and efficiency measures for the purposes of implementing the program. In the rules, DNR may not require retrofitting of existing fixtures, appliances, or equipment.

WATER USE REPORT

The act directs DNR, beginning no later than June 11, 2016 and every five years thereafter, using water data reported under the provisions of the act and under other water regulatory laws, to publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use.

PENALTIES

The act establishes that any person who violates the pre-compact implementation statute described above, or any rule promulgated or approval issued under these provisions, must forfeit no less than \$10 or more than \$10,000 for each violation. Each day of continued violation is a separate offense.

In addition to the above forfeitures, the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

POST-COMPACT STATE REGULATIONS

The act contains a number of water use regulations that only apply after the compact's effective date. If the compact is never ratified by all of the Great Lakes states and approved by the U.S. Congress, these provisions will not go into effect. The act places these provisions in one section of the statutes, s. 281.346, that is referred to in this memorandum as the post-compact implementation statute.

BASELINES AND OTHER DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS

The act repeats in the post-compact implementation statute most of the determinations concerning the applicability of requirements that are in the pre-compact implementation statute, including the determination regarding the public trust doctrine. The post-compact implementation statute does not contain the determination relating to the historic interpretation or application of WRDA.

In addition, the post-compact implementation statute establishes that regional review or council approval is not required when there is a change of ownership of a water supply system that withdraws, diverts, or consumptively uses waters of the Great Lakes basin unless the new owner proposes a change that is otherwise subject to this review or approval.

The post-compact implementation statute also specifies the following baselines:

- For a withdrawal covered by a general permit issued under the pre-compact implementation statute, the withdrawal amount specified for the withdrawal in DNR's database of withdrawals under general permits on the compact's effective date.
- For a withdrawal subject to an individual permit issued under the pre-compact implementation statute, the withdrawal amount specified in the permit on the compact's effective date.
- For a withdrawal subject to an interim approval under the pre-compact implementation statute, the withdrawal amount specified in that approval.
- For a consumptive use for which DNR has specified an authorized base level of water loss under the statute regulating water losses, the amount of that authorized base level on the compact's effective date.
- For a diversion for which DNR has issued an interbasin transfer approval under the pre-compact implementation statute, the interbasin transfer amount specified in the approval on the compact's effective date.

The act directs DNR to provide a list of the baseline volumes determined under the above specifications to the council and regional body no later than one year after the compact's effective date.

STATEWIDE REGISTRATION AND REPORTING OF WITHDRAWALS AND DIVERSIONS

The statewide requirements for registration and reporting of withdrawals and interbasin transfers created by the pre-compact implementation statute continue after the compact takes effect for withdrawals and diversions.

REGULATION OF DIVERSIONS

Under the act, the general prohibition on new interbasin transfers and on increases in existing interbasin transfers and the three exceptions to the prohibition in the pre-compact implementation statute continue to apply to new and increased diversions after the compact takes effect. The pre-compact standards for approval by DNR for new or increased interbasin transfers apply to new or increased diversions, but for some diversions, different review procedures and new requirements also apply, as described below. In addition, the post-compact implementation statute does not contain the water supply planning process based procedures or the consideration of items in the exception standard in the cost-effectiveness analysis in this process for diversions supplying water to straddling communities, communities within straddling counties, and parts of communities in straddling counties, as set forth in the pre-compact implementation statute for comparable interbasin transfers.

The act does not treat a proposal to remove water from the basin in containers of 5.7 gallons or less (i.e., bottled water) as a diversion. The provisions relating to withdrawals, described below, apply to such a proposal.

Straddling Communities

In addition to the requirements that apply before the compact takes effect, a proposal for a diversion to a straddling community that results in a very large new or increased water loss to the Great Lakes basin must be reviewed by the regional body before DNR decides whether to approve the proposal.

Intrabasin Transfers

In addition to the requirements that apply before the compact takes effect, a proposal for an intrabasin transfer that results in a new or increased water loss to the Great Lakes basin averaging at least 5,000,000 GPD in any 90-day period must be reviewed by the regional body and DNR may not approve the proposal unless the council approves the proposal with no disapproving votes.

Communities Within Straddling Counties

In addition to the requirements that apply before the compact takes effect, a proposal for a diversion to a community within a straddling county or to the portion of a community in a straddling county, where another part of the community is in a county not in the Great Lakes basin, must be reviewed by the regional body and DNR may not approve the proposal unless the council approves the proposal with no disapproving votes.

REGULATION OF WITHDRAWALS IN THE GREAT LAKES BASIN

Permit Requirement

The permitting requirement for a withdrawal of water from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period continues after the compact takes effect. A notice of coverage under a general permit or an individual permit issued under the pre-compact implementation statute continues to be valid, but post-compact decision-making standards apply to withdrawals that are proposed to be increased by one of the threshold amounts, as described below.

General Permits

The provisions relating to coverage under a general permit generally do not change after the compact takes effect. However, after the compact takes effect, DNR may not issue a notice of coverage under a general permit for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the withdrawal is covered by an approved water supply plan.

Individual Permits

The process for issuing, modifying, or reissuing individual water supply permits does not generally change when the compact takes effect. For a new or increased withdrawal after the compact's effective date of at least 1,000,000 GPD for 30 consecutive days for a public water supply system, the DNR reviews the withdrawal as part of its review and approval of a water supply service plan that provides for the withdrawal using the same standards as described below that apply to individual permits.

After the compact takes effect, the act conditions the issuance of an individual permit for a new withdrawal that equals at least 1,000,000 GPD, but less than 10,000,000 GPD, for any 30 consecutive days on compliance with the state decision-making standard, described below. In general, the act conditions the issuance of an individual permit for a new withdrawal that equals at least 10,000,000 GPD for any 30 consecutive days on compliance with the compact decision-making standard. However, if the applicant demonstrates, using procedures specified by DNR by rule, that the water loss associated with the new withdrawal will average less than 5,000,000 GPD in every 90-day period, then the state decision-making standard rather than the compact decision-making standard applies to the withdrawal.

If a person proposes to increase the amount of a withdrawal that is covered by a water supply permit so that it equals at least 1,000,000 GPD, but less than 10,000,000 GPD, for any 30 consecutive days over the withdrawal amount for the withdrawal as of the beginning of the current permit term, the compact's effective date, or the last date on which the state or compact decision-making standard was applied to an increase in the withdrawal, whichever is latest, approval of the increase is conditioned on compliance with the state decision-making standard. In general, if a person proposes to increase the amount of a withdrawal that is covered by a water supply permit so that it equals at least 10,000,000 GPD for any 30 consecutive days over the withdrawal amount for the withdrawal as of the beginning of the current permit term, the compact's effective date, or the last date on which the compact

decision-making standard was applied to an increase in the withdrawal, whichever is latest, approval of the increase is conditioned on compliance with the compact decision-making standard. However, as for a new withdrawal, if the applicant demonstrates that the water loss associated with the increased withdrawal will average less than 5,000,000 GPD in every 90-day period, then the state decision-making standard applies.

Prior Notice; Regional Review

If a proposal will result in a new water loss or an increase in water loss that averages 5,000,000 GPD or more in any 90-day period, DNR is required to provide notice of the proposal to the other states and to Ontario and Quebec.

Also, if a majority of the members of the regional body request regional review of a regionally significant or potentially precedent-setting proposal for a withdrawal and DNR determines the proposal is subject to regional review, DNR must conduct a technical review of the proposal and submit it for regional review. The DNR may not determine that the proposal is subject to regional review unless it will result in a water loss averaging more than 5,000,000 GPD in any 90-day period. If DNR submits the proposal for regional review, DNR cannot act on the proposal until it has been reviewed by the regional body and the DNR has considered the regional declaration of finding from that review, or until 90 days after the department submits the proposal for regional review, whichever is sooner.

State Decision-Making Standard

A proposal meets the state decision-making standard if it satisfies several criteria, including the following:

- The amount of the withdrawal is needed to meet the projected needs of the persons who will use the water.
- Cost-effective conservation practices will be implemented to ensure efficient use of the water.
- One of the following applies:
 - The withdrawal will cause no significant adverse environmental impacts to the waters of the state.
 - If the withdrawal is from a surface water body, the withdrawal will not result in the violation of water quality standards or impair fish populations.
 - DNR has issued an approval for the withdrawal under laws related to high capacity wells, the withdrawal of water from streams, or the placement of structures in navigable waters.

Compact Decision-Making Standard

What the act calls the compact decision-making standard is similar to the decision-making standard in the compact itself. A proposal meets the compact decision-making standard if it satisfies several criteria, including the following:

- The withdrawal will not result in significant adverse individual or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin, to related natural resources, or, if the withdrawal is from a stream tributary to one of the Great Lakes, to the watershed of that stream.
- Environmentally sound and economically feasible water conservation measures will be used in implementing the withdrawal.
- The proposed use of the water is reasonable, based on a consideration of specified factors.

Interim Approvals

Before DNR issues an automatic notice of coverage under a general permit or an automatic individual permit for a withdrawal in the Great Lakes basin that is covered under an interim approval under the pre-compact implementation statute, the act directs DNR to determine the withdrawal amount for the withdrawal. The procedure for DNR to determine a withdrawal amount under this provision is comparable to the procedure used by the department to determine withdrawal amounts for existing withdrawals subject to automatic coverage under a general permit or an automatic individual permit under the pre-compact implementation statute. The act specifies that for purposes of water withdrawal regulations under the post-compact implementation statute, a withdrawal amount determined under these provisions is considered to be the withdrawal amount for the withdrawal as of the compact's effective date, i.e., the baseline for the withdrawal.

The act also directs DNR to automatically issue a notice of coverage under a general permit to a person who makes a withdrawal that is covered by an interim approval under the pre-compact implementation statute if the withdrawal averages 100,000 GPD or more in any 30-day period but is less than 1,000,000 GPD for any 30 consecutive days. This notice must include the withdrawal amount determined under the above procedures. Similarly, DNR must automatically issue an individual permit to a person who makes a withdrawal that is covered by an interim approval under the pre-compact implementation statute if the withdrawal equals at least 1,000,000 GPD for any 30 consecutive days. In this permit, DNR must specify the withdrawal amount determined under the above procedures.

Exceedances

The act specifies that it is not a violation of the water withdrawal provisions in the post-compact implementation statute to withdraw an amount of water that exceeds that withdrawal amount specified in an individual permit or the database of withdrawal amounts for withdrawals covered by a general permit, unless the amount by which the withdrawal exceeds

the withdrawal amount would result in the application of the state or compact decision-making standard.

STATEWIDE WATER CONSERVATION AND EFFICIENCY

The requirements for a statewide water conservation and efficiency program and related program elements specified in the pre-compact implementation statute continue to apply after the compact takes effect. The act also requires DNR to specify water conservation and efficiency goals and objectives for the waters of the Great Lakes basin in the state that are consistent with the goals in the compact and the objectives specified by the council. Within two years after the compact's effective date, DNR must implement a water conservation and efficiency program for all users of waters of the Great Lakes basin that is designed to achieve those goals and objectives.

PUBLIC PARTICIPATION

The act includes procedures that facilitate public participation in the review of proposals for diversions, proposals for withdrawals for which individual permits are required if the state or compact decision-making standard applies to the withdrawal, proposed general permits, and proposed water supply plans. The act also requires consultation with a federally recognized American Indian tribe concerning a proposal that may affect the tribe for which council approval or regional review is required.

INFORMATION, REPORTS, AND ASSESSMENTS

The act directs DNR to develop and maintain a water resources inventory of the waters of the state no later than June 1, 2014 or five years after the compact's effective date, whichever is later. Beginning within five years after the compact's effective date, DNR must annually report to the council the information from this inventory regarding withdrawals that average 100,000 GPD or more over a 30-day period, including consumptive uses, in the Great Lakes basin and any diversions, as well as the amounts of withdrawals, water losses from consumptive uses, and diversions in the Great Lakes basin reported to DNR under the reporting requirements described above.

Beginning no later than one year after the compact's effective date and every five years thereafter, DNR must submit a report to the council and the regional body describing the implementation of the water management programs and regulations under the post-compact implementation statute, including the manner in which withdrawals from the Great Lakes basin are managed, how criteria for permits and approvals are applied, and how conservation and efficiency measures are implemented. The DNR must also annually assess the effectiveness of the state water conservation and efficiency program, described above, in meeting the Great Lakes basin water conservation and efficiency goals established by the compact. In each assessment, DNR must consider whether there is a need to adjust the Great Lakes basin water conservation and efficiency program in response to new demands for water from the basin, and the potential impacts of the cumulative effects of diversions, withdrawals, and consumptive uses, and of climate. The DNR must provide this assessment to the council and regional body and make it available to the public.

No later than five years after the compact's effective date, DNR must submit to the Legislature a report analyzing the impact of the threshold for an individual water use permit (at least 1,000,000 GPD for any 30 consecutive days) and providing any recommendations to change the threshold.

Beginning no later than June 11, 2016, or five years after the last report published under the pre-compact implementation statute, whichever is earlier, and every five years thereafter, DNR must continue to publish the water use report first required under the pre-compact implementation statute.

PENALTIES

The act creates the same penalty provisions in the post-compact implementation statute as those in the pre-compact implementation statute.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by ***John Stolzenberg, Chief of Research Services, and Mark C. Patrosky, Senior Staff Attorney, on July 21, 2008, revised July 31, 2008.***

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APPENDIX

**SUMMARY OF WATER USE PERMITTING REQUIREMENTS FOR
WITHDRAWALS IN THE GREAT LAKES BASIN**

The tables in this Appendix summarize the water use permitting requirements for existing, new or increased withdrawals in the Great Lakes basin. These requirements were described in the text in the preceding descriptions of the pre- and post-compact state regulations created by the act. The first table summarizes the requirements for withdrawals that provide water for purposes other than a public water supply, such as agricultural or industrial purposes. The second table summarizes these requirements for providing water to a public water supply system serving a population of 10,000 or less. The third table summarizes these requirements for providing water to a public water supply system serving a population of more than 10,000. These tables are organized into categories based on whether the withdrawal is an existing withdrawal or a new or increased withdrawal, and, if new or increased, its starting date.

The column labeled the “Amount of Existing or New or Increased Withdrawal” in these tables gives the amount of the withdrawal or the increase in a withdrawal in gallons per day (GPD) and is based on the determinations in the pre- and post-compact implementation statutes on aggregating multiple sources that supply a single water supply system and cumulative increases in withdrawals over a 10-year period. In the second and third tables, the column on “Coverage by Water Supply Plan” addresses whether the public water supply system withdrawing the water is required to have as a condition of withdrawing the water a water supply plan or is voluntarily covered by a plan.⁴ The columns “Standards for Permit Issuance” and “Type of Water Use Permit Required” are self-explanatory.

These tables do not address regional reviews and consultations for large withdrawals in the Great Lakes Basin called for in the compact. In addition, the tables do not address interim approvals or any scenario involving the compact taking effect before July 1, 2015.

The water regulation approvals, state decision-making standard, and compact decision-making standard listed in these tables are described above under the pre- and post-compact state regulations.

⁴ These water supply plans are described in IM-2008-06.

**Water Use Permitting Requirements for Withdrawals in the Great Lakes Basin
for Providing Water Other Than to a Public Water Supply System**

Amount of Existing or New or Increased Withdrawal⁵	Standards for Permit Issuance⁶	Type of Water Use Permit Required⁷
Existing, New, or Increased Small Withdrawal Irrespective of Starting Date		
Less than 100,000 GPD, 30-day average.	Not applicable.	No permit required.
Existing Withdrawal (Reported to DNR Before June 1, 2015)		
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	None.	Automatic coverage under a general permit.
Over 1,000,000 GPD, 30 consecutive days.	None.	Automatic individual permit.
New or Increased Withdrawal Starting Between June 1, 2015 and Compact's Effective Date		
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	Issuance of applicable water regulation approvals.	Coverage under a general permit.
Over 1,000,000 GPD, 30 consecutive days.	Issuance of applicable water regulation approvals.	Individual permit.

⁵ "GPD" means gallons per day.

⁶ Water regulation approvals are any approvals required for the withdrawal under s. 30.12, 30.18, or 281.34, Stats., or s. 281.17, 2001, stats.

⁷ The DNR may waive the requirements to obtain coverage under a general permit for a person making a withdrawal under s. 30.18 (2) (a), Stats. (to maintain the flow or level in a navigable stream or lake or for the purpose of agriculture or irrigation).

Amount of Existing or New or Increased Withdrawal⁵	Standards for Permit Issuance⁶	Type of Water Use Permit Required⁷
New or Increased Withdrawal Starting After Compact's Effective Date		
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	Issuance of applicable water regulation approvals.	Coverage under a general permit.
Between 1,000,000 and 10,000,000 GPD, 30 consecutive days.	State decision-making standard and issuance of applicable water regulation approvals.	Individual permit.
Over 10,000,000 GPD, 30 consecutive days, and water loss less than 5,000,000 GPD, 90-day average.	State decision-making standard and issuance of applicable water regulation approvals.	Individual permit.
Over 10,000,000 GPD, 30 consecutive days, and water loss at least 5,000,000 GPD, 90-day average.	Compact decision-making standard and issuance of applicable water regulation approvals.	Individual permit.

**Water Use Permitting Requirements for Withdrawals in the Great Lakes Basin
for Providing Water to a Public Water Supply System
Serving a Population of 10,000 or Less**

Amount of Existing or New or Increased Withdrawal⁸	Coverage by Water Supply Plan	Standards for Permit Issuance⁹	Type of Water Use Permit Required
Existing, New, or Increased Small Withdrawal Irrespective of the Starting Date			
Less than 100,000 GPD, 30-day average.	Not relevant.	Not applicable.	No permit required.
Existing Withdrawal (Reported to DNR before June 1, 2015)			
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	Not relevant.	None.	Automatic coverage under a general permit.
Over 1,000,000 GPD 30 consecutive days.	Not relevant.	None.	Automatic individual permit.
New or Increased Moderate Withdrawal Starting After June 1, 2015			
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	System covered by a voluntary plan approved by DNR.	Consistency with the plan.	Coverage under a general permit.
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	System not covered by a plan.	Issuance of applicable water regulation approvals.	Coverage under a general permit.

⁸ “GPD” means gallons per day. In practice, public water supply systems addressed in this table do not withdraw more than 10,000,000 GPD, so this table does not address that scenario.

⁹ Water regulation approvals are any approvals required for the withdrawal under s. 30.12, 30.18, or 281.34, Stats., or s. 281.17, 2001, Stats.

Amount of Existing or New or Increased Withdrawal⁸	Coverage by Water Supply Plan	Standards for Permit Issuance⁹	Type of Water Use Permit Required
New or Increased Large Withdrawal Starting Between June 1, 2015 and Compact's Effective Date			
Over 1,000,000 GPD, 30 consecutive days.	System covered by a voluntary plan approved by DNR.	Consistency with the plan.	Individual permit.
Over 1,000,000 GPD, 30 consecutive days.	System not covered by a plan.	Issuance of applicable water regulation approvals.	Individual permit.
New or Increased Large Withdrawal Starting After Compact's Effective Date			
Between 1,000,000 and 10,000,000 GPD, 30 consecutive days.	System covered by a voluntary plan approved by DNR.	State decision-making standard and consistency with plan.	Individual permit, issued as part of plan approval.
Between 1,000,000 and 10,000,000 GPD, 30 consecutive days.	System not covered by a plan.	State decision-making standard and issuance of applicable water regulation approvals.	Individual permit.

**Water Use Permitting Requirements for Withdrawals in the Great Lakes Basin
for Providing Water to a Public Water Supply System
Serving a Population of More Than 10,000**

Amount of Existing or New or Increased Withdrawal¹⁰	Coverage by Water Supply Plan	Standards for Permit Issuance¹¹	Type of Water Use Permit Required
New or Increased Small Withdrawal Irrespective of the Starting Date			
Less than 100,000 GPD, 30-day average.	Not relevant.	Not applicable.	No permit required.
Existing Withdrawal (Reported to DNR Before June 1, 2015)			
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	Not relevant.	None.	Automatic coverage under a general permit.
Over 1,000,000 GPD 30 consecutive days.	Not relevant.	None.	Automatic individual permit.
New or Increased Withdrawal Starting Between June 1, 2015 and Compact's Effective Date or December 31, 2025, Whichever is Earlier			
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	System covered by a voluntary plan approved by DNR.	Consistency with the plan.	Coverage under a general permit.
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	System not covered by a plan.	Issuance of applicable water regulation approvals.	Coverage under a general permit.
Over 1,000,000 GPD, 30 consecutive days.	System covered by a voluntary plan approved by DNR.	Consistency with the plan.	Individual permit.
Over 1,000,000 GPD, 30 consecutive days.	System not covered by a plan.	Issuance of applicable water regulation approvals.	Individual permit.

¹⁰ "GPD" means gallons per day. In practice, public water supplies addressed in this table that existed on the act's effective date do not withdraw less than 100,000 GPD, so this table does not address that scenario.

¹¹ Water regulation approvals are any approvals required for the withdrawal under s. 30.12, 30.18, or 281.34, Stats., or s. 281.17, 2001, Stats.

Amount of Existing or New or Increased Withdrawal¹⁰	Coverage by Water Supply Plan	Standards for Permit Issuance¹¹	Type of Water Use Permit Required
New or Increased Large Withdrawal Starting After December 31, 2025 and Before Compact's Effective Date (if Occurs)			
Over 1,000,000 GPD, 30 consecutive days.	System covered by a mandatory plan approved by DNR.	Consistency with plan.	Individual permit.
New or Increased Moderate Withdrawal Starting After Compact's Effective Date or December 31, 2025, Whichever is Earlier			
100,000 GPD, 30-day average, to 1,000,000 GPD, 30 consecutive days.	System covered by a mandatory plan approved by DNR.	Consistency with the plan.	Coverage under a general permit.
New or Increased Large Withdrawal Starting After Compact's Effective Date			
Between 1,000,000 and 10,000,000 GPD, 30 consecutive days.	System covered by a mandatory plan approved by DNR.	State decision-making standard and consistency with plan.	Individual permit, issued as part of plan approval.
Over 10,000,000 GPD, 30 consecutive days, and water loss less than 5,000,000 GPD, 90-day average.	System covered by a mandatory plan approved by DNR.	State decision-making standard and consistency with plan.	Individual permit, issued as part of plan approval.
Over 10,000,000 GPD, 30 consecutive days, and water loss at least 5,000,000 GPD, 90-day average.	System covered by a mandatory plan approved by DNR.	Compact decision-making standard and consistency with plan.	Individual permit, issued as part of plan approval.