



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Great Lakes Compact Law (2007 Wisconsin Act 227): Water Loss, Legislative Oversight, and Other Provisions

In addition to the ratification of the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) and the creation of new state water use programs and water supply planning by 2007 Wisconsin Act 227 (the “act”), other provisions in the act provide for Wisconsin's representative on the Great Lakes-St. Lawrence River Basin Water Resources Council (the “council”), authorize legislative oversight of the representative's actions on the council and hearings on water use regulatory actions, and amend prior water use laws to conform them to the new programs created by the act. These provisions are summarized in this memorandum.

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-2008-05: *New State Water Use Regulations.*
- IM-2008-06: *Water Supply Planning.*
- IM-2008-08: *DNR Rule-Making.*

REGULATION OF WATER LOSS UNDER PRIOR STATEWIDE LAW

1985 Wisconsin Act 60 established statewide regulations that require the Department of Natural Resources (DNR) to approve a new withdrawal or an increase in the amount of an existing withdrawal that results in a water loss averaging more than 2,000,000 gallons per day (GPD) in any 30-day period. These regulations apply to a person beginning a new or increased withdrawal who is subject to the permit requirement under s. 30.18 for specified diversions from lakes and streams, high capacity well approvals under s. 281.34 or 281.17 (1), 2001 Stats., or plan approvals under s. 281.41 for water supply and wastewater treatment systems. These regulations specify that the water loss approval is incorporated into one of these other permits or approvals. For purposes of these regulations, a water loss is a loss of water from a

consumptive use or a diversion of water from the Great Lakes basin or the Upper Mississippi River basin.

2007 Wisconsin Act 227 (the “act”) continues these water loss regulations and amends them to conform with the new regulation of withdrawals, interbasin transfers, and diversions created by the act. These amendments expand the applicability of the water loss regulations to also apply to a person subject to individual water use permitting requirements in the pre- and post-compact implementation statutes. If a withdrawal is subject to an individual water use permit, the amendments also make that permit the vehicle for prescribing the terms of the water loss approval when the withdrawal is subject to one or more of the other approvals or permits provided in the act.¹

The water loss regulations specify that any person other than to whom a water loss approval has been issued and who may be adversely affected by a proposed modification of the water loss approval is entitled to a contested case hearing before the modification takes effect. The act deletes the requirement in this provision that the contested case hearing must be held before the modification takes effect.

WISCONSIN REPRESENTATIVE ON THE COUNCIL; LEGISLATIVE OVERSIGHT

The act authorizes the Governor to take such actions as are necessary for the organization and operation of the Great Lakes-St. Lawrence River Basin Water Resources Council (the “council”) and specifies that the Governor shall serve as the state’s representative on the council.² The act authorizes the Governor to designate the Secretary of Natural Resources and other individuals as his or her alternate on the council. An alternate may vote at the meeting of the council in the absence of the Governor. Any designee, other than the Secretary of Natural Resources, must be nominated by the Governor, and with the advice and consent of the Senate appointed, to serve at the pleasure of the Governor. The Governor may also appoint an advisor to attend meetings of the council who has knowledge of and experience with Great Lakes management issues; however, an advisor may not vote at meetings of the council.

The act directs the Governor and his or her alternates on the council to submit any proposed council regulation that modifies the standard of review and decision or that creates or amends a council rule or regulation, other than a rule or regulation that deals solely with the internal management of the council or its property, to the Joint Committee on Legislative Organization for approval in a 60-day passive review process. Under this process, if the cochairpersons of this committee schedule a meeting and the committee takes action on the report from the Governor or his or her alternate on the regulation or rule within 60 days after the submission of the report, the Governor or his or her alternate may only vote on the proposed rule or regulation in accordance with the position expressed by majority vote of the committee.

¹ The pre-and post-compact implementation statutes, including the individual and general water use permits and approvals for interbasin transfers and diversions required in these statutes, are described in IM-2008-05.

² The composition, powers, and duties of the council are set forth in the compact and summarized in IM-2008-04.

HEARINGS ON CERTAIN WATER USE REGULATORY ACTIONS

The act establishes that any permit or approval, part of a permit or approval, order, decision, or determination by DNR under the pre- or post-compact implementation statutes or the water loss regulatory statute shall become effective unless the permit or approval holder, applicant, or other recipient seeks an administrative hearing challenging the action using the prescribed procedures. A hearing held under this procedure is a contested case. If a permit or approval holder or applicant seeks a hearing challenging part of a permit or approval, the remainder of the permit or approval becomes effective and this person may, at the person's discretion, begin the activity for which the application was submitted or for which the permit or approval was issued.

In addition, the act establishes that any person not identified in the preceding paragraph and who meets the general requirements to request a contested case hearing under the state administrative procedures law or has submitted comments in a public comment process under one of three statutes may seek review of the permit or approval, or part of a permit or approval, order, decision, or determination. These persons may not seek a hearing under this provision for DNR's determination of an initial withdrawal amount for an existing withdrawal subject to automatic notice of coverage under a general permit or an automatic individual permit. In addition, none of these hearing provisions apply if a hearing on the matter is conducted as part of a master hearing on a metallic mining permit.

HIGH CAPACITY WELL AND INFRASTRUCTURE PLAN APPROVALS; CONSISTENCY WITH WATER SUPPLY PLANS

The act amends the law governing high capacity wells, s. 281.34, Stats., to require that, if a proposed high capacity well is covered by an approved water supply plan required or authorized under the act, DNR may not approve the well unless it is consistent with that plan. Similarly, DNR must disapprove a plan for specific water supply infrastructure under s. 281.41, Stats., that does not conform with any applicable approved water supply plan.³

TERMINOLOGY RECONCILIATION

The act conforms the terminology in various water use regulations specified in previously enacted laws with the terminology in the compact and the post-compact implementation statute. In particular, these changes result in the term "diversion" being used consistently throughout the statutes to be a transfer of water from the Great Lakes basin to any other basin or between the Lake Superior and Lake Michigan basins. In water use regulations not associated with the compact or its implementation, a diversion can also refer to a transfer of water from the Upper Mississippi River basin.

³ These water supply plans are described in IM-2008-06.

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

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