

To: Representative Cory Mason, John Stolzenberg
From: Jodi Habush Sinykin, Keith Reopelle
Re: Great Lakes Compact Bill Draft
Date: September 18, 2007

9/20

2/17 *delete sub (4) on council review*
↳ *delete the legislative review.*

Barby,
you see the drafting instructions from Rep. Mason we discussed Glen

Ratification of Compact Provisions:

Pages 1 – 43 of the P3 Draft set forth the provisions ratifying the Compact and should be copied as it is other than the Leg Council's prefatory note and comments. *w/c: 0141/P3*

I. Baseline Volumes

Beginning at p. 54 of P 3 line 6 are provisions re: baseline volumes. At p. 54 lines 18 – 20, continuing on to p. 55 lines 1-3, it reads:

"3. Determinations for a withdrawal and consumptive use." The department shall determine a baseline volume for a withdrawal or consumptive use identified in subd.2. using the following procedure.

a. The department shall estimate the baseline volume for the withdrawal based on the maximum hydraulic capacity of the most restrictive component in the water supply system supplied by the withdrawal using information available to the department."

* **Drafting Instructions:** Copy P3 :Use all of the language from line 3 of page 54 to line 14 on page 55 except you can delete "b." i.e. lines 4 and 5 on page 55, and you can delete the reference to "b" on lines 6 and 13 on page 55.

II. Decision-Making Threshold

* On page 70 at line 2 replace the words "consumptive use" with "withdrawal" and at line 3, replace "2,000,000" with "500,000."

III. Return Flow Provisions.

These provisions relate to the Diversions section of the Compact [beginning at p. 60 of P 3], specifically with regard to application of the Exception Standard to Straddling Communities and Communities within Straddling Counties.

*At the top of page 68 of P 3, the language provides:

"3. All water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use."

Drafting Instructions: In addition to the above language at p. 63, the following provisions should be added:

- An applicant seeking to withdraw water from the Basin shall return the water as close to the point of the initial withdrawal from the source watershed as environmentally practicable, unless it can be shown that it is not economically feasible, not environmentally sound and not in the interest of public health to do so.
- In returning water to the source watershed an applicant must document how the physical, chemical and biological integrity of the receiving waters including the "natural flow regimes" will be protected and sustained.

In addition, certain factors need to be considered if an applicant community were proposing to meet the return flow requirements through a river or stream or surface body of water connected to the source watershed. These include:

- "Natural flows" of the receiving waters shall be established at the point of a proposed discharge based on calculations commonly used within Wisconsin or by U.S. EPA and other communities. The applicant or the DNR would establish the Q7, 10 (for low flows) and the 100 year flood (for high flows) at the point of discharge.
- The water quality goal for the receiving waters should be established as the "highest attainable biological use". (This clarification is designed to ensure that the quality of the receiving waters would not be limited to their current condition).
- The proposed return flow would constitute a "new discharge" and the new discharge would minimize adverse impacts on magnitude, frequency, timing, duration, rate of change and predictability of natural flow events and address temperature, nutrients loadings, seasonal variations and loadings in the receiving waters.
- The receiving stream or river would be monitored for potential impacts at reasonable intervals and permits issued for the new discharge would incorporate such monitoring schedules.

IV. Fixed Boundaries *- see notes*

V. Water Conservation and Efficiency.

- Copy/include here as follows: P3 p. 75 line 9 through p. 79 line 3.
- * Copy/include here as follows: P3 p. 90 line 15 through p. 92 line 24.

*see above BLM
Name on return
flow*

*3 hydro
all
draft*

VI. Bottled Water Clarification

At p. 33 of P3 lines 6 -10 the Bulk water transfer provision provides that: "Each party shall have the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the basin in any container of 5.7 gallons or less."

Drafting Instructions. Include the following:

Add sentence
The Decision-Making Standard shall apply to any proposal to withdraw water from the Basin for bottled water in containers of 5.7 gallons or less at the threshold level designated [i.e. 500,000 or 1 million gpd].

Proposals for new or increased surface water withdrawals shall identify whether the withdrawal will result in 95% or greater consumptive use and, if so, shall trigger an assessment of significant adverse environmental impact prior to approval. (note: comparable to the requirement in NR 820.32 regarding new groundwater withdrawals).

on tributary water only

*only of
from tributary
waters
(see high cap
well stat.)*

VII. Public Participation

*→ NR 203 - will check P3 draft
+ penalties*

VIII. Compact's effective date—

At p. 45 P 3 lines 3-4 Definition of Compact's effective date referenced

** hold }*
Provide that within 3 years of the effective date of this legislation all regulatory requirements of the Compact apply.

IX. Appropriations/ DNR Staffing

m
[See handout at last meeting re: 20.370 (4)(b) Water resources regulation and conservation-fees, which creates an appropriation in ch.20 BUT does not authorize the DNR to expend funds or create any position authorizations—this requires explicit statutory authorization—which we should be sure to include.*

*clean
timing*

*- 5 staff - Bolensly - Permit & plan review
- 450,000 staff - Estaffing compact
150,000 routing & approval*

Tradewell, Becky

From: Stolzenberg, John
Sent: Wednesday, November 07, 2007 9:48 AM
To: Tradewell, Becky
Subject: Rep. Mason's Great Lakes Compact Bill

Attachments: Mason instructions 11-7-07.doc

Becky,

I am still fleshing out the details of Rep. Mason's drafting instructions for his bill modifying and implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact. Rather than holding up this note for a complete list, I have attached a partial list, in no particular order, that includes expanded requirements for the water supply plans called for in proposed s. 281.344 (12).



Mason instructions
11-7-07.doc...

I'll forward additional instructions to you as I complete them to keep the drafting process moving forward.

John

John Stolzenberg
Legislative Council
266-2988

November 7, 2007

**Additional Drafting Instructions for Rep. Cory Mason's Bill
Modifying and Implementing
The Great Lakes-St. Lawrence River Basin Water Resources Compact**

(Instructions are listed by proposed subsections in s. 281.344 in WLC: 0141/P3. Page and line references are to this P3 draft.)

Definitions

- ✓ 1. Definition of "straddling community" (page 51, lines 9 to 12): Substitute that the boundary to be used is the boundary existing on December 13, 2005 rather than the compact's effective date.

Determinations concerning applicability of requirements

- ✓ 1. Consumptive use determinations (page 57, lines 1 to 14): These determinations will still be needed even though, in general, new or expanded consumptive uses will not be subject to the decision-making standard because consumptive uses will still be reported under sub. (3) (e) and large consumptive uses averaging more than 5,000,000 gallons per day in any 90-day period are subject to prior notice to other parties in Ontario and Québec under sub. (5) (d).

Registration and reporting

- ✓ 1. Reporting applicability (page 59, lines 13 to 16): Retain the 100,000 gallon per day, 30-day average, threshold for reporting, irrespectively of whether the withdrawer has an approval from DNR.

Diversions [including exception standard]

- ✓ 1. Determinations regarding whether a diversion proposal is subject to standards for a straddling community or standards for a community within a straddling county (page 61, lines 11 to

15): If a proposal applies to multiple public water systems, subject the portion of the project that is within straddling communities to straddling community standards and the portion of the project that is within communities within straddling counties to community within straddling county standards. (This is the approach taken on these determinations in WLC: 0141/P4. This draft is posted at the study committee's webpage.)

- ✓2. Determinations regarding growing straddling community (page 61, line 11): Clarify that, if a straddling community grows through annexation or other means outside of a Great Lakes basin after December 13, 2005, a diversion supplying water to this new portion of the community shall be evaluated based on the standards applicable to diversions to communities within a straddling county.
- ✓3. Additional approval criterion on return flow (after page 68, line, 2): Add to the exception standard an additional criterion that, if the return flow is via a tributary stream, that the governing body of each city, village or town through which the tributary stream flows or is adjacent to, between the discharge of the return flow to the stream and the mouth of the tributary stream into a Great Lake, has approved the use of the tributary stream for the return flow. Required DNR to notify these municipalities and receives an application for a diversion to such a return flow and of the municipalities' role in viewing the return flow. As part of this policy, also suspend the DNR's 90-day review period under sub. (12) (f) 2. (page 86, line 5) until all of these municipalities have issued their approval.
- ✓4. "Hydrologically interconnected" (page 67, line 4): Do not in add the definition of hydrologically interconnected in the note following this line.
- ✓5. Description of impacts (page 68, line 13): Substitute "significant" for "positive or negative".
- ✓6. Description of current water supply (page 65, lines 10 to 14): Delete those lines in substitute "The community does not have a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply, based on considerations of public health, economic feasibility, and direct and avoided environmental impacts."

Withdrawals and Consumptive uses

- ✓1. Withdrawals for bottled water (page 70?): Establish that a withdrawal approval is required for a withdrawal that uses the withdrawn water to produce bottled water in containers of 5.7

gallons or less which may be removed from the basin. (This provision implements Wisconsin's authority under the second sentence in s. 281.343 (4t) (j). Making this requirement explicit addresses the concern that if s. 281.343 (4t) (j) is not explicitly addressed, the lack of a provision could be interpreted to imply that the state intends to not regulate these withdrawals.)

Decision-making standard [for regulated withdrawals and consumptive uses]

Exemptions [from regulations]

Water conservation and efficiency

Integrated review

Water supply plans

1. ✓ Applicability (page 80, line 4): Make the water supply planning provisions in sub. (10) mandatory rather than discretionary for any public water supply system applying for a diversion under sub. (4) or a withdrawal under subs. (5) and (6). Also add to the criteria for approval for diversions or withdrawals by these entities that the proposed diversion or withdrawal project must be consistent with a current water supply plan prepared under sub. (10). A current plan is one initially prepared or updated within the previous five years.
- ✓ 2. Content (page 80, line 9 to page 81, line 1): Add to the plan content that a plan must include (a) a demonstration that the recommended water supply system will fully and effectively maximize the use of existing water supply and wastewater infrastructure; (b) identification of how the implementation of the plan will be managed and enforced and commitment to using this management and enforcement procedures; and (c) an analysis of how the proposed water supply system supports and is consistent with applicable smart growth plans prepared under s. 66.1001, and with current areawide water quality management plans (per ch. NR 121) and sewer service area plans, also referred to as nonindustrial wastewater treatment and

initial basin transfer

collection system plans (per, as best as I can tell, ss. NR 110.09 and NR 121.05 (g)) [The later 2 plans are required under 33 USC s. 1288 and s. 283.83, Stats.]

3. Plan approval (after page 81, line 1): Add that the department must find that a water supply plan meets all of the following to approve the plan: (a) the plan is consistent with the applicable smart growth plans and the applicable areawide water quality management plans and sewer service area plans that were approved or revised within the previous 5 years (this 5 year update requirement is in ss. NR 121.07 (2) (intro) and 121.08 (2) (intro)); (b) the plan provides for the most cost-effective water supply system; (c) the plan provides for the maximum use of existing water supply and wastewater infrastructure; and (d) the plan will result in a water supply system that provides water for new residential development that has a density of at least 10 housing units per acre.
4. Plan updating (page 81, after line 1): Required water supply plans to be updated at least every five years.

Water supply permits

Tribal consultation and public participation

Information, reports, and assessments

Dispute resolution and penalties

Rule-making; Fees

Prepared by John Stolzenberg, Legislative Council

Tradewell, Becky

From: Stolzenberg, John
Sent: Thursday, November 15, 2007 12:33 PM
To: Tradewell, Becky
Subject: Mason Great Lakes Compact draft - additional instructions

Becky,

Here are the additional drafting instructions for Rep. Mason's bill modifying and implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact.

All of these items were on my November 13 list of remaining items. Other items on that list that we do not need to address now are items I. A. 1, 3, 4, and 5 and II. D. In addition, I'd suggest we hold on addressing effective date(s) and the changing definition of "diversion," items II A. and E. on the list, pending further input from Rep. Mason after he has reviewed a P draft. As we discussed, I'm addressing items on the list under IV. as I review the P2 draft, and we agreed to hold on items under V. for a future version of the draft.

Let me know if you have any questions on these instructions.

Also, after you have had a chance to review these instructions, could you provide an estimate of when you feel you may be able to complete your drafting of them? I'm continuing to get ETA questions.

John

ADDITIONAL INSTRUCTIONS

(Page and line references are to LRB-3207/P2.)

Funding and Positions

1. Temporary funding and positions for initial DNR rulemaking [these items address items I A. 2. and III. C. in the November 13 list of remaining items]:
 - a. Create a GPR appropriation to DNR from the s. 20.370 (4) (ma) drinking water and groundwater sub account of \$33,600 in FY 2007-08 and \$134,400 in FY 2008-09 to fund 2 project positions in DNR. Terminate these positions 2 years after the bill's effective date. These positions are to be used to write the rules required under the bill, including rules establishing the fees authorized under s. 281.344 (12).
 - b. Zero out the PR appropriations on page 4, line 11.

Definitions

1. Definition of "total resources costs" (page 51, lines 16): Insert "direct and avoided" before "environmental". [This item addresses item II B. in the November 13 list of remaining items.]

Diversions [including exception standard]

1. Return flow [These items address item III A. in the November 13 list of remaining items]:
 - a. Add to the required contents of an application for a diversion subject to the exception standard (add to sub. (4) (b) on page 57):

- i. The application shall document how the physical, chemical, and biological integrity of the water receiving the return flow (where the return flow is water returned under sub. (4) (f) 3.), based on the state of the receiving water prior to the introduction of the return flow, will be protected and sustained. [The phrase "physical, chemical, and biological integrity" of water is referenced in a number of DNR rules, including s. NR 110.05 (1).]
- b. Add to the exception standard requirement on return flow, sub. (4) (f) 3. on page 63, lines 9 to 11:
 - i. The water shall be returned to as close to the point of the initial withdrawal from the source watershed as practicable, unless the applicant demonstrates that it is not economically feasible, environmentally sound, or in the interest of public health to do so.
- c. Add to the DNR's review and approval of a return flow discharge to a stream (including a lake) that is a tributary to one of the Great Lakes [should these provisions be added to s. 281.344 (4) or ch. 283? Chapter 283 appears more appropriate to me, especially because the holder of the discharge permit may be a different person than the holder of the diversion approval; hypothetical example - Waukesha pumps its return flow to a POTW that is on a tributary stream in the Lake Michigan basin and is operated by another municipality or MMSD]:
 - i. The DNR shall treat the discharge as a new discharge for purposes of permitting or approving the discharge, irrespective of whether the return flow will be combined with another discharge previously authorized under s. 283.31.
 - ii. Notwithstanding the DNR's classification of the receiving water immediately prior to the discharge of the return flow, the DNR shall establish effluent limits for the discharge:
 - (a.) Based on the highest attainable biological use of the receiving water [see s. NR 210.05 for a list of water classifications for setting effluent limits for sewage treatment systems]; and
 - (b.) To address the levels and seasonal variations in temperature and nutrient and other pollutant loadings in the receiving water in order to minimize the adverse impacts of the return flow on the physical, chemical, and biological integrity of the receiving water. [This point is intended to elaborate on item 1. a. i. for the affected discharges.]
 - iii. As part of the application addressing item 1. a. i., the applicant must establish the baseline amount of flow of the receiving water at the point of discharge immediately prior to the discharge, considering both low flow conditions and the 100 year storm event.
 - iv. In addition to any other required monitoring, the DNR shall include as a permit or approval condition that the permit or approval holder monitor the receiving water for potential impacts of the return flow and a schedule for this monitoring.
- 2. Cost-effectiveness requirement (add to exception standard on page 63, line 3, to page 64, line 10): The diversion provides the most cost-effective water supply, based on the supply resulting in the minimum total resources costs over the planning period specified by the DNR, as determined in a cost-effective analysis and an environmental assessment. [This item addresses item III B. in the November 13 list of remaining items.]

Water supply plans

1. Procedures and requirements (page 75, lines 14 to 18): Add that the procedures must provide for public review and comment on a plan. [This item and the next item address item II C. in the November 13 list of remaining items.]
2. Plan approval (either in conditions on DNR approval, page 76, line 17, to page 77, line 12, or the procedures and requirements, page 75, lines 14 to 18): Add that the governing bodies of all of the municipalities affected by the plan (i.e., municipalities whose public water supplies are addressed in the plan) must have approved the plan as a condition of DNR approving the plan.

The terms “measures”, “new or increased diversion”, and “originating party” do not need to be defined in s. 281.344.

“Proposal” is not included because of the way the word is used in s. 281.344.

“Province” is not needed in s. 281.344.

“Standard of review and decision” is not needed in s. 281.344; see s. 14.95.

“State” is not needed in s. 281.344.

“Water”, as defined in s. 281.343 (1e) (r), is not included in s. 281.344 because the word is used also to refer to water that is not in the basin.

- 1 (c) “Basin” means the watershed of the Great Lakes and the St. Lawrence River
2 upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

NOTE: This provision is identical to s. 281.343 (1e) (c) except that it does not include “Great Lakes–St. Lawrence River Basin” as an alternate term being defined, as it is contrary to Wisconsin drafting practices to define 2 terms to mean the same thing.

- 3 (cm) “Basin ecosystem” means the interacting components of air, land, water, and
4 living organisms, including humans, within the basin.

NOTE: This provision clarifies s. 281.343 (1e) (cm) and is substantively identical to the compact’s provision.

- 5 (d) “Community within a straddling county” means any city, village, town, or the
6 equivalent thereof, that is not a straddling community, that is located outside the basin, and
7 for which a majority of the amount of water distributed or provided in it by public and other
8 water supply systems is distributed or provided within a county that lies partly within the
9 basin.

NOTE: This provision interprets s. 281.343 (1e) (d). The reference to “the equivalent thereof” includes in this definition other entities that provide a public water supply, such as a town sanitary district.

COMMENT: This definition was amended based on drafting instructions provided at the September 4, 2007 committee meeting.

1 (jm) "intra-basin transfer" means the transfer of water from the watershed of one of the
2 Great Lakes into the watershed of another of the Great Lakes.

NOTE: This provision is substantively identical to s. 281.343 (1e) (n).

3 (m) "Local governmental unit" means a city, village, town, town sanitary district, water
4 utility district, municipal water district, or a public inland lake protection and rehabilitation
5 district that has town sanitary district powers under s. 33.22 (3).

NOTE: This provision adds a new definition for purposes of
implementing the compact under s. 281.344.

COMMENT: This definition was added as part of the interpretation of
drafting instructions provided at the September 4, 2007 committee
meeting. The item is used in s. 281.344 (4) (bg).

6 (n) "Party" means a state that is a party to the compact.

NOTE: This provision is substantively identical to s. 281.343 (1e) (jm).

7 (nm) Notwithstanding s. 281.01 (9), "person" means an individual or other entity,
8 including a government or a nongovernmental organization, including any scientific,
9 professional, business, nonprofit, or public interest organization or association that is neither
10 affiliated with, nor under the direction of a government.

NOTE: This provision implements s. 281.343 (1e) (nm) and is
substantively identical to the compact's provision.

11 (o) "Product" means something produced by human or mechanical effort or through
12 agricultural processes and used in manufacturing, commercial, or other processes or intended
13 for intermediate or ultimate consumers, subject to all of the following:

- 14 1. Water used as part of the packaging of a product is part of the product.
- 15 2. Other than water used as part of the packaging of a product, water that is used
16 primarily to transport materials in or out of the basin is not a product or part of a product.
- 17 3. Except as provided in subd. 1., water that is transferred as part of a public or private
18 supply is not a product or part of a product.

1 (bg) *Determinations*. 1. For purposes of determining whether a proposal under par. (b)
2 is subject to par. (c) or (e), the department shall use the following standards:

3 a. If the proposal provides water for a public water supply for a single local
4 governmental unit, the proposal shall be subject to par. (c) if the local governmental unit is a
5 straddling community and to par. (e) if the local governmental unit is a community within a
6 straddling county.

7 b. If the proposal provides water for public water supplies for multiple local
8 governmental units, the portion of the proposal that provides public water supplies for local
9 governmental units that are straddling communities shall be subject to par. (c), and the portion
10 of the proposal that provides public water supplies for local governmental units that are
11 communities within a straddling county shall be subject to par. (e).

12 2. For purposes of determining the application of requirements in pars. (c), (e), and (f)
13 and sub. (9) under a proposal under par. (c) or (e), the department shall use, as appropriate, the
14 current or planned service area of the public water supply system or systems receiving water
15 under the proposal. The planned service area shall be the service area of the system or systems
16 at the end of any planning period authorized by the department in a facility plan approved
17 under s. 281.41 or a water supply plan approved under sub. (10).

NOTE: Paragraph (bg) implements and interprets s. 281.343 (4n).

COMMENT: Paragraph (bg) 1. was amended based on drafting instructions provided at the September 4, 2007 committee meeting.

18 (br) *Review*. The department shall determine whether an application under par. (b)
19 meets the requirements of this subsection based on the review in sub. (9).

NOTE: Paragraph (bm) implements and interprets s. 281.343 (4n).

20 (c) *Straddling communities*. The department may approve a proposal under sub. (9) to
21 begin a diversion, or to increase the amount of a diversion, to an area within a straddling