

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3207/P5dn
RCT:jld:rs

January 23, 2008

Representative Mason:

This is another preliminary version of the implementing legislation for the Great Lakes Water Resources Compact.

This draft responds to instructions dated December 27, 2007, and discussions with John Stolzenberg, of the Legislative Council, and Chuck Ledin and Shaili Pfeiffer, of the Department of Natural Resources (DNR). It does not yet implement all of the provisions included in the December 27 instructions. In particular, the draft does not fully implement the differing treatment of new and increased withdrawals by public water supply systems from other types of withdrawals (related to water supply planning), instruction 51 (related to public water supply systems and planning), or the permitting scheme based on the December 19 DNR concept paper. Consequently, the draft does not yet deal with the application of the decision-making standards as withdrawals increase over time (after the compact takes effect).

The draft implements some of the instructions dated January 10, 2008. It does not implement instruction 6 because I have not yet determined the intended meaning of the proposed language. In relation to instruction 7 from January 10, the draft deletes, rather than modifies, the language that appeared at page 60, lines 3 to 5 of the /P3, based on a later instruction conveyed by John Stolzenberg.

Instruction number 2 from the January 10 instructions required placing into separate sections of the statutes the provisions that apply before the compact takes effect (s. 281.344 in this draft) and those that apply once the compact takes effect (s. 281.346 in this draft). There was not complete guidance on what should be included in the precompact section. In reviewing proposed s. 281.344, please keep in mind that it is possible that the compact will never take effect. Therefore, that section must be drafted so that it can remain in effect indefinitely.

This version of the draft does not make any changes with respect to who would apply to DNR for approval of a withdrawal, diversion, or consumptive use.

There are a number of specific comments in notes in the draft itself.

The compact provides that the baseline for an existing withdrawal from the Great Lakes basin must be based on the capacity of the water supply system as of the effective

date of the compact or on a withdrawal approval issued by the state before the effective date of the compact. Under this draft, baselines would be based on water use permits that DNR would issue under s. 281.344 before the effective date of the compact. In this respect, the draft works logically, I think, but it may not work as a practical matter. If the compact takes effect within a few years after this bill passes, especially if it takes effect within three years after this bill passes, it will be difficult or impossible to get all of the permits issued before the compact takes effect. This draft does not provide for the eventuality of permits not being issued before the compact takes effect. Please let me know if you would like a more detailed discussion of this issue.

I am spending much time and effort on this important proposal, as is John Stolzenberg. As the late Rupert Theobald, long-time Chief of the Legislative Reference Bureau, once put it, “I am dancing as fast as I can.” However, I feel obligated to communicate that there is still much work to be done, including continuing to analyze the instructions that have been provided, engaging in consultations to flesh out the instructions and to obtain answers to questions that arise from that analysis, determining how to structure and word the provisions that have not yet been drafted and how to change the provisions already in the draft to be consistent with the new provisions, and responding to new and modified drafting instructions. In addition, it remains to be determined how current law must be changed to mesh with this proposal.

Please feel free to contact me with any questions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov