

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 4, 2008

Representative Mason:

This is another preliminary version of the implementing legislation for the Great Lakes Water Resources Compact. Again, there are some notes in the draft concerning specific provisions.

Changes in this version

The largest addition to the draft is language relating to postcompact water supply permitting for withdrawals by sources other than public water systems covered by water supply plans. This language appears in proposed s. 281.346 (4m), (4s), and (5). The consumptive use decision-making standard is added and there are refinements to various parts of the /P5 version based on discussions with Chuck Ledin, Judy Ohm, and Lee Boushon, of DNR, and John Stolzenberg. This version also responds to decisions made at the meeting of January 24, although not all of the issues raised at that meeting have been resolved.

Remaining matters

The main provisions that still must be added to the draft relate to the precompact regulation of interbasin transfers, as well as water supply planning and the related differences in the regulation of public water supply systems from others who withdraw water. The provisions relating to regulation of consumptive uses also must be completed, as well as the needed changes to current law.

Water supply planning and approval of diversions

Under the DNR proposal related to water supply planning for public water systems, the approval of a water supply plan would constitute the approval of all new and increased withdrawals and of any new or increased diversions proposed to take place during the 20-year term of the plan. I feel that some issues related to this approach should be raised before the drafting proceeds much further.

As I understand the DNR proposal, if a water supply plan being reviewed by DNR after the compact takes effect included a proposed diversion for which Great Lakes council approval is required (most likely a diversion to a community in a straddling county) DNR would conduct the required technical review, present the proposal for the diversion for regional review, and ask the council for its approval, all before DNR

approved the water supply plan and as many as 20 years before the diversion would begin. I want to be sure that you and the other legislators with whom you are working are comfortable with this.

It seems to me that upon being asked to vote on a diversion up to 20 years in advance another state's governor might vote to disapprove on the grounds that he or she could not conclude that the diversion would satisfy the exception standard, and the other applicable requirements, so far in advance. Someone also might argue that the whole approach is not consistent with the compact. I think that there is some support in the compact for those positions.

The compact contemplates improvements over time in the understanding of the impacts of withdrawals, diversions, and consumptive uses. It provides for evaluating proposed diversions in the context of other existing and potential diversions and withdrawals. The compact also indicates that review of proposed diversions will recognize uncertainties with respect to future demands that may be placed on basin water, future changes in environmental conditions, and the reliability of existing data. To approve a diversion, one must conclude that the diversion would not have significant individual or cumulative adverse impacts. It might be argued that an evaluation of cumulative impacts cannot be made so far in advance. It might also be argued, for example, that it is not possible to make some of the other, specific determinations required by the compact years in advance, such as what conservation measures are economically feasible for the applicant or what other water supplies are reasonable. In evaluating this approach, it might be useful to consider whether a Wisconsin governor might be comfortable with another state taking this approach.

The DNR proposal would also allow a person operating a public water supply to adopt a water supply plan before the compact takes effect. We do not know when the compact will take effect. It is my opinion that, if a plan approved before the compact takes effect provides for a new interbasin transfer or an increase in an existing interbasin transfer but the compact happens to take effect before the transfer or increase in the transfer is begun, approval by the Great Lakes council must be obtained before the transfer or increase in the transfer (diversion) may be begun. In other words, in this situation, it is not consistent with the compact to have approval of the plan constitute approval of the diversion. I have conveyed this opinion to DNR staff.

Precompact water supply planning and approval of withdrawals

As I understand DNR's proposal, before the compact's effective date, in determining whether to approve a water supply plan that contained a large new withdrawal or a large increase in a withdrawal, DNR would not apply the state decision-making standard or the compact decision-making standard. Again, we do not know when the compact will take effect, but it is possible that such a new withdrawal or increase in a withdrawal would begin after the compact's effective date without either decision-making standard applying. After the compact takes effect, a large withdrawal not covered by a plan approved before the compact takes effect would be subject to a decision-making standard while another withdrawal of the same size and starting at the same time, but covered by a precompact water supply plan, would not be subject to a decision-making standard.

Please let me know if you have any questions or would like additional information related to the draft or the issues in this note.

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