

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3207/P3ins  
RCT:.....

*that is not definitional and*  
**Insert 51-7**

*not*  
\*\*\*NOTE: The compact definition of "source watershed" has some additional language that is inconsistent with the language that precedes it. The substantive concern with which that language is intended to deal, as expressed by a staff person from the Council of Great Lakes Governors, is covered by the return flow provisions in this draft. ✓

**Insert 52-11**

*assumes*  
\*\*\*NOTE: I used "transfer" rather than "diversion" in this provision because by definition a diversion is a transfer out of the basin (or out of one Great Lakes watershed into another). The surface water divide is used to tell whether one is dealing with a diversion or not. If one uses "diversion" in the text of this paragraph, it means that there is a transfer out of the basin, but in this paragraph one is trying to tell whether there is a transfer out of the basin. ✓

**Insert 52-22**

\*\*\*NOTE: The compact uses the date of application for the date from which one counts back 10 years, but the problem is that you need to know the date on which you begin counting back in order to decide whether you have to apply. If you do not apply, there is no date of application to count back from. Alternatives to the date specified here could be chosen.

**Insert 53-17**

\*\*\*NOTE: The compact provides states with two ways of determining baselines for existing withdrawals and diversions. One is to use the capacity of existing systems, based on the most restrictive capacity information. The other is to use amounts authorized to be withdrawn in approvals issued by the state before the compact's effective date. As drafted, this version provides for a baseline based on capacity determination. It is consistent with the compact, unless subd. 3.c. is interpreted to allow too much variance from the most restrictive capacity of the system. \*

This state does not issue approvals for withdrawals that include a limit on the amount of water that may be withdrawn. The Legislative Council Special Committee had begun to incorporate the approval alternative for establishing baselines by requiring DNR to issue water supply permits that would include a limit on the amount that could be withdrawn, but the concept was not fully developed in the WLC draft. In order for an approval approach to work, DNR would have to get all of the water supply permits issued before the compact takes effect. Please let me know if you are interested in pursuing the approval alternative for determining baselines.

**Insert 53-20**

4m. The department shall specify a baseline water loss for a withdrawal or diversion for which it specifies a baseline under subd. 3. or 4. if the department determines that the water loss from the withdrawal or diversion exceeds or could eventually exceed 5,000,000 gallons per day over any 90-day period. The

department shall determine the percentage of the withdrawal or diversion that is consumptively used and shall specify the baseline water loss equal to that percentage of the amount specified for the withdrawal or diversion under subd. 3. or 4.

\*\*\*\*NOTE: It will be necessary to have a baseline water loss for some withdrawals and diversions that involve consumptive uses, because the compact provides different standards depending on whether the amount of water loss increases by more than 5,000,000 gallons per day. This is a first attempt at drafting a requirement.

**Insert 57-20**

4s. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide documentation of how the physical, chemical, and biological integrity of the receiving water under par. (f) 3. will be protected and sustained, considering the state of the receiving water before the proposal is implemented. If the receiving water is a surface water body that is tributary to one of the Great Lakes, the person shall include a description of the flow of the receiving water before the proposal is implemented, considering both low flow conditions and the heaviest flow that would be caused by a precipitation event that statistically has a 1-percent chance of occurring in any year.

**Insert 60-13**

10ff and, if the water will be used for public water supply purposes, the proposal is consistent with a water supply plan under sub. (10) that was initially prepared or was updated within 5 years before the application for the proposal is submitted to the department.

**Insert 61-2**

c. If the water will be used for public water supply purposes, the proposal is consistent with a water supply plan under sub. (10) that was initially prepared or



was updated within 5<sup>✓</sup> years before the application for the proposal is submitted to the department.✓

**Insert 61-12**

c. If the water will be used for public water supply purposes, the proposal is consistent with a water supply plan under sub. (10)<sup>✓</sup> that was initially prepared or was updated within 5<sup>✓</sup> years before the application for the proposal is submitted to the department.✓

**Insert 63-2**

\*\*\*\*NOTE: The special committee's /P3 draft also authorizes DNR to consider "information regarding restoration of hydrologic conditions and function of the source watershed" (page 67, lines 2-4). I do not see anything like that in the compact. Please let me know if you want to discuss adding a similar provision.

**Insert 63-11**

3m.<sup>✓</sup> The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, unless the applicant demonstrates that returning the water at that place is one of the following:

- a. Not economically feasible.✓
- b. Not environmentally sound.✓
- c. Not in the interest of public health.✓

**Insert 65-8**

*not* , including a withdrawal for the purpose of bottling water in containers of 5.7 gallons or less, ✓ (NO \$)

**Insert 71-24**

\*\*\*\*NOTE: The bases for amending or adding measures are time limited. A note in the special committee /P3 draft raises what seems like a good question: whether an assessment of the water conservation and efficiency program (see sub. (11) (d))<sup>✓</sup> should be an additional basis for amending or adding measures.

**Insert 72-4**



\*\*\*\*NOTE: I modified this some from the special committee version after discussing the provision with John Stolzenberg. The compact requires "appropriate consultations." ✓

**Insert 75-2**

3. From the day that the department receives a request under sub. (5) (e) to the day that the department receives the regional declaration of finding. ✓

**Insert 75-15**

1. Public review and comment on a proposed plan. ✓

**Insert 75-16**

not by the department ✓ and the governing body of each city, village, and town whose public water supply is addressed by the plan ✓

**Insert 77-12**

(e) A person applying for approval of a diversion under sub. (4) or a withdrawal under sub. (5) may use elements of an approved plan under this subsection to show compliance with requirements under subs. (4) to (6) to which the plan is relevant. ✓

**Insert 80-19**

\*\*\*\*NOTE: I still need to consider how to deal with proposed sub. (14) (a) 2. from the special committee's /P3 draft (page 89, lines 4 to 5). I think that proposed sub. (14) (a) 1. is not necessary because of current s. 227.01 (9). ✓

**Insert 81-24**

# (A) PROJECT POSITIONS. ✓ The authorized FTE positions for the department of natural resources are increased by 2.0 GPR ✓ project positions for a 2-year period beginning on the effective date of this subsection, ✓ to be funded from the appropriation under section 20.370 (4) (ma) of the statutes, for the purpose of promulgating rules required under this act.

**SECTION #. Fiscal changes.**

(1) PROJECT POSITIONS. ✓ In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (4) ✓



(ma) of the statutes, as affected by the acts of 2007, the dollar amount is increased by \$33,600 for fiscal year 2007-08 and the dollar amount is decreased by \$134,400 for fiscal year 2008-09 to provide funding for the project positions authorized under this act.

(end ins 8724)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3207/P3dn

RCT: #....

date

jld

Rep. Mason:

- ✓ This is a preliminary version of the draft implementing the Great Lakes Water Resources compact.
- ✓ The draft is based on the /P3 version of the Legislative Council Special Committee draft, WLC: 0141, plus most of the changes that John Stolzenberg has given me on your behalf. The draft does not include the part of the changes related to return flow dealing with the wastewater discharge permit under ch. 283. It is going to take some time to determine how to properly structure and word those provisions. It also does not include a change related to the definitions of "total resources costs" and "cost-effectiveness analysis" because John has not yet been able to get clarification of the intent of those changes. ✓

The draft has some other differences from WLC: 0141/P3, primarily for reasons of clarity and organization. I have discussed many of those with John Stolzenberg and described some in notes in the draft. This draft does not include the provision titled "Integrated review" from the special committee /P3 draft. I understand that John Stolzenberg discussed that with you. Please note that the water supply planning requirement for public water supply systems in this draft incorporates the requirement that a proposed public water supply system be the most cost-effective alternative.

As we discussed, this draft does not include changes in current laws needed to harmonize those laws with the compact implementation provisions.

Please review the draft carefully to identify any provisions that are inconsistent with your wishes. The special committee made a number of policy decisions that are reflected in the draft. Note, however, that proposed s. 281.343 consists of the language of the compact with mainly technical changes. Party states have very limited ability to modify the compact language.

Please contact me with any questions.

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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3207/P3dn  
RCTjld:pg

November 26, 2007

Rep. Mason:

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Please contact me with any questions.

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

December 27, 2007

**Drafting Instructions for Changes in LRB-3207/P3,  
Relating to Ratifying and Implementing  
The Great Lakes-St. Lawrence River Basin Water Resources Compact**

**Based on issues discussed and resolved at meetings on November 28 or 30 or December 3 or 21;  
associated notes from Jodi Habush Sinykin, et. al., dated December 4, and DNR staff, dated  
December 6 and December 7; DNR Concept Paper, dated December 3 and revised version of DNR  
Concept Paper, dated December 19, 2007; and comments from Becky Tradewell, LRB.**

**These sources are indicated below in brackets.**

**Great Lakes-St. Lawrence River Basin Water Resources Council**

1. Page 2, lines 11 to 14: delete the sentence on the appointment of the Secretary of Natural Resources' designee being subject to the advice and consent of the Senate. [December 3 meeting]
2. Page 2, lines 20 to 22: delete the sentence on the appointment of the Governor's advisor being subject to the advice and consent of the Senate. [December 3 meeting]

**Water Conservation Council**

3. Page 3, line 1 to page 4, line 4; page 82, lines 5 to 23; and page 83, line 23 to page 84, line 16: delete all provisions on the Water Conservation Council, including its composition, staggered terms and duties. [December 21 meeting]

**Ch. 20 appropriations**

4. Page 4, lines 5 to 15: delete these SECTIONS on ch. 20 appropriations to DNR. (Note: this deletion and related deletions of DNR rule making on fees and the nonstat on DNR position authorization and funding are intended to make the bill not subject to review by the Joint Committee on Finance or subject to the Governor's partial veto. These deletions may be revisited in light of SECTION 5; see the related question for Legislators.) [December 21 meeting]

**Definitions**

5. Page 47, line 17: after "costs" insert "and maximize environmental benefits". [November 30 and December 21 meetings]
6. Page 50, line 13: remove the direct reference to bottled water in a container of 5.7 gallons or less from the definition of "product." Revise definitions of "consumptive use," "diversion," and "divert," as appropriate. [November 30 meeting and Jodi Habush Sinykin, et. al., December 4 note and follow-up communication]
7. Page 51, line 7: note following this line reviewed; clarify the draft to indicate that if a withdrawal is from a tributary of Lake Michigan or Lake Superior, then the watershed of that tributary stream should be considered the "source watershed." (Note: this clarification is relevant to requirements in the compact relating to which watershed a withdrawal is taken from as opposed to which watershed the return flow is discharged to. See, for example, the reference to "source watershed" on page 60, lines 14 and 20 ) [November 28 and 30 meetings, and Jodi Habush Sinykin, et. al., December 4 note and follow-up communication and December 21 meeting]



8. Page 51, line 9: substitute "as of the compact's effective date" for "on December 13, 2005". (The compact's effective date is the date used in the compact's definition of "straddling community" on page 10, line 1.) [November 28 and 30 and December 3 and 21 meetings]

9. Page 51, line 16: after "and" insert "direct and indirect". [November 30 meeting]

10. Page 52, lines 1 to 3: re the definition of "water loss," use s. 281.35 definition or otherwise keep the definitions in ss. 281.35 and 281.344 the same; see also the treatment of water loss permits in and out of the Great Lakes basin below. [November 30 meeting, and Jodi Habush Sinykin, et. al., December 4 note and follow-up communication, and December 21 meeting]

### **Determinations concerning applicability of requirements**

11. Page 52, line 14: note following this line reviewed; no follow-up or change in the text of the draft required. [November 28 and 30 meetings]

12. Page 53, line 3: note following this line reviewed; text on page 52, line 19 to page 53, line 3 will be revised in light of using the DNR Concept Paper as the basis for setting baselines for withdrawals. (See next item on the treatment of page 53, line 24 to page 54, line 2.) [November 28 and 30 meetings; DNR December 6 note]

13. Page 53, line 4 to page 54, line 2: note following page 54, line 2 reviewed; December 21 meeting participants agreed to use the December 19 DNR Concept Paper as the basis for setting baselines. This involves the following changes to these pages in the draft [based also on communications with DNR staff on December 3 DNR Concept Paper]:

- a. Establish baselines for withdrawals from waters of the Great Lakes basin over the threshold of 100,000 gallons per day (gpd) (30 day average).
- b. Suggested terminology:
  - i. "Existing amount of withdrawal" is the amount of an existing withdrawal specified in the initial water use permit issued by DNR to the withdrawer.
  - ii. "Existing withdrawal" is a withdrawal in existence prior to 3 years after the bill's effective date.
  - iii. "Current amount of withdrawal" is the amount of a new withdrawal or an increase of a new or existing withdrawal beginning at least 3 or more years after the bill's effective date.
  - iv. "Baseline" is the existing amount of withdrawal or current amount of withdrawal specified in a water use permit as of the compact's effective date.
- c. Require the existing amounts of withdrawals and current amounts of withdrawals to be specified in either an individual water use permit or DNR's database for withdrawals subject to a general water use permit.
  - i. See the treatment of withdrawals and consumptive uses on page 67, line 12 to page 71, line 2 for the deadlines for the issuance of these initial permits for existing withdrawals. Since these deadlines require issuance of these permits prior to the compact's effective date, the state will be setting baselines for withdrawals based upon existing withdrawal approvals rather than the maximum hydraulic capacity – see page 34, line 24 to page 35, line 6 in the text of the compact in the P3 draft.)

- d. Add to basis for the setting of the existing amount of withdrawal by DNR (page 53, lines 12 to 15) restrictions on the withdrawal authorized in an existing permit or order under s. 30.12 or 30.18.
  - e. Add other types of relevant information that the person making a withdrawal may provide to DNR (page 53, lines 16 to 21): submitted plans to expand the water supply system capacity prior to 2 years after the bill's effective date, withdrawal information from the previous five years, information demonstrating successful water conservation programs, information on consumptive use of similar types of users, and other information considered relevant by DNR (these points are set forth in the December 19, 2007 DNR Concept Paper on page 5, lines 1 to 7).
  - f. Add an exception for specifying the existing amount of withdrawal for a public water supply system that has DNR approval under s. 281.41 to provide water from the Great Lakes basin for municipal water service and DNR approval under s. 283.31 for the associated wastewater return flows to the Great Lakes basin to be the amount of water necessary for the municipal water services based on the service territory and population and related service projections in the sewer service area portion of an areawide water quality management plan, if the areawide water quality management plan was approved by DNR by December 31, 2007. (This exception is on page 5, lines 13 to 19 in the December 19, 2007 DNR Concept Paper.)
  - g. Authorize municipalities that merge their water supply systems after their existing or current amount of withdrawals have been established to combine these amounts.
  - h. Establish that the person making the existing withdrawal is the only person authorized to provide additional information on the establishment of the withdrawal's existing amount of withdrawal.
  - i. Establish that DNR's determination of the existing amount of withdrawal is not subject to review under ch. 227, except by the person making the withdrawal.
  - j. Require a baseline for consumptive use only if a water withdrawal registrant has an existing water loss approval under s. 281.35. Set the baseline at the level in the approval. (Note: the terminology for consumptive use baselines has not yet been revised in a manner similar to the suggested terminology for withdrawal baselines, above.)
  - k. Direct DNR to specify by rule procedures for establishing baselines for diversions between the compact's effective date and one year after the compact's effective date. (This is a placeholder provision; see the related question to DNR staff.)
14. Page 54, lines 6 and 7, and 8: Delete "or diversion" as its use in these places appears to overlap with the determination of the baseline for a diversion on page 54, lines 3 to 5. [November 30 meeting]
15. Page 54, line 13: note following this line reviewed; no follow-up or change in the text of the draft required. [November 28 meeting]
16. Page 55, lines 15 to 17: delete these lines regarding the public trust doctrine. [November 30 meeting]

**Registration and reporting**

17. Page 55, line 19: change the effective date for registration of an existing withdrawal to three years after the bill's effective date or, if the withdrawal is within the Great Lakes basin, the compact's effective date, whichever is earlier. (The reference to the compact's effective date is added since registration as a prerequisite for setting the baseline for existing withdrawals.) [December 21 meeting]
18. Page 55, line 22: note following this line reviewed; leave setting of reporting deadline to DNR rule-making. [November 28 meeting]
19. Page 55, line 23: change the effective date for registration of a new withdrawal to three years after the bill's effective date or, if the withdrawal is within the Great Lakes Basin, the compact's effective date, whichever is earlier. [December 21 meeting]
20. Page 57, line 6: note following this line reviewed; delete page 57, lines 1 to 6 in light of the treatment of page 55, lines 19 and 23. [November 28 and 30 and December 21 meetings]
21. Page 57, lines 16 to 20: Substitute, in this provision on the assignment of consumptive uses to withdrawers and public water supply systems, "provides" for "sells" on line 16 and add that a consumptive use that occurs after treatment of wastewater shall be reported by the operator of the wastewater treatment system. (Per DNR staff, at least 1 wastewater treatment plant in the state sells treated water to a nearby factory for cooling water.) [DNR December 6 note and December 21 meeting]

#### **Diversions [including exception standard]**

22. Page 58, lines 1 to 6: retain this effective date for diversion approvals. [December 3 meeting, DNR December 6 note and December 21 meeting]
23. Page 59, lines 1 to 9: delete this subdivision. (Part of return flow issue. Also see the treatment of page 66, lines 3 to 5.) [December 3 meeting, DNR December 6 note and December 21 meeting.]
24. Page 59, lines 14 to 17: delete this paragraph and substitute notifications in appropriate statutory sections by the DNR to the downstream municipalities identified on page 66, lines 6 to 9, if water from a diversion will be returned to the source watershed through a stream tributary to one of the Great Lakes. These notifications should be provided when the DNR receives the following:
- a. An application for a new or amended areawide water quality management plan that provides for this return flow.
  - b. A complete application for any permit required under s. 30.12 or 283.31 for this return flow. (Part of the return flow issue. See also the question to DNR staff on this item.) [DNR December 6 note, December 19 DNR Concept Paper and December 21 meeting]
25. Page 60, lines 3 to 5: retain this determination on the treatment of land annexed by a straddling community. (This provision may be amended or deleted in a subsequent instruction.) [November 28 and 30 and December 3 meetings, DNR December 6 note, and December 21 meeting]
26. Page 61, lines 8 to 10: delete the 5 year update requirement in these lines and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). Since these plans are for a 20 year period, this has the effect of requiring initial preparation or updating with 20 years before the application for the proposal was submitted to the department. (This change is needed for all the references in the draft requiring a diversion or withdrawal proposal to be consistent with a water supply plan; see page 62, lines 4 and 20; page 63, line 12; page 64, line 17;

and page 68, line 23, as noted in instructions that follow.) [November 28 meeting, DNR December 6 note and December 21 meeting]

27. Page 62, lines 4: delete the 5 year update requirement in these lines and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). (See also the treatment of page 61, lines 8 to 10 and similar provisions.) [December 21 meeting]

28. Page 62, line 5: note following this line reviewed; authorize DNR to specify other applicable requirements by rule. [November 28 and 30 meetings]

29. Page 62, line 20: delete the 5 year update requirement in this line and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). (See also the treatment of page 61, lines 8 to 10 and similar provisions.) [December 21 meeting]

30. Page 63, line 12: delete the 5 year update requirement in this line and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). (See also the treatment of page 61, lines 8 to 10 and similar provisions.) [December 21 meeting]

31. Page 64, line 17: delete the 5 year update requirement in this line and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). (See also the treatment of page 61, lines 8 to 10 and similar provisions.) [December 21 meeting]

32. Pages 65, line 5: note following this line reviewed; no follow-up or change in the text of the draft required. [November 28 meeting]

33. Page 65, line 6 to page 66, line 22: direct DNR to specify by rule procedures for DNR's review of an application for a diversion to determine compliance with the exception standard. (Note: this is an alternative to the comment in the DNR's note regarding the use of a balancing test to determine compliance with the individual requirements in the exceptions standard. Similar requirement added for DNR review of compliance with state and compact decision making standards.) [DNR December 6 note and follow-up communication and December 21 meeting]

34. Page 66, lines 3 to 5: add s. 30.12 to the cited permit requirements and require that these applicable permits have been approved by DNR as a prerequisite for the DNR's approval of a diversion application. (Part of the return flow issue. The applicant for these permits will be the person responsible for managing the return flow and may not be the applicant for the diversion approval.) [December 19 DNR Concept Paper and December 21 meeting]

35. Page 66, lines 6 to 10: delete downstream municipal approval of return flow on these lines. (Part of return flow issue. See also the treatment of page 59, lines 14 to 17 and page 77, lines 7 to 9. [November 30 meeting, DNR December 6 note, and December 21 meeting]

36. Page 67, lines 3 to 11: substitute for these specific requirements for demonstrating the efficient use and conservation of existing water supplies in a diversion application a directive to DNR to identify by rule the elements this demonstration. (See also the treatment of page 72, line 14 to page 74, line 8) [DNR December 6 note and follow-up communication and December 21 meeting]

#### **Withdrawals and consumptive uses and decision-making standard**

37. Page 67, line 12 to page 71, line 2: December 3 meeting participants agreed to incorporate into the draft the framework of tiered water quantity permits, thresholds and approval standards, and the treatment of the baselines in these permits, in the DNR Concept Paper, and December 21 meeting

participants revised instructions to apply the treatment of these items in the December 19 DNR Concept Paper. [Also follow-up communications with DNR staff after December 3 meeting]

- a. Core regulations outside of Great Lakes basin
  - i. Withdrawals over 100,000 gpd (30 day average) subject to statewide registration and reporting requirements.
  - ii. New or increased withdrawals subject to existing infrastructure permits and approvals (ss. 30.12, 30.18, 281.34, and 281.41).
  - iii. New or increased water loss over 2,000,000 gpd (30 day average) subject to existing water loss permit (s. 281.35 (4)).
- b. Core regulations inside Great Lakes basin
  - i. Withdrawals over 100,000 gpd (30 day average) subject to statewide registration and reporting requirements.
  - ii. New or increased withdrawals subject to existing infrastructure permits and approvals (ss. 30.12, 30.18, 281.34, and 281.41).
  - iii. New or increased withdrawals subject to new water use permit:
    - (a.) General permit, if withdrawal is between 100,000 and 1,000,000 gpd.
    - (b.) Individual permit, if withdrawal is over 1,000,000 gpd.
  - iv. New or increased water loss over 2,000,000 gpd (30 day average), subject to consumptive use decision making standard. (See also the question to DNR staff on this instruction.)
- c. Related items:
  - i. Allow DNR to specify by rule a staggered schedule to issue the initial water use permits for existing withdrawals in the Great Lakes basin, provided that all of these permits are issued within 7 years after the bill's effective date or the compact's effective date, whichever is earlier. The initial permits are issued "automatically" by DNR based upon information from registration and reporting and existing permits and approvals.
  - ii. For existing withdrawals, the 10 year water use permit period starts the date the initial permit is issued rather than the date for which the existing amount of withdrawal or baseline is set.
  - iii. Authorize DNR to issue multiple types of general water use permits applicable to different classes of water withdrawers.
  - iv. Require DNR to identify by rule general and individual water use permit terms relating to reporting, metering and surveillance; water conservation and efficiency; limits on location, dates or season; allowable uses of the withdrawal; and other conditions, limitations and restrictions.
  - v. Clarify that a request for an increase in the amount of a withdrawal during the 10 year life of a water use permit is addressed via a modification to the permit. During the term of the permit, the cumulative amount of increased withdrawals and whether the 1 MGD or 10 MGD thresholds for applying the state or compact's decision making standard are tracked separately by DNR based on annual reports submitted by the withdrawer.

- vi. Specify that a water use permit is not transferable.
38. Page 68, line 23: delete the 5 year update requirement in this line and substitute that the proposal must be consistent with a current water supply plan approved under sub. (10). (See also the treatment of page 61, lines 8 to 10 and similar provisions.) [December 21 meeting]
39. Page 69, line 9: note following this line reviewed; no follow-up or change in the text of the draft required. [November 28 meeting]
40. Page 69, line 17 to page 71, line 2: direct DNR to specify by rule procedures for DNR's review of an application for a withdrawal to determine compliance with the state and compact decision making standards. (Similar requirement added for DNR review of compliance with exception standard on page 65, line 6 to page 66, line 22.) [December 21 meeting]
41. Page 70, line 14: note following this line reviewed; no follow-up or change in the text of the draft required. [November 28 meeting]
42. Page 71, line 2: no insert after that line. (A prior instruction had called for inserting a new criterion in the state decision making standard that, if the withdrawal is from a stream tributary to one of the Great Lakes, DNR has assessed the potential environmental impacts of the proposed withdrawal. This assessment is based on the assessment of a withdrawal from a high capacity well under subch. III in ch. NR 820. There was also comparable addition to the exception standard.) [Jodi Habush Sinykin, et. al., December 4 note and follow-up communication, and December 21 meeting]

#### **Statewide water conservation and efficiency**

43. Page 71, line 10: substitute "objectives" for "objective" in the paragraph title. [Technical amendment]
44. Page 72, line 14 to page 74, line 8: change the water conservation and efficiency tiers as follows:
- a. Delete the specific water conservation and efficiency tiers and measures on these lines and substitute a directive to DNR to identify these measures by rule, based on:
    - i. The amount and type of diversion, withdrawal or consumptive use that the measure applies to and whether the diversion, withdrawal or consumptive use is existing, expanded or new.
    - ii. The results of any pilot water conservation program conducted by the department in cooperation with the regional body.
    - iii. The results of any assessment of the water conservation and efficiency programs under sub. (11) (d).
  - b. Prohibit DNR's rules from mandating the retrofitting of existing facilities (see tier 2 c on page 73, line 7 for potential language).
  - c. Specify that DNR's rules applicable to new standards of construction may only be applied to new facilities. [December 3 meeting, DNR Concept Paper, DNR December 6 note and follow-up communication, December 19 DNR Concept Paper, and December 21 meeting]
45. Page 74, line 8: note following this line reviewed; addressed in the preceding item. [November 28 and December 21 meetings]

**Tribal consultation; public participation; time limits**

46. Page 74, line 13: note following this line reviewed; no follow-up or change in the text of the draft to t required. [November 28 meeting]
47. Page 77, lines 7 to 9: delete these lines on suspension of time limits pending municipal approval of downstream flow in light of deletion of page 66, lines 6 to 10. (Part of the return flow issue.) [December 21 meeting]
48. Page 77, line 22: note following this line reviewed; substitute “120” for “90” on page 77, line 1, and authorize an extension of any of the time limits in sub. (9) if the applicant and DNR agree to the extension (based on the extension language in s. 285.61 (10). [November 28 and December 21 meetings]

**Water supply planning**

49. Page 78, line 1: substitute in the subsection title “Regional Water Supply Service Area Plans for Public Water Supply Systems” for “Water Supply Planning”. [November 30 meeting]
50. Page 78, lines 1 to 7: revise the applicability of the water supply planning provisions to require all owners or operators of public water supply systems that withdraw water from waters of the state (thus making this a statewide program) and that serve a population of 10,000 or more persons to have a water supply plan approved by DNR by December 31, 2025. (This instruction was broadened from the text in the DNR Concept Paper that applied only to municipalities making these withdrawals and providing this service to any owner or operator of a municipal water supply system, and thus includes private owners of the systems such as in Superior. See also the question to DNR staff on this applicability.) [December 19 DNR Concept Paper and December 21 meeting]
51. Page 78, line 1 to page 80, line 8: at the appropriate location in this or other subsections or other statutes, add:
- a. For purposes of the requirement in s. 281.344 that a proposal for a withdrawal from the Great Lakes basin must be consistent with a water supply plan approved by DNR under sub. (10), prior to the approval of an applicable water supply plan, the applicant for the withdrawal may use the service territory and population and related service projections in an areawide water quality management plan to demonstrate this consistency, if the areawide water quality management plan was approved by DNR by December 31, 2007 and the plan was used to set the existing amount of withdrawal (“baseline” in the DNR Concept Paper) for the public water supply system. [December 19 DNR Concept Paper, starting at page 16, line 21, and December 21 meeting]
  - b. If a person subject to an areawide water quality management plan approved by DNR prior to December 31, 2007 is also responsible for providing a public water supply and the person proposes to amend the sewer service area portion of the plan to include an area across the Great Lakes basin boundary prior to the compact's effective date and prior to the approval of a water supply plan under sub. (10) that applies to the same area, then in addition to meeting the requirements established under s. 281.83, the amended areawide water quality management plan must also comply with the applicable diversion requirements and, if a new or expanded withdrawal is involved in providing the public water supply, the state decision making standard. (See also the related question to DNR staff.) [December 19 DNR Concept Paper starting at page 17, line 3, and December 21 meeting]

52. Page 78, line 13: delete that line and substitute “3. Ensuring the currency of the plan.” [December 21 meeting]

53. Page 78, line 14: after that line add to the procedures and requirements that DNR may on its own motion require the reopening and reconsideration of a previously approved plan. (This provision is modeled on similar authority for DNR to reopen an areawide water quality management plan under s. NR 121.07 (4).) [December 21 meeting]

54. Page 78, line 20: after that line, insert a new subdivision that reads “Identification of the existing population and population density and forecasts of the expected population and population density of the area for which the plan is prepared.” [November 28 and December 21 meetings]

55. Page 78, line 22: delete “most”. [November 30 meeting]

56. Page 78, lines 22 to 24: limit options for supplying water identified in a plan to those options that are approvable by DNR. [Question from Becky; response endorsed by DNR staff and Rep. Mason]

57. Page 79, line 1: no changes to this line. (Any prior instruction called for deleting the line and substituting “5. An assessment of the total resources costs, including the environmental, social, and economic impacts, of”. [November 30 and December 21 meetings]

58. Page 79, line 5: no insert after that line. (A prior instruction had called for inserting after this line a new subdivision that reads “A demonstration that new residential development that will be served by the water supply system proposed in the plan will have an average density of at least 10 housing units per acre.”) [November 30 and December 21 meetings]

59. Page 79, line 10: note following this line reviewed; on line 10, substitute “areawide water quality management plans under s. 283.83” for “areawide waste treatment management plans under 33 USC 1288”. (Note: per DNR staff, the plans under s. 283.83 are broader than, and incorporate the requirements of, the plans required under 33 USC 1288.) [November 28 meeting and follow-up communications with DNR]

60. Page 80, lines 4 and 5: delete those lines. (See also the treatment of page 79, line 5.) [November 30 meeting and DNR December 6 and 7 notes]

### **Fees**

61. Page 82, lines 3 and 4: delete these lines on DNR rule making on fees. [December 21 meeting]

### **Penalties**

62. Page 83, line 14: note following this line reviewed; no follow-up or change in the text of the draft required with respect to proposed sub. (14) (a) 1. or 2. in the Special Committee's /P3 draft. (If needed, these issues will be addressed in an amendment to the introduced bill.) [November 28 and December 21 meetings]

### **Nonstatutory provisions and fiscal changes**

63. Page 84, line 17 to page 85, line 3: delete these lines authorizing DNR project positions and appropriations to fund these positions. [December 21 meeting]



**CONCEPT PAPER WRITTEN IN THE FORM OF DRAFT COMPACT RATIFICATION AND IMPLEMENTATION LEGISLATION (12/19/07)**

1 **281.343 Great Lakes – St. Lawrence River Basin Water Resources Compact.**

2 **(See Legislative Reference Bureau Draft)**

3 **An Act to Repeal 281.35 to recreate 281.35 Water resources regulation**

4 **281.35**

5 (1) DEFINITIONS: Additional discussions on some definitions are needed either as part  
6 of the legislative package or during rulemaking processes. Some previously identified topics  
7 include refining Compact terms or definitions:

- 8 • “without adequate supplies of potable water”
- 9 • “reasonable supply alternative”
- 10 • “need reasonably avoided through conservation”
- 11 • “hydrologically interconnected”

12

13 (2) AGGREGATION OF MULTIPLE WITHDRAWALS. (a) In calculating the total  
14 amount of an existing or proposed withdrawal for purposes of implementing this chapter, a  
15 person shall include all separate withdrawals which the person makes or proposes to make for a  
16 single use or for related uses.

17 (b) In calculating the total amount of an existing or proposed water loss for purposes of  
18 implementing this chapter, a person shall include all separate diversions and consumptive uses,  
19 or combinations thereof, which the person makes or proposes to make for a single use or for  
20 related uses.

21 (3) REGISTRATION AND REPORTING (a) Any person who has the capacity to make a  
22 withdrawal that will average more than 100,000 gallons per day in any 30-day period from

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1 waters of the state, or is making any diversion, shall register the withdrawal or diversion with the  
2 department by not later than three years after the effective date of this Act [insert date].

3 (b) A person to whom par. (a) applies shall provide all of the following information:

4 1. The name and address of the registrant and the date of registration.

5 2. The locations and sources of the withdrawal.

6 3. The daily capacity of the withdrawal and the amount withdrawn from each source.

7 4. An estimate of the amount of the withdrawal in terms of gallons per day averaged in  
8 any 30-day period.

9 5. The actual or estimated average annual and monthly amounts and rates of water loss  
10 from the withdrawal.

11 6. The actual or estimated maximum daily use.

12 7. The actual or estimated average number of days of use.

13 8. The uses made of the water.

14 9. The place of use and the place of discharge.

15 10. Any other information in a form or format that the department requires in rules.

16 (c) 1. Each person who makes a withdrawal from the waters of the state that will average  
17 more than 100,000 gallons per day in any 30-day period shall annually report to the department  
18 the monthly amounts of withdrawal, consumptive use, and diversion.

19 2. Persons withdrawing less than 100,000 gallons per day averaged in any 30-day period  
20 shall not be required to report water use unless specifically required in order to protect public  
21 health, safety and welfare or unless required by a permit issued under s. 30.18 or an approval  
22 issued under s. 281.34 or s. 281.17, 2001 stats.

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1 (4) DIVERSION OF WATER FROM THE GREAT LAKES BASIN (a) *Prohibition.*  
2 After the compact is ratified by the U.S. Congress no person may begin a diversion or increase  
3 the amount of a diversion, except as exempted under par. (b) or as authorized under par. (d), (e),  
4 or (f).

5 (b) *Exemption.* The prohibition on diversions does not apply to existing diversions  
6 authorized prior to the enactment of this Act on [insert date] nor to diversions from the Great  
7 Lakes Basin for any of the following purposes:

- 8 1. To supply vehicles, including vessels and aircraft, for the needs of the persons or  
9 animals being transported or for ballast or other needs related to the operation of the vehicles.
- 10 2. To use in a noncommercial project on a short-term basis for fire fighting,  
11 humanitarian, or other emergency response purposes.

12 (c) *Application.* A person who proposes to begin a diversion or to increase the amount of  
13 a diversion under par. (d), (e), or (f) shall apply to the department for approval.

14 (d) *Straddling Communities.* A proposed diversion for a straddling community is  
15 authorized if the proposal meets the requirements in s. 281.343 (4n)(a), has received approval  
16 from the department under the exception standard in par. (h), and is in conformance with any  
17 existing water supply service area plan described in sub. (11) and is authorized to discharge  
18 return flow under s.283.31.

19 (e) *Intra-Basin Transfer.* A proposed intra-basin transfer is authorized if the proposal  
20 meets the requirements in s. 281.343 (4n) (b) and is in conformance with any existing water  
21 service area plan described in sub. (11) and is authorized to discharge return flow under s283.31.

22 (f) *Communities in Straddling Counties.* A proposed diversion for a community in a  
23 straddling county is authorized if the proposal meets the requirements in s. 281.343 (4n) (c), and

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1 has received approval from the department under the exception standard under (h)is in  
2 conformance with any existing regional water supply service area plan described in sub. (11) and  
3 is authorized to discharge return flow under s.283.31.

4 (g) *Regional Consultation.* All proposals under par. (f), and those proposals under (d) or  
5 (e) that would result in a new or increased consumptive use that would average 5,000,000  
6 gallons or more per day in any 90-day period, must undergo regional consultation outlined in  
7 sub. (7) (f).

8 (h) *Exception Standard.* A diversion proposal meets the exception standard if it meets  
9 the criteria outlined in s. 281.343 (4n) (d).

10 (5) BASELINE DETERMINATIONS

11 The establishment of baselines is intended to continue the authorization of water uses that exist  
12 prior to the enactment of this Act. Baselines will be determined by the department for all  
13 persons making a withdrawal of Great Lakes basin water averaging more than 100,000 gallons  
14 per day in any 30-day period. Baselines will be used for determining the applicability of  
15 decision making standards to new or increased withdrawals. The department shall establish  
16 existing withdrawal approvals by determining the baseline for persons making a withdrawal  
17 using the following procedure:

18 (a) The department shall estimate the baseline for the withdrawal based on the maximum  
19 hydraulic capacity of the most restrictive component in the water supply system, using  
20 information available to the department or as authorized in an existing permit or order in s. 30.18  
21 or 31.02.

22 (b) The department shall provide the estimate under par. (a) to the person making the  
23 withdrawal and allow the person to provide additional information to the department relevant to

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1 the determination under this subsection. Relevant information on the withdrawal may relate to  
2 current components of the water supply system, submitted plans to expand the water supply  
3 system capacity prior to two years after the effective date of this act [insert date], withdrawal  
4 information from the previous five years, information demonstrating successful water  
5 conservation programs, information on seasonal variations in water use, information on  
6 consumptive use of similar types of users, or other information considered relevant by the  
7 department.

8 (c) The person making the withdrawal is the only person authorized to provide additional  
9 information to the department under par. (b).

10 (d) The department shall specify baselines using the estimate under par. (a) and any  
11 additional information provided under par. (b). Baselines shall be specified in individual permits  
12 or maintained by the department in a database for withdrawals subject to general permits issued  
13 pursuant to sub. (6). Baselines will be issued no later than two years after the effective date of  
14 this act [insert date]. For those communities which had Department approval to provide water  
15 from the Great Lakes basin for municipal water service and Departmental approval to return  
16 those associated wastewater flows to the basin, the department shall set the baseline at the  
17 amount of water necessary for the municipal water services associated with implementing sewer  
18 service area plans, developed in compliance with NR 121, Wisconsin Administrative Code, and  
19 approved by the Department no later than December 31, 2007.

20 (e) The department's determination of a baseline under pars. (d) is not subject to  
21 administrative review under ch. 227 except by the person making the withdrawal.

22 (f) After the issuance of baselines under pars. (d), municipalities that merge their water  
23 supply systems may use the combined total of their baselines for purposes of this statute.

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1           (6) WATER QUANTITY PERMIT (a) No later than seven years after the effective date  
2 of this Act [insert date], except as provided in par. (d), no person may withdraw water from the  
3 waters of the Great Lakes basin without either an individual permit or coverage under a general  
4 permit under this section. The department may waive this requirement for a person making a  
5 withdrawal that is covered by a permit under s. 30.18. The department shall issue a water  
6 quantity permit or grant coverage under the general permit for a person with an existing  
7 withdrawal if the person has submitted necessary information pursuant sub. (3).

8           (b) *Individual Permit terms.* Each individual permit issued under this subsection shall be  
9 valid for 10 years and shall contain the following:

10           1. Any applicable baseline, as specified under sub. (5) (d), or an authorized withdrawal  
11 amount for new or increased withdrawals as allowed under sub. (7).

12           2. An allowable water loss resulting from the withdrawal in gallons per day, if applicable.  
13 Permits with water loss terms shall also include the authorized base level of water loss from the  
14 withdrawal.

15           3. The requirements for reporting withdrawals and consumptive uses to the department.

16           4. The requirements for water conservation.

17           5. The location, dates or season, and allowable uses of the withdrawal.

18           6. Conditions specified for any diversions that have been approved under sub. (4).

19           7. Any requirements for metering, surveillance and reporting that the department  
20 determines by rule are necessary to ensure compliance with other conditions, limitations or  
21 restrictions.

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1           8. Any other conditions, limitations and restrictions that the department determines by  
2 rule are necessary to protect the environment and the public health, safety and welfare and to  
3 ensure the conservation and proper management of the waters of the state.

4           (c) *Terms for general permits.* General permits issued under this paragraph shall have a  
5 term of 10 years and contain the following:

6           1. A reference the department maintained database of baseline determinations, as  
7 specified under sub. (5) (d) and a reference to the department maintained database of authorized  
8 withdrawals, as specified under sub. (7).

9           2. The requirements for reporting withdrawals, consumptive uses, and diversions to the  
10 department.

11           3. The requirements for water conservation.

12           4. Any other conditions, limitations and restrictions that the department determines by  
13 rule are necessary to protect the environment and the public health, safety and welfare and to  
14 ensure the conservation and proper management of the waters of the state.

15           (d) *Types of permits.* Coverage under the general permit and individual permits shall  
16 occur as follows:

17           1. Withdrawals of at least 1,000,000 gallons per day for 30 consecutive days require an  
18 individual permit.

19           2. Withdrawals averaging at least 100,000 gallons per day in any 30-day period but less  
20 than 1,000,000 gallons per day for 30 consecutive days require a general permit that shall be  
21 issued by the department pursuant to par. (c).

22           3. Water quantity permits are not required for withdrawals averaging less than 100,000  
23 gallons per day in any 30-day period, unless a permit is required under s. 30.18.

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1           (e) *Department response.* Within the time limit established by the department by rule,  
2 which shall be consistent with the time limit, if any, established by the Compact Council, the  
3 department shall do one of the following in writing:

4           1. Notify persons with existing withdrawals that an individual permit has been issued or  
5 coverage under the general permit has been granted, or notify the person that additional  
6 information is required to grant an individual permit or coverage under the general permit.

7           2. Notify an applicant for an individual permit that the permit has been issued or  
8 modified, or if the application is denied, the reason for the denial.

9           3. Notify an applicant for coverage under the general permit, that such coverage has been  
10 granted, or if the application is denied, the reason for the denial.

11          4. Notify an applicant of additional information necessary to determine whether an  
12 individual permit may be issued or modified or whether coverage may be granted under a  
13 general permit.

14          (f) *Permit modification.* A person to whom an individual permit has been issued under  
15 this section may request that the department modify a condition, limitation, or restriction of the  
16 permit. The department may also unilaterally modify an individual permit or add conditions,  
17 limitations or restrictions to an individual permit if necessary for the withdrawal to meet a  
18 condition of the state decision making standard.

19          (g) *Revocation.* Coverage under a general permit under sub. (c) or authorization to  
20 withdraw water under an individual permit issued by the department under sub. (b) may, after an  
21 opportunity for hearing, be suspended or revoked, in whole or in part, for cause, including but  
22 not limited to:

23          1. Violation of any terms or conditions of the permit;



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1           2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

2           (h) *Reissuance*. 1. Any person who wishes to continue to withdraw water from the  
3 waters of the state after the expiration date of the permit shall file an application on a form  
4 provided by the department for reissuance of coverage under a general permit or for reissuance  
5 of an individual permit at least 180 days prior to the expiration date. Following receipt of a  
6 complete application for reissuance, the department shall grant coverage under the general  
7 permit or issue a new individual permit unless the application for reissuance includes a proposal  
8 for an increase in the withdrawal or the consumptive use. If the application for reissuance  
9 includes a proposal for an increase in the withdrawal or an increase in the consumptive use, the  
10 application is subject to review under sub. (7). If the application for reissuance includes a  
11 proposal for a new or increased diversion the application is subject to review under sub. (4).

12           (i) *Notice; right to hearing*. The department shall notify the person to whom the  
13 individual permit has been issued, and any other person who has in writing requested notice of a  
14 request to modify a specific individual permit of the department's intent to modify or revoke the  
15 individual permit. The person to whom the individual permit is issued is entitled to a contested  
16 case hearing under ch. 227 before a revocation or modification takes effect. Any other person  
17 who may be affected by a proposed modification is entitled to a contested case hearing before a  
18 modification takes effect if that person qualifies for a hearing pursuant to s. 227.42.

19           (7) NEW OR INCREASED WITHDRAWALS AND CONSUMPTIVE USES. (a) *New*  
20 *withdrawals*. Withdrawals from the Great Lakes basin that average less than 100,000 gallons per  
21 day in a 30-day period that are increased to average at least 100,000 gallons per day in a 30-day  
22 period are considered new withdrawals under this subsection. 1. No person may begin a new  
23 withdrawal averaging at least 100,000 gallons per day in any 30-day period but less than

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1 1,000,000 gallons per day for 30 consecutive days without obtaining a general permit issued  
2 under sub. (6).

3 2. No person may begin a new withdrawal in the Great Lakes basin of at least 1,000,000  
4 gallons per day for 30 consecutive days without obtaining an individual permit issued by the  
5 department under sub. (6). After the date the U.S. Congress ratifies the compact, for new  
6 withdrawals in the Great Lakes basin, the individual permit may be issued only if the proposed  
7 withdrawal complies with the state decision making standard in sub. (8) (a).

8 3. After the date the U.S. Congress ratifies the compact, no person may begin a new  
9 withdrawal in the basin of at least 10,000,000 gallons per day for 30 consecutive days without an  
10 individual permit issued by the department under sub. (6), which may be issued only if the  
11 proposed withdrawal complies with the compact decision making standard in sub. (8) (b).

12 (b) *Increased withdrawals.* Increases in withdrawals are considered cumulatively for the  
13 term of the individual or general permit.

14 1. No person withdrawing water as allowed by coverage under the general permit  
15 pursuant to sub. (6) (c) may increase the withdrawal unless one of the following conditions is  
16 met:

17 a. If the person proposes to increase the withdrawal to less than 1,000,000 gallons  
18 per day for 30 consecutive days, the person may continue to withdraw water as allowed by  
19 coverage under the general permit.

20 b. If the person proposes to increase the withdrawal from waters to at least  
21 1,000,000 gallons per day for 30 consecutive days, the person must apply for an individual  
22 permit issued under sub. (6). After the date the U.S. Congress ratifies the compact, for increased

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1 withdrawals in the basin, the individual permit may be issued only if the proposed withdrawal  
2 complies with the state decision making standard in sub. (8) (a).

3 c. After the date the U.S. Congress ratifies the compact, if the person proposes to  
4 increase the withdrawal from waters of the basin by at least 10,000,000 gallons per day for 30  
5 consecutive days above the baseline or authorized withdrawal, the person must apply for an  
6 individual permit under sub. (6), which may be issued only if the proposed withdrawal complies  
7 with the compact decision making standard in sub. (8) (b).

8 2. No person withdrawing water under an individual permit issued under sub. (6) (b) may  
9 increase the withdrawal unless one of the following conditions is met:

10 a. If the person proposes to increase the withdrawal, and subpar. b. and c. do not  
11 apply, the person may continue to withdraw water under the terms of the individual permit.

12 b. After the date the U.S. Congress ratifies the compact, if the person proposes to  
13 increase the withdrawal from waters of the basin by at least 1,000,000 gallons per day for 30  
14 consecutive days above the baseline or authorized withdrawal, the person must request a  
15 modified individual permit issued under sub. (6), which may be issued only if the proposed  
16 withdrawal complies with the state decision making standard in sub. (8) (a).

17 c. After the date the U.S. Congress ratifies the compact, if the person proposes to  
18 increase the withdrawal from waters of the basin by at least 10,000,000 gallons per day for 30  
19 consecutive days above their baseline or authorized withdrawal, the person must request a  
20 modified individual permit issued under sub. (6), which may be issued only if the proposed  
21 withdrawal complies with the compact decision making standard in sub. (8) (b).

22 (c)*New or increased consumptive use.* No person may begin a new withdrawal that will  
23 result in a consumptive use or increase of the consumptive use resulting from an existing

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1 withdrawal without obtaining a new or modified permit under sub. (6), which may be issued only  
2 if the proposed withdrawal complies the with consumptive use decision making standard in sub.  
3 (8) (b), if either of the following conditions apply:

4 1. The person proposes to begin a new withdrawal that will result in a consumptive use  
5 averaging more than 2,000,000 gallons per day in any 30-day period.

6 2. The person proposes to increase the amount of a consumptive use from an existing  
7 withdrawal that will result in a consumptive use averaging more than 2,000,000 gallons per day  
8 in any 30-day period above the person's authorized base level of consumptive use.

9 (d) *Application.* A person who proposes a withdrawal, an increase in a withdrawal, a new  
10 consumptive use or an increased consumptive use under par. (a) (b) or (c) shall apply to the  
11 department for a new or modified water quantity permit on forms supplied by the department.

12 (e) *Grounds for approval.* 1. Following receipt of a complete application the department  
13 shall grant coverage under the general permit or issue a new or modified permit under sub. (6) as  
14 provided for in sub. (a), (b) or (c).

15 (f) *Great Lakes Basin; prior notice.* If the department receives an application that, if  
16 approved, will result in a new consumptive use to the Great Lakes basin averaging more than  
17 5,000,000 gallons per day in any 90-day period above the applicant's authorized base level of  
18 consumptive use, the department shall notify the other parties and the Provinces of Ontario and  
19 Quebec, Canada and provide them an opportunity to comment as required in s. 281.343 (4j). The  
20 department shall take into consideration and respond to all such comments prior to taking any  
21 final decision on such application.

22 (8) DECISION-MAKING STANDARD. (a) *State decision-making standard.* A proposal  
23 under sub. (7) meets the state decision-making standard if all of the following apply:

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1           1. An increase above the baseline or authorized withdrawal in the permit of at least  
2 1,000,000 gallons per day is required to meet the projected needs of the person seeking  
3 authorization for the increased withdrawal.

4           2. Efficiency based conservation practices have been cost-effectively implemented for the  
5 existing water use.

6           3. Alternative sources have been assessed for cost-effectiveness and environmental  
7 effects over the proposed service life for the planning areas or the proposed project.

8           4. Cost-effective conservation practices will be employed to assure efficient use of the  
9 new or increased withdrawals.

10          5. No significant adverse environmental impacts to the waters of the state will result  
11 because of the proposed new or increased withdrawal. Demonstrations that surface water  
12 withdrawals that will not result in violations of water quality standards adopted under s. 281.15  
13 or impair fish population management objectives, possession of a permit under Ch. 30.12 or  
14 30.18 or an approval under s. 281.34 shall satisfy the standard under this subsection.

15          6. Any other standards as deemed necessary by the department by rule.

16          (b) *Compact decision-making standard.* A proposal under sub. (7) meets the compact  
17 decision-making standard if all of the criteria in s. 281.343 (4r) are met.

18          (c) *Consumptive use decision-making standard.* A proposal under sub. (7) meets the  
19 consumptive use decision making standard if all of the following criteria are met:

20           1. No public water rights in navigable waters will be adversely affected.

21           2. The proposed withdrawal does not conflict with any applicable plan for future uses of  
22 the waters of the state, including plans developed under sub. (10) and ss. 281.12 (1), and 283.83.

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1           3. Both the applicant's current water use, if any, and the applicant's proposed plans for  
2 withdrawal, transportation, development and use of water resources incorporate reasonable  
3 conservation practices.

4           4. The proposed withdrawal and uses will not have a significant adverse impact on the  
5 environment and ecosystem of waters of the state or waters of the basin if the consumptive use is  
6 5,000,000 gallons per day or greater averaged in any 90-day period.

7           5. The proposed withdrawal and uses are consistent with the protection of public health,  
8 safety and welfare and will not be detrimental to the public interest.

9           6. The proposed withdrawal will not have a significant detrimental effect on the quantity  
10 and quality of the waters of the state.

11           (9) WATER CONSERVATION AND EFFICIENCY. In cooperation with other state  
12 agencies, the department shall develop and implement a statewide water conservation and  
13 efficiency program. This program shall included a tiered approach, in which program  
14 requirements may be based on consumptive uses, straddling community exceptions, community  
15 in straddling county exceptions, or other factors as established in rules. The rules shall require  
16 some mandatory requirements in the basin and may include mandatory requirements outside the  
17 basin. The program shall not mandate retrofitting of existing facilities. New standards of  
18 construction shall only be applied to new facilities. The department may utilize sector based  
19 workgroups or other committee approaches to assist in the rulemaking process.

20           (10) PUBLIC NOTICE, PUBLIC COMMENT, NOTICE OF FINAL ACTION. (a) The  
21 department shall promulgate by rule procedures for circulating to interested and potentially  
22 interested members of the public notices of each complete application for an individual permit.

**CONCEPT PAPER WRITTEN IN THE FORM OF DRAFT COMPACT RATIFICATION AND IMPLEMENTATION LEGISLATION (12/19/07)**

1           (b) The department shall provide a period of not less than 30 days following the date of  
2 the public notice during which time interested persons may submit their written comments on the  
3 tentative determinations with respect to the permit application. All written comments submitted  
4 during the period for comment shall be retained by the department and considered in the  
5 formulation of the final determinations for the permit application.

6           (c) The department shall by rule prescribe the form and content of public notices issued  
7 under sub. (a). Every such notice issued by the department shall include at least the following  
8 information:

9           1. The name and address of each applicant;

10           2. A brief description of each applicant's activities or operations which result in the  
11 withdrawal described in the application;

12           3. The location and source of the withdrawal, and if the withdrawal is a new or increased  
13 withdrawal.

14           4. A statement of the tentative determination to issue or deny a permit for the withdrawal  
15 described in the application;

16           5. A brief description of the procedures for the formulation of final determinations,  
17 including the 30-day comment period required under sub. (b).

18   (11) REGIONAL WATER SUPPLY SERVICE AREA PLANS FOR PUBLIC WATER

19   SUPPLY SYSTEMS (a) By no later than December 31, 2025, all municipalities making a  
20 withdrawal from waters of the state to serve populations of 10,000 persons or more shall have a  
21 water service area plan approved by the Department. Each plan shall include:

22           1. The delineation of service area boundaries which are expected to have water service  
23 over a 20 year period.

**CONCEPT PAPER WRITTEN IN THE FORM OF DRAFT COMPACT RATIFICATION AND IMPLEMENTATION LEGISLATION (12/19/07)**

- 1           2. The existing and expected populations to be served.
- 2           3. The identification of municipal responsibilities for withdrawal, treatment and
- 3 distribution systems when the service area includes multiple municipalities.
- 4           4. The identification of alternative water sources evaluated and the cost-effective
- 5 justification for the selected option.
- 6           5. A description of the environmental considerations associated with the alternatives
- 7 evaluated.
- 8           6. For withdrawals in the counties impacted by 281.343 and s. 281.35, the additional
- 9 requirements of those sections.
- 10           (b) These plans may be developed by regional planning agencies on behalf of the
- 11 municipalities.
- 12           (c) Prior to submittal to the Department for review, the applicant shall conduct at least
- 13 one public hearing to solicit comments and reactions to the proposed water supply service area.
- 14 The application submitted to the Department shall include information including the date and
- 15 location of the hearing, number of participants, a summary of comments and changes made to
- 16 the plan as a result of the comments.
- 17           (d) Following Departmental approval, only projects that are consistent with the approved
- 18 municipal water service area plan may be approved by the Department. All the requirements of
- 19 this statute shall be waived for individual implementation projects which are consistent with the
- 20 plan.
- 21           (e) For the purposes of this section, any community with a sewer service area plan
- 22 approved by December 31, 2007 which was used to set the baseline under section(5 ), shall be
- 23 able to use those plans as the basis for decisions on new municipal water service projects. The



**CONCEPT PAPER WRITTEN IN THE FORM OF DRAFT COMPACT RATIFICATION AND IMPLEMENTATION LEGISLATION (12/19/07)**

1 department may approve any proposed municipal water service project which is consistent with  
2 the approved plan.

3 (f) If a community proposes to amend a plan approved prior to December 31,2007 to  
4 include areas across the Great Lakes basin boundary prior to Congressional ratification of the  
5 Compact and development of a water service area plan under sub (11), the proposal must  
6 comply with the requirements of sub. (8) in addition to the requirements of NR 121.

7 (g) The department is authorized to develop rules to establish the process and timelines  
8 for developing, reviewing and approving or rejecting plans.

9 **(12) EMERGENCY ORDER.** The department may, without a prior hearing, order a  
10 person to whom an individual permit or coverage under the general permit is issued to  
11 immediately stop a withdrawal if the department determines that there is a danger of imminent  
12 harm to the public health, safety or welfare, to the environment or to the water resources or  
13 related land resources of this state. The order shall specify the date on which the withdrawal  
14 must be stopped and the date, if any, on which it may be resumed. The order shall notify the  
15 person that the person may request a contested case hearing under ch. 227. The hearing shall be  
16 held as soon as practicable after receipt of a request for a hearing. An emergency order remains  
17 in effect pending the result of the hearing.

18 **(13) AMENDMENT OF COASTAL MANAGEMENT PROGRAM.** (a) The Wisconsin  
19 coastal management council, established under executive order number 62, dated August 2,  
20 1984, shall amend this state's coastal management program submitted to the U.S. secretary of  
21 commerce under 16 USC 1455, to incorporate the requirements of this section and the findings  
22 and purposes specified in 1985 Wisconsin Act 60, section 1, as they apply to the water resources

**CONCEPT PAPER WRITTEN IN THE FORM OF DRAFT COMPACT RATIFICATION  
AND IMPLEMENTATION LEGISLATION (12/19/07)**

1 of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S.  
2 secretary of commerce.

3 (b) After approval of the amendments submitted to the U.S. secretary of commerce under  
4 par. (a), the Wisconsin coastal management council shall, when conducting federal consistency  
5 reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified  
6 under par. (a), if applicable.

7 (c) If the department issues a permit or grant coverage under a general permit for a  
8 withdrawal to which this section applies, and the withdrawal is subject to a federal consistency  
9 review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the  
10 withdrawal is consistent with this state's coastal management program.

11 (14) Rulemaking authority-decision standard application and review criteria, water  
12 conservation, monitoring requirement and format, application requirements, public notification  
13 process to downstream interests for return flow proposals,

## Tradewell, Becky

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**From:** Stolzenberg, John  
**Sent:** Wednesday, January 09, 2008 12:22 PM  
**To:** Beth Bier; Dan Kanninen; Jeff Kostelic; John Stolzenberg; Michael Browne; Nabeela Baig; Rachel Letzing; Rep.Mason; Rep.Richards; Ryan Smith; Sen.Cowles  
**Cc:** Tradewell, Becky; Charles Hammer; Charles Ledin; Patrick Henderson; Shaili Pfeiffer; Todd Ambs  
**Subject:** Additional questions for legislators on the drafting instructions for the Great Lakes compact draft

Rep. Mason and other legislators working on the Great Lakes compact draft, LRB-3207/P3

We held two meetings last Monday with Chuck Ledin in which we started to address the questions on the drafting instructions on the Great Lakes Compact we had for DNR staff and that we previously shared with you in lists dated December 27 and January 3. A few of Mr. Ledin's elaborations of the drafting instructions from the December 21 meeting raised significant drafting concerns on which we would appreciate your input.

The first concern is that as a result of Monday's meetings, the complexity of the instructions, and thus the resulting draft as well as the time to prepare the draft, have further increased. To place this in perspective, we would note that we have already indicated that the addition of the DNR's December 19 Concept Paper to the instructions greatly added to the complexity of the LRB-3207/P3 (the "P3" draft). Broadly speaking, under the P3 draft, there are three regulatory schemes, one for withdrawals, consumptive uses, and diversions, set forth using one regulatory mechanism or vehicle, water use approvals. The diversion scheme is further subdivided among intrabasin transfers and diversions to straddling communities and to communities in straddling counties. Also, each scheme has its own applicability and set of approval standards. The P3 draft sets forth these implementations provisions in one statutory section.

Under the Concept Paper, our present understanding is that there will be at least eight regulatory schemes involving at least four regulatory mechanisms. Four of these schemes are timed to occur between the bill's effective date and the Compact's effective date and are thus interim provisions. The other four are timed to occur after the Compact becomes effective and thus are permanent provisions. The interim provisions apply as follows: withdrawals and diversions by public water utilities based upon sewer service area plans; withdrawals by entities other than public water utilities based upon water use permits that do not restrict the amount of water withdrawn (in general and individual permits); and consumptive uses under either existing water loss approvals or new water use permits (this distinction has not yet been clarified). The permanent regulatory schemes will distinguish between withdrawals by entities other than public utilities based upon water use permits with restrictions on the amount that can be withdrawn (in general and individual permits and 2 sets of standards for the individual permits); withdrawals by public water supplies based upon water supply plans; diversions by public water utilities based upon water supply plans; intrabasin transfers that may involve entities other than public water utilities based upon water use permits (this scheme has not been fleshed out) and consumptive uses based upon water use permits. To be consistent with the Compact's approach for setting baselines based on approvals in effect before the Compact's effective date, appropriate baselines for diversions, withdrawals, and consumptive uses will have to be established under these interim schemes, and then these baselines and approvals under the interim schemes will have to be coordinated and legally transferred to the permits and approvals established under the permanent schemes.

In discussing the above framework on Monday, an additional consideration was added to the framework that greatly complicates it, and thus slows down, the drafting of the framework. This consideration is that in order to address concerns raised by the Kenosha water utility over the potential effects of the bill before the Compact goes into effect, the interim regulatory schemes described above that apply to water utilities should not use the terms "diversion" or "divert," as defined in the Compact. As noted above, the approach of the P3 draft

is to place all of the implementing regulatory provisions in one statutory section. The P3 draft uses the Compact's definitions in this section, including the Compact's definitions of "diversion" and "divert." To avoid using those terms in the interim regulations in the next version of the draft means that the draft will not be able to build upon the statutory scheme set forth in the P3 draft. Instead the scheme will need to be reconceptualized and redesigned which will likely result in the interim provisions being in at least one section and the permanent provisions being in one or more other sections. While conceptually this redesign is feasible to do, it will take additional time, on the order of multiple days, to complete.

Thus, we would ask if you would like us to include the terminology consideration in the drafting instructions. If the terminology consideration is not included in the instructions, we would proceed with drafting the regulatory scheme outlined above that is based upon the DNR Concept Paper, including that the Compact's provisions on diversions would not take effect until the Compact goes into effect.

The second general concern that we would like to raise with you is how we should handle situations in which DNR's elaboration of the drafting instructions conflicts with instructions that were provided at the December 21 or earlier meetings involving legislators. You have previously told us if the DNR staff raise an issue that was not addressed in one of these meetings, that we should use our discretion and, if we feel the issue is sufficiently important to legislators, we would raise it with you before proceeding. Otherwise, we would incorporate the DNR's instruction into the next version of the draft.

Based on Monday's meetings, we are now aware of instances where DNR will be providing instructions in the form of elaborations which conflict with instructions previously provided by legislators. An example of this situation is that at the December 21, meeting, we were instructed to remove the requirement for downstream communities to approve return flows from a diversion and instead require DNR to notify the downstream communities when any of the regulatory approvals necessary for the return flow have been applied for. At the Monday meetings, we were told that this notification should only be applicable to the submission of a new or revised water supply plan and not to other approvals necessary for a return flow, such as WPDES or s. 30.12 permits.

We would appreciate your guidance on how we should handle these conflicting instructions. Would you like us to raise each instance with you or exercise our judgment on the conflicts we raise with you? In the later situation, we would use the DNR instruction unless we feel the conflict is significant and of concern to you, in which case, we will raise it with you before incorporating it into the draft.

Thank you for your clarification of the draft's instructions and the process for developing the next version of the draft.

John Stolzenberg, Legislative Council

Becky Tradewell, Legislative Reference Bureau

## Tradewell, Becky

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**From:** Stolzenberg, John  
**Sent:** Thursday, January 10, 2008 2:20 PM  
**To:** Tradewell, Becky  
**Cc:** Beth Bier; Dan Kanninen; Jeff Kostelic; John Stolzenberg; Michael Browne; Nabeela Baig; Rachel Letzing; Rep.Mason; Rep.Richards; Ryan Smith; Sen.Cowles; Charles Hammer; Charles Ledin; Patrick Henderson; Shaili Pfeiffer; Todd Ambs  
**Subject:** Additional drafting instructions (Set #2) on the Great Lakes compact draft  
**Attachments:** Drafting instructions - Jan 10 - Great Lakes Compact draft LRB-3207\_P3.doc

Becky,

Here are additional drafting instructions on the Great Lakes compact draft provided to me by Rep. Mason in response to our email note to him and other legislators working on the draft, dated January 9, 2007, and other concerns that he raised.

John



Drafting instructions  
- Jan 10...

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John Stolzenberg  
Legislative Council  
266-2988

January 10, 2008

**Additional Drafting Instructions for Changes in LRB-3207/P3 (Set #2),  
Relating to Ratifying and Implementing  
The Great Lakes-St. Lawrence River Basin Water Resources Compact**

**Based on instructions provided by Rep. Cory Mason**

**These instructions either revise or add to the list of instructions dated December 27, 2007.**

**Department of Justice (DOJ) appropriations and revenue source**

1. Page 4, lines 16 to 22: delete this SECTION on ch. 20 appropriations to DOJ. Also, remove from page 83, lines 3 to 10 the providing of state revenue for DOJ's expenses [by deleting all of par. (b)?]. (These deletions, along with similar deletions of DNR appropriations and fees that provide state revenues to pay for the appropriation to DNR raised in the December 27 drafting instructions, are intended to make the bill not subject to review by the Joint Committee on Finance or subject to the Governor's partial veto. This item addresses the question on this topic posed to legislators in the December 27, 2007 list of questions on the draft.)

**Diversions – terminology in interim regulations**

2. Revise the draft so that "diversion" and "divert," as defined in the compact, do not apply to the interim regulations applicable under the bill, as revised under the December 27 drafting instructions, between the bill's effective date and the compact's effective date. (This item addresses the terminology consideration raised in the January 9 note to Rep. Mason and other legislators working on the Great Lakes compact draft from John Stolzenberg and Becky Tradewell.)

**Diversions – return flow**

3. Page 58, line 24, after that line insert a new provision that, if an applicant for a diversion will not be the person discharging the return flow from the diversion to waters of the Great Lakes basin, the applicant must identify the entity that will discharge the water and provide evidence of any agreement necessary for the entity to discharge the return flow. (If the diversion approval is ultimately addressed within the review of a new or modified regional water quality management plan or regional water supply plan rather than a water use permit, then this item (as well as other provisions in the P3 draft, such as page 58, lines 21 to 24) may need to be reconfigured, such as making them an approval condition, rather than an application prerequisite. In addition, see the parenthetical comment in item 6 in this list regarding the interplay between a diversion approval and a WPDES permit for the return flow.)

4. Page 59, lines 1 to 9: retain these lines rather than deleting them. (This is a deletion of item 23 in the December 27 drafting instructions. See also the parenthetical comment in item 6 in this list.)

5. Page 59, lines 14 to 17: add to item 24 b. in the December 27 drafting instructions, regarding the notification that DNR must provide downstream communities, that this notification must be provided when DNR receives a complete application for any permit or approval applicable to the return flow, including not only the listed permits under ss. 30.12 and 283.31, but also plan approvals under s. 281.41. (This item addresses the specific notification issue raised in the January 9 note to

Rep. Mason and other legislators working on the Great Lakes compact draft from John Stolzenberg and Becky Tradewell.)

6. Page 66, line 5: after that line, insert a new subdivision that establishes an additional criterion in the exception standard for a proposal in which water will be returned to the source watershed through a stream tributary to one of the Great Lakes that specifies that the return water will help achieve the highest attainable biological state of the receiving water, including consideration of the temperature, nutrient loading and flow regimes of the returned water on the receiving water. (This item is based on item 19 in the December 19, 2007 list of unresolved issues. This criterion and the related provisions in items 3 and 4 in this list are placed within the diversion approval regulatory framework rather than the WPDES regulatory framework. Coordination on return flow regulatory issues between the diversion applicant and the return flow discharger, if they are different entities, is intended to be addressed in the agreement called for in item 3.)

#### **Diversions – straddling community expansion**

7. Page 60, lines 3 to 5: retain this determination on the treatment of land annexed by a straddling community, except change the date on line 5 from December 13, 2005 to 1 year after the bill's effective date.

#### **Diversion – conservation of existing water supplies**

8. Page 67, lines 3 to 11: add to item 36 in the December 27, 2007 list of drafting instructions, regarding the directive to DNR to identify by rule requirements for demonstrating the efficient use and conservation of existing water supplies in a diversion application, that these rules must include that the applicant has demonstrably and measurably engaged in this efficient use and conservation. (The purpose of this additional instruction is to ensure that the applicant has made a good-faith effort to engage in this efficient use and conservation and has initiated its efforts prior to applying for a diversion rather than promising to engage in the efficient use and conservation of existing water supplies following approval of the diversion application. See also the treatment of page 72, line 14 to page 74, line 8 in the December 27 list of drafting instructions.)

#### **General guidance on applying DNR's instructions**

9. In applying DNR staff's elaboration or clarification of the DNR December 19 Concept Paper, if Becky and John feel that the instruction either goes beyond or conflicts with an instruction set forth in this list or the December 27 list of drafting instructions and the instruction raises a significant policy issue that they feel would be of interest to the legislators, they should share the instruction with the legislators for their input. Otherwise, the instruction should be incorporated into the next version of the draft for review as part of the draft. (This item addresses the concern over conflicting instructions raised in the January 9 note to Rep. Mason and other legislators working on the Great Lakes compact draft from John Stolzenberg and Becky Tradewell.)