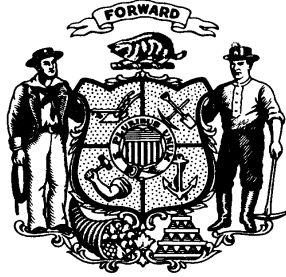


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**TO: MEMBERS OF THE SUBCOMMITTEE ON WATER CONSERVATION AND BOTTLED WATER OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT**

**FROM: John Stolzenberg, Chief of Research Services**

**RE: Association Certification of Water Conservation Measures**

**DATE: January 31, 2007**

At its January 19, 2007 meeting, the subcommittee requested that the Legislative Council staff prepare a proposal that would enable an industry trade association representing entities subject to water conservation requirements under the Great Lakes – St. Lawrence River Basin Water Resources Compact (the “compact”) to certify the entities’ compliance with these requirements based upon accepted industry-wide practices.

This memorandum sets forth this proposal. The proposal applies to all types of water users that “self supply” their water. To simplify the proposal, it focuses upon a withdrawal of water by entities other than water utilities that are subject to the decision-making standard in the compact.

**Background**

The decision-making standard in the compact specifies that a proposed withdrawal “will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.” [Proposed s. 281.343 (4r) (c) in LRB-0058/P1.]

The compact defines “environmentally sound and economically feasible water conservation measures” to mean:

Those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that are environmentally sound, reflect best practices applicable to the water use sector, are technically feasible and available, are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental

costs, and consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts, and other appropriate factors. [Proposed s. 281.343 (1e) (i) in LRB-0058/P1.]

One reading of the compact's decision-making standard criterion cited above, with its use of the phrase "will be implemented," is that it assumes the applicant has not yet implemented the required environmentally sound and economically feasible water conservation measures but will do so as a condition of receiving the withdrawal approval.

The proposal in this memorandum addresses the situation where most, if not all, entities within a given business sector have already implemented water conservation measures because those measures are accepted practices within the sector. The proposal is based upon the assumption that because these measures are industry-wide practices, an entity's implementation of the measures meets the technical and economic feasibility and cost effectiveness tests in the definition of "environmentally sound and economically feasible water conservation measures." As a result, the association can focus its request for certification on the other tests in this definition.

The intended effect of the certification procedure is to streamline the review of withdrawal applications by accounting for current conservation practices.

### **Certification Process**

Under the proposal, an association of public or private entities, that supply water to themselves and are subject to the decision-making standard in the compact, may request the Department of Natural Resources (DNR) to certify the entities' water conservation measures to be environmentally sound and economically feasible and in compliance with the decision-making standard's criterion on water conservation. [Proposed s. 281.343 (4r) (c) in LRD-0058/P1.]

Specific elements of the certification process could include:

- Direct the DNR to promulgate rules to provide specific guidance on the certification process and how the applicable tests in the definition of "environmentally sound and economically feasible water conservation measures" would be applied.
- Require an association to include in its application for a certification the following information:
  - Documentation of a survey of the water conservation measures currently being implemented by its members.
  - Identification of which members of the association currently implement the specific water conservation measures addressed in the application.
  - A description of how the currently practiced measures relate to the measures in the water conservation tiers likely to be applicable to the members.

- An explanation that the water conservation measures for which the certification is being sought are “environmentally sound,” based upon guidance provided by DNR.
- [**Alternative 1** - An explanation that the water conservation measures for which the certification is being sought “reflect best practices applicable to the water use sector,” based upon guidance provided by DNR.] [**Alternative 2** - A certification by the association that the water conservation measures for which the certification is being sought reflect current “best practices applicable to the water use sector” and a commitment by the association to educate its members on new or improved practices as these current practices become outdated.]
- Establish that the technical and economic feasibility and cost effectiveness of the water conservation measures specified in the application will not be subject to review by DNR in its review of the application.

### *Use of a Certification*

If DNR approves an association’s certification application, an entity identified in the certification as implementing one or more water conservation measures required in a water conservation tier may use the certification to demonstrate compliance with the water conservation criterion in the compact’s decision-making standard.

JES:tlu