



MEMORANDUM

December 5, 2006

To: John Stolzenberg and Rachel Letzing, Legislative Council

From: Edward J. Wilusz, Vice President, Government Relations

Subject: **Additional Compact Comments**

The following comments are submitted in response to Senator Kedzie's request for additional comments on the Great Lakes Water Resources Compact. These comments are in addition to those we submitted dated September 26, 2006. We address the four items listed in the meeting notice for December 15, as well as a few additional issues that have come up.

Tributary Groundwater Definition

Mr. Duchniak's proposal appears to be acceptable.

Registration and Reporting/Water Resources Inventory

We assume that this item deals with the issues raised in Staff Memo 7. In general, we prefer to stick with the Compact requirements, which would be option 1 under each of the issues. However, we are flexible on some of these issues. One caveat is that we do not want the Compact requirements to conflict with other legal requirements. Also, under Development Process on page 10 of Staff Memo 7, we interpret the term "private agencies and entities" to include businesses that use water. Clearer wording may be appropriate.

Baseline Volume Determinations

We assume Wisconsin will need to pursue the capacity option. At least for manufacturers, capacity should be based on the hydraulic capacity of the facility – the maximum amount of water that could be pushed through a system at a given facility. Actual use of water should not be a capacity-limiting factor. This is consistent with our understanding of the intent behind the baseline language. Also, if a facility has multiple water systems with multiple water withdrawals and discharges, the capacities of all water systems at a facility must be aggregated to determine a baseline for the facility.

Classification of Withdrawals and Diversions

Our understanding is that this item refers to the use of categories to establish regulatory requirements. For example, small sources must do X, medium sources must do X plus Y, and large sources must do X plus Y plus Z. Conceptually, we don't have a problem with this approach. It seems to offer the potential for a simplified regulatory scheme. It's hard to say much more without seeing a proposal. However, it is important to maintain site-specific flexibility in any categorical system. That is, a category could prescribe the factors to be considered, but the application of those factors at any individual source would be a site-specific analysis.

Definition of New Withdrawal

The definition of "new or increased withdrawal or consumptive use" is circular, at best. One issue that needs to be clarified relates to the replacement or movement of a water intake. For example, it may be cheaper to install a new intake at a new location than to replace an intake that is deteriorating. Assuming the capacity of the new intake is the same as the old intake, the new intake should not be considered a new withdrawal.

A related situation would be where a facility uses surface water run through chillers to provide cooling water. The company could save money by drilling a new high capacity well to access colder groundwater that would allow the expensive chillers to be operated less, or not at all. In this case, the volume of withdrawal would not change and the source would still be waters of the basin, so this should not be considered a new withdrawal.

Repealer

The Committee may want to consider, including a repealer in state law that would repeal the Compact language if the Compact is never ratified and never takes effect. We aren't sure if this is possible, and a repealer would have limited practical effect since the regulatory requirements are tied to a Compact effective date that would never come, but it would clean up the statutes.

