



WISCONSIN LEGISLATIVE COUNCIL

REVISED*

GREAT LAKES WATER RESOURCES COMPACT

Room 411 South
State Capitol

July 18, 2007
9:00 a.m. – 4:30 p.m.

[The following is a summary of the July 18, 2007 meeting of the Special Committee on Great Lakes Water Resources Compact. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Kedzie called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Neal Kedzie, Chair; Sens. Robert Cowles and Mary Lazich; Reps. Scott Newcomer, Jon Richards, John Steinbrink, and Karl Van Roy; and Public Members Ann Beier, Kevin Crawford, Dan Duchniak, Hallet Harris, Andrew Lisak, William Mielke, Matthew Moroney, Jodi Habush Sinykin, James Surfus, and Edward Wilusz.

COMMITTEE MEMBERS EXCUSED: Sen. Robert Wirsch; and Public Member Keith Reopelle.

COUNCIL STAFF PRESENT: John Stolzenberg, Chief of Research Services; and Rachel Letzing, Senior Staff Attorney.

Approval of the Minutes of the December 15, 2006 Meeting

The minutes of the committee's December 15, 2006 meeting were approved by unanimous consent.

***The minutes have been revised to reflect changes made at the August 7, 2007 meeting of the Special Committee.**

Description of Materials Distributed

Mr. Stolzenberg described the following materials that were included in the mailing:

- WLC: 0141/P1, relating to implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact.
- Handout, *Draft Regional Water Conservation and Efficiency Objectives in the Great Lakes-St. Lawrence River Basin Water Conservation and Efficiency Initiative* (March 15, 2007). [Distributed by the Council of Great Lakes Governors.]
- Memorandum, *Great Lakes Compact Study Committee: Recommended Compact Implementing Provisions*, submitted by Public Members Jodi Habush Sinykin and Keith Reopelle (July 11, 2007).
- Handout, *Analysis of Alternative Threshold Quantities*, submitted by Public Member Hallet Harris (July 11, 2007).

Briefing on Other States Recent Actions on Ratifying the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “Compact”)

Mr. Stolzenberg reported on the status of compact ratification and implementation bills in other states. As a point of clarification, Mr. Stolzenberg noted that a “ratification” bill only includes the text of the compact and an “implementation” bill implements the compact in a particular state.

Minnesota. Minnesota is the first state to ratify the compact. The Minnesota legislation does not include an implementation piece, but Minnesota believes that other parts of their current law may be used to implement the compact.

New York. The New York Senate recently passed a bill which ratifies the compact and contains some implementation language. The New York Assembly is expected to act on the Senate version of the bill during its next floor session. Among other things, the Senate bill authorizes the Department of Natural Resources to promulgate rules necessary to implement the compact, prohibits the department from adopting any rule or regulation before an advisory committee has issued its recommendations regarding legislation or rules necessary to implement the compact, creates a definition of “person aggrieved” and repeals the bill on December 31, 2011 unless Congress has given its consent to the compact.

Michigan. Three compact ratification bills have been introduced. In addition, individual legislators are working on implementation legislation that would build on Michigan’s groundwater management bill enacted last year. Hearings on the bills are expected to be held later this year.

Ohio. No compact ratification or implementation bill has been introduced yet this session, but a bill may be introduced this fall. Senator Timothy Grendell has introduced a bill which would create a task force to study whether Ohio should enter into the compact.

Pennsylvania. A compact ratification bill has been introduced and a stakeholder group has been formed to discuss implementation.

Indiana. A compact ratification bill has been introduced. The executive branch will be working on implementation language.

Illinois. The Illinois Legislature passed a compact ratification bill earlier this year. The bill is awaiting the Governor's signature.

Chair Kedzie reminded the committee that the Joint Legislative Council has stated that the committee must complete its work by September 15, 2007. Chair Kedzie clarified that there is no limit on the number of committee meetings that may be held, but that the committee cannot take action after that date. Legislative Council staff, however, may continue with committee work, such as writing a report, after the September 15 deadline. Chair Kedzie said that the goal of the meeting today is to try to reach agreement on the three subcommittee's work. He stated that unresolved issues will be discussed at a subsequent meeting.

Senator Lazich asked for more information about a meeting held in the Governor's office regarding the compact and expressed concern that she was not invited to the meeting. Chair Kedzie stated that the Governor's office initiated the meeting and that at the meeting, the Governor offered his assistance in helping the study committee to reach consensus on unresolved issues. Chair Kedzie said that the Governor told the group that he wants a bill regarding the compact on his desk by this fall. According to a show of hands, seven study committee members were present at the meeting in the Governor's office. Senator Lazich expressed her belief that the open meetings law was violated because a quorum of her subcommittee was at the Governor's meeting. Ms. Beier said that at the meeting, the Governor reiterated his support for the compact, no substantive issues were discussed, and that the Governor's intent is that the study committee continue to be the primary working group regarding the compact. Mr. Duchniak stated that he agreed with Ms. Beier's summary of the meeting. Mr. Stolzenberg noted that for purposes of the open meetings law, a quorum of a subcommittee was not present at the Governor's meeting because the subcommittees created by Chair Kedzie no longer exist.

Senator Lazich asked that Professor Squillance from the University of Colorado be scheduled to speak at a future committee meeting. Chair Kedzie said that he would take this request under advisement.

Discussion of Subcommittee and Committee Recommendations, in WLC: 0141/P1, Relating to Implementing the Compact

Mr. Stolzenberg explained that WLC: 0141/P1, relating to implementation of the compact, and LRB-0058/P1, the text of the compact, will eventually be combined into one bill draft for the committee's vote. He noted that Wisconsin's implementation legislation must be consistent with the compact and that any inconsistency between the compact and the implementation legislation would be subject to legal challenge. He further noted that after being ratified by Congress, the compact will become federal law. Mr. Stolzenberg explained that WLC: 0141/P1 only includes the provisions of the compact needed for implementation at the state level, such as certain definitions, the regulatory sections and the water conservation program, and some cross-references to the compact text as appropriate. He noted that the goal was to create a self-contained state implementation piece. Mr. Wilusz expressed concerns regarding how the two bill drafts will be incorporated and the possibility of a legal challenge. Mr. Stolzenberg noted that staff is working on language that will link the two drafts and clarify the relationship between them, and observed that many provisions of the compact are not self-executing.

In response to a question from Mr. Wilusz, Mr. **Dave Naftzger**, Council of Great Lakes Governors, observed that combining the text of the compact with implementation language is problematic. He noted that other states' legislation has set forth the compact text in one section and implementation language in a separate section which states that for purposes of the compact, a certain term or provision of the compact will be implemented in a certain manner. Mr. Naftzger observed that because WLC: 0141/P1 repeats and in some sections changes the text of the compact, it necessitates a lot of back and forth between WLC: 0141/P1 and the compact in order to understand WLC: 0141/P1, and creates confusion about the meaning of the altered sections.

Mr. **Pete Johnson**, Council of Great Lakes Governors, stated that New York's compact legislation uses the two-section model explained by Mr. Naftzger. Mr. Naftzger noted that four other states have followed the New York approach. Mr. Stolzenberg observed that the committee had agreed to take the approach in WLC: 0141/P1 of having both a compact ratification piece and a self-contained implementation piece, but that he and Ms. Letzing will evaluate whether this structure should be changed to more closely model other states' legislation.

Chair Kedzie asked Mr. Stolzenberg to provide a general overview of WLC: 0141/P1. Mr. Stolzenberg explained that in an effort to get the draft out to committee members as soon as possible, the draft is in preliminary form. He noted that in drafting WLC: 0141/P1, he and Ms. Letzing looked at the compact itself, the drafting instructions from the three subcommittees and the full committee as reflected in the Memo Nos. 12, 13, 14, and 15, the preliminary implementation draft prepared last session by Becky Tradewell at the Legislative Reference Bureau, and used their own judgment as drafters.

Ms. Letzing described WLC: 0141/P1, page 3, lines 1 to 15 and page 4, lines 1 to 6, regarding the Governor's actions for the initial organization and operation of the Great Lakes-St. Lawrence River Basin Water Resources Council ("the council"), the Governor's alternate and the Governor's advisor. There was consensus to keep the language in WLC: 0141/P1.

The committee then discussed WLC: 0141/P1, page 4, lines 7 to 11. As drafted, this section requires the Governor to obtain approval by legislation enacted by both houses of the Legislature before casting a vote regarding any regulation that amends or revises the standard of review and decision. "Standard of review and decision" is a defined term in the compact which includes the exception standard, the decision-making standard, and council reviews as outlined in subs. (4) to (4z) in LRB-0058/P1. Mr. Johnson explained that the council's ability to revise the standard of review and decision allows the council to make adaptive management changes over time and could include changing technical reviews and other procedures. In the ensuing discussion, committee members raised concerns about which council procedures are included in technical reviews, whether the Legislature should be required to act within a certain timeframe, and whether legislative approval should be given through a bill or a joint resolution. There was consensus to amend WLC: 0141/P1, page 4, lines 7 to 11 to provide that legislative review applies to the exception standard and the decision-making standard. In addition, staff will include options in the draft for the committee to consider regarding the issue of deadlines and the form of legislation. Staff will also identify for the committee other parts of WLC: 0141/P1 that involve council review.

Regarding the Note in WLC: 0141/P1 on the top of page 3, Mr. **Chuck Ledin**, Department of Natural Resources (DNR), observed that instead of reconciling current law requirements regarding registration, reporting, withdrawals, and consumptive uses with the compact's requirements, the

committee should strongly consider eliminating the current regulatory framework and creating a new consolidated water regulatory management approach, which could stand alone from the compact.

Ms. Letzing explained the registration requirements in WLC: 0141/P1, page 13, line 13 to page 15, line 11. As drafted, these provisions require statewide registration of withdrawals averaging 100,000 gallons per day or more in any 30-day period, including consumptive uses, and any amount of diversion. The draft further provides that people registered before the effective date of the draft have three years to register using the compact's information requirements. Mr. Ledin explained that the intent of the registration is for the DNR to find out which withdrawals have the potential to withdraw 100,000 gallons per day so that DNR may determine which registrants actually withdraw that amount of water. Those that withdraw an average of 100,000 gallons per day or more in any 30-day period would then fall into the reporting database used for state purposes only. There was consensus to amend WLC: 0141/P1 to require registration statewide for any person with the potential to withdraw an average of 100,000 gallons per day or more in any 30-day period and any diversion. Senator Cowles asked why current registrants would need three years to register. Mr. Ledin observed while a shorter timeframe is preferable, it may take up to three years for rule-making. There was consensus to leave the three year delayed effective date for current withdrawals in the draft.

Ms. Letzing described the reporting requirements in WLC: 0141/P1, page 15, line 12 to page 16, line 12. As drafted, the reporting requirements do not apply statewide. Mr. Ledin stated that he did not support the provisions as drafted and noted that current ch. NR 142 requires statewide reporting of withdrawals that average more than 100,000 gallons per day in any 30-day period. There was consensus to amend WLC: 0141/P1 to require statewide reporting of withdrawals averaging 100,000 gallons per day or more in any 30-day period and any diversion. Mr. Ledin noted that only reporting information from the Great Lakes basin is forwarded to the regional level.

Next, the committee discussed whether additional requirements should be added to the compact's requirements for a diversion application. As drafted, WLC: 0141/P1, page 16, lines 16 to 19, provides that beginning on the compact's effective date, a person applying for a diversion must provide information about the potential impacts of the diversion on the waters of the basin and water dependent natural resources of the applicable watershed. Mr. Duchniak asked what the term "compact's effective date" refers to. Mr. Stolzenberg explained that "compact's effective date" is defined in WLC: 0141/P1, page 6, lines 3 to 4 to mean the date when Congress ratifies the compact. As such, the section of the draft regarding authorization to make exceptions to the prohibition on diversions does not take effect until the compact is ratified by Congress. Senator Kedzie stated that discussion of effective dates should be deferred until the committee discusses the effective date provision at the end of the draft. Regarding an application for a diversion, Mr. Moroney said that he preferred that specific application requirements be provided in statute. Mr. Ledin noted that application requirements are usually provided in administrative rule, and observed that an example of possible application requirements already exists in ch. NR 142. There was consensus to amend WLC: 0141/P1 page 16, line 19 to authorize the DNR to add additional information requirements for a diversion application by administrative rule.

The committee then discussed the provisions of WLC: 0141/P1 relating to straddling communities beginning on page 18. Mr. Duchniak noted that instead of the draft language on page 18, lines 5 to 7, he wants to go back to the language used in the compact. As drafted, WLC: 0141/P1, page 18, lines 5 to 7 provide that water withdrawn from the basin shall be returned as close as practicable to the point of the initial withdrawal from the source watershed unless it is shown that it is not feasible,

cost effective, environmentally sound, or in the interest of public health to do so. In addition, Mr. Duchniak noted that the language in WLC: 0141/P1 omits the phrase “less an allowance for consumptive use” used in the compact and that he also wants this phrase inserted in the draft. Ms. Habush Sinykin observed that the language in WLC: 0141/P1 reflects concern about the impact of return flow on the environmental quality and quantity of the receiving waters and that the closer the point of return, the less the environmental impact there will be. Mr. Ledin observed that the wastewater program plan review evaluates the condition of receiving waters using a Wisconsin Environmental Policy Act (WEPA) screening worksheet. Ms. Habush Sinykin noted that the wastewater program does not cover quantity concerns. There was consensus to amend WLC: 0141/P1 to delete page 18, lines 5 to 7, and to substitute the compact language.

Next, the committee discussed the requirements in WLC: 0141/P1, page 18, lines 8 to 19 regarding the conditions under which water from outside the basin will be returned to the basin. Mr. Naftzger observed that WLC: 0141/P1 lines 8 to 19 are worded differently than the compact. Mr. Stolzenberg said that this was done for purposes of clarity. Mr. Naftzger stated that using different words in WLC: 0141/P1 than the compact creates confusion and observed that if different language is used there should be a compelling reason to do so. Mr. Moroney suggested amending WLC: 0141/P1, page 18, lines 8 to 19 to go back to the compact language. After further committee discussion, there was consensus to amend WLC: 0141/P1 by deleting page 18, lines 1 to 19 through page 19, lines 1 to 7, and to substitute the compact language.

Mr. Stolzenberg described the provision of WLC: 0141/P1, page 19, lines 8 to 10, relating to small intrabasin transfers. As drafted, this section authorizes the DNR to approve a proposal for a new or increased intrabasin transfer averaging less than 100,000 gallons per day in every 90-day period, but does not include a standard which these intrabasin transfers must meet. There was consensus to amend WLC: 0141/P1 to provide that the applicable requirements in current law will apply to these intrabasin transfers.

The committee then discussed the provision of WLC: 0141/P1, page 20, lines 8 to 10 relating to new or increased intrabasin transfers that average more than 100,000 gallons per day in any 90-day period. As drafted, this section provides that the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies under par. (g). The committee engaged in a lengthy discussion of what the term “cost effective” should mean. Mr. Ledin stated that wastewater program rules define “cost effective analysis” to mean capital cost, operating cost over the service life, and salvage value. Ms. Habush Sinykin suggested that since the term “cost effective” comes up in later sections of the draft regarding return flow, water conservation, and withdrawals, it may be useful to define this term in the draft. There was consensus to amend WLC: 0141/P1 to include a cross-reference to the wastewater program definition of “cost effective” and to include a Note in the draft explaining the cross-reference.

Mr. Stolzenberg explained WLC: 0141/P1, page 21, lines 4 to 8, relating to straddling counties. As drafted, this section provides that the community does not have a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is economically feasible at a reasonable cost, and has no adverse environmental impacts greater than those likely to result from the new or increased diversion. Mr. Stolzenberg noted that this language

is based upon subcommittee drafting instructions and replaces the compact language. In the ensuing discussion, Ms. Beier observed that the new language in the draft raises questions about their meaning. Mr. Ledin stated that the language in the draft contains too many generalities, no commonly defined terms, and does not provide a time period in which to measure what a “reasonable cost” is. Mr. Harris suggested that this language in WLC: 0141/P1 be changed back to the compact language.

The committee then discussed ways in which a straddling county’s existing water supply could be evaluated and whether the service life of the existing supply should be considered. Mr. Moroney and Senator Lazich expressed concerns about ensuring that a community be able to get water to accommodate projected future population and economic growth. Ms. Habush Sinykin suggested using the compact language that a community is without adequate supplies of potable water, and adding that in determining whether a community has an adequate supply of potable water, the applicant shall show its existing supply is economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs. Mr. Duchniak stated that public health and sustainability issues should also be included. There was consensus that Mr. Duchniak and Ms. Habush Sinykin will discuss WLC: 0141/P1, page 21, lines 4 to 8 outside of the committee and will report back to the committee.

Mr. Stolzenberg described the provision in WLC: 0141/P1 on page 21, lines 13 to 14, which provides that there is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies under par. (g). Mr. Stolzenberg asked whether the committee wanted to change the phrase “within the basin” to “within the watershed in which the community is located.” Mr. Naftzger explained that the term “basin” covers the major water sources in the state. There was consensus to keep the term “within the basin” in WLC: 0141/P1. Mr. Duchniak stated that the phrase “no reasonable water supply alternative” should either be defined in the draft or the draft should include criteria to determine whether a straddling county has no reasonable water supply alternative. There was consensus that Mr. Duchniak, Ms. Habush Sinykin, and Mr. Ledin will discuss this issue outside of the committee and report back to the committee.

The committee then discussed WLC: 0141/P1, page 21, line 15. As drafted, this section provides that the proposal for a new or increased diversion will have “no significant adverse impact to the basin ecosystem.” Mr. Moroney observed that the draft language may be a substantive change from the language used in the compact, which provides that the proposal will not endanger the integrity of the basin ecosystem. Mr. Naftzger noted that this is an example of a lack of clarity in WLC: 0141/P1. There was consensus to amend WLC: 0141/P1, page 21, line 15 to delete the draft language and substitute the compact language and to indicate that this language is interpreted to mean that the proposal will have no significant adverse impact to the basin ecosystem.

Mr. Duchniak expressed concern regarding the language in WLC: 0141/P1 on page 22, lines 6 to 9. As drafted, this section provides that the DNR may consider whether the proposal provides sufficient scientifically based evidence that the applicant’s existing water supply is derived from groundwater that is hydrologically interconnected to waters of the basin only if the proposal includes this information and asks DNR to consider it. Mr. Duchniak stated that he preferred the compact language that “substantive consideration” will be given to whether or not the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the basin. Mr. Duchniak observed that under the compact language, if this information is included, an applicant will get extra credit, but if it is not included, the lack of such

information will not hurt the applicant. There was consensus to amend WLC: 0141/P1 on page 22, lines 6 to 9 to delete the draft language and substitute the compact language. Mr. Duchniak added that he would like to reserve the right to revisit the term “hydrologically interconnected” at a later time.

The committee then discussed language in WLC: 0141/P1 regarding the exception standard. Mr. Duchniak noted that page 23, line 3 provides that the need for the proposed diversion cannot reasonably be “reduced or eliminated”, but that the compact uses the term “avoided.” Mr. Duchniak requested that “reduced or eliminated” be replaced by “avoided.” It was the consensus of the committee to amend WLC: 0141/P1, page 23, line 3 to 4 to delete the draft language and substitute the compact language.

Mr. Stolzenberg explained that the next condition in the exception standard in WLC: 0141/P1, page 23, lines 5 to 6, is that the diversion is limited to the amount needed for the anticipated use of the service life of the project. He noted that this language is based upon subcommittee drafting instructions and is different from the compact language. Ms. Beier stated that she liked the concept of the service life of a project, but wondered whether diversion applications will always involve a project. Mr. Mielke observed that a project might be phased and each component would have a different life span. He also noted that current law provides a 20-year planning window. Mr. Moroney stated that it may be appropriate to include an economic development component. Mr. Mielke observed that the fear is that regional review would only allow enough water to meet public health needs, not future economic development needs. Mr. Ledin stated that a 20-year service period may be a good timeframe to use in order to avoid questions about whether growth would be allowed. There was consensus that Mr. Ledin will work with staff on draft language for the committee to review at a subsequent meeting.

Mr. Stolzenberg explained that the next section of WLC: 0141/P1, page 23, lines 7 to 9, repeats the language discussed previously by the committee that water withdrawn from the basin shall be returned as close as practicable to the point of the initial withdrawal from the source watershed unless it is shown that it is not feasible, cost effective, environmentally sound, or in the interest of public health to do so. There was consensus to amend WLC: 0141/P1 to delete lines 7 to 9 as well as lines 10 to 13 and substitute the compact language in both sections. Mr. Ledin stated that he would provide a WEPA screening worksheet to Ms. Habush Sinykin.

Next, Mr. Stolzenberg described WLC: 0141/P1, page 24, lines 3 to 7. As drafted, this section provides that the diversion will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the basin or to water dependent natural resources, including potential cumulative impacts that might result due to any positive or negative impacts on the sustainable management of the waters of the basin from the proposed diversion. Mr. Stolzenberg noted that the phrase “that might result due to any positive or negative impacts on the sustainable management” replaces the compact language “precedent-setting consequences associated with the proposal.”

Mr. Stolzenberg then directed the committee to the Note on page 24, under line 7, and explained the link between the cumulative impact assessment in this section of the draft and the cumulative impact assessment required under LRB: 0058/P1, page 38 lines 15 to 21. Mr. Naftzger explained that the compact drafters intended that the applicant be responsible for the individual adverse impact assessment and the state would be responsible for the cumulative impact assessment. He noted that the expectation is that the applicant and the state would be working together on an application. Mr. Ledin explained that WEPA review process, which may include an environmental impact statement or screening statement, currently evaluates cumulative and individual adverse impacts, so there is a system in place to determine

whether those impacts exist at a state level. In the ensuing discussion, there was consensus to amend WLC: 0141/P1, page 24, lines 5 to 7 to insert the “precedent setting consequences” language from the compact and to provide that this language is interpreted to mean “any positive or negative impacts on the sustainable management of the waters of the basin from the proposed diversion.” There was further consensus to amend this section to clarify that the applicant is not responsible for providing a cumulative impact assessment and to include a cross-reference to the assessment of cumulative impacts section in LRB-0058/P1. This language will also be added to the appropriate section of the draft regarding the decision-making standard.

The committee began discussion of WLC: 0141/P1 page 25, lines 8 and 9. As drafted, this section provides that the applicant commits to implementing the water conservation measures in tier 3 under sub. (8) (c) that are environmentally sound and economically feasible for the applicant. Mr. Stolzenberg explained that an applicant subject to the exception standard must perform this evaluation on all measures in tier 3, which also include the measures in tiers 1 and 2. Mr. Duchniak requested that the committee discuss this provision when it discusses the water conservation section of the draft. At Mr. Duchniak’s request, a handout from Lawrie Kobza, Municipal Environmental Group (MEG) Drinking Water, regarding proposed changes to the conservation language in WLC: 0141/P1, was distributed to the committee. Mr. Ledin expressed concern regarding the framework of the water conservation program tiers in WLC: 0141/P1 because Environmental Protection Association guidance may change over time. Mr. Duchniak requested that Jeff Ripp, the new water conservation czar at the Public Service Commission, be included in the committee’s discussion of water conservation at the next meeting.

Chair Kedzie told the committee he hoped to have another committee meeting in two weeks and would send an email to committee members asking for their availability for a full day meeting.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Tuesday, August 7th, at 9:00 a.m., in Room 411 South, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 4:30 p.m.

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