

To: John Stolzenberg and Rachel Letzing, Wisconsin Legislative Council,
Senator Neal Kedzie

From: Jodi Habush Sinykin, Of Counsel, Midwest Environmental Advocates, and
Keith Reopelle, Clean Wisconsin

Re: Great Lakes Compact Study Committee: Recommended Compact
Implementing Provisions

Date: July 11, 2007

MEMORANDUM

The Great Lakes are one of the natural wonders of the world - the heart of the ecosystem we rely on for life and a vital resource for us to use and protect. Holding almost 20% of the world's surface freshwater, the Great Lakes are vast. But they aren't infinite – only one percent of the water in the Great Lakes is renewed by rainfall and snowmelt every year. And yet there is no statutory regime currently in place to ensure the long-term protection of our Great Lakes Basin's waters and ecosystem.

To fill this void, Wisconsin must join the other Great Lakes states in ratifying the Great Lakes Compact and enacting implementing legislation that provides clarification and improvements for our state. The Compact that is best for Wisconsin will include the implementing provisions found in the following Platform, which will provide for the sound management and wise use of Great Lakes waters, thereby ensuring that these incomparable resources and Wisconsin's economic prosperity are protected for this and succeeding generations.

I. INCREASED WITHDRAWAL OR CONSUMPTIVE USES FOR IN-BASIN USERS

The state should adopt thresholds for increased withdrawal or consumptive uses for in-basin users.

- The baseline should be defined as the maximum throughput of the smallest bottleneck in the current water withdrawal, treatment and distribution system for all applications and sources.
- The threshold standard for general permits would be 100,000 gallons per day for all applications.
- The threshold standard for individual permits would be 500,000gpd from high capacity wells and 500,000 gpd from all surface water withdrawals.

The standards here would include all of the requirements for water conservation and impact analysis required in the Compact. The legislation should clearly outline the details of what is required in a general and individual permit.

II. CONSERVATION

At the heart of the Compact and critical to the preservation of Great Lakes water quantities, water conservation efforts at the state and regional level can help to ensure sustainable water supplies for the basin economies and ecosystem far into the future. The Great Lakes Water Resources Compact provides a valuable opportunity to bring water conservation to the forefront in Wisconsin and across the Great Lakes region in a consistent, appropriate manner.

To reach these objectives, we recommend that Wisconsin implementation legislation establish a conservation framework for Wisconsin which:

- Utilizes the water conservation definitions and tiers articulated by the U.S. Environmental Protection Agency (EPA) in the agency's *Water Conservation Plan Guidelines, Appendix A, Water Conservation Measures*.
- Requires a community, *prior* to its application for a new or increased diversion, to demonstrate system-wide (i) water conservation planning which evaluates present and future uses; (ii) determination of which conservation measures in the EPA tiers are environmentally sound and economically feasible to provide for *both* the "conservation of existing water supplies" *and* the implementation of the proposed diversion; and (iii) the measurably successful *implementation* of the water conservation measures and programs identified to provide for "conservation of existing water supplies" or a *legally enforceable commitment* to implement said water conservation measures.
- Requires utilities, prior to new or additional in-Basin withdrawals, (i) to demonstrate water conservation planning system-wide, (ii) to evaluate which water conservation measures (e.g. metering, pricing, replacements and promotions, loss assessment and public information) are environmentally sound and economically feasible, and (iii) to commit *in a legally enforceable manner* to implementing said measures.
- Establishes an advisory committee, comparable to the Act 310 Groundwater Advisory Committee, to assist DNR in developing a comprehensive conservation program for the state to assist in the coordination of uniform measures like public education, plumbing codes and piping standards and to consider a variety of conservation initiatives, including re-use and reclamation of water, within the state's menu of water conservation opportunities.

III. RETURN FLOW

To prevent or minimize water losses in the Great Lakes Basin and to prevent adverse impacts to the basin ecosystem, the Great Lakes Compact requires that all water withdrawn from the Basin shall be returned, either naturally or after use, to the source watershed less an allowance for

consumptive use. To further these objectives and not undermine the considerable investments in restoring the ecological integrity of the Basin's waters, Wisconsin's implementing legislation should include the following clarifications:

- An applicant seeking to withdraw water from the Basin shall return the water as close to the point of the initial withdrawal from the source watershed as environmentally practicable, unless it can be shown that it is not economically feasible, not environmentally sound and not in the interest of public health to do so.
- In returning water to the source watershed an applicant must document how the physical, chemical and biological integrity of the receiving waters including the "natural flow regimes" will be protected and sustained.

In addition, certain factors need to be considered if an applicant community were proposing to meet the return flow requirements through a river or stream or surface body of water connected to the source watershed. These include:

- "Natural flows" of the receiving waters shall be established at the point of a proposed discharge based on calculations commonly used within Wisconsin or by U.S. EPA and other communities. The applicant or the DNR would establish the Q7, 10 (for low flows) and the 100 year flood (for high flows) at the point of discharge.
- The water quality goal for the receiving waters should be established as the "highest attainable biological use". (This clarification is designed to ensure that the quality of the receiving waters would not be limited to their **current** condition).
- The proposed return flow would constitute a "new discharge" and the new discharge would minimize adverse impacts on magnitude, frequency, timing, duration, rate of change and predictability of natural flow events and address temperature, nutrients loadings, seasonal variations and loadings in the receiving waters.
- The receiving stream or river would be monitored for potential impacts at reasonable intervals and permits issued for the new discharge would incorporate such monitoring schedules.

IV. FIXED BOUNDARIES

To establish boundaries for "communities within straddling counties" and "straddling communities" and to ensure that the review of proposed diversions follow the distinctions called for in the Great Lakes Agreement of December 13, 2005 the implementing legislation should include the following clarifications:

- The term "communities" as used in "communities within a straddling county" or "straddling communities" shall only mean cities and villages incorporated under Wisconsin laws as of December 13, 2005.
- The boundaries of incorporated straddling communities and incorporated communities within a straddling county shall be defined as those boundaries that exist as of December 13, 2005.

- Diversions to lands annexed after the Agreement was signed (12/13/05) may be allowed **but** only after complying with the Regional Review provisions of the Compact.

V. CLARIFICATION OF THE BOTTLED WATER EXEMPTION

Wisconsin implementing legislation should safeguard against the unregulated privatization of our Great Lakes waters one bottle at a time.

- Implementing legislation should clarify that the decision-making standard will apply to any proposal to withdraw water for bottled water in containers of 5.7 gallons or less at the threshold level designated to trigger the application of said decision-making standard. [Proposed s. 281.343 (4t) (j) in LRB-0058/P1.]
- Implementing legislation should also require that an application for a new or increased surface water withdrawal include an analysis of whether the withdrawal will result in 95% or greater consumptive use and, if so, an analysis of any significant adverse environmental impact (comparable to the requirement in NR 820.32 regarding new groundwater withdrawals).

VI. PUBLIC PARTICIPATION

Wisconsin should develop appropriate rules and procedures to ensure that in conducting its duties and responsibilities under the compact, the state proceeds in an open and transparent manner maximizing the availability for meaningful public participation and involvement.

- **Provide a clear public notification process.** Use the WPDES program as guidance for the Compact's public notification and disclosure process.
- **Civil Penalties.** There should be a meaningful disincentive to violating the Compact. We propose meaningful penalties identical to those available under the Federal Clean Water Act.

APPLICATIONS FOR DIVERSION OF LAKE MICHIGAN WATER

In addition to our legislative positions, we are recommending that the Wisconsin Department of Natural Resources ("DNR") should not consider applications for Great Lakes water diversions until Wisconsin has passed state legislation that includes standards for implementing the Compact. Until all the Great Lakes states adopt the Compact and Congress ratifies it, the existing federal Water Resource Development Act (WRDA), that covers Great Lakes diversions, is in full force.