

KENOSHA COUNTY MULTI-JURISDICTIONAL COMPREHENSIVE PLAN

APPENDIX R

SUMMARY OF GREAT LAKES COMPACT



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Great Lakes Compact Law (2007 Wisconsin Act 227): Executive Summary of the Act

The endorsement of the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) by the governors of the eight Great Lakes states in December 2005 led to an extensive review and consideration of the compact by the Wisconsin Legislature. This consideration included a Joint Legislative Council study committee on the compact and culminated in the enactment of 2007 Wisconsin Act 227 (the “act”).

Act 227 does the following:

- Contains Wisconsin’s ratification of the compact.
- Regulates water use in the Wisconsin portion of the Great Lakes basin until Congress consents to the compact.
- Implements the compact in Wisconsin when the compact takes effect.
- Establishes other state water use programs.

BACKGROUND

In Wisconsin, as shown in the accompanying map, approximately the eastern one-fourth of the state is in the Lake Michigan part of the Great Lakes basin, and a smaller area in the northern part of the state is in the Lake Superior basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the compact.

The compact takes effect when ratified in Wisconsin and by the other seven Great Lakes states through legislation, and consented to by Congress. Thus far, the compact has been ratified by



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all eight Great Lakes states. When the compact takes effect, it will establish the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) for regulating large withdrawals and consumptive uses of water within the basin. Throughout the act, "water" includes groundwater and surface water.

The use of Great Lakes basin waters was addressed prior to the act in the following two programs:

- The Great Lakes Charter of 1985, which is a voluntary agreement among states for cooperative management of waters of the Great Lakes. (Wisconsin adopted legislation implementing this agreement. See s. 281.35, Stats.)
- The U.S. Water Resources Development Act (WRDA) of 1986, which is a federal law that requires the unanimous approval of the governors of the eight Great Lakes states for any proposed out-of-basin diversion of water from the Great Lakes basin. WRDA does not contain standards or procedures that governors must use in deciding whether to approve a proposal to divert or export water. (Presumably, Congress will amend or repeal this law when it acts on the compact.)

In 2001, the eight Great Lakes governors concluded in essence that WRDA did not adequately protect and manage the Great Lakes and those governors and the premiers of Ontario and Quebec agreed to prepare basin-wide binding agreements, such as an interstate compact, to protect and improve the quantity and quality of water in the Great Lakes.

In December 2005, the Great Lakes governors signed the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (the "agreement") and called for enactment of the draft compact, which was endorsed by the governors in that month.

The Joint Legislative Council created the Special Committee on Great Lakes Water Resources Compact, chaired by Senator Kedzie, to consider ratification and implementation of the compact in Wisconsin. After many meetings between September 2006 and September 2007, the committee was adjourned without reaching a consensus on legislation. The Governor then convened a group of individuals to prepare legislation to ratify the compact. The Senate Committee on Environment and Natural Resources introduced the draft legislation as 2007 Senate Bill 523 on February 21, 2008. The Senate passed Senate Bill 523 on March 6, 2008. The Assembly did not concur in this bill before the end of the regularly scheduled floorperiod.

Subsequently, the Governor called the Legislature into Special Session to consider the compact and revised implementing legislation. The Legislature passed April 2008 Special Session Senate Bill 1 on May 14, 2008, and the Governor approved it on May 27, 2008 as 2007 Wisconsin Act 227. Act 227 took effect on June 11, 2008.

KEY PROVISIONS OF THE ACT

REGULATION AND REVIEW OF PROPOSALS TO WITHDRAW OR DIVERT WATER FROM THE BASIN

For purposes of the compact, the Great Lakes basin is composed of the surface water and groundwater of the individual basins of each of the Great Lakes and the St. Lawrence River basin upstream from Trois-Rivières, Quebec, as depicted in the map on page 1.

The Great Lakes-St. Lawrence River Basin Water Resources Council (the “council”), created by the compact, consists of the governors of the eight Great Lakes states or their alternatives. Under the compact, the council’s review and approval authority relates primarily to reviewing exceptions to the prohibition on diversions of water from within the basin to places outside the basin. The compact contains a standard of review for the council and the states to use in making these decisions (called the “exception standard”), which the council may modify to make more or less restrictive. The council also oversees implementation of the compact, including identifying water conservation and efficiency objectives.

The compact also assigns tasks to a “regional body,” created by the agreement, that consists of the members of the council and the premiers of Ontario and Quebec. The regional body provides advisory opinions on certain diversions and withdrawals but has no decision-making authority.

Any person who takes water from the basin (i.e., “withdraws” the water) for use within the basin that exceeds the specified amounts or diverts any amount of basin water to any place outside of the basin or between basins of the Great Lakes must, under the compact, register with the state and provide information to the state about the withdrawal or diversion.

With a few exceptions, new or increased diversions of water from the basin are prohibited under the compact. A “diversion” is when water is removed from the Great Lakes basin. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin. In particular, the compact authorizes the following three exceptions to its general ban on new or increased diversions:

- Diversions to areas outside the basin that are within communities that are partly outside of (i.e., straddle) the boundary of the basin.
- Transfers of water within the basin, but from the watershed of one Great Lake into another, referred to as an “intrabasin transfer.”
- Diversions to communities that are outside the basin, but that are entirely within a county that straddles the basin limits.

The compact provides that council approval is required for the last of the three exceptions above and for large intrabasin transfers, and requires approval by the council without a dissenting vote.

The compact requires each of the eight Great Lakes states to regulate new and increased withdrawals and consumptive uses of water from the basin. “Consumptive use” means that

water is removed and not returned to the basin, such as by evaporation. Each state sets the volume of water withdrawn or consumed that triggers regulatory review by that state. Any proposal that exceeds the volume of water to trigger review under the compact must obtain approval from the state based on the “decision-making standard” established in the compact. The council may also modify this standard.

IMPLEMENTATION OF THE COMPACT

The act implements the compact for Wisconsin in two stages. The first stage of state regulation applies prior to the ratification of the compact by the Great Lakes states and consent to the compact by Congress. These regulations are specific to Wisconsin and consist of the modification of current statutes and the enactment of new statutes. Many of these provisions are similar or identical to provisions in the compact. For example, the regulation of interbasin transfers in this period is generally based on the regulation of diversions under the compact.

The second stage of state regulation establishes statutory provisions that apply commencing on the effective date of the compact and that replace the pre-compact regulations. The act creates regulatory provisions to implement the standards imposed directly by the compact, and to adopt state policies within state discretion as authorized by the compact. Interbasin transfer approvals issued before the compact takes effect continue to be valid diversions after the compact’s effective date. The threshold for regulating a new or increased withdrawal under the compact (i.e., subjecting it to the compact decision-making standard) is essentially whether the withdrawal is at least 10,000,000 gallons per day (GPD) in any 30 consecutive days and the water loss resulting from the withdrawal is at least 5,000,000 GPD in any 90-day period.

WATER CONSERVATION

The act establishes a statewide water conservation and efficiency program, to be administered by the Department of Natural Resources (DNR), the Public Service Commission (PSC), and the Department of Commerce. Elements of this program are used as part of the regulation of interbasin transfers, diversions, and withdrawals from the waters of the Great Lakes basin under the act. Use of water from the Upper Mississippi River basin is subject only to voluntary water conservation and efficiency measures.

WATER SUPPLY PLANS

The act establishes a new statewide requirement for water supply plans. This planning requirement applies to a public water supply system serving a population of 10,000 or more that withdraws waters from any location in the state after 2025. The act also requires a public water supply system to prepare a water supply plan as a condition of receiving approval of a proposal for a new or increased withdrawal after the compact’s effective date, if the system serves more than 10,000 people, or for an interbasin transfer or diversion for any size of system after the act’s effective date.

ADDITIONAL INFORMATION

This memorandum is one of a series of memoranda summarizing Act 227. Other memoranda in this series address the following topics:

- IM-2008-04: *Summary of the Compact.*
- IM-2008-05: *New State Water Use Regulations.*
- IM-2008-06: *Water Supply Planning.*
- IM-2008-07: *Water Loss, Legislative Oversight, and Other Provisions.*
- IM-2008-08: *DNR Rule-Making.*

For additional background information on the compact, see the Council of Great Lakes Governor's website at <http://www.cglg.org>. This site includes this Council's resource kit on the compact.

For information on the work of the Special Committee on Great Lakes Water Resources Compact, consult the Joint Legislative Council's website for the Special Committee (2006 study committees) at <http://www.legis.state.wi.us/lc>.

The DNR website on the compact is at:

<http://www.dnr.wi.gov/org/water/greatlakes/annex2001/>.

The DNR website on Wisconsin's Objectives for Water Use Efficiency and Conservation in the Great Lakes-St. Lawrence Basin is at: <http://dnr.wi.gov/org/water/dwg/wigobjectives.htm>. This website includes links to the PSC's water conservation program and the Department of Commerce's plumbing program.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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