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# **Wisconsin Briefs**

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## **GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT**

According to the National Oceanic and Atmospheric Administration, each day the Great Lakes provide drinking water for 40 million people, as well as 56 billion gallons of water for other municipal, agricultural, and industrial uses. However, this resource is not limitless. A potential worldwide water crisis, intensified by the scarcity of available freshwater, is creating tension in all corners of the world. In the United States, much of this tension is focused on the Great Lakes.

In order to conserve and protect the Great Lakes from mismanagement and overextension, the governors of the eight U.S. states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and premiers of the two Canadian provinces (Ontario and Quebec) that border the Great Lakes conducted negotiations that resulted in the Great Lakes-St. Lawrence River Basin Water Resources Compact. Since states cannot enter into binding agreements with foreign governments, the Canadian provinces are not parties to the compact, but will have a cooperative role in managing the waters of the basin. In 2005, the Great Lakes governors endorsed the compact.

The compact will not become law until it is ratified by all eight of the Great Lakes states and the U.S. Congress. In Wisconsin, ratifying legislation was passed by the legislature during the April 2008 special session and signed by Governor Jim Doyle on May 27, 2008, as 2007 Wisconsin Act 227.

### **BACKGROUND**

The Great Lakes basin consists of the watersheds of Lakes Superior, Erie, Huron, Michigan, and Ontario and the Upper St. Lawrence River and the surface and groundwater in those watersheds. The current federal law on use of water from the basin is the Federal Water Resources Development Act of 1986 (WRDA). WRDA prohibits new diversions from the Great Lakes basin without the approval of all the Great Lakes states; however, it does not create any standard or process for reviewing requests. As a result, there is a concern that decisions based on WRDA could be overturned in court or that governors from other states could withhold approval arbitrarily.

In 2001, the Great Lakes governors and Canadian premiers decided they needed a stronger management system and committed to create one within three years. On December 13, 2005, the Great Lakes governors endorsed what is commonly known as the Great Lakes Compact. The compact creates a cooperative management approach to the basin's resources with reporting requirements and decision-making standards, and prevents further diversions from the basin with some exceptions. While the compact provides a framework, individual states have discretion over many of the specifics of how they will comply with compact requirements.

## ROAD TO RATIFICATION

As of June 13, 2008, the governors of Illinois, Indiana, New York, and Minnesota have also signed laws ratifying the compact. Legislation is pending in Ohio, Michigan, and Pennsylvania.

In Wisconsin, the development of legislation to ratify the compact began with the first meeting of the Special Committee on Great Lakes Water Resources Compact in September 2006. During the next year, that committee, which included members of the legislature and representatives of business organizations, water utilities, and environmental groups, held several meetings assisted by staff of the Legislative Council and of the Wisconsin Department of Natural Resources (DNR). The committee was unable to reach a consensus and adjourned. Although the committee dissolved, a compact implementation bill, 2007 Senate Bill 523 was introduced by the Committee on Environment and Natural Resources on February 21, 2008. On March 6, a substitute amendment was adopted along with a simple amendment, and the revised bill was sent to the assembly. The assembly did not act on SB-523 before the end of the last general-business floorperiod.

Although the last general-business floorperiod had ended, members of the legislature continued to work on resolving issues that had been raised during the legislative process. Governor Doyle issued Executive Order 246 on March 9, 2008, calling a special session of the legislature to convene starting April 17 to ratify the compact. April 2008 Special Session Senate Bill 1 was introduced on May 12, 2008, and was passed by both houses on May 14, 2008, with only one dissenting vote in each house.

## 2007 WISCONSIN ACT 227

2007 Wisconsin Act 227 regulates diversions of any amount and requires permits for withdrawals from the basin that

average 100,000 gallons per day (GPD) or more in a 30-day period. Once the compact takes effect, the act requires certain large withdrawals of water to meet decision-making standards in order to receive permits. In addition, the act creates a statewide registration and reporting system for withdrawals that average 100,000 GPD or more in a 30-day period, requires DNR to promote water conservation and efficiency, and establishes a planning program for public water utilities.

As noted, the compact will not become binding until all the Great Lakes states and the U.S. Congress have ratified it. However, Act 227 creates pre-compact provisions that will take effect immediately in Wisconsin and stay in effect regardless of whether the compact becomes law. If the compact becomes law, some of the pre-compact provisions will be modified.

## DIVERSIONS

The compact generally prohibits new diversions or increases in current diversions. A "diversion" is defined as a transfer of water out of the basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means, such as a pipeline, canal, aqueduct, or tunnel. Removal of Great Lakes water in containers of 5.7 gallons or larger is also treated as a diversion. The states can decide how to regulate removal in smaller containers, such as bottled water; Act 227 will regulate them as "withdrawals."

When Act 227 takes effect, new and increased diversions are generally prohibited. The prohibition applies before and after the compact takes effect, although the standards for exceptions will change somewhat when the compact takes effect. Existing diversions are grandfathered, but must be registered with DNR. DNR is required to establish a baseline volume to be used to determine the amount of

water that may be diverted without the need to apply for approval to increase the diversion.

## **EXCEPTIONS**

The compact allows some new diversions under certain conditions, including that the diverted water is treated and returned to the basin. That provision is effective immediately and will remain after the compact is ratified. Also, some proposed diversions must meet the “exception standard.” In general, the exception standard says a diversion is allowed if it cannot be avoided by increasing efficiency, it is limited to quantities considered reasonable, and it will not adversely affect the water or natural resources dependent on water in the basin.

Some exceptions will need to be reviewed by the regional body, and some of those exceptions will also need unanimous approval of the Great Lakes Council. The council consists of the governors of the Great Lakes states or an appointed representative, while the regional body is comprised of the council plus government officials from Ontario and Quebec. If a request is denied by the council, the state may appeal the decision according to a process set in the compact.

One type of exception is for towns, cities, or villages partially within the basin, called “straddling communities.” Under the compact and under the act after the compact is effective, proposals for new diversions or increases that average 100,000 GPD or more in a 90-day period are subject to the exception standard. Pre-compact, DNR must consider the exception standard, but the proposal does not have to meet all the requirements. Also, any proposal for such a diversion must be consistent with an approved public water supply plan. Once the compact is effective, proposals that would result in a water loss to the basin of 5,000,000 GPD or more in a 90-day period are subject to review by the compact’s regional body.

Another exception is for “communities within straddling counties.” In this scenario, the community is not inside the basin at all; however, the county the community lies in is at least partially within the basin. Communities within straddling counties need to meet the exception standard regardless of the amount of water withdrawn. Similar to straddling communities, DNR does not have to hold proposals strictly to the exception standard until the compact becomes effective. Each proposal must be consistent with an approved public water supply plan. After the compact takes effect, proposals of any amount must also have unanimous approval of the Great Lakes Council before DNR can give its approval.

Finally, exceptions are allowed for “intra-basin transfers.” In Wisconsin, these are transfers between the watersheds of Lake Michigan and Lake Superior. According to the compact, transfers that average 100,000 GPD or more in a 90-day period are subject to the exception standard but only transfers resulting in an average water loss of 5,000,000 GPD or more in a 90 day period need council approval. States have the authority to regulate smaller transfers. According to Act 227, DNR may approve intra-basin transfers that average 100,000 GPD or less in a 90-day period if the proposal follows state laws and DNR rules regarding high-capacity wells, water supply systems, or withdrawals from streams, whichever is appropriate.

## **WITHDRAWALS**

A withdrawal is the removal of surface or groundwater, regardless of where the water is used. The compact requires the registration of withdrawals in the basin that average 100,000 GPD or more in a 30-day period. Act 227 requires registration with DNR of withdrawals of 100,000 GPD or more in a 30-day period statewide in addition to waters solely from the basin. Besides registration,

withdrawals of this size from the basin will need to be covered by a permit. Under the act, DNR will automatically issue permits for existing withdrawals before the compact takes effect, after which all proposals will need to go through the full review and application process with DNR. When it issues automatic permits, DNR will also determine baselines required by the compact, generally based on the capacity to withdraw.

After the compact takes effect, the act requires DNR to apply the compact's decision-making standard, or a similar state decision-making standard, to certain proposals for new or increased withdrawals. A decision-making standard applies to a new withdrawal or an increase to an existing withdrawal that equals or exceeds the threshold of 1,000,000 GPD for any 30 consecutive days. The compact also requires states to notify the regional body of withdrawal requests that would result in an average water loss to the basin of 5,000,000 GPD or more in a 90-day period.

## **REPORTING**

Under the compact, states must develop an inventory of all types of withdrawals from the basin and create a system of reporting and keeping information, including locations and quantities, on withdrawals of 100,000 GPD or more in a 30-day period (this includes high-capacity wells), or diversions of any amount. This information will be shared with the council to evaluate the impacts of withdrawals and diversions. According to Act 227, DNR will be responsible for relaying information received from registration and permits to the council to fulfill this requirement.

## **CONSERVATION AND EFFICIENCY STANDARDS**

The compact also sets goals for creating conservation and efficiency standards for the

waters of the basin. Each state must develop a mandatory or voluntary conservation and efficiency program that meets those standards. Act 227 requires DNR to develop a statewide conservation and efficiency program in consultation with the Wisconsin Department of Commerce and the Public Service Commission. For water withdrawals outside the basin, the program must be voluntary; within the basin, DNR must promulgate rules that may include mandatory conservation and efficiency measures for all withdrawals that are required to have permits and all diversions.

## **DEBATED ISSUES**

Several concerns were raised throughout the legislative process that delayed Wisconsin's ratification of the compact. For example, some agricultural and manufacturing companies argued that the new permitting system would be unnecessarily restrictive and give "broad authority" to DNR.

The most divisive issue, however, was the ability of a council member from any Great Lakes state to veto a request for a diversion by a Wisconsin community. Some legislators asserted that the unilateral veto was similar to giving up state sovereignty. In particular, they felt it was unfair to give Michigan such strong decision-making power over requests, since Michigan is mostly within the basin and is less likely to need a diversion to supply its communities with water. The approval of diversions is a special concern for communities outside the basin, including Waukesha. Waukesha is looking for a new public water supply due to high levels of radium in its current wells. There was a suggestion to amend the language in the compact from requiring unanimous council approval to instead requiring a simple majority vote. However, changing the compact would have required a renegotiation by all the Great Lakes governors. Wisconsin

legislators did not see this as a likely scenario, and the issue was dropped in favor of passing the compact without change.

#### FOR MORE INFORMATION

View a copy of 2007 Wisconsin Act 227 at: [www.legis.wi.gov/2007/data/acts/07Act227.pdf](http://www.legis.wi.gov/2007/data/acts/07Act227.pdf)

View a copy of April 2008 Special Session Senate Bill 1 at: [www.legis.wi.gov/2007/data/AP8SB1hst.html](http://www.legis.wi.gov/2007/data/AP8SB1hst.html)

To learn more about the Great Lakes-St.

Lawrence River Basin Water Resources Compact, visit:

Wisconsin Department of Natural Resources: [www.dnr.wi.gov/org/water/greatlakes/annex2001](http://www.dnr.wi.gov/org/water/greatlakes/annex2001)

Council of Great Lakes Governors: [www.cglg.org/projects/water/CompactImplementation.asp](http://www.cglg.org/projects/water/CompactImplementation.asp)

Material from the Special Committee on Great Lakes Water Resources Compact: [www.legis.wi.gov/lc/committees/study/2006/GLAKE](http://www.legis.wi.gov/lc/committees/study/2006/GLAKE)

#### GREAT LAKES AND ST. LAWRENCE RIVER BASINS



Graphic by Legislative Technology Services Bureau.