

Great Lakes—St. Lawrence River Basin Water Resources Council
Meeting Summary
December 8, 2010
2:45 p.m. EST

Notice:

Notice of the meeting was provided to the public through the Great Lakes Information Network's distribution list on November 8, 2010. Notice was also posted to the Great Lakes-St. Lawrence River Basin Water Resources Council (Compact Council) website at www.glscompactcouncil.org. The notice included an announcement that the meeting agenda, draft resolutions and materials to be discussed during the meeting were available on the Compact Council's website.

Call of Meeting:

3:30 p.m. EST—The meeting was called to order by Kari Evans Bennett, alternate of Compact Council Chair, Governor Mitch Daniels.

Roll Call:

The following Compact Council members, constituting a quorum, were present:

Illinois (alternate of Governor Pat Quinn): Gary Clark, Director, Office of Water Resources, Illinois Department of Natural Resources; Daniel Injerd, Manager, Lake Michigan Management Section, Office of Water Resources, Illinois Department of Natural Resources.

Indiana (alternate of Governor Mitch Daniels): Kari Evans Bennett, General Counsel, Indiana Department of Natural Resources.

Michigan (alternate of Governor Jennifer Granholm): Ken DeBeaussaert, Director, Michigan Office of the Great Lakes.

Minnesota (alternate of Governor Tim Pawlenty): Kent Lokkesmoe, Director, Division of Water, Minnesota Department of Natural Resources; Jim Japs, Deputy Director, Division of Water, Minnesota Department of Natural Resources.

New York (alternate of Governor David A. Paterson): Don Zelazny¹ on behalf of Jim Tierney, Assistant Commissioner for Water Resources, New York State Department of Environmental Conservation.

Ohio (alternate of Governor Ted Strickland): Sean Logan, Director, Ohio Department of Natural Resources. Ted Lozier of the Ohio Department of Natural Resources also participated.

Pennsylvania (alternate of Governor Ed Rendell): Cathleen Curran Myers, Interim Executive Director, Environmental Center, Bucknell University.

Wisconsin (alternate of Governor Jim Doyle): Bruce Baker¹ on behalf of Matt Frank, Secretary, Wisconsin Department of Natural Resources. Eric Ebersberger of the Wisconsin Department of Natural Resources also participated.

¹ Copies of executed proxy forms are available upon request.

Actions Taken

Review of June 10, 2010 Compact Council meeting minutes.

A motion was made by Mr. DeBeaussaert to formally approve the minutes of the June 10, 2010, Compact Council meeting. The motion was adopted without objection.

Reports

Noting that the meeting of the Regional Body adjourned immediately prior to the Compact Council meeting, a motion was made by Mr. Clark to incorporate minutes of the Regional Body reports into the Compact Council minutes.

The motion was approved without objection. Pursuant to the approved motion, the following reports are incorporated by reference into the Compact Council's record and re-printed in their entirety below:

Council of Great Lakes Governors Water Resource Managers Initiative.

Mr. Naftzger was asked by Mr. DeBeaussaert to report on the latest activities of the Water Resource Managers Initiative. Mr. Naftzger in turn noted that the Council of Great Lakes Governors, in partnership with The Nature Conservancy and with the support of the Joyce foundation started the initiative 18 months ago to identify tools and information that focus on managing water use impacts.

Mr. Naftzger reported that Phase 2 of the initiative started six months ago, focusing on developing a process for reviewing impacts of water withdrawals on the Basin as a whole or individual watersheds (e.g. Lake Michigan/Huron watershed). As part of this phase, the initiative is focusing on identifying a potential process for impact assessments and the substance of what would be included.

Mr. Naftzger noted that at the initiative meeting in the summer, there was a decision to look at water quantity, how water was used, and how it moves through the system. He described that initiative partners were working with the U.S. Geological Survey to this end. Mr. Naftzger also noted that a draft outline had been created for future assessments; gaps and deficiencies have been identified in current information; and the draft outline has been revised and final plans are being created.

Mr. Naftzger then reported that an exercise is being planned to draft a cumulative impact assessment, with the goal of having something to share in the first half of the year with the Regional Body's Advisory Committee, Resource Group and Observers, as well as with Tribes and First Nations. The intention would then to be have something concrete to share more widely in June or sometime thereafter.

No questions were raised by Regional Body members.

State and Provincial updates on implementation of the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement); Water conservation and efficiency goals and objectives; Water conservation and efficiency programs.

Each Regional Body designee provided an update on their jurisdiction's efforts to implement the Agreement including the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) or other mechanisms as appropriate.

In addition, each of the States and Provinces was asked to report on the status of its Water Conservation and Efficiency goals and objectives, as well as its Water Conservation and Efficiency program. The States' goals, objectives and programs were to be developed by December 8, 2010, pursuant to the Compact.

Illinois

Mr. Injerd reported that Illinois has no need to adopt any Compact implementing legislation or rules, as the State continues to operate under the Supreme Court decree.

Mr. Injerd also reported that domestic Lake Michigan water use under the consent decree was at about 900 million gallons per day in 2010. In the prior year, it was about 930 million gallons per day. He noted that in previous years water use was routinely above 1100 million gallons per day. He also noted that this reduction in use had occurred while the service population had increased which was indicative of how conservation and efficiency efforts had been taken seriously.

Mr. Injerd noted that a letter had been received from Environmental Non-Governmental Organizations (ENGOS), and that a departmental response had been drafted and was under review. He also described that water conservation and efficiency goals and objectives had been formalized in a document, which was being shared internally before being released. He noted that the proposed goals and objectives were consistent with the State's ongoing program.

Mr. Injerd reported that the State was undertaking a review of rules and regulations, including conservation and efficiency rules and regulations, with a plan to update them. The process is being overseen by a judicial committee so an exact timeframe cannot be given for this review to occur and be completed. However, the department plans to perform its work on this effort this year, with an opportunity for public review and comment.

Mr. Injerd stated that a water rate survey was completed with users. It was reported that residential water use costs were an average of \$5.22 per 1000 gallons (not including sewer costs), and that there had been an 8.6% increase per year in the price of water. This reflects a growing trend in in water pricing to better approximate service costs.

It was also reported that a retaining wall was completed on the Chicago River to reduce leakage, and that a Chicago River lock had been closed for the purposes of rehabilitation.

Finally, Mr. Injerd noted that the Illinois State Senate had confirmed the appointment of himself and Mr. Clark as Governor Quinn's alternates to the Compact Council. Mr. Clark, it was noted, will be retiring at the end of the year.

Indiana

Ms. Bennett began by reporting that the baseline and reporting mechanisms were working well in Indiana.

She noted that Indiana's water conservation and efficiency implementation statute requires that the State program be voluntary in nature. She reported that a State-wide water shortage task force report was released in 2009, creating a model for conservation and efficiency programs. Several cities have adopted this model. A commitment was also made that conservation and efficiency efforts would be State-wide, not just in the Great Lakes Basin. The State's efforts are focusing now on significant facilities (those that withdraw more than 100,000 gallons of water per day).

Ms. Bennett reported that outreach has been ongoing through many user groups. Conservation and efficiency information as well as best management practices tailored to several categories of users have been created. Furthermore, questionnaires are going out to water users, as well as annual reminders to report water use. Thus far, the response rate from irrigators have been very good. The State is determining what lessons have been learned so that in the future the program can be advanced. After this effort is completed, priorities will be identified and sent to stakeholder groups. The State will then focus on developing a program for water use permitting.

Michigan

Mr. DeBeaussaert reported that changes are underway regarding how the water management program is being administered through State agencies. Specifically, he noted that earlier this year Michigan developed goals and objectives consistent with the Basin-wide objectives as adopted by the Great Lakes – St. Lawrence River Basin Water Resources Regional Body.

Mr. DeBeaussaert also reported that Michigan's Conservation and Efficiency Program operates under the Water Use Program within the Department of Natural Resources and Environment (DNRE). The long-established Water Use Program has expanded its original role to incorporate the Compact provisions for a conservation and efficiency program to achieve Michigan's conservation objectives. The Water Use Program has the client base of Michigan's large quantity water users, and the means to communicate water conservation objectives and initiatives to the water users. The foundation of Michigan's Conservation and Efficiency Program is the water withdrawal assessment required of all new or increased large quantity withdrawals. The assessment process is a key part of Michigan's ground-breaking legislation that conserves and protects the water resources of the Great Lakes Basin. Now, an environmental and ecological standard of "no adverse impact" to the water resources must be met through the assessment process before a proposed withdrawal can proceed. This new standard insures that even at the smallest watershed scale, the water resources of the basin will not be impacted beyond set, acceptable limits.

Mr. DeBeaussaert further reported that Michigan approved sector-specific water conservation measures, and also developed generic measures for broader applicability. These “environmentally sound and economically feasible water conservation measures” must be reviewed by all large quantity water users. The water users certify that they reviewed the measures with each annual water use report. In environmentally sensitive areas where an increased risk of adverse impact is predicted as a result of a proposed withdrawal, implementation of water conservation measures is required as a condition of authorization. In addition, all other nearby large quantity water users are also required to consider implementing conservation measures. Water user committees are encouraged to be formed at the local watershed level with assistance from the DNRE for the dissemination of information about current water use, the status of the water resources, and long-term conservation planning. If the DNRE determines adverse impacts are occurring or likely to occur in a watershed where a water user committee has not been formed, the DNRE shall convene a meeting and facilitate measures that would prevent adverse impacts.

Finally, Mr. DeBeaussaert reported that, based on comments made, the Governor-elect is likely to separate the DNRE back into two separate agencies (DNR and DEQ).

Minnesota

Mr. Lokkesmoe began by noting that former U.S. Senator Mark Dayton is now the Governor-Elect for Minnesota.

Mr. Lokkesmoe noted that Minnesota has in place a long-standing water management program. He then asked Mr. Japs to discuss components of the State’s water conservation and efficiency program.

Mr. Japs noted that existing State laws are consistent with regional conservation and efficiency goals and objectives. The State’s program focuses on the issues of water supply, improving measures and prohibiting waste.

Mr. Japs noted that permits are required for all water withdrawals over 10,000 gallons per day. The State also requires applicants to have conservation and efficiency plans, as well as water use metering and reporting. He noted that water use fees are based on use, which have appreciated from \$3.30 to \$8.00 per million gallons. The State also charges \$30 per million gallons for non-essential uses. Also, drought plans require irrigation to be interrupted until there is sufficient rainwater. There is also a \$30 per million gallons summer surcharge.

State law also requires that public water supply systems incorporate conservation rate structures. In addition, they must implement demand reduction measures. Annual reports are also required by category and show unaccounted for water loss. Benchmarks created by the American Water Works Association for unaccounted for water loss are used. Mr. Japs noted that soil and water conservation plans are also required, and permits are suspended if they are not followed.

Finally, he described that laws eliminating groundwater as a source for once-through cooling have been implemented. It is estimated that 11 billion gallons per year have been saved.

New York

Mr. Zelazny reported that ever since the adoption of the Compact legislation, it has been the intention of the State to develop, resource and implement a water management program, including water conservation and efficiency plans, as part of a State-wide program. To that end, the Administration has been working with assorted partners such as irrigators, industry and environmental groups to adopt new legislation establishing a state-wide program with specific authorities that would help strengthen the Compact's implementation. The legislation (S.8280-A) has been passed by the State Senate, and the hope is that Bill A.11426-B will also be passed by the Assembly this year. The legislation would authorize the New York Department of Environmental Conservation to set a program consistent with Compact goals, which would allow the State's program to become more robust.

Mr. Zelazny reported that the existing Great Lakes Water Conservation and Management Act (Article 15, Title 16 of Environmental Conservation Law) and the Potable water Supply permit program encourage economically feasible conservation measures. For example, potable water supply facilities must have water conservation and efficiency plans as a condition of their permit application. These plans can be updated when the State-wide program goes into effect to address the Compact's new goals and objectives. Under the new program, short and long term plans with specific measures would be performed.

Mr. Zelazny also noted that the Compact implementing legislation requires specific recommendations from New York's Great Lakes Basin Advisory Council on a few specific issues including water conservation and efficiency goals, objectives and program measures. Those policy recommendations were provided in October, and the State is considering them now.

In addition, an Interim Strategy for Mitigation and Adaptation to Climate Change action plan was released last month that includes water resource conservation strategies. The State is now looking to receive comments. Furthermore, as part of New York's ARRA efforts, the State adopted a green infrastructure grant program which includes water metering and infrastructure realignment requirements. So, in effect, a number of actions are underway which will help promote the water conservation and efficient use goals and objectives of the Compact.

Ohio

Mr. Lozier reported that a 28-member advisory panel was formed in the State in March 2009 to work on implementing the Compact. The panel is completing its report by next week, as the due date is December 15. It is expected that there will be recommendations on baseline reporting, conservation and efficiency goals and objectives, as well as program development. Once complete, the report will be available on the Ohio

Department of Natural Resources website. As of now, there is not full consensus on the report, so more work must be done. The next step will be to develop implementing legislation.

With regard to conservation and efficiency goals and objectives, the advisory panel developed recommendations. The panel also developed recommended program elements. Mr. Lozier noted that Ohio's Compact implementing legislation called for the program to be voluntary, unless otherwise approved by the legislature. The legislation did allow education efforts to be part of the program. The State is now beginning to implement plans including outreach efforts.

Mr. Lozier reported that a drought management plan and task force that monitors resources was also created. This includes use restriction recommendations until disaster is declared, which then become mandatory. This effort is being worked on in partnership with the Ohio Environmental Protection Agency.

Ontario

Mr. Boysen reported that the Ontario Ministry of Natural Resources and the Ministry of Environment are working together on Agreement implementation. In 2007, the Ontario Provincial Parliament passed bill 187. Enabling legislation is now being developed to meet the bill's provisions. Scientific and information gathering is being performed regarding watershed mapping in a manner to be consistent with U.S. approaches. The Province is finishing a water use database for 2009, and is also performing water risk assessments and looking at climate change, with a focus on preserving water quantity. The Province is engaging with an Advisory Panel as well as First Nations as part of this process. Once complete, the Province wants to be able to meet the minimum commitments of the Agreement, if not go beyond them.

Mr. Boysen reported that, earlier, Ontario initiated a prior notice and consultation proceeding for a proposed interbasin transfer of water in the York region, which has been successfully concluded. He commented that the process was very comprehensive, and could serve as a model for future regional water reviews. As part of that process, Ontario required a long term conservation and efficiency strategy including monitoring and reporting.

Mr. Boysen reported that the Province is analyzing input received on draft conservation and efficiency objectives and will share them once complete. The hope is that this will occur by the end of March 2011.

Lastly, Mr. Boysen noted that, on November 29, the Water Opportunity and Conservation Act was introduced. It sets a framework to drive opportunities for conservation and efficiency to conserve Ontario's water resources. It also requires conservation efforts at government facilities and sets a goal for reducing water use on a per capita basis. Standards are included for consumer products, a change to the building code and requirements for regular review of building codes.

Pennsylvania

Ms. Myers provided a report on behalf of the Commonwealth. Elements of a conservation and efficiency program were included in the Pennsylvania Compact enabling legislation. Other elements were met through other planning and quality authorizations by the State legislature. The principal source of authorization is the State's water resources planning act. There is a State-wide reporting program of withdrawals over 10,000 gallons per day, with reporting and registration being performed through a metering system. The system allows for updating of registration information.

Ms. Myers noted that there has also been some judicial expansion, with recognition of water quality being a component of water quantity protection.

She reported that there recently has been a focus on hydro-fracturing issues in the Marcellus shale formation. This is important because 50% of the State has this shale. The State considers and issues permits under its oil and gas laws for water use related to hydro-fracturing.

The Compact enabling legislation called for a voluntary water conservation and efficiency program to be addressed through the development of a clearinghouse, with assistance from the Susquehanna River Basin Commission. To that end, the Pennsylvania Environmental Council won the bid to develop the clearinghouse. The scope of its work includes developing conservation and efficiency programs to meet the requirements in the Compact.

Ms. Myers concluded her report by noting that a new State water plan was adopted in 2009. This includes sub-plans for all basins in the State including the Great Lakes. The State now has a Great Lakes plan for meeting its commitments. Legislation was also introduced to implement recommendations on infrastructure conservation and efficiency, and the State is working with sewer and water authorities.

Québec

Mr. Maranda reported that the National Assembly adopted a specific water legislation in June 2009. Regulations are now being drafted to implement the legislation. One of the regulations, the Draft Regulation on the Prohibition of Diversions and Management of Exceptions, was released on November 10 for a 60-day public comment period, with the hope of adopting it in the spring of 2011. The Ministère du Développement durable, de l'Environnement et des Parcs (MDDEP) is looking to completely revise its water withdrawal regulations and include some provisions for shale gas drilling. The intention is to merge relevant regulations currently placed in disparate locations into a common regulation system.

Mr. Maranda said that for the conservation and efficiency program, final objectives will likely be adopted in early 2011. The intention is to have the program in place by 2013, pursuant to the terms of the Agreement, but a strategy may be in place as early as 2011 or 2012.

Mr. Maranda concluded by stating that, as part of the water withdrawals reporting program, the Province is working on an online reporting.

Wisconsin

Mr. Ebersberger reported that in June of 2008 Wisconsin adopted detailed implementing legislation along with the Compact. As part of the package, provision was made for the addition of four new staff people at the Wisconsin Department of Natural Resources to implement the Compact. Three of those four positions have now been filled.

With regard to the State's conservation and efficiency goals, objectives and program, the State worked with the Council of Great Lakes Governors on a pilot project to develop its own goals, objectives and program, and is using the outcomes of that project for its current program State-wide. This program was also developed in cooperation with the Wisconsin Department of Commerce and other State agencies. The program is voluntary in the Mississippi River basin, with both voluntary and mandatory components in the Great Lakes basin. As part of that program, there are increasing conservation and efficiency measures required by tiers and sector. The State is also developing conservation and efficiency guidance by sector, and a resource group is developing statewide plans and programs.

Opportunity for public comments.

Noting that the meeting of the Regional Body adjourned immediately prior to the Compact Council meeting, a motion was made by Mr. Clark to incorporate comments and questions made by the public during the public comment portion of the Regional Body meeting into the Compact Council minutes.

The motion was approved without objection. Pursuant to the approved motion, the following public comments and questions are incorporated by reference into the Compact Council's record and re-printed in their entirety below:

Members of the public were given an opportunity to ask questions or provide comments.

- Jim Zorn, Great Lakes Indian Fish and Wildlife Commission (GLIFWC): Mr. Zorn thanked the members for all of the updates. He then asked whether an assessment had been performed of how the programs were being received by water users. Mr. DeBeaussaert responded by noting that in the States, programs were required to be in place by today, but not any formal assessment or report. Ms. Myers responded by noting that the work in Pennsylvania has been collaborative and that the State has been seeking best industry practices. The response from industry and the regulated community has been enthusiastic.
- Marc Smith, National Wildlife Federation: Mr. Smith noted that a coalition of ENGOs had submitted letters to the Governors' offices regarding water conservation and efficiency goals, objectives and programs, and requested that a formal response be provided by December 15.

Mr. Smith also asked that future December meetings of the Regional Body and Compact Council be held face-to-face. Mr. DeBeaussaert responded by noting that budget restrictions made it difficult to travel, but every effort would be made to continue to have one face-to-face meeting per year, pursuant to resolution adopted last year by the Regional Body and Compact Council. Mr. Naftzger also noted that the large number of changes in the Governors' offices could make it important to hold a face-to-face meeting in June of 2011. Mr. Logan of Ohio also suggested that some action could be undertaken informally to meet face-to-face at Great Lakes Day in 2011.

- Karen Hobbs, Natural Resources Defense Council: Ms. Hobbs stated that she appreciated the reports and looked forward to reviewing reports from each of the States.
- Ed Glatfelter, Alliance for the Great Lakes: Mr. Glatfelter noted that there will be six new Governors in January and asked what actions were being taken to get the new members up to date on the requirements under the Compact. Mr. Naftzger responded by stating that briefing books had been developed, and that plans are being made to visit each of the new Governors' teams in the State Capitols after the transition.

Mr. Glatfelter asserted that some States have not met the requirements for developing water conservation and efficiency goals and objectives or implementing conservation and efficiency programs. He also expressed his concern that a lack of compliance could compromise the viability, both long and short term, of the Agreement and Compact. He therefore asked that any relevant reports be as detailed as possible.

- Marc Hudon, Nature Québec: Mr. Hudon asked which agency in Québec was taking the lead on merging regulations. In response, Mr. Maranda noted that the MDDEP regulations were being updated.
- Sara Gosman, National Wildlife Federation: Ms. Gosman thanked the members for the updates. Ms. Gosman also noted that under the Agreement any Party can ask for a Declaration of Finding to be performed on whether conservation and efficiency goals, objectives and programs were being properly implemented. She stated that it would be helpful to conduct such a review now rather than wait until 2013, and asked that one of the Parties request such a review accordingly.

New Business

Resolution #14 Adoption of MOU between the Compact Council and the CGLG.

Ms. Bennett provided an overview of Resolution #14. A motion was made by Ms. Myers to adopt the resolution. The resolution was adopted without objection.

Resolution #15 Adoption of Access to Records Policy.

Ms. Bennett provided an overview of Resolution #15. A motion was made by Mr. Clark to adopt the resolution.

Mr. Logan raised concerns about the Resolution and its attachment as proposed. First, Mr. Logan raised the concern with Section 1(f)(5) of the proposed Access to Records Policy. Specifically, he raised the concern that contemplations regarding legislative proposals would not be available to the public. Secondly, Mr. Logan raised an objection to Section 4(b)(2), which would allow for charging for the staff time required to put together documents in response to a request from the public. Mr. Logan noted that while he understood that there was a potential for abusing requests so as to unreasonably burden the staff, philosophically he had an objection to charging for staff time for public document requests. He also recognized that while other interstate compacts agencies similarly charge for staff time to respond to public records requests, he felt that this approach reflected an outdated model and that philosophies had changed since those policies had been put in place.

A roll call vote was then called on the motion to adopt the Resolution:

Mr. Clark of Illinois—Yes
Ms. Bennett of Indiana—Yes
Mr. DeBeaussaert of Michigan—Yes
Mr. Lokkesmoe of Minnesota—Yes
Mr. Zelazny of New York—Yes
Mr. Logan of Ohio—No
Ms. Myers of Pennsylvania—Yes
Mr. Baker of Wisconsin—Yes

The resolution was adopted by the Compact Council through majority vote.

Resolution #16 Adoption of Records Retention Policy.

Ms. Bennett provided an overview of Resolution #16. A motion was made by Mr. Clark to adopt the resolution. The resolution was adopted without objection.

Resolution #17 Election of Chair and Vice-Chair.

Ms. Bennett provided an overview of Resolution #17, which would elect the Governor of Illinois to serve as the Chair of the Compact Council with New York serving as Vice Chair beginning at the close of the meeting. A motion was made by Mr. Logan to adopt the resolution. The resolution was adopted without objection.

Ms. Bennett then thanked the other members of the Compact Council for the opportunity to serve as Chair on behalf of Governor Daniels over the last year. She also thanked the members of the public who participated in the meetings and activities of the Compact Council, and the staff of the Council of Great Lakes Governors for their support.

Mr. Injerd, on behalf of incoming Compact Council Chair Governor Quinn of Illinois, expressed his hope that with the help of the other Compact Council members and the

Draft—For Discussion Purposes Only
February 9, 2011

Vice Chair of the Compact Council that the Compact Council will perform well over the next year.

Ms. Myers closed by expressing her appreciation for the leadership of Ms. Bennett over the last year.

Other Business

No other business was raised by members of the Compact Council.

Adjournment

A motion was made by Mr. Clark to adjourn. The motion carried without objection. The next meeting of the Compact Council will be set and noticed at a future date.

The full text of the materials discussed at the meeting is available online at www.gslcompactcouncil.org.