

Great Lakes—St. Lawrence River Basin Water Resources Council

Meeting Summary

April 8, 2021

2:00 p.m. EDT

Remote participation was available to individuals registering at:

<https://attendee.gotowebinar.com/register/2291877425902342672>

Listen only mode is available by calling:

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Passcode: 902-144-486

Notice:

Notice of the special meeting was provided to the public through the Great Lakes Information Network's distribution list on March 9, 2021. Notice was also posted to the Great Lakes-St. Lawrence River 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-in information was also posted to the front page of the Compact Council website.

Call of Meeting:

3:37 p.m. EST— The meeting was called to order by Todd Ambts¹, Deputy Secretary, on behalf of Preston Cole, Secretary, Wisconsin Department of Natural Resources, who serves as alternate of Wisconsin Governor Tony Evers.

Roll Call:

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

Illinois (alternate of Governor J.B. Pritzker): Loren Wobig, Director, Office of Water Resources, Illinois Department of Natural Resources.

Indiana (alternate of Governor Eric Holcomb): Chris Smith, Deputy Director, Indiana Department of Natural Resources.

Michigan (alternate of Governor Gretchen Whitmer): James Clift, Deputy Director, Michigan Department of Environment, Great Lakes & Energy.

Minnesota (alternate of Governor Tim Walz): Jess Richards, Assistant Commissioner, Minnesota Department of Natural Resources.

New York (alternate of Governor Andrew Cuomo): James Tierney, Assistant Commissioner, New York State Department of Environmental Conservation.

Ohio (designee of Governor Mike DeWine): Mary Mertz, Director, Ohio Department of Natural Resources.

Pennsylvania (alternate of Governor Tom Wolf): Tim Bruno, Chief, Office of the Great Lakes, Pennsylvania Department of Environmental Protection.

¹ Signed proxy forms for individuals participating on behalf of official member designees are available upon request.

Wisconsin (designee of Governor Tony Evers): Todd Ambs, Deputy Secretary, on behalf of Preston Cole, Secretary, Wisconsin Department of Natural Resources.

Actions Taken

New Business

- Consideration of *Resolution #48 Adoption of Amendments to Rules of Practice and Procedure*

Mr. Ambs noted that the only item for consideration is adoption of Amendments to Great Lakes St. Lawrence River Basin Water Resources Council's Rules of Practice and Procedure. He further stated that the Compact Council Rules of Practice and Procedure that were being amended were adopted on December 6, 2018 along with the Regional Body Procedures and Council Guidance. At that time, the Compact Council committed to undertake a Phase II updates of its Guidance and Rules of Practice and Procedure.

He noted further that to implement its commitment, on December 6, 2018, the Council together with the Regional Body tasked the Procedures Update Team with drafting Phase II revisions to the Regional Body Procedures and Council Guidance for the Regional Body and Council's consideration, and the Council tasked the Procedures Update Team with drafting potential modifications to the Rules of Practice and Procedure for the Council's consideration. Each member of the Regional Body and the Council appointed at least one individual to the joint Team.

He noted that the existing Regional Body/Compact Council Advisory Committee, Resource Group, and Observers, as well as Tribes and First Nations have provided input and feedback to the Team at specific times throughout the process. He also stated that from May 18 through June 17, 2020, the public provided feedback on initial drafts. During the public comment period conducted from September 15-October 15, 2020, the Compact Council solicited written comments on draft amendments to the Compact Council Guidance as well as draft amendments to the Compact Council Rules of Practice & Procedure. A public hearing was held on October 13, 2020 wherein members of the public provided oral comments. Mr. Ambs stated that after considering the comments received during the public comment period, additional revisions were made, resulting in the proposed amendments to the Compact Council Rules of Practice and Procedure to be considered today.

He noted that resolution #48 to adopt amendments to the Council's Rules of Practice and Procedure and the accompanying proposed amendments have been distributed to all Council members. Mr. Bruno moved that the resolution be adopted, and Mr. Tierney seconded the motion.

Mr. Ambs pointed out that pursuant to the terms of the Compact, these amendments to the Rules of Practice and Procedure may be adopted by majority vote. He also added that much as was done in 2018, authority be given to Secretariat staff to make any typo level corrections, and corrections to conform the Rules of Practice and Procedure to the amendment to the resolution, as necessary, and report to the Compact Council members

what if any such changes were made by May 19, 2021. He further noted that a comment and response document will be finalized and published.

The resolution was adopted unanimously via voice vote.

Opportunity for public comments (limited to five minutes per speaker, depending on participation).

Mr. Ambs opened the meeting up for public comments by first noting that this was not a formal opportunity to comment on the amended rules of practice and procedure, and such comments would not be incorporated into the administrative record.

Jacqueline Wilson, Canadian Environmental Law Association. Ms. Wilson began her comments by noting her appreciation that the amendments to the rules have now been passed. Consequently comments were made for consideration going forward.

Specifically, she raised concerns about private confidential decision making approach under what is in its essence a public contract about issues of great importance to people living in the Great Lakes Basin. She acknowledged that there was a widely shared spirit of wanting to make sure that these important issues are public and there's stakeholder input. Accordingly, she stated that rule 500.5 of the rules should be watched closely as its implemented. She stated that under the ADR process, it allows a party to identify a person other than a party to participate in the ADR process. She considered that a positive development because it's a way for non parties to be participating in these more private processes. She still relayed concerns that such an approach would leave out non traditional actors because you're relying on a State to identify which persons should participate in ADR. Specifically, there's a concern about (for instance) low income and marginalized communities not being properly identified and not participating even though they should be included in such processes.

She also raised concerns that even if those communities are identified, the rule then allows a party to object and veto this participation. She recognized that changes could not be made now to the rules, but asked that as these processes unfold the members keep an eye out to make sure that that ADR process isn't excluding members of the public, especially low income, marginalized communities, indigenous communities, and other people that really should be part of the process.

Todd Brennan, Alliance for the Great Lakes. Mr. Brennan began by echoing the previous comments made by Ms. Wilson. He stated that they are appreciative to see that the Compact Council has improved the procedures by including alternative dispute resolution, and the clarifying the steps in the process, as well as including notification of potential disputes for a broader audience. He stated that overall they feel the process has been improved by adding a good and reasonable option for participation of other people, or potential communities or others that a party could nominate as someone that might be impacted or have expertise or have an important voice in the situation.

He stated further that in that same vein, they feel like the opportunity in 500.5 for another party, including possibly the one in dispute, to veto an outside person or organization's participation seems arbitrary and capricious. He stated that it's unclear on what grounds the objecting party would be refuting the judgment of another party, where you're trying to create a sense of cohesion among compact and party, it seems as if that that would be valuable to can to allow that participation. He noted that furthermore, because decisions ultimately may be resolved by a majority of the Compact Council members, the outside person or organization that would have been involved in ADR becomes just a passive participant. Consequently, Mr. Brennan recommend considering that this is a group of public bodies in the public eye participating in a unique and regional governance process and changing the process to allow for greater outside participation.

Mr. Brennan also questioned the inclusion of arbitration. He stated that it seemed like just another step allowed before a legal steps in a court of law may be taken. He recognized that alternative dispute resolution was required by the procedures of which by the compact to be spelled out what you've done here. He raised the concern that arbitration is effectively offering an opportunity for confidential negotiations, which is he recommended that members consider removing the arbitration procedures all together, as it uncertain who the process benefits.

Cheryl Nenn, Milwaukee River Keepers. Ms. Nenn was supportive of the comments made by Ms. Wilson and Mr. Brennan. Specifically, Ms. Nenn indicated that their biggest priority is to achieve a more open and participatory dispute resolution process should issues arise regarding enforcement, or interpretation and application or implementation of the compact. She stated that this was important because there is a shared dedication in seeing the Compact succeed. She went on to State that the section that allows Parties to an ADR action to veto the participation of an outside entity appears to be arbitrary. She further noted that as ADR does not involve legally binding actions, it still sets up a situation where a State or Province could improperly play gatekeeper.

Overall, she stated that another important priority is making sure that any community, primarily marginalized communities, tribal nations, and organizations or persons that might be impacted by a water diversion or other proceeding should have an opportunity to listen in and participate openly in ADR proceedings to be duly heard and informed throughout the process.

Ms. Nenn closed by again encouraging the members to reconsider the veto provision in Section 500.5 of the Rules of Practice and Procedure.

Mark Smith, National Wildlife Federation. Mr. Smith thanked the Chair for hosting the meeting and providing the opportunity to comment.

Mr. Smith began by noting that the Compact has really been the focus of many years of Mr. Smith's life, and that an important component has been collaboration. He also noted that add transparency has also been effective in getting the jurisdictions working together to get to where we are today of having a really robust, proactive thinking Compact regime that manages our water protectively, but also allows for a sustainable use. He noted that it has been that collaborative spirit, transparency and inclusion of the public, stakeholders and Tribes and First Nations that has made the Compact effective.

Mr. Smith then stated that he wanted to commend the Compact Council and Regional Body for understanding that, because this is a joint venture to make the Compact and Agreement work in our region. Accordingly, he stated that he thinks because of that collaboration the region is seeing the Compact and the Agreement work.

He then followed those comments by stating that he would hope that the Council focus on inclusivity when ADR or arbitration proceedings are initiated. And that, even though that there is the ability for a party to object to another persons or entities being involved in the participation, that the Compact members focus on that collaboration and transparency theme that has brought the Compact and Agreement so much success over the many, many years, and inclusion of people who may not be at the table, whether they are disadvantaged or just not in a position to participate, we keep that in mind when a situation arises, where you have the ability to object or not object. He also stated that if an issue has to go to the ADR process, it is important to have a really robust public participation in order to keep the spirit of transparency and collaboration moving forward. Because again, this is how it's going to work.

He closed by thank the members for listening to him and his counterparts and addressing some of the issues regarding the amendments to the Guidance and Rules that he and his counterparts raised during the public comment period, and that they look forward to working with the members in the future.

Adjournment

Before entertaining a motion to adjourn, Mr. Ambs stated that he really appreciated all the thoughts and comments folks had, noting that not only he had been involved with the Compact for many years, but many of the listeners on the call have been involved in Compact implementation for a long time as well.

He then stated that in the spirit of what we've been doing for the last 13 years since the Compact came into force in 2008, the members are continuing to work on the processes and procedures.

Mr. Ambs stated that the thought process behind non binding ADR and arbitration was to provide that as an option to resolve disputes between States before being forced to go to court. Along those lines, he pointed out that both ADR and arbitration are focused on resolving disputes between the States, and consequently the main driver on how it's implemented has to be how to effectively resolve disputes between States. Accordingly, the disputing Parties are by necessity going to have to be driving the bus on how ADR and arbitration procedures move forward, including who will be allowed to participate in such procedures or they will be ineffective.

Mr. Ambs invited a motion to adjourn and a second. Mr. Clift moved and Mr. Smith seconded the motion. The motion passed without objection and the meeting was adjourned.

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