



Analysis of November 2005 Revised Annex Implementing Agreements

The Implementing Agreements consist of a Compact and an Agreement. The Compact is an agreement among the eight Great Lakes States that is intended to be enacted into law in each of the States via concurrent State legislation and eventual consent of the United States Congress. The Agreement included the two Great Lakes Canadian Provinces, and is a good-faith agreement amongst the Great Lakes States and Provinces. The Great Lakes Governors and Premiers are planning a meeting in Milwaukee in mid-December for the potential signing of the Implementing Agreements.

Major Provisions of Revised Agreements:

- ? Creates the Great Lakes – St. Lawrence River Basin Water Resources Council (Council) and the Great Lakes – St. Lawrence River Water Resources Regional Body (Regional Body), consisting of one representative of each of the Great Lakes States, each having one vote. Unless otherwise noted, rule of decisions is by a simple majority, and the participation of a majority of the parties constitutes a quorum for the transaction of business. [Article 2 of Compact, Articles 400 and 401 of Agreement]
- ? The Council/Regional Body is responsible for determining if the water management and conservation and efficiency programs of each State meet the requirements and intent of the Agreements. [Section 3.4 of Compact, Article 300 of Agreement]
- ? Within five years of the effective date of the Compact, each State/Province must develop and maintain a water resources inventory, including a registration program for all water withdrawals in an amount of 100,000 gallons per day or greater in a 30 day period. Registrants must then annually report water withdrawals. [Section 4.1 of Compact, Article 301 of Agreement]
- ? Within two years of the effective date of the Compact, each State/Province must develop a water conservation and efficiency program, either voluntary or mandatory. [Section 4.2 of Compact, Article 304 of Agreement]
- ? Regional Review by the Council is provided for proposals for a new or increased consumptive use of 5 million gallons per day or greater average in any 90 day period (in-basin withdrawals, straddling community diversion exceptions, and intra-basin transfer exceptions), and for any straddling county diversion exceptions. [Article 4 of Compact, Article 204 of Agreement]
- ? No later than five years after effective date of the Compact (similarly configured deadlines are included in the Agreement – typical throughout), each State must allow for all other States and Provinces to comment on any proposal for a new or increased consumptive use of 5 million gallons per day or greater average in any 90 day period. [Section 4.6 of Compact, Article 205 of Agreement]
- ? Diversions are prohibited, except for strictly regulated exceptions. [Section 4.8 and 4.9 of Compact, Articles 200 and 201 of Agreement]
 - ? Straddling community exceptions are managed and regulated by each State/Province. Such exceptions must:
 - ? Ensure that all water is used solely for public water supply purposes.
 - ? All water withdrawn must be returned to the basins less allowance for consumptive use, and no water from outside the basin can be included in the return flow unless it is part of a water supply or wastewater treatments system that combines water from inside and outside of the basin, is treated to meet applicable water quality standards and to prevent invasive species

- introduction, and maximizes the portion of Basin water returned as compared to non-Basin water.
- ? If the proposal is for 100,000 gallons per day of greater average over a 90 day period, the proposal must meet the Exception Standard.
- ? If the proposal results in a new or increased consumptive use of 5 million gallons per day or greater average over a 90 day period, Regional Review is required.
- ? Intra-basin transfer exceptions are managed and regulated by each State/Province as follows:
 - ? At their discretion if the withdrawal is less than 100,000 gallons per day average over a 90 day period.
 - ? If the withdrawal is 100,000 gallons per day or greater average over a 90 day period and the consumptive use is less than 5 million gallons per day average over a 90 day period, the proposal must meet the Exception Standard (except for return flow being to another Great Lake watershed), there must be no feasible, cost-effective, and environmentally sound alternative (including conservation), and prior notice must be provided to the other States/Provinces.
 - ? If the withdrawal results in a new or increased consumptive use of 5 million gallons per day or greater average over a 90 day period, the proposal must meet the Exception Standard (with water returned to the source watershed), there must be no feasible, cost-effective, and environmentally sound alternative (including conservation), the proposal must undergo Regional Review, and unanimous approval must be provided by the Council.
- ? Straddling county exceptions are managed and regulated by each State/Province, and must satisfy all the following conditions:
 - ? Water must be used solely for public water supply purposes of a community within a straddling county that is without adequate supplies of potable water.
 - ? Must meet the Exception Standard.
 - ? Must be no reasonable water supply alternative within the basin in which the community is located (including conservation).
 - ? Must not endanger the integrity of the Basin Ecosystem.
 - ? Must undergo Regional Review, and must receive unanimous approval by the Council.
- ? The following Exception Standard [Section 4.9.4 of the Compact, Article 201 of the Agreement] applies as indicated above:
 - ? Need for all or part of the proposed exception can not be avoided through conservation and efficient use.
 - ? Exception is limited to quantities that are considered reasonable for the purposes for which it is proposed.
 - ? All water must be returned to the source watershed, less an allowance for consumptive use, unless it is part of a water supply or wastewater treatments system that combines water from inside and outside of the basin, is treated to meet applicable water quality standards and to prevent invasive species introduction.
 - ? Exception must be implemented to ensure it will result in no significant individual or cumulative adverse impacts to the water or water-dependent resources of the Basin.
 - ? Must incorporate environmentally sound and economically feasible water conservation measures.
- ? Within five years of the effective date of the Compact, each State/Province must create a program for the management and regulation of new or increased withdrawals and consumptive uses in accordance with the Decision Making Standard. Each State/Province may set and modify threshold levels for regulation; however, within 10 years of the effective date of the Compact, any State/Province that has not yet set threshold levels must apply a threshold level

- of 100,000 gallons per day or greater average in any 90 day period. [Section 4.10 of Compact, Article 206 of Agreement]
- ? A Decision Making Standard [Section 4.11 of Compact, Article 203 of Agreement] is set for the above referenced State/Province management and regulation programs:
 - ? All water, less a consumptive use allowance, must be returned to the source watershed.
 - ? Withdrawal must not result in any significant individual or cumulative adverse impacts.
 - ? Must incorporate environmentally sound and economically feasible water conservation measures.
 - ? Proposed use must be reasonable, based on consideration of:
 - ? Being planned in a fashion that provides for efficient use of the water and minimize waste, including any existing withdrawal.
 - ? Balance of economic development, social development, and environmental protection.
 - ? Supply potential of the water source.
 - ? Probable degree and duration of any adverse impacts to other water uses and the resource, including any proposed mitigation of such impacts.
 - ? Any plans for restoration of hydrologic conditions and functions.
 - ? Any State may impose more restrictive decision making standards. [Section 4.12.1 of Compact]
 - ? Baseline for determining a new or increased diversion, consumptive use, or withdrawal is the capacity of an existing withdrawal as of the effective date of the Compact, based on withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factor. [Section 4.12.2 of Compact, Article 207 of Agreement]
 - ? Applications for new or increased withdrawals are considered cumulatively within ten years of any other application. [Section 4.12.2 of Compact, Article 207 of Agreement]
 - ? Groundwater divides are assumed to be the same as surface water divides. [Section 4.12.5 of Compact, Article 207 of Agreement]
 - ? Watershed of each Great Lakes includes its upstream and downstream connecting channels. [Section 4.12.7 of Compact, Article 207 of Agreement]
 - ? Lake Michigan and Lake Huron watersheds are considered to be a single watershed. [Section 4.12.9 of Compact, Article 207 of Agreement]
 - ? Withdrawal of water and removal from the Basin in any container greater than 5.7 gallons is considered a diversion (and is therefore prohibited). Each State has the discretion on treatment of proposals to withdraw water and remove it from the basin in containers of 5.7 gallons or less. [Section 4.12.10 of Compact, Article 207 of Agreement]
 - ? Current, new, or increased withdrawal, consumptive uses, and diversions of Basin water within the State of Illinois are allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et.al. vs. Illinois et.al. [Section 4.14 of Compact, Article 207 of Agreement]
 - ? Each State/Province must conduct, on a Lake watershed basis, a periodic assessment of cumulative impacts of withdrawals, etc., every five years or each time the incremental Basin water losses reach 50 million gallons per day in any 90 day period in excess of the quantity at the time of most recent assessment. [Section 4.15 of Compact, Article 209 of Agreement]
 - ? Appendix 1 of the Agreement (Decision Making Standard Procedures Manual) has been removed.

Continuing Issues from MI-AWWA 08/15/05 Review of Previous Version of Agreements:

- ? Status of Illinois and the Proposed Agreements: Diversions, consumptive uses, withdrawals, etc., within the State of Illinois (the entire State, not just the portion within the Great Lakes Basin) are not under the same proposed regulations as the remainder of the Basin. It is not clear what the true implications of this may be; the concern remains that Illinois may be benefiting from this proposal, beyond water uses specifically resulting from the Chicago Diversion.

- ? Averaging periods remain as proposed in the last version of the documents (90 days).
- ? Capacity of an existing system is defined as the lesser of withdrawal capacity, treatment capacity, distribution capacity, or “other capacity limiting” factor. This requires additional permitting/permission to use infrastructure already in place.
- ? Groundwater divides are assumed to be the same as surface water divides.
- ? Consumptive use coefficients not clearly defined nor justified, although specific references to certain documents have been removed.
- ? Each State/Province is entitled to a single vote in matters before the Council, and the rule of decision for most matters is by simple majority (certain exceptions have been revised to require unanimity). Quorum for the transaction of business at any meeting of the Council is a majority of the members; i.e., all members need not be present and represented to render decision on an issue. Should this be required to be “all members present” to ensure representation in all decisions? Should voting rights be weighted in any way?
- ? Each State/Province must implement water conservation programs. Although these programs have been called to be “voluntary or mandatory” (at each State’s/Province’s discretion), the Decision Making Standard requires conservation be considered in applicable water withdrawal proposals. Specific suggestions for conservation measures, however, have been deleted from the latest revision of the documents.
- ? MI-AWWA suggested that the straddling community exception also be subjected to Regional Review. As revised, such exceptions only subject to Regional Review if consumptive use is 5 million gallons per day or greater average over a 90 day period.
- ? Intra-basin Transfer Exception: Michigan and Ontario likely are most impacted by these provisions. Previously, MI-AWWA suggested that such transfers for PWS’s should not be considered a diversion (and thus subjected to regulation as an exception).
- ? Straddling county exceptions: MI-AWWA is opposed to setting a precedent for establishing an ever-expanding definition of area where Great Lakes waters can be diverted.
- ? Decision making standard includes reference to “individual or cumulative adverse impacts”, but with no definition of such impacts. References also remain for “potential Cumulative Impacts of any precedent-setting consequences”, which appears to leave much to interpretation.
- ? Required Lake watershed assessments of cumulative impacts refer to an incremental Basin water loss of 50 million gallons per day over a 90 day period, which assumes that water is continually leaving or disappearing from the Basin and not being replenished, not recognizing the reality of a long-term water balance on a Lake watershed basis that would show no net loss (except in short-term basis of lowering lake levels) of the Basin waters.
- ? Return flow requirements remain, although the specifics of “guarantees” as referenced in the previous version’s Procedures Manual are no longer included. The potential for any increased monitoring, certification, etc., should likely be addressed.
- ? Exposure to additional liability, avoidance of redundant regulatory programs, and details to be developed at a later date continue to be of concern.

Additional Issues of Concern:

- ? The removal of the “Decision Making Standard Procedures Manual” means that some of the contentious and controversial issues from the previous documents are no longer included. The general provisions of the primary documents (Compact and Agreement) remain, thus the interpretation of how certain provisions will be implemented are left unknown.
- ? Although it is not likely to affect PWS’s, the intra-basin transfer exception as revised for those proposal with a consumptive use of 5 million gallons per day or greater average over a 90 day period calls for water to be returned to the source watershed. If the water is returned to the source watershed, then how is it an intra-basin transfer?