

Mr. Dan S. Duchniak P.E.
General Manager
Waukesha Water Utility
P.O. Box 1648
Waukesha WI 53187-1648

November 17, 2015

Re: Great Lakes Compact Inquiry

Dear Mr. Duchniak

You have asked me to summarize my involvement in the negotiations leading to the Great Lakes Compact and the state implementation statute. In particular, you have asked me to comment on the concept of water service areas as part of the process.

I worked at DNR from June 1974 until August of 2008. When I retired in 2008 I was the Director of the Office of the Great Lakes. Beginning in 1987, in my role as the Water Quality Planning section chief, I was the technical lead for Wisconsin's review of regional water project proposals which required state action under both the Great Lakes Charter and the requirements of the federal law. I subsequently represented Wisconsin in the negotiations and technical discussions with the other Great Lake states and the Canadian provincial governments which resulted in the Great Lakes Compact. Following the agreement on the compact by the 10 jurisdictions, I represented the DNR as the technical lead in the legislative discussions resulting in the enactment of the Compact requirements in Wisconsin statutes and ultimately federal law.

The concept of a water service area did not arise as an issue in the regional workgroup discussions until very late in the process. In the very first discussions about creating the compact, there was consensus that only municipalities should be eligible for 'straddling community' or 'straddling county' procedures. However when the regional discussions about specific definitions and applicability began, it became apparent that a variety of governance models were being used in the 10 jurisdictions. This variety was particularly evident for those instances where several areas that are individually governed are served by one water supply withdrawal and interconnected delivery systems. Utility districts, contractual relationships, basin authorities and other models including privatization approaches were already in use throughout the 10 jurisdictions. From these discussions, we realized that simply using the term "municipality" without some additional flexibility could be problematic.

Further, as these discussions continued, the 10 governments also developed consensus on several other issues related to a "municipal" application process:

1. for systems serving multiple communities, there should only be one application submitted by the designated water supply authority

2. the application should be based on a projected long term water usage to prevent multiple applications for small incremental increases of withdrawals. Further, as municipal systems are financed through bonding, there is a need for certainty of service for at least the payback period of the bonds
3. the long term water use projections should be premised on sound planning, using accepted population growth projections and realistic industrial and commercial needs for the planning period rather than historic water usage

At this point, Wisconsin introduced the concept of water service areas as an approach which could address these points of consensus through a process that could also provide a framework for the diversion proposal applications and reviews. In Wisconsin, we had been using the concept of a service area in the wastewater management program for over 20 years. It was particularly effective for developing multiple community management systems for shared wastewater treatment and disposal systems. Through environmental reviews coupled with cost-effectiveness analyses and public involvement; wastewater collection, treatment and management alternatives to meet the regional needs for a 20 year planning period could be evaluated. This evaluation process resulted in selected approaches supported by the local governments. Through this process, a governance system, or the designated management agency for building and managing the selected plan would be identified.

However, the other nine jurisdictions were not using this concept. Different approaches existed at the provincial or state level in the other jurisdictions but through this discovery there was recognition that some overall flexibility would be needed. Wisconsin proposed changing the term municipality to be broad enough that if Wisconsin decided to use this service area approach at the state level, such an approach would not be precluded by the compact language. That concept of flexibility was supported by all the regional workgroup members and resulted in the "equivalent thereof" addition. Additionally there were no concerns raised by the regional workgroup members or the advisory group members about a service area approach. Underlying all the discussions was the recognition that the history of legislation in all 10 jurisdictions mandated a variety of implementation approaches based on equivalency with the Compact requirements rather than conformity with Compact language.

This need for flexibility was seen in several aspects of the final version of the Compact. Beyond the "equivalent thereof" addition, flexibility for a regional water supply was included in the term "Public Water Supply System". This phrase referred to a "physically connected system of treatment, storage and distribution facilities" without regard to political boundaries. The Compact Exception Standard also included a provision that it was to be implemented "to ensure that it is in compliance with all applicable municipal, state and federal laws".

When we began our state implementation discussions, comments were raised about solutions for existing needs only versus planning for future needs as well. These comments were coupled with concerns about minimizing the number of reviews which could be required in systems that supplied multiple communities. Other questions were raised about which entity was really the applicant and how was the return flow guaranteed if the governance was different for sewage versus water supply. As part of the outreach process, DNR met with the City of Kenosha to gather ideas from a community having experience with an earlier regional review process for their proposal to provide water to Pleasant Prairie. The issue of service areas was suggested by the City of Kenosha as an approach that was established and understood by municipalities. There was also an established public involvement process. So the concept was proposed and the regional planning agencies believed that it was a logical extension of the sewer planning. Other interested parties also supported this approach .


As a result, we transferred the applicable provisions of Wis Admin Code NR 121 to a water supply service area process and included a requirement that the water supply area be consistent with the sewer service area plans. This process also required the types of environmental analyses and cost-effectiveness evaluations needed to meet Compact requirements. In addition to identifying the projected water service map for 20 years, this procedure addressed the governance questions using a process that was familiar to potential applicants and which also required the designation of the management agency for the multi-community proposals. Finally we required that any application by communities in straddling counties or straddling communities be consistent with the water supply area plan. Thus a community in a straddling county like the City of Waukesha, would be required to submit an application that addressed the projected needs for a 20 year period in the water supply service area instead of water needs solely based on City boundaries.

While copies of state legislation were distributed broadly to the other parties and other requestors by the Council of Great Lakes Governors (whose staff also made the proposals available on the council internet site) , I do not know who received copies.

To my knowledge there was never any opposition to the use of water supply service areas in the state legislation either within or outside of the state.

If you have additional questions, please let me know.

Sincerely,



Charles Ledin

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