

Compact deal shows progress

It's important to remember 'single veto' provision wasn't optional

By JAMES WIGDERSON

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Waukesha is at the center of the debate over the proposed Great Lakes Water Compact, an agreement between the Great Lakes states as well as Canada governing the use of the lakes. The compact must be approved by each of the Great Lakes states, and four states have already approved the compact.



In Wisconsin, the Democrat-controlled state Senate gave its approval in a bipartisan 26-6 vote. The governor announced on Wednesday a compromise has been reached with the Republicans in the Assembly and called for a special session to begin consideration of the compact on April 17.

The city of Waukesha is especially interested in the outcome. In order for the city to have access to Lake Michigan water, it will need the approval of each of the Great Lakes states.

Some Republicans, led by State Sen. Mary Lazich, have raised a few concerns about the compact. Chief among the concerns is the "single veto" provision. Under the compact, there would be an application process and criteria for any proposed diversion of water from the Great Lakes. However, any state would have the power to veto the request.

Lazich and others complain that this veto power is not democratic, and that diversions should be approved by a majority vote of the Great Lakes states. Lazich actually calls the veto power an infringement on Wisconsin's "sovereignty."

Compact opponents point specifically at the states of Michigan and Illinois as having little interest in seeing any diversions for Wisconsin. Michigan lies almost entirely within the basin, and Illinois benefits from the reversal of the Chicago River and a favorable Supreme Court ruling.

What the opponents appear to be forgetting is that the current federal law governing diversions also grants each state a veto. There isn't any criteria or process for granting permission for a diversion, so a state can veto a diversion application without offering any justification.

It's quite unrealistic to expect any state's governor to give up that kind of authority. Political bodies as a rule tend to jealously guard power that has been accumulated. If the four years it took to negotiate the compact didn't shake loose this provision, it's unlikely four or even eight more years will accomplish it.

But even under the current law the governors approved a diversion for Pleasant Prairie. With the compromise in place, Waukesha should be able to look forward to that kind of successful request.

Interestingly, Lazich cites as an authority a study by Mark Squillace, the director of the Natural Resources Law Center at the University of Colorado Law School, for renegotiating the entire compact. However, Squillace proposes an even less democratic process and one less respectful of Wisconsin's sovereignty. He proposed setting a "water budget" based upon current consumption for each state with careful auditing by the International Joint Commission.

Squillace wrote, "the parties will have to cede oversight responsibility to a central authority, perhaps the IJC itself, including the power to determine how much water is available for consumptive use during an established water cycle. Because of the relative insignificance of downstream withdrawals to upstream users, the IJC might appropriately look to hydrologic sub-basins in defining state and provincial rights."

And while Lazich and others also have objected to Public Trust Doctrine language in the compact, the above quote from Squillace demonstrates that complaint is mostly hollow. The Great Lakes basin is a single hydrological system. Every sucking straw in the water counts.

Lazich has also expressed concern that the compact will be a generator of litigation. But the Squillace study points out that only prevailing litigants can recover legal costs incurred, surely a deterrent for frivolous lawsuits.

After further review, Lazich is fortunate that nobody took the recommendations of the study seriously.

Fortunately Assembly Republicans were able to come to a compromise position with the governor. This compromise was only possible when Assembly Republicans realized that the single-state veto was not optional. When they reconvene, they should continue to be cautious of the governor's intentions, but at least real progress has been made to protect the Great Lakes and secure Waukesha's water future.

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