

THE GOOD, THE BAD, AND THE UGLY Implementation of the Great Lakes Compact

EXECUTIVE SUMMARY

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The Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”) is at a critical juncture. The Compact, a binding agreement among the Great Lakes states to protect the water resources of the Great Lakes Basin from diversions and excessive withdrawals, became law two and a half years ago. Together with a similar agreement between the states and the Great Lakes Canadian provinces, the Compact set minimum requirements for water use across the Basin. Each state agreed to implement the Compact by meeting a series of deadlines over five years, subject to regional oversight. Today, implementation of the Compact is at the halfway point. Two deadlines have already passed, and the final deadline is December 8, 2013.

Where are the Great Lakes states? That isn’t a rhetorical question. While some states have taken their obligations under the Compact seriously, and indeed chosen innovative approaches, many have opted for the lowest common denominator. All have failed to meet one or more of the deadlines. The Great Lakes-St. Lawrence River Basin Water Resources Council (“Council”)—the regional oversight body created by the Compact—has not stepped up and held the states to account. The Council is operating on a shoestring budget from a foundation grant and cannot even muster the resources to bring the state representatives together for a formal meeting more than once a year.

Implementing the Compact is essential to the health of the Great Lakes, to the interconnected waters of the Great Lakes Basin, and to the people, economy, and wildlife that depend on the entire ecosystem. The Great Lakes are a vast, but surprisingly fragile, natural resource. Together, the five Great Lakes make up 84% of all fresh surface water in North America and 21% of fresh surface water in the world. Yet less than 1% of the water in the Great Lakes Basin is renewable through precipitation, surface water runoff, and groundwater recharge. Even if water uses remain within that 1%, local shortages of surface water or groundwater can dramatically affect users and degrade the environment.

Great Lakes water resources could be even more vulnerable in the future. In a recent review of climate change models, the majority of the models predict decreases in the levels of the Great Lakes over time. The decreases could be very severe; some models show drops of more than eight feet in Lakes Michigan and Huron by the end of the century if carbon dioxide emissions are high. Groundwater may also be affected. Aquifer levels and groundwater recharge rates are expected to drop, particularly in shallow aquifers.

This report reviews the state and regional implementation of the Compact in three critical areas: diversions out of the Basin; water conservation and efficiency; and water withdrawal permitting. For each area, the report gives examples of the good, the bad...and the downright ugly. A summary of these examples follows.

Diversions out of the Basin

- **THE GOOD...** So far, Wisconsin’s review of the controversial proposal by the city of Waukesha to divert water from Lake Michigan has been exemplary in its thoroughness and responsiveness to public concern.
- **THE BAD...** The region’s guidelines for review of exceptions to the diversion ban are lacking, both because there was no thorough public review of the guidelines before they were adopted, and because the process is not binding on the states.
- **THE UGLY...** Illinois’ decision to divert water to Lake County through the Chicago diversion is not consistent with the standard applied to communities just outside of the Basin in other states.

Water Conservation and Efficiency

- **THE GOOD...** Ohio made a promising start when an advisory board proposed a program that, while voluntary in nature, has several innovative ideas.
- **THE BAD...** When given the choice between the bare minimum required by the Compact and going above and beyond to protect water resources, many of the states have chosen the path of least resistance.
- **THE UGLY...** It appears that all of the states have failed to meet at least one of the conservation and efficiency requirements in the Compact by the legally binding deadline of December 8, 2010.

Water Withdrawal Permitting

- **THE GOOD...** Michigan’s groundbreaking online screening test for withdrawals, which has won three national awards, is a novel means of predicting resource impacts and providing users with a quick determination.
- **THE BAD...** Michigan has failed to apply its permitting standard to proposed large withdrawals in a way that is consistent with its obligations under the Compact.
- **THE UGLY...** Under legislation recently passed in Ohio, the state’s permitting program will have the dubious distinction of not only exempting more withdrawals from regulation than any other state, but also flouting several requirements in the Compact.

The good examples of implementation in this report show that the promise of the Compact remains bright. But the Compact needs renewed commitment by the states and the region to address the bad—and stop the ugly.

CONCLUSION

Halfway to the five-year mark, it is time for the states to renew their commitments under the Compact to each other, to the public, and to the long-term health of the Great Lakes Basin. And it is time for the Council to demand the resources necessary to oversee the states and to publicly set the states right when they falter. There is no doubt that these actions require more effort than accepting the lowest common denominator. But without these steps, the Compact will be yet another promising framework that is never truly implemented.

Based on the examples in this report, the states, the Council, and the Regional Body should do the following:

Diversions out of the Basin

- As the Waukesha proposal moves forward to the technical review stage under the Compact, it is more important than ever that the Wisconsin DNR be thorough and responsive to the public. The DNR must also make a public participation rule a priority.
- The Council and Regional Body must subject the guidelines for review of diversion proposals to public scrutiny by holding a comment period and a public hearing. To provide certainty to all involved, the Council must use its authority under the Compact to adopt the interim guidance as binding rules.
- When considering new allocations, the Illinois DNR should apply a standard similar to the Compact standard for diversions to communities in straddling counties. For example, the DNR should require that a community demonstrate efficient use of current supplies and at least partial return of the water to the Lake Michigan watershed.

Conservation and Efficiency

- Ohio must follow through on the innovative ideas developed by industry and environmental representatives on the state's Advisory Board. The Ohio DNR should use its general implementing authority to put these ideas into practice.
- All of the states must revisit the conservation and efficiency requirements in the Compact and ensure that they are in compliance. The states should provide a detailed and honest assessment of their progress in the reports they are required to submit to the Council and Regional Body this December.
- The Council must assess the states' conservation and efficiency activities as soon as possible. Rather than wait until 2013, the Council must critically review the reports submitted by the states in December and provide a written evaluation of each state's progress. A member of the Council should

request review of the states' conservation and efficiency programs so that the Council can make formal determinations on compliance.

Water Withdrawal Permitting

- Michigan must adequately fund its groundbreaking water withdrawal assessment process by either restoring general funding or ending the fee exemption for agricultural uses.
- Michigan must revisit its permitting program and ensure that its standard is consistent with the minimum standard in the Compact. An applicant should be required to adopt environmentally sound and economically feasible water conservation measures as a condition of a permit.
- Ohio must create a program that complies with the Compact, is based in science, and is protective of the state's water resources. The General Assembly should reverse course and adopt House Bill 257 (Murray-D) and Senate Bill 186 (Skindell-D), the bills endorsed by the conservation and environmental community, which use a tool similar to Michigan's to measure resource impacts and set thresholds for permitting.

Governance

- The states must provide dedicated staff and sufficient resources to their environmental agencies to carry out the obligations under the Compact. The states must also step up and fund the Council, and with the provinces the Regional Body, so that these regional entities can fulfill their responsibilities.
- The Council and Regional Body must take their role as regional watchdogs seriously and hold individual states and provinces to account. For the Council, this includes using every opportunity possible to assess the states' progress on compliance with Compact requirements. Letting the states slide does no one any favors if it opens up the governments to legal action for violation of state and federal law.
- The states, the Council, and the Regional Body must ensure that the public is fully involved in decisions made to implement the framework. As one example, each of the jurisdictions and the regional entities should follow Wisconsin's lead and place all important documents on a website for easy public access. As another example, the Council and Regional Body should restructure their semi-annual meetings to allow for more give and take between members of the public and government officials.



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