Bill Rowland
Jill Rowland
Eric Vendel

Legislative Service Commission

Sub. H.B. 574

126th General Assembly
(As Reported by H. Economic Development & Environment)

Reps. Dolan, Collier, Law, Martin, Distel, DeGeeter, Perry, Wagoner, J. McGregor, Yuko, Williams, Skindell, Seitz, Setzer, Flowers, Combs, Hagan, Taylor, Strahorn, DeBose, J. Stewart, Domenick, Chandler, Fende, Harwood

BILL SUMMARY

- Ratifies the Great Lakes-St. Lawrence River Basin Water Resources Compact to be entered into between Ohio and other Great Lakes states for the purpose of protecting the Great Lakes-St. Lawrence River basin, defined as the watershed of the Great Lakes and certain portions of the St. Lawrence River.

- Through enactment of the Compact, does all of the following:

  --Provides for the implementation of the Compact by a Great Lakes-St. Lawrence River Basin Water Resources Council consisting of the governors of each of the Great Lakes states.

  --Prohibits, with certain exceptions, all new or increased diversions of water resources from the Great Lakes-St. Lawrence River Basin into another watershed.

  --Establishes a decision-making standard for the management and regulation of new or increased withdrawals from and consumptive uses of water resources in the Great Lakes-St. Lawrence River Basin.

  --Establishes other procedures and requirements to effectuate the Compact's purposes.

- Requires the Governor to serve as the state's administrator of the Compact, and establishes the Governor's duties as administrator.

- Requires the Director of Natural Resources to adopt rules for the implementation, administration, and enforcement of the bill and to enforce the Compact and take appropriate actions to effectuate its purposes, but specifically limits that rulemaking authority regarding specified provisions of the Compact.

- Requires the Governor, prior to casting a vote under the Compact with respect to any regulation that amends or revises the standard of review and decision, to obtain authorization from the General Assembly for the vote, and requires approval by the General Assembly of any rule to be adopted by the Director of Natural Resources that has been adopted by the Great Lakes-St. Lawrence River Basin Water Resources Council and that amends or revises the standard of review and decision.

- Creates an advisory board for the purpose of developing recommendations for legislation that is necessary to implement and effectuate the requirements and purposes of the Compact.

- Includes several statements of intent dealing with Ohio's interpretation of specific provision of the Compact or how current law will be interpreted in conjunction with the Compact's provisions.

TABLE OF CONTENTS

Overview....4
Ratification....5
Agreement....5
Article 1: Short title, findings, purposes, and science....5
Short title....5
Findings....5
Purposes....6
Science....7
Article 2: Compact organization....7
Great Lakes-St. Lawrence River Basin Water Resources Council....7
Article 3: General powers and duties of Council and states that are parties to Compact....9
General declaration....9
General authority of and requirements governing Council....9
General authority of states that are parties to Compact....11
State reports to Council....11
Article 4: Water management and regulations....11
Powers and duties of states that are parties to Compact....11

Prohibition against new or increased diversions; exceptions 13
Exception standard 16
Management and regulation of new or increased withdrawals and consumptive uses 17
Decision-making standard 18
Regional review 19
Council actions 21
Proposals subject to prior notice 22
Water resources inventory, withdrawal registration, and reporting 22
Water conservation and efficiency programs 23
Assessment of cumulative impacts 24
Applicability 25
Miscellaneous exemptions 27
Provisions related to Illinois 27
Article 5: Tribal consultation 27
Article 6: Public participation 28
Article 7: Dispute resolution and enforcement 28
Good faith implementation 28
Alternative dispute resolution 28
Enforcement 29
Remedies 30
Article 8: Additional provisions 30
Effect on existing rights 30
Relationship to agreements concluded by United States 31
Confidentiality 31
Additional laws 31
Amendments and supplements 31
Severability 32
Duration and termination 32
Article 9: Effectuation 32
Repeal of other laws; governors' actions 32
Declaration of completeness 32
Effective date and execution 32
Governor as state's administrator of Compact 33
Duties of Director of Natural Resources and other state agencies 33
State law provisions governing Compact 34
Compact advisory board 35
Statements of intent regarding Compact and existing law 37

CONTENT AND OPERATION

Overview

The eight Great Lakes states, which are Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin, and Pennsylvania, together with the Canadian provinces of Ontario and Quebec have worked together to create the Great Lakes-St. Lawrence River Basin Water Resources Compact for the purpose of protecting the watershed of the Great Lakes and certain portions of the St. Lawrence River. They endorsed the Compact on December 13, 2005. The eight Great Lakes states are considered to be parties to the Compact; however, the Compact will not become binding and effective until each state ratifies it by enacting identical concurring legislation and Congress consents to it (Section 9.4 of the Compact). The bill is the means by which Ohio may ratify the Compact.

Ontario and Quebec are not parties to the Compact, but it requires the states that are parties to it to consult and cooperate with those provinces concerning certain matters. In addition, the Compact provides that the premiers of Ontario and Quebec together with the governors of the Great Lakes states are to serve on a regional body that is to be responsible for receiving certain information and for approving or disapproving certain proposals regarding the withdrawal, diversion, or consumptive use of water in the Great Lakes-St. Lawrence River Basin[1] (Section 1.2 and Section 4).

The Compact prohibits, with certain exceptions, all new or increased diversions of water resources from the watershed of the Great Lakes and certain portions of the St. Lawrence River into another watershed. In addition, it establishes a decision-making standard for the management and regulation of new or increased withdrawals and consumptive uses of such water resources. The decision-making standard is designed to ensure that such withdrawals and consumptive uses will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the source watershed. (Section 4.) The Compact will be implemented by a Council consisting of the governors of each of the Great Lakes states (Section 2).

Each of the Great Lakes states that are a party to the Compact must develop and maintain a water resources inventory regarding the location, type, quantity, and use of water resources in the watershed of the Great Lakes and certain

---

[1] *"Basin" or "Great Lakes-St. Lawrence River Basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the Parties (Section 1.2).*

portions of the St. Lawrence River, including withdrawals, diversions, and consumptive uses of the water resources (Section 4.1). Each state that is a party to the Compact also must develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction. The program must be consistent with basin-wide goals and objectives. (Section 4.2.)

The Compact provides for public notice and participation in many matters (Section 4). It also requires the parties to the Compact, together with the provinces of Ontario and Quebec, to conduct a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from waters of the Basin for purposes of future implementation of the Compact (Section 4.15).

Ratification

The bill states that the "Great Lakes-St. Lawrence River Basin Water Resources Compact," which has been negotiated by representatives of this state and the states of Illinois, Indiana, Michigan, Minnesota, New York, and Wisconsin and the commonwealth of Pennsylvania, is ratified, enacted into law, and entered into by this state as a party to it as provided in the Compact (sec. 1522.01). The bill then enacts the Compact in its entirety.

Agreement

The Compact provides that the states specified above solemnly covenant and agree with each other concerning the Compact upon enactment of concurrent legislation by the respective state legislatures and consent by Congress (Section 1).

Article 1: Short title, findings, purposes, and science

Short title

The Compact provides that the act must be known and may be cited as the "Great Lakes-St. Lawrence River Basin Water Resources Compact" (Section 1.1).

Findings

The Compact specifies that the legislative bodies of the respective parties find and declare all of the following:

(1) The waters of the Great Lakes-St. Lawrence River Basin are precious public natural resources shared and held in trust by the states;

(2) The waters of the Basin are interconnected and part of a single hydrologic system;

(3) The waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic, and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. Other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

(4) Future diversions and consumptive uses of Basin water resources have the potential to significantly impact the environment, economy, and welfare of the Great Lakes-St. Lawrence River region;

(5) Continued sustainable, accessible, and adequate water supplies for the people and economy of the Basin are of vital importance; and

(6) The parties to the Compact have a shared duty to protect, conserve, restore, improve, and manage the renewable but finite waters of the Basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The Compact states that the most effective means of protecting, conserving, restoring, improving, and managing the Basin waters is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by all parties. (Section 1.3.1.)

Purposes

The Compact states that its purposes are all of the following:

(1) To act together to protect, conserve, restore, improve, and effectively manage the waters and water dependent natural resources of the Great Lakes-St. Lawrence River Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin ecosystem;

(2) To remove causes of present and future controversies;

(3) To provide for cooperative planning and action by the parties with respect to such water resources;

(4) To facilitate consistent approaches to water management across the Basin while retaining state management authority over water management decisions within the Basin;

(5) To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential

effects of proposed withdrawals and losses on the waters and water dependent natural resources of the Basin;

(6) To prevent significant adverse impacts of withdrawals and losses on the Basin's ecosystems and watersheds;

(7) To promote interstate and state-provincial comity; and

(8) To promote an adaptive management approach to the conservation and management of Basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's waters and water dependent natural resources (Section 1.3.1).

Science

The Compact specifies that the parties to it commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision making under the Compact. It requires the strategy to guide the collection and application of scientific information to support all of the following:

(1) An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the Great Lakes-St. Lawrence River Basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed;

(2) The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lake and St. Lawrence River watershed basis;

(3) Improved scientific understanding of the waters of the Basin;

(4) Improved understanding of the role of groundwater in Basin water resources management; and

(5) The development, transfer, and application of science and research related to water conservation and water use efficiency. (Section 1.4.)

Article 2: Compact organization

Great Lakes-St. Lawrence River Basin Water Resources Council

The Compact creates the Great Lakes-St. Lawrence River Basin Water Resources Council consisting of the governors of the states that are parties to the

Compact, ex officio. Under the Compact, each governor must appoint at least one alternate to serve in his or her place with full voting powers. Each member of the Council is entitled to one vote and, unless otherwise stated, decisions are required to be made by a simple majority. A majority of members of the Council constitutes a quorum. The Compact requires the Council to annually adopt a budget for each fiscal year apportioned equitably among the states that are parties to the Compact subject to unanimous vote of the Council. (Sections 2.1 to 2.4.)

The Council is required to provide for its own organization and procedure and may adopt rules governing its meetings and transactions as well as the procedures and timelines for submission, review, and consideration of proposals that come before the Council for its review and action. The Council must annually elect a chair and vice-chair from among its members. Each member may appoint an advisor who may attend all meetings of the Council and its committees, but does not have voting power. The Council may employ or appoint professional and administrative personnel, including an executive director. (Section 2.5.)

The Compact declares that it is the policy of the party states to preserve and utilize the functions, powers, and duties of existing offices and agencies of government to the extent consistent with the Compact. Further, the Council must promote and aid the coordination of the activities and programs of the party states concerned with water resources management in the Great Lakes-St. Lawrence River Basin. To this end, but without limitation, the Council may advise, consult, contract, assist, or otherwise cooperate with any and all such agencies, employ any other agency or instrumentality of any of the party states for any purpose, and develop and adopt plans consistent with the water resources plans of the party states. (Section 2.6.)

The Council must have, exercise and discharge its functions, powers, and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent that the action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction in which it proposes to act. (Section 2.7.)

The Council and its members and personnel in their official capacity and when engaged directly in the affairs of the Council and its property and its assets, wherever located and by whomever held, enjoy the same immunity from suit and every form of judicial process as is enjoyed by the states that are a party to the Compact, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract. The property and assets of the Council, wherever located and by whomever held, is required to be considered public property and is immune from search, requisition, confiscation, expropriation, or any other form of taking or foreclosure by executive or legislative action. The Council, its property, assets, and income, and

the operations it carries out pursuant to the Compact are immune from all taxation, provided that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts that approximate the taxes lawfully assessed on similar property. (Section 2.8.)

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, tribal, county, and local governments, water resources agencies, water-using industries and sectors, water-interest groups, and academic experts in related fields (Section 2.9).

Article 3: General powers and duties of Council and states that are parties to Compact

General declaration

The Compact declares that the waters and water dependent natural resources[2] of the Great Lakes-St. Lawrence River Basin are subject to the sovereign right and responsibilities of the states that are parties to the Compact and further declares that its purpose is to provide for joint exercise of those powers of sovereignty by the Great Lakes-St. Lawrence River Basin Water Resources Council in the common interests of the people of the region and in the manner and to the extent provided in the Compact. Under the Compact, the Council and the party states must use the standard of review and decision established in the Compact (see below) and procedures contained in or adopted pursuant to the Compact as the means to exercise their authority under the Compact. (Section 3.1.)

General authority of and requirements governing Council

Under the Compact, the Great Lakes-St. Lawrence River Basin Water Resources Council may plan; conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses; forecast water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest therein as it may deem necessary, useful, or convenient to carry out the Compact's purposes; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any state that is a party to the Compact or by any other public or private agency,

---

[2] *"Water dependent natural resources" is defined to mean the interacting components of land, water, and living organisms affected by the waters of the Great Lakes-St. Lawrence River Basin (Section 1.2).*

corporation, or individual; and exercise such other and different powers as may be delegated to it by the Compact or otherwise pursuant to law and have and exercise all powers necessary or convenient to carry out its express powers or that may be reasonably implied from those express powers (Section 3.2).

In addition, the Council may promulgate and enforce any rules that may be necessary for the implementation and enforcement of the Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to proposals for exceptions from the Compact that are subject to Council review. Any rule of the Council, other than one that deals solely with the internal management of the Council or its property, must be adopted only after public notice and hearing. (Section 3.3.)

The Council may revise the standard of review and decision (see below), after consultation with the Canadian provinces of Ontario and Quebec and upon unanimous vote of all Council members, by regulation duly adopted in accordance with the Compact and in accordance with each state's respective statutory authorities and applicable procedures. Further, the Council must identify priorities and develop plans and policies relating to water resources of the Great Lakes-St. Lawrence River Basin. The Council must adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin. (Section 3.1.)

The Council, in cooperation with the Canadian provinces of Ontario and Quebec, must review its water management and conservation and efficiency programs and those of the states that are a party to the Compact that are established under the Compact and make findings on whether the water management program provisions in the Compact are being met and, if not, recommend options to assist the party states in meeting the provisions of the Compact. The review must take place within 30 days after the first report required under the Compact is submitted by all party states (see below), every five years after the effective date of the Compact, and at any other time at the request of one of the party states. (Section 3.4.)

As one of its duties and responsibilities, the Council may recommend a range of approaches to the party states with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the Great Lakes-St. Lawrence

River Basin, including groundwater, and the impacts of withdrawals on the Basin ecosystem.[3] (Section 3.4.)

General authority of states that are parties to Compact

Each state that is a party to the Compact, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules to implement and enforce the Compact and the programs adopted by the state to carry out the management programs contemplated by the Compact (Section 3.3).

State reports to Council

Each state that is a party to the Compact must submit a report to the Council and the regional body detailing its water management and conservation and efficiency programs that implement the Compact (Section 3.4). Under the Compact, "regional body" means the members of the Council and the Premiers of Ontario and Quebec or their designee as established by the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (Section 1.2). The report must set out the manner in which water withdrawals are managed by sector, water source, quantity, or any other means and how the provisions of the standard of review and decision (see below) and conservation and efficiency programs are implemented. The first report must be provided by each state one year from the effective date of the Compact and every five years thereafter. (Section 3.4.)

Article 4: Water management and regulations

Powers and duties of states that are parties to Compact

Under the Compact, each state that is a party to the Compact, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions (see below), in accordance with the Compact (Section 4.3). Under the Compact, "withdrawal" means the taking of water from surface water or groundwater. "Diversion" means a transfer of water from the Great Lakes-St. Lawrence River Basin into another watershed or from the watershed of one of the Great Lakes into that of another by any means of transfer, including, but not limited to, a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker, but does not apply to water that is used in the Basin or a Great Lake

---

[3] *"Basin Ecosystem" or "Great Lakes-St. Lawrence River Basin Ecosystem" is defined to mean the interacting components of air, land, water, and living organisms, including humankind, within the Great Lakes-St. Lawrence River Basin (Section 1.2).*

watershed to manufacture or produce a product[4] that is then transferred out of the Basin or watershed. "Consumptive use" means that portion of the water withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into products, or other processes. (Section 1.2.)

Each state that is a party to the Compact must require an applicant[5] to submit an application for a proposal to withdraw, divert, or conduct consumptive use of water in the manner and with the accompanying information that the state prescribes. No party state may approve a proposal if the state determines that the proposal is inconsistent with the Compact or the standard of review and decision established under the Compact or any implementing rules promulgated under it. (Section 4.3.) "Standard of review and decision" means the exception standard (see below), decision-making standard (see below), and other reviews as outlined in Article 4 of the Compact (Section 1.2).

A state that is a party to the Compact may approve, approve with modifications, or disapprove any proposal depending on the proposal's consistency with the Compact and the standard of review and decision. Each party state must monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions. No party state may approve a proposal that is subject to Great Lakes-St. Lawrence River Basin Water Resources Council or regional review (see below), or both, pursuant to the Compact unless it has been first submitted to and reviewed by either the Council or regional body, or both, and approved by the Council, as applicable. Sufficient opportunity must be provided for comment on the proposal's consistency with the Compact and the standard of review and decision. All such comments must become part of the state's formal record of decision, and the state must take into consideration any such comments received. (Section 4.3.)

---

[4] *"Product" is defined in the Compact to mean something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a product is considered to be part of the product. (ii) Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the Basin is not a product or part of a product. (iii) Except as provided in (i) above, water that is transferred as part of a public or private supply is not a product or part of a product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product. (Section 1.2.)*

[5] *"Applicant" is defined in the Compact to mean a person who is required to submit a proposal that is subject to management and regulation under the Compact (Section 1.2).*

No proposal that is subject to management and regulation under the Compact can be undertaken by any person[6] unless it has been approved by the originating party (Section 4.4). Under the Compact, "originating party" means the state that is a party to the Compact within whose jurisdiction an application or registration is made or required (Section 1.2).

Prohibition against new or increased diversions; exceptions

The Compact establishes an outright prohibition against new or increased diversions of water from the Basin (Section 4.8.). However, although the Compact generally prohibits diversions, it establishes provisions that act as exceptions to that general prohibition and establishes standards for implementing the exceptions (Section 4.9).

Exception 1--straddling community transfers. A proposal to transfer water to an area within a straddling community, but outside the Great Lakes-St. Lawrence River Basin or outside the source Great Lake watershed is excepted from the prohibition against diversions (Section 4.9.1). "Straddling community" is defined to mean any incorporated city, town, or the equivalent thereof wholly within any county that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of the Compact is partly within the Basin or partly within two Great Lakes watersheds (Section 1.2).

Such a diversion must be managed and regulated by the originating party, provided that, regardless of the volume of water transferred, all the water so transferred must be used solely for public water supply purposes within the straddling community, and all of the following apply:

(1) All water withdrawn from the Basin must be returned, either naturally or after use, to the source watershed[7] less an allowance for consumptive use. No

---

[6] *"Person" is defined in the Compact to mean a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government (Section 1.2).*

[7] *"Source watershed" is defined in the Compact to mean the watershed from which a withdrawal originates. Under the Compact, if water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed is considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or to the St. Lawrence River, then the source watershed is considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn. (Section 1.2.)*

surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin, is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin, and maximizes the portion of water returned to the source watershed as Basin water and minimizes the surface water or groundwater from outside the Basin.

(2) If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal must also meet the exception standard (see below); and

(3) If the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period, the proposal also must undergo regional review (see below). (Section 4.9.1.)

Exception 2--intra-basin transfer. A proposal for an intra-Basin transfer that would be considered a diversion under the Compact, and not already excepted pursuant to the straddling community exception, also is excepted from the prohibition against diversions (Section 4.9.2). "Intra-Basin transfer" is defined to mean the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake (Section 1.2). An intra-Basin transfer is excepted, provided that:

(1) If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal must be subject to management and regulation at the discretion of the originating party.

(2) If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than five million gallons per day average over any 90-day period, all of the following apply:

(a) The proposal must meet the exception standard (see below) and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed;

(b) The applicant for the diversion must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and

(c) The originating party must provide notice to the other party states prior to making any decision with respect to the proposal.

(3) If the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period, all of the following apply :

(a) The proposal must be subject to management and regulation by the originating party and must meet the exception standard (see below), ensuring that water withdrawn must be returned to the source watershed;

(b) The applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies;

(c) The proposal undergoes regional review (see below); and

(d) The proposal is approved by the Great Lakes-St. Lawrence River Basin Water Resources Council. Council approval must be given unless one or more Council members vote to disapprove. (Section 4.9.2.)

Exception 3--straddling counties.[8] A proposal to transfer water to a community within a straddling county[9] that would be considered a diversion under the Compact is excepted from the prohibition against diversions, provided that it satisfies all of the following conditions:

(1) The water must be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water;

(2) The proposal meets the exception standard (see below), maximizing the portion of water returned to the source watershed as Basin water and minimizing the surface water or groundwater from outside the Basin;

(3) The proposal must be subject to management and regulation by the originating party regardless of its size;

---

[8] *The Compact does not define "straddling county."*

[9] *"Community within a straddling county" is defined to mean any incorporated city, town or the equivalent thereof that is located outside the Basin but wholly within a county that lies partly within the Basin and that is not a straddling community (Section 1.2).*

(4) There is no reasonable water supply alternative within the Basin in which the community is located, including conservation of existing water supplies;

(5) Caution must be used in determining whether or not the diversion proposal meets the conditions for this exception. Under the Compact, this exception may not be authorized unless it can be shown that it will not endanger the integrity of the Great Lakes-St. Lawrence River Basin ecosystem.

(6) The diversion proposal undergoes regional review (see below); and

(7) The diversion proposal is approved by the Great Lakes-St. Lawrence River Basin Water Resources Council. Council approval must be given unless one or more Council members vote to disapprove. (Section 4.9.3.)

In order to meet the straddling county exception, a diversion proposal must satisfy all of conditions 1 through 7, above. Further, substantive consideration will also be given to whether or not the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Basin. (Section 4.9.3.)

Exception standard

The Compact establishes additional criteria for determining if a diversion proposal meets one of the exceptions. The additional criteria are referred to as the exception standard. Proposals must be declared to meet the exception standard and may be approved as appropriate only when the following criteria are met:

(1) The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

(2) The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

(3) All water withdrawn must be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the Great Lakes-St. Lawrence River Basin may be used to satisfy any portion of this criterion except if it is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin or is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin.

(4) The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the Basin with

consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the proposal. Under the Compact, "cumulative impacts" is defined to mean the impact on the Basin ecosystem that results from incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions, and consumptive uses regardless of who undertakes the other withdrawals, diversions, and consumptive uses. "Cumulative impacts" can result from individually minor, but collectively significant, withdrawals, diversions, and consumptive uses taking place over a period of time. (Section 1.2.)

(5) The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use;

(6) The exception will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

(7) All other applicable criteria regarding exceptions have been met. (Section 4.9.4.)

Management and regulation of new or increased withdrawals and consumptive uses

Within five years of the effective date of the Compact, each state that is a party to the Compact must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard established under the Compact (see below). Each such state, through a considered process, must set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water dependent natural resources of the Great Lakes-St. Lawrence River Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the Compact are achieved. Each state may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program. (Section 4.10.1.) Any state that fails to set threshold levels in compliance with the Compact any time before ten years after the effective date of the Compact must apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period (Section 4.10.2).

The Compact declares that the states that are parties to the Compact intend that programs for new or increased withdrawals and consumptive uses evolve as may be necessary to protect Great Lakes-St. Lawrence River Basin waters. The Great Lakes-St. Lawrence River Basin Water Resources Council, in cooperation with the Canadian provinces of Ontario and Quebec, must periodically assess the water management programs of the party states. Such assessments may produce recommendations for the strengthening of the programs, including, without limitation, establishing lower thresholds for management and regulation in accordance with the decision-making standard (see below). (Section. 4.10.3.)

Decision-making standard

Under the Compact, proposals that are subject to management and regulation as discussed above must comply with a decision-making standard established by the Compact. Such proposals are declared to meet the decision-making standard and may be approved as appropriate only when the following criteria are met:

(1) All water withdrawn is returned, either naturally or after use, to the source watershed less an allowance for consumptive use;

(2) The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed;

(3) The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;

(4) The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

(5) The proposed use is reasonable, based on a consideration of the following factors:

(a) Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water and will avoid or minimize the waste of water;

(b) If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;

(c) The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

(d) The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

(e) The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the Great Lakes-St. Lawrence River Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and

(f) If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party state may consider that. (Section 4.11.)

Regional review

The Compact declares that it is the intention of the states that are parties to the Compact to participate in regional review of proposals for the withdrawal, diversion, or consumptive use of water as described in the Compact. Regional review means the collective review by a regional body composed of the Great Lakes-St. Lawrence River Basin Water Resources Council and the premiers of Ontario and Quebec or their designees. The Compact also declares that unless an applicant or the originating party where an application for a proposed withdrawal, diversion, or consumptive use of water is submitted requests otherwise, it is the goal of the regional body that regional review conclude no later than 90 days after notice of a proposal is received from the originating party. Proposals for exceptions from the Compact's prohibition against diversions that are subject to regional review must be submitted by the originating party to the regional body for regional review and, where applicable, to the Council for concurrent review. (Section 4.5.1.)

The Compact declares that the parties to the Compact agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin ecosystem is the overarching principle for reviewing proposals that are subject to regional review, recognizing uncertainties with respect to demands that may be placed on Basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions may harm the integrity of the Basin ecosystem. The Compact further declares that the originating party has the lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal and must consult with the applicant who is responsible for

the proposal throughout the regional review process. A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent setting proposal. Such regional review must be conducted, to the extent possible, within the time frames set forth in the Compact. Any such regional review must be undertaken only after consulting the applicant. (Section 4.5.1.)

The originating party must determine if a proposal is subject to regional review. If the proposal is subject to regional review, the originating party must provide timely notice to the regional body and the public. Notice must not be given unless and until all information and documents and the party's technical review (see below) conducted under the Compact that is needed to evaluate whether the proposal meets the standard of review and decision established under the Compact have been provided. An originating party may provide notice to the regional body of an application even if notification is not required or request regional review of an application even if regional review is not required. Any such regional review must be undertaken only after consulting the applicant. An originating party may provide preliminary notice of a potential proposal. (Section 4.5.2.)

To ensure adequate public participation, the regional body must adopt procedures for the review of proposals that are subject to regional review. The regional body must provide notice to the public of a proposal that is undergoing regional review. The notice must indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision established under the Compact. The regional body must hold a public meeting in the originating party or the province where the proposal originated in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision established under the Compact. The regional body must consider the comments received before issuing a declaration of finding and must forward the comments that it receives to the party state where the proposal originated. (Section 4.5.3.)

The originating party must provide the regional body with its technical review of the proposal under consideration (Section 4.5.4). Under the Compact, "technical review" means a detailed review conducted to determine whether or not a proposal that requires regional review meets the standard of review and decision established under the Compact following procedures and guidelines as set out in the Compact (Section 1.2). The originating party's technical review must thoroughly analyze the proposal and provide an evaluation of it that is sufficient for a determination of whether the proposal meets the standard of review and decision. Any member of the regional body may conduct their own technical review of any proposal that is subject to regional review. At the request of the

majority of its members, the regional body must make arrangements that it considers appropriate for an independent technical review of a proposal. All states that are parties to the Compact must exercise their best efforts to ensure that a technical review does not unnecessarily delay a decision on an application for a proposal. Unless the applicant or the originating party requests otherwise, all technical reviews must be completed no later than 60 days after the date on which the notice of the proposal was given to the regional body. (Section 4.5.4.)

The regional body must meet to consider a proposal. The applicant for the proposal must be provided with an opportunity to present the proposal to the regional body at that time. The regional body, having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections including the analysis of comments made by the public, First Nations, and federally recognized tribes, and any other information that is provided under the Compact must issue a declaration of finding that the proposal under consideration meets the standard of review and decision, does not meet the standard of review and decision, or would meet the standard of review and decision if certain conditions were met.

An originating party may decline to participate in a declaration of finding made by the regional body. However, the Compact declares that the parties to the Compact recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision. If the members of the regional body who participate in the declaration of finding all agree, they must issue a written declaration of finding with consensus. If the members cannot agree, the regional body must make every reasonable effort to achieve consensus within 25 days. Should consensus not be achieved, the regional body may issue a declaration of finding that presents different points of view and indicates the conclusions of each state that is a party to the Compact. The regional body must release the declaration of finding to the public. The originating party and the Great Lakes-St. Lawrence River Basin Water Resources Council must consider the declaration of finding before making a decision on the proposal. (Section 4.5.5.)

Council actions

Proposals for exceptions that are subject to Great Lakes-St. Lawrence River Basin Water Resources Council review must be submitted by the originating party to the Council for review and, where applicable, to the regional body for concurrent review. The Council must review and take action on proposals in accordance with the Compact and the standard of review and decision established under it. The Council cannot take action on a proposal that is subject to regional review unless the proposal has been first submitted to and reviewed by the

regional body. The Council must consider any findings resulting from that review. (Section 4.7.)

Proposals subject to prior notice

Beginning no later than five years from the effective date of the Compact, an originating party must provide all other states that are parties to the Compact and the provinces of Ontario and Quebec with detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of five million gallons per day or greater average in any 90-day period. Comments must address whether or not the proposal is consistent with the standard of review and decision established under the Compact. The originating party must provide a response to any such comment received from another state that is a party to the Compact. A party state may provide notice and an opportunity to comment and a response to comments even if this is not required by the Compact. Any provision of notice and an opportunity to comment must be undertaken only after consulting the applicant for the proposal. (Section 4.6.)

Water resources inventory, withdrawal registration, and reporting

Within five years of the effective date of the Compact, each state that is a party to the Compact must develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of the state. The inventory must include information on the location, type, quantity, and use of those resources and the location, type, and quantity of withdrawals, diversions, and consumptive uses. To the extent feasible, the water resources inventory must be developed in cooperation with local, state, federal, tribal, and other private agencies and entities as well as the Great Lakes-St. Lawrence River Basin Water Resources Council. The agencies of each party state must cooperate with that state in the development and maintenance of the inventory. The Council must assist each party state to develop a common base of data regarding the management of the water resources of the Great Lakes-St. Lawrence River Basin and to establish systematic arrangements for the exchange of those data with other states and provinces. (Sections 4.1.1 and 4.1.2.)

To develop and maintain a compatible base of water use information, within five years of the effective date of the Compact any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period, including consumptive uses, from all sources, or diverts water of any amount, must register the withdrawal or diversion by a date set by the Council unless the person has previously registered in accordance with an existing state program. The Compact requires the person to register the withdrawal or diversion with the originating party using a form prescribed by that originating party. The

registration must include, at a minimum, the name and address of the registrant and date of registration; the locations and sources of the withdrawal or diversion; the capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source; the uses made of the water; places of use and places of discharge; and such other information as the state may require. All registrations must include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period. (Section 4.1.3.)

All registrants must annually report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party. The registrants also must report any other information requested by the originating party. Each state that is a party to the Compact must annually report the information gathered to a Great Lakes-St. Lawrence River water use data base repository, and aggregated information must be made publicly available consistent with confidentiality requirements established in the Compact. Information gathered by the parties to the Compact must be used to improve the sources and applications of scientific information regarding the waters of the Great Lakes-St. Lawrence River Basin and the impacts of the withdrawals and diversions from various locations and water sources on the basin ecosystem and to better understand the role of groundwater in the Basin. The Council and the party states must coordinate the collection and application of scientific information to further develop a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions must be assessed. (Section 4.1.4, 4.1.5, and 4.1.6.)

Water conservation and efficiency programs

Within two years of the effective date of the Compact, each state that is a party to the Compact must develop its own water conservation and efficiency goals and objectives consistent with the Great Lakes-St. Lawrence River Basin-wide goals and objectives and must develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the goals and objectives of the state. Each state must annually assess its programs in meeting the state's goals and objectives, report to the Council and the premiers of the Canadian provinces of Ontario and Quebec or their designees, and make the annual assessment available to the public. (Section 4.2.2.)

In addition, within two years of the effective date of the Compact, the party states commit to promote environmentally sound and economically feasible water conservation measures such as measures that promote efficient use of water, identification and sharing of best management practices and state of the art conservation and efficiency technologies, application of sound planning principles, demand-side and supply-side measures or incentives, and development, transfer, and application of science and research. Each state must implement a voluntary or

mandatory water conservation program for all, including existing, Great Lakes-St. Lawrence River Basin water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate. (Section 4.2.4.)

The Compact declares that the Great Lakes-St. Lawrence River Basin Water Resources Council commits to identify, in cooperation with the Canadian provinces, Great Lakes-St. Lawrence River Basin-wide water conservation and efficiency objectives to assist the states that are parties to the Compact in developing their water conservation and efficiency program. The Compact declares that these objectives are based on the goals of ensuring improvement of the waters and water dependent natural resources, protecting and restoring the hydrologic and ecosystem integrity of the Basin, retaining the quantity of surface water and groundwater in the Basin, ensuring sustainable use of waters of the Basin, and promoting the efficiency of use and reducing losses and waste of water. (Section 4.2.1.) Every five years the Council, in cooperation with the provinces, must review the objectives and modify them as appropriate. This assessment will be based on examining new technologies, new patterns of water use, new resource demands, and threats and cumulative impact assessment conducted under the Compact. (Section 4.2.3.)

Assessment of cumulative impacts

The states that are parties to the Compact in cooperation with the Canadian provinces of Ontario and Quebec must collectively conduct within the Great Lakes-St. Lawrence River Basin, on a Great Lake watershed and St. Lawrence River basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the Basin every five years or each time the incremental Basin water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the parties to the Compact (Section 4.15.1).

The assessment is required to form the basis for a review of the standard of review and decision and regulations of the Great Lakes-St. Lawrence River Basin Water Resources Council and the party states. The assessment must do all of following:

(1) Utilize the most current and appropriate guidelines for such a review, which may include, but not be limited to, Council on Environmental Quality and Environment Canada guidelines;

(2) Give substantive consideration to climate change or other significant threats to Basin waters and take into account the current state of scientific

knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage may result; and

(3) Consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of, science concerning the Basin's water resources, watersheds, and ecosystems, including potential changes to Basin-wide processes such as lake level cycles and climate. (Section 4.15.1.) Under the Compact, "adaptive management" means a water resources management system that provides a systematic process for evaluation, monitoring, and learning from the outcomes of operational programs and adjustment of policies, plans, and programs based on experience and the evolution of scientific knowledge concerning water resources and water dependent natural resources (Section 1.2).

The parties to the Compact have the responsibility of conducting the cumulative impact assessment. Applicants are not required to participate in the assessment. Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application, but must submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant's proposal meets the no significant adverse cumulative impact provision of the standard of review and decision. (Section 4.15.2 and 4.15.3.)

Applicability

The Compact establishes general applicability provisions regarding a variety of issues as follows:

(1) *Minimum standard*. The standard of review and decision established in the Compact must be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. The Compact states that it is also acknowledged that although a proposal meets the standard of review and decision, it may not be approved under the laws of the originating party that has implemented more restrictive measures.

(2) *Baseline*. To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party must develop either or both of the following lists for their jurisdiction:

(a) A list of existing withdrawal approvals as of the effective date of the Compact;

(b) A list of the capacity of existing systems as of the effective date of the Compact. The capacity of the existing systems must be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations must be based on approval limits or the most restrictive capacity information.

For all purposes of the Compact, volumes of diversions, consumptive uses, or withdrawals of water set forth in the list or lists prepared by each party constitute the baseline volume.

The list or lists must be furnished to the regional body and the Great Lakes-St. Lawrence River Basin Water Resources Council within one year of the effective date of the Compact.

(3) *Timing of additional applications*. Applications for new or increased withdrawals, consumptive uses, or exceptions must be considered cumulatively within ten years of any application.

(4) *Change of ownership*. Unless a new owner proposes a project that results in a proposal for a new or increased diversion or consumptive use that is subject to regional review or Council approval, the change of ownership in and of itself does not require regional review or Council approval.

(5) *Groundwater*. The Great Lakes-St. Lawrence River Basin surface water divide must be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

(6) *Withdrawal systems*. The total volume of surface water and groundwater resources that supply a common distribution system must determine the volume of a withdrawal, consumptive use, or diversion.

(7) *Connecting channels*. The watershed of each Great Lake must include its upstream and downstream connecting channels.

(8) *Transmission in water lines*. Transmission of water within a line that extends outside the Basin as it conveys water from one point to another within the Basin must not be considered a diversion if none of the water is used outside the Basin.

(9) *Hydrologic units*. The Lake Michigan and Lake Huron watersheds are considered to be a single hydrologic unit and watershed.

(10) *Bulk water transfer*. A proposal to withdraw water and to remove it from the Basin in any container greater than 5.7 gallons must be treated under the Compact in the same manner as a proposal for a diversion. Each state that is a party to the Compact must have the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the Basin in any container of 5.7 gallons or less. (Section 4.12.)

Miscellaneous exemptions

The Compact specifies that withdrawals from the Great Lakes-St. Lawrence River Basin for the following purposes are exempt from the requirements of Article 4 of the Compact:

(1) To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles; or

(2) To use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes (Section 4.13).

Provisions related to Illinois

The Compact includes provisions regarding the applicability of the United States Supreme Court decree in ***Wisconsin et al. v. Illinois et al.*** to current, new, or increased withdrawals, consumptive uses, and diversions of water from the Great Lakes-St. Lawrence River Basin with respect to the state of Illinois (Section 4.14).

Article 5: Tribal consultation

In addition to all other opportunities to comment pursuant to the public participation provisions of the Compact (see below), the Compact requires appropriate consultations with federally recognized tribes in an applicable party state for all withdrawals, diversions, and consumptive uses of water that are subject to Great Lakes-St. Lawrence River Basin Water Resources Council review or regional review pursuant to the Compact. The consultations must be organized in a manner that is suitable to the individual withdrawal, diversion, or consumptive use and the laws and policies of the applicable party state. (Section 5.1.1.) The Compact establishes procedural requirements such as notice requirements, the provision of an opportunity to comment, processes to facilitate dialogue and scientific and technical interactions and data exchanges, and other requirements to facilitate consultation with federally recognized tribes. (Section 5.1.2 and 5.1.3.)

Article 6: Public participation

The Compact states that it is the intent of the Great Lakes-St. Lawrence River Basin Water Resources Council to conduct public participation processes concurrently and jointly with processes untaken by the party states and through regional review. The Compact requires each party state or the Council to ensure that procedures for the review of withdrawals, diversions, and consumptive uses that are subject to the standard of review and decision are consistent with all of the following requirements:

(1) Provide public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted on;

(2) Assure public accessibility to all documents that are relevant to an application, including public comments received;

(3) Provide guidance on standards for determining whether to conduct a public meeting or hearing for an application, the time and place of such a meeting or hearing, and procedures for conducting a meeting or hearing; and

(4) Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions, and disapprovals. (Section 6.2.)

Further, the Compact states that because of the importance and necessity of public participation in promoting management of the water resources of the Basin, all meetings of the Council must be open to the public except those with respect to issues of personnel. The Compact also requires that the minutes of the Council be a public record that is open to inspection at its offices during regular business hours. (Section 6.1.)

Article 7: Dispute resolution and enforcement

Good faith implementation

The Compact states that each of the states that are parties to the Compact pledges to support implementation of all provisions of the Compact and covenants that its officers and agencies cannot hinder, impair, or prevent any other party state from carrying out any provision of the Compact (Section 7.1).

Alternative dispute resolution

The Compact states that in desiring that it be carried out in full, the states that are parties to the Compact agree that disputes between the party states

regarding the interpretation, application, and implementation of the Compact must be settled by alternative dispute resolution. The Great Lakes-St. Lawrence River Basin Water Resources Council, in consultation with the provinces, must provide by rule procedures for the resolution of disputes pursuant to the Compact's provisions discussed below. (Section 7.2.)

Enforcement

The Compact requires that any person aggrieved by any action taken by the Council under the authority contained in the Compact be entitled to a hearing before the Council. Further, any person aggrieved by an action of a state that is a party to the Compact must be entitled to a hearing under the relevant state's administrative procedures and laws. The Compact states that after the exhaustion of such administrative remedies, any aggrieved person has the right to judicial review of an action of the Council in the United States District Court for the District of Columbia or the district court in which the Council maintains offices, provided that the action is commenced within 90 days. In addition, any aggrieved person has the right to judicial review of an action of a state that is a party to the Compact in the relevant state's court of competent jurisdiction, provided that an action or proceeding for the review is commenced within the time frames provided for by the state's law. Under the Compact, a state or province is deemed to be an aggrieved person with respect to any action of a state that is a party to the Compact. (Section 7.3.1.)

The Compact states that any party state or the Council may initiate actions to compel compliance with the Compact and the rules promulgated under it by the Council. The Compact grants jurisdiction over such actions to the court of the relevant party state as well as the United States District Court for the District of Columbia and the district court in which the Council maintains offices. The remedies available to a court include, but are not limited to, equitable relief and civil penalties. Additionally, a party state may issue orders within its jurisdiction and initiate actions to compel compliance with its statutes that were enacted and its rules that were adopted to implement the authority contemplated by the Compact in accordance with the state's laws. (Section 7.3.2.)

Under the Compact, any aggrieved person, a state that is a party to the Compact, or the Council may commence a civil action in the relevant state's courts and administrative systems to compel any person to comply with the Compact if such a person, without prior approval, undertakes a new or increased withdrawal, consumptive use, or diversion of water that is prohibited or subject to approval pursuant to the Compact. However, a civil action cannot be commenced if the party state with jurisdiction or the Council approves the new or increased withdrawal, consumptive use, or diversion or finds that the new or increased withdrawal, consumptive use, or diversion is not subject to approval under the

Compact. In addition, a civil action cannot be commenced unless a person commencing such an action has first given notice to the party state with jurisdiction, the Council, and the person alleged to be in noncompliance 60 days prior to commencement of the action and neither the party state with jurisdiction nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with the Compact. (Section 7.3.3.)

Remedies

The Compact requires that the available remedies include equitable relief. In addition, the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate. (Section 7.3.3.) Further, each of the states that are parties to the Compact may adopt provisions providing additional enforcement mechanisms and remedies, including equitable relief and civil penalties applicable within its jurisdiction, to assist in the implementation of the Compact (Section 7.3.4).

Article 8: Additional provisions

Effect on existing rights

The Compact states that nothing in it can be construed to affect, limit, diminish, or impair any rights validly established under state or federal law governing the withdrawal of waters of the Great Lakes-St. Lawrence River Basin and existing as of the Compact's effective date. In addition, nothing in the Compact can be construed as affecting or intending to affect or in any way to interfere with the law of a state that is a party to the Compact related to common law water rights. Further, nothing in the Compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the federal government of the United States based on its status as a recognized tribe. Finally, an approval by a state that is a party to the Compact or the Great Lakes-St. Lawrence River Basin Water Resources Council under the Compact does not do any of the following:

(1) Give any property rights or exclusive privileges, and it cannot be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a such a state;

(2) Authorize any injury to private property or invasion of property rights or any infringement of federal, state, or local laws or regulations; or

(3) Obviate the necessity of obtaining federal assent when necessary. (Section 8.1.)

Relationship to agreements concluded by United States

The Compact states that nothing in it is intended to do any of the following:

(1) Provide, and it cannot be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement or derogate any right, claim, or remedy that already exists under any treaty or international agreement;

(2) Infringe, and it cannot be construed to infringe, on the treaty power of the United States, and no term of the Compact can be construed to alter or amend any treaty or term of a treaty that has been or may be executed by the United States; or

(3) Affect, and it cannot be construed to affect, the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of the Compact. (Section 8.2.)

Confidentiality

The Compact states that nothing in the Compact requires a state that is a party to the Compact to breach confidentiality obligation or requirements prohibiting disclosure or to compromise the security of commercially sensitive or proprietary information. A party state may take measures, including, but not limited to, deletion and redaction, that are deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to another state that is a party to the Compact. The party state must summarize or paraphrase any such information in a manner that is sufficient for the Council to exercise its authority contained in the Compact. (Section 8.3.)

Additional laws

The Compact states that nothing in it can be construed to repeal, modify, or qualify the authority of any state that is a party to the Compact to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction (Section 8.4).

Amendments and supplements

The Compact requires that its provisions remain in full force and effect until amended by action of the governing bodies of the states that are parties to the Compact and consented to and approved by any other necessary authority in the same manner as the Compact is required to be ratified to become effective (Section 8.5).

Severability

The Compact states that if a court of competent jurisdiction holds any part of the Compact to be void or unenforceable, the remainder of the Compact that is capable of continued implementation must continue in full force and effect. (Section 8.6.)

Duration and termination

Once effective, the Compact must continue in force and remain binding on each state that is a party to the Compact unless terminated. The Compact may be terminated at any time by a majority vote of the party states. In the event of termination, all rights that are established under the Compact continue unimpaired. (Section 8.7.)

Article 9: Effectuation

Repeal of other laws; governors' actions

The Compact declares that all acts and parts of acts that are inconsistent with the Compact are to the extent of the inconsistency repealed and that the Governor is authorized to take action that may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation of it (Sections 9.1 and 9.2).

Declaration of completeness

The Compact declares that the states that are parties to the Compact consider the Compact to be complete and an integral whole. Each provision of the Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in the Compact, any change or amendment made to it by any party state in its implementing legislation or by Congress when giving its consent to the Compact is not considered effective unless concurred in by all parties to it. (Section 9.3.)

Effective date and execution

The Compact declares that it becomes binding and effective when ratified through concurring legislation by the party states and consented to by Congress and declares that it must be signed and sealed in nine identical original copies by the respective chief executives of the signatory states. One copy must be filed in each party state, and one copy must be filed and retained in the archives of the Great Lakes-St. Lawrence River Basin Water Resources Council. The signatures must be affixed and attested in accordance with a specified form. (Section 9.4.)

Governor as state's administrator of Compact

The bill requires the Governor, ex officio, to serve as Ohio's administrator of the Great Lakes-St. Lawrence River Basin Water Resources Compact. The Governor must appoint the Director of Natural Resources as his alternate for purposes of attending all meetings of the Great Lakes-St. Lawrence River Basin Water Resources Council and voting on matters before the Council in the Governor's absence.

The bill requires the Governor to do all of the following as administrator:

(1) Receive all copies of all agreements that are entered into pursuant to the Compact by Ohio or its political subdivisions and other states or their political subdivisions;

(2) Consult with, advise, and aid Ohio, other states, and political subdivisions in the formulation of such agreements;

(3) Make any recommendations to the General Assembly, legislatures of other states, governmental agencies, and political subdivisions that the Governor considers desirable in order to effectuate the purposes of the Compact; and

(4) Consult with and cooperate with the Compact administrators of other states that are parties to the Compact. (Sec. 1522.02.)

Duties of Director of Natural Resources and other state agencies

The bill requires the Director of Natural Resources to adopt rules in accordance with the Administrative Procedure Act for the implementation, administration, and enforcement of the bill and to enforce the Compact and take appropriate actions to effectuate its purposes and intent (sec. 1522.03(A)). The bill also requires any appropriate state agency or governmental officer to enforce the Compact and take appropriate actions to effectuate its purpose and intent (sec. 1522.03(B)). However, the bill declares that the governor, the Department of Natural Resources, or any other state agency cannot adopt rules or implement any program regulating the use, withdrawal, consumptive use, or diversion of water pursuant to Sections 4.10 and 4.12.2 of the Compact unless the General Assembly enacts legislation after the effective date of the bill authorizing the implementation of the program or adoption of rules. In addition, the bill specifies that the Governor, the Department of Natural Resources, or any other agency of the state cannot adopt rules or implement any mandatory program governing water conservation and efficiency pursuant to Section 4.2 of the Compact unless the General Assembly enacts legislation after the effective date of the Compact authorizing the implementation of the program or adoption of rules. However, the

Governor, the Department of Natural Resources, or any other agency of the state may adopt rules concerning and may implement voluntary water conservation and efficiency programs without authorization from the General Assembly. Such voluntary programs must not include any mandatory requirements. (Sec. 1522.05(B)(1).)

The bill clarifies that the limitation on actions of the Governor, the Department of Natural Resources, or any other state agency does not prohibit the effectuation of the sections of the Compact dealing with the prohibition against new or increased diversions of water from the Great Lakes-St. Lawrence River Basin and exceptions to that prohibition (Sections 4.8 and 4.9 of the Compact) after the effective date of the Compact. In addition, the bill clarifies that the limitation does not prohibit the continued implementation and enforcement by the Governor or applicable state agencies of laws, rules, or programs regulating the use, withdrawal, consumptive use, or diversion of water that are in effect on or before the effective date of the bill. (Sec. 1522.05(B)(2).)

State law provisions governing Compact

The bill requires that prior to casting a vote under the Great Lakes-St. Lawrence River Basin Water Resources Compact with respect to any regulation that amends or revises the standard of review and decision (Section 3.1 of the Compact), the Governor or the Governor's alternate must obtain authorization from the General Assembly for the vote.[10] The Governor or the Governor's alternate must obtain the authorization via a concurrent resolution adopted or bill enacted by the General Assembly. The Governor or the Governor's alternate must exercise the vote consistent with the terms of the General Assembly's authorization. The bill declares that those procedures are material requirements for adoption of any such regulation in accordance with the Compact and Ohio's respective statutory authority and procedures. (Sec. 1522.04(A).) In addition, the bill states that no regulation duly adopted by the Great Lakes-St. Lawrence River Basin Water Resources Council that amends or revises the standard of review and decision as set forth in the Compact may be adopted by the Director of Natural Resources unless the regulation is first approved by the General Assembly in the same manner as a statutory enactment (sec. 1522.04(B)).

---

[10] *Under section 3.1 of the Compact, the Great Lakes-St. Lawrence River Basin Water Resources Council may revise the standard of review and decision after consultation with the Canadian provinces and upon a unanimous vote of all Council members. (See "***Article 3: General powers and duties of Council and states that are parties to Compact; General authority of and requirements governing Council***," above).*

The bill declares that pursuant to Section 9.2 of the Compact, the Governor may take such actions as are necessary for the initial organization and operation of the Great Lakes-St. Lawrence River Basin Water Resources Council. The bill then declares that agencies of the state are authorized to cooperate with the Council. (Sec. 1522.05(A).)

Compact advisory board

The bill requires that not later than three months after its effective date, the Director of Natural Resources must convene an advisory board consisting of the following persons with an interest in the Great Lakes-St. Lawrence River Basin Water Resources Compact:

(1) The Director of Natural Resources or the Director's designee, who must serve as chairperson of the advisory board;

(2) The Director of Environmental Protection or the Director's designee;

(3) The Director of Development or the Director's designee;

(4) The following members appointed by the Governor:

--One water quality expert from the faculty or staff of an Ohio college or university;

--One representative of a statewide environmental advocacy organization;

--One representative of a local environmental advocacy organization in the Lake Erie Basin;

--One representative of a sustainable economic development organization in the Lake Erie Basin;

--One representative of the travel and tourism industry;

--One representative of the electric utility industry;

--One representative of a county government in the Lake Erie Basin.

(5) The following members appointed by the President of the Senate:

--Two members of the Senate who cannot be members of the same political party;

--One representative of the bottled water industry;

--One representative of a statewide land conservation advocacy organization;

--One representative of agricultural interests in the Lake Erie Basin;

--One representative of the aggregates industry;

--One representative of the pulp and paper industry;

--One representative of a large manufacturer with a facility located within the Lake Erie Basin;

--One member of the public.

(6) The following members appointed by the Speaker of the House of Representatives:

--Two members of the House of Representatives who cannot be members of the same political party;

--One representative of a municipal government in the Lake Erie Basin;

--One expert in hydrogeology from the faculty or staff of an Ohio college or university;

--One representative of a locally based organization in the Lake Erie Basin that assists in the development and implementation of a plan for the protection and management of surface and ground water resources in a watershed;

--One representative of a fish and wildlife advocacy organization;

--One representative of residential developers;

--One representative of the chemical industry;

--One representative of the petroleum industry with a facility located within the Lake Erie Basin. (Section 3(A).)

All appointments must be made to the advisory board not later than 30 days after the effective date of the bill. The advisory board must meet on a regular basis. Vacancies must be filled in the manner provided for original appointments. Members are to receive no compensation for serving on the board. The Department of Natural Resources is required to provide technical support to the advisory board. (Section 3(A).)

The advisory board must be convened for the purpose of developing recommendations for legislation that is necessary to implement and effectuate the requirements and purposes of the Great Lakes-St. Lawrence River Basin Water Resources Compact. The recommendations must address, but not be limited to, the following:

(1) The evaluation and recommendation of the threshold levels to be included in the implementing legislation for regulating new or increased water withdrawals in the state, considering at least the number of withdrawals that will be regulated, the relative impact of those withdrawals, the practicality of regulating those withdrawals, and the alternatives that are available in the establishment of a permitting program in order to meet the water management objectives of Ohio.

(2) The establishment of requirements regarding the review of lists of existing water users in the portion of the Great Lakes-St. Lawrence River Basin that is in Ohio;

(3) The establishment of a process for use by persons that wish to appeal their inclusion in the list of existing water users;

(4) The establishment of conservation objectives with respect to the Great Lakes-St. Lawrence River Basin Water Resources Compact and the development of the state's water conservation and efficiency programs; and

(5) The method for determining the capacity of existing facilities as required in Section 4.12.2 of the Compact. (Section 3(B).)

The advisory board must present its final recommendations to the Governor and the General Assembly not later than 18 months after the effective date of the bill. The bill declares that it is the intent of the General Assembly that the recommendations of the advisory board will represent a consensus of the board's members regarding the issues presented to and discussed by the board. However, the bill also declares that if a consensus cannot be reached on any or all of the issues before the board, one or more minority opinions may accompany the board's recommendations. (Section 3(C).)

The bill declares that upon submission of its recommendations, the advisory board ceases to exist (Section 3(D)).

Statements of intent regarding Compact and existing law

The bill includes several statements of intent dealing with Ohio's interpretation of the Compact and current state law. Each statement of intent deals with either a specific provision of the Compact or addresses how current law will

be interpreted in conjunction with the Compact's provisions. The statements of intent are as follows:

(1) The bill declares that it is the intent of the General Assembly that any incorporation of water into a product that is produced within the Great Lakes-St. Lawrence River Basin and packaged and intended for intermediate or end-use consumers, whether distributed inside or outside the Great Lakes-St. Lawrence River Basin, is a consumptive use and does not constitute a diversion for purposes of the Compact. A proposal to withdraw water and remove it from the Basin in a container greater than five and seven-tenths gallons in capacity must be treated as a proposal for a diversion as provided under the Compact. (Sec. 1522.06.)

(2) The bill declares that it is the intent of the General Assembly that for purposes of establishing the baseline for determining a new or increased diversion, consumptive use, or withdrawal pursuant to Section 4.12.2 of the Compact,[11] the amount of each existing diversion, consumptive use, or withdrawal must be the larger of either of the following:

(A) The physical capacity of the withdrawal system of the applicable facility as of the effective date of the Compact; or

(B) The applicable limitation specified in a diversion permit issued under current law that requires a permit for water diversions of greater than 100,000 gallons per day out of the Lake Erie Basin or another permit issued by an agency of the state that specifically regulates and limits the amount of a water diversion, consumptive use, or withdrawal.

The bill specifies that, for those purposes, a wastewater discharge permit issued under the state Water Pollution Control Law or the Federal Water Pollution Control Act cannot be considered a permit that regulates or limits the amount of an existing diversion, consumptive use, or withdrawal. In addition, the bill specifies that approval of a public water supply system under the state Safe Drinking Water Law cannot be considered a permit that regulates or limits the amount of an existing diversion, consumptive use, or withdrawal unless the approval contains a specific and legally enforceable limitation on the amount of the diversion, consumptive use, or withdrawal. (Sec. 1522.07(A); see also secs. 1501.32, 1501.33, and 1501.34 (not in the bill).)

(3) The bill includes intent provisions addressing portions of the Compact dealing with the decision-making standard, specifically, one of the conditions necessary for meeting the decision-making standard. That condition, in Section

---

[11] *See "**Article 4: Water management and regulations; Applicability**," above.*

4.11.2 of the Compact, specifies that a proposal for a withdrawal or consumptive use of water from the Great Lakes-St. Lawrence River Basin may be approved as appropriate only if the withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of waters and water dependent natural resources in the Basin. The bill specifies that it is the understanding and intent of the General Assembly that Section 4.11.2 of the Compact is to be interpreted in Ohio to require that a withdrawal or consumptive use will be implemented so as to ensure that the withdrawal or consumptive use will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of either of the following:

(A) The Basin considered as a whole; or

(B) The applicable source watershed considered as a whole. (Sec. 1522.07(B)(1).)

The bill then states that it is the understanding and intent of the General Assembly that impacts of a withdrawal or consumptive use on the quantity or quality of waters and water dependent natural resources of more localized areas that affect less than the Basin or an applicable source watershed as a whole are to be considered a part of the evaluation of reasonable use as required under the decision-making standard (sec. 1522.07(B)(2)).

The bill requires the Governor and the Governor's alternate on the Great Lakes-St. Lawrence River Basin Water Resources Council to advise the Council, the other states that are proposed parties to the Compact, and the United States Congress with respect to the understanding and statement of legislative intent set forth above and must inform them that such understanding and intent are a material consideration to the General Assembly's concurrence in the Great Lakes-St. Lawrence River Basin Water Resources Compact. Prior to seeking the consent of the United States Congress to the Compact, the Governor and the Governor's alternate on the Council must actively seek the concurrence of the Council and the other state parties to the Compact with respect to that understanding and legislative intent, and the Governor must report to the General Assembly periodically concerning those efforts. (Sec. 1522.07(B)(2).)

(4) The bill declares that it is the intent of the General Assembly that on the effective date of the Great Lakes-St. Lawrence River Basin Water Resources Compact, as that date is specified in the Compact, both of the following apply:

(A) All provisions of the Revised Code that were inconsistent with the Compact prior to the Compact's effective date must have been amended or repealed in order to conform with the Compact as required in the Compact; and

(B) Provisions of current law regarding water resources inventories, long-term water resources planning, registration of water withdrawals over 100,000 gallons a day, and ground water stress areas, as they exist on the effective date of the bill or as subsequently amended, are to be used for the purposes of implementing the water resources inventory, registration, and reporting provisions of the Compact (Section 2).

HISTORY

ACTION	DATE
Introduced	04-27-06
Reported, H. Economic Development and Environment	11-30-06

H0574-RH-126.doc/jc