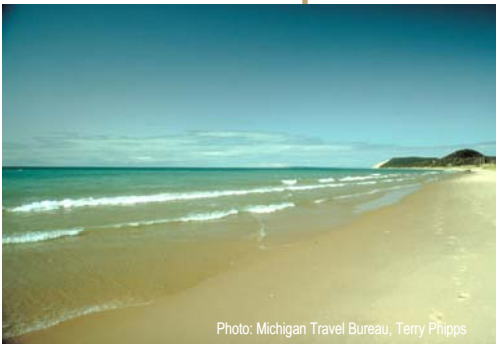


The Great Lakes-St. Lawrence River Basin Water Resources Compact

Legal Summary/Overview

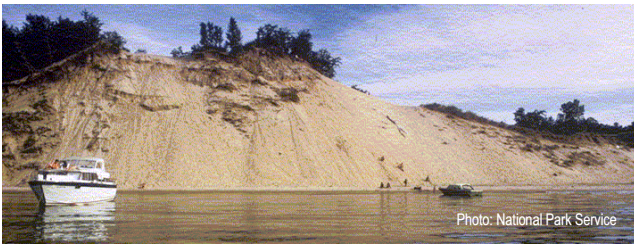


With the January 2007 introduction of House Bill 375 (HB375) and Senate Bill 50 (SB50) Illinois legislators have the opportunity this session to enact standard-driven, ecosystem-based measures for protecting the finite water resources of the Great Lakes.

Both HB375 and SB50 seek adoption of The Great Lakes-St. Lawrence River Basin Water Resources Compact (“the Compact”). Unlike other agreements related to protecting Great Lakes water resources, the Compact provides comprehensive, legally enforceable standards for approving new projects proposing large scale water withdrawals of Great Lakes Basin waters.

This fact sheet provides a brief summary of existing agreements related to Great Lakes protection, and explains how the Compact will impact Illinois and Illinois residents.





Protecting the Great Lakes: A Legal History

Agreements related to diversions and exports of Great Lakes waters date back to the early 1900s. Starting with the Boundary Waters Treaty, these agreements recognize the importance of Great Lakes water to the governing bodies and residents of the Great Lakes Basin.

The Boundary Waters Treaty (1909).

Signed by the United States and Canada, the Treaty's purpose is to prevent temporary or permanent changes to the "natural level or flow of boundary waters" without prior approval of the United States or Canada, and the International Joint Commission (IJC) established by the Treaty. The IJC's responsibilities include reporting on issues related to boundary waters, and recommending improvements to water management efforts that impact boundary waters. While this treaty is binding law, its standard is not sufficient to provide resource based protection of Great Lakes water.

The Water Resources Development Act (1986, amended 2000).

The Water Resources Development Act (WRDA) requires approval by each Great Lakes Governor for proposals to divert or export Great Lakes water outside the Great Lakes Basin. However, WRDA does not provide any framework or standards for approving such proposals. It also does not address use of water within the Basin. Finally, because it is federal legislation, the Act is subject to repeal by Congress.

The Great Lakes Charter (1985).

The Great Lakes Charter is a non-binding agreement signed by the eight Great Lakes Governors and the Premiers of Ontario and Quebec. By signing the Charter, the parties agreed to give prior notice to, and consult with, each other before approving any new projects for diverting, withdrawing or consuming over five million gallons of water per day (gpd) averaged over a 30-day period. They also agreed to establish regulations for all new withdrawals and to share information regarding other large withdrawals based on the volume of the withdrawal. However, the states and provinces have not fully implemented this non-binding agreement.

The Great Lakes Charter Annex (2001).

The Great Lakes Charter Annex (Annex 2001) builds on the commitments of the 1985 Charter. Like the 1985 Charter, Annex 2001 is a non-binding agreement. By signing Annex 2001 the Great Lakes Governors and Premiers agreed to prepare "implementing agreements" that would: be legally binding; protect, conserve, restore and improve Great Lakes waters; and provide protocols for processes such as public participation, enforcement and dispute resolution.

The Great Lakes-St. Lawrence River Basin Compact (December 2005),

Endorsed by all eight Great Lakes Governors, the Compact is one of the Annex 2001 implementing agreements. The second implementing agreement, signed by the Great Lakes Governors and the Premiers of Ontario and Quebec, is the non-binding [Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement](#). The Compact is an interstate compact (i.e. contract); for the Compact to become a legally binding and enforceable document it must first be adopted by each Great Lakes State and consented to by Congress.

The Need for the Great Lakes Compact

With all these existing laws why do we need the Compact? Unlike current agreements, laws and treaties, the Compact

- Is a legally binding agreement among all Great Lakes States
- Focuses on protecting Great Lakes water resources through ensuring implementation of sustainable, adaptive management practices
- Provides standards for approving proposals for new large water withdrawals from the Great Lakes Basin
- Requires sharing of information among Compact parties for the purpose of improving management of water resources and water dependent resources



Photo: iStock.com

- Recognizes the need for ecosystem-based resource management by declaring “the Waters of the Basin are interconnected and part of a single hydrological system”
- Prohibits new diversions, except in rare cases and for these provides a decision making standard.
- Recognizes the necessity of managing Great Lakes waters to sustain the many benefits they provide, such as drinking water, commercial shipping and fishing, fish and wildlife habitat, and recreation activities.

Legal Concerns

While the Compact is a legally binding agreement, it does not

- Affect existing diversions and/or withdrawals from the Great Lakes Basin (Sections 4.8, 4.10, 8.1(1))*
- Affect existing international treaties (such as the 1909 Boundary Waters Treaty) (Section 8.2)
- Create new state or federal agencies (Section 2.6)
- Prohibit any state from making regulations for decision making standards that are more strict than the Compact’s provisions (Sections 4.12, 8.4)
- Affect the authority of each of the Great Lakes States to manage its Great Lakes Basin waters consistent with the Compact (Section 3.1)
- Affect state common law respecting water rights (Section 8.1(2))

The Illinois Exception: Illinois' Unique Role in Great Lakes Protection

Illinois is unique among the Great Lakes States in that it is exempted from the Compact provisions on diversions and withdrawals. Illinois' use of Lake Michigan water has been the subject of litigation between Illinois and nearly all of the other Great Lakes states. Spanning much of the 1900s, the case has resulted in several U.S. Supreme Court decrees. The Court's 1967 Decree, still in effect, allocates 3200 cubic feet per second (CFS) of Lake Michigan water to Illinois each year. The Court continues to have jurisdiction over this case and any of the parties may seek revision of the Decree if circumstances warrant.

Illinois, however, is not exempt from other provisions of the Compact, such as

- Developing and maintaining an inventory of water resources and their uses, including water withdrawals and diversions (Section 4.1(1), (3))
- Developing a water conservation and efficiency program (Section 4.2 (2))
- Promoting water conservation management measures that are “environmentally sound and economically feasible” (Section 4.2(2))
- Periodically assessing cumulative impacts of water withdrawals, diversions and consumptive uses on basin waters (Section 4.15)

Although exempt from some Compact provisions, Illinois shares with the other Great Lake States the ecological and economic benefits the Basin's water resources and diverse ecosystems provide.



Impacts from activities

in any Great Lakes State can affect the waters and water dependent natural resources in other Great Lakes States. In adopting the Compact, Illinois will be joining a precedent-setting management plan for protecting one of the world's most unique freshwater ecosystems.

*Copies of the Compact can be downloaded from the Council of Great Lakes Governors' website, <http://www.cglg.org>

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