

CRS Report for Congress

Received through the CRS Web

Great Lakes Water Withdrawals: Legal and Policy Issues

June 20, 2005

Stephen R. Viña
Legislative Attorney
American Law Division

Pervaze Sheikh
Analyst in Environmental and Natural Resources Policy
Resources, Science, and Industry Division

Great Lakes Water Withdrawals: Legal and Policy Issues

Summary

The Great Lakes and their connecting waters form the largest fresh surface water system on Earth and support substantial social, economic, and ecological interests in the United States and Canada. Because less than 1% of Great Lakes water, on average, is renewed annually, many are concerned with potential threats to lake levels and quality, including environmental and climatic changes, growing consumptive uses of water, and most notably, a growing demand to move Great Lakes water to water-thirsty regions across the United States and throughout the world. Several laws, policies, and governing bodies already regulate the use, withdrawal, and diversion of water from the Great Lakes Basin; however, the concern over domestic and international demand for Great Lakes water has prompted officials from the United States and Canada to reevaluate these laws and policies.

Currently, the Council of Great Lakes Governors (CGLG) — a partnership of the governors of the eight Great Lakes states and the Canadian provincial premiers of Ontario and Quebec — is creating a new common conservation standard to manage water diversions, withdrawals, and consumptive use proposals. On July 19, 2004, the CGLG announced the completion of a draft Agreement and Compact to address such concerns. Some interest groups have voiced concern over the draft proposals, asserting that they may impair some industries' access to water; seriously challenge Canadian and state sovereignty; and facilitate, rather than constrain, the diversion of water. Upon completion of a final version, the Compact will need to be approved by each state legislature, as well as the U.S. Congress, to achieve full force and effect as an interstate compact. The Canadian federal government and the provinces of Ontario or Quebec are not parties to the Compact; the provinces are, however, supposed to be signatories to the related international state-provincial Agreement. The Final versions of the Compact and Agreement are expected to be released during the 109th Congress.

This report describes the characteristics of the Great Lakes, the interests they support, and possible threats to lake levels. It analyzes the current laws and policies that regulate the diversion, withdrawal, and consumptive use of water from the Great Lakes. Also included is a discussion of the draft Agreement and Compact and the various positions voiced by interest groups. This report concludes with a general discussion on the relationship between compacts, federal law, and the Congress. This report will be updated as warranted.

Contents

Introduction	1
Characteristics of the Great Lakes	2
The Great Lakes Basin	2
Water Levels and Flows	3
Water Uses	4
Potential Threats to Water Levels	6
Potential Impacts of Low Water Levels	7
Legal and Policy Frameworks	8
The Early Years	8
Congressional Involvement	10
Recent Events	11
Structure of the Draft Proposals	11
The Great Lakes Basin Water Resources Compact	11
The Great Lakes Basin Sustainable Water Resources Agreement	12
Consideration of Draft Proposals	13
Legal	13
Environmental	15
Trade	15
Industry	16
The Potential Congressional Role	17
Conclusion	19

List of Figures

Figure 1. The Great Lakes Basin	3
---------------------------------------	---

List of Tables

Table 1. Great Lakes Interbasin Diversions	4
Appendix 1. Standard of Review and Decision for Reviewable Diversions and Consumptive Use Proposals	20

Great Lakes Water Withdrawals: Legal and Policy Issues

Introduction

The Great Lakes Basin is the world's largest system of fresh water, and the lakes themselves store nearly one-fifth of the world's surface freshwater. Because less than 1% of Great Lakes' water, on average, is renewed annually, many are concerned with potential threats to their water levels and quality, including environmental and climatic changes, and most particularly, an increase in the overall demand for the withdrawal of Great Lakes water. A *withdrawal* means the taking of water from surface or groundwater by any means. A withdrawal that transfers water from the Great Lakes Basin into another watershed, or from the watershed of one of the Great Lakes into that of another is generally called a *diversion*. When the withdrawn water is lost or otherwise not returned to the Great Lakes Basin due to evaporation, incorporation into products, or other processes, a *consumptive use* has occurred. While the effects of such activities on the Great Lakes — individually and cumulatively — are not completely understood, lower lake levels could cause significant environmental, social, and economic harms.

Some observers assert that the pressure to divert Great Lakes water to regions across the United States and throughout the world is growing. Communities are looking to the Great Lakes as a feasible water supply, because of concerns with population growth, persistent drought, and contaminated or exhausted well water. Some view the communities lying just outside the Great Lakes Basin as presenting the largest demand for Great Lakes water in the near future, though the possibility of exporting water under trade agreements also has raised concern. These potential threats have prompted a reevaluation of the frameworks that regulate the use, withdrawal, and diversion of water from the Great Lakes Basin, and for some, a call for a new Basin-wide water conservation standard.

On July 19, 2004, the Council of Great Lakes Governors — a non-partisan partnership of the governors of the eight Great Lakes states and the Canadian provincial premiers of Ontario and Quebec — announced the completion of a draft Agreement and Compact to regulate water withdrawals and diversions from the Great Lakes Basin. The proposals, according to some proponents, represent significant efforts to establish environmental standards for water withdrawals from the Basin and improve the overall management of water resources in the Basin. Critics, however, contend that the draft proposals present a number of legal and trade questions; facilitate, rather than constrain, the diversion of water; and immerse water users in a complex regulatory scheme. Final versions of the Compact and Agreement are expected to be completed during the 109th Congress.

The regulation of Great Lakes water has always been of interest to Congress and the proposals discussed herein are not likely to be an exception. These proposals could potentially affect the environment and the economies of, and relationship between, Canada and the United States. Further, upon completion of a final version, the Compact will need to be approved by the U.S. Congress, as well as each state legislature to achieve full force and effect as an interstate compact. The Canadian federal government and the provinces of Ontario or Quebec are not parties to the Compact; the provinces are, however, supposed to be signatories to the related international state-provincial Agreement.

This report begins with a description of the characteristics of the Great Lakes, the interests they support, and the possible threats to lake levels. It then analyzes current laws and policies that regulate the withdrawal of water from the Great Lakes. Next, this report discusses the draft proposals and presents summaries of various stakeholder views. This report concludes with a general discussion on the relationship between compacts, federal law, and the Congress.

Characteristics of the Great Lakes

The Great Lakes Basin. The Great Lakes Basin is shared by eight states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and two Canadian provinces (Ontario and Quebec). The Basin comprises the Great Lakes, connecting channels, tributaries, and groundwater that drain through the international section of the St. Lawrence River. (See **Figure 1**) The Great Lakes watershed is the largest system of fresh, surface water in the world and covers approximately 300,000 square miles. The Great Lakes themselves contain an estimated 5,500 cubic miles or six quadrillion gallons of water. This constitutes nearly 90% of the surface freshwater supplies of the United States and 20% of the surface freshwater supplies of the world.¹

¹ Great Lakes Commission, The Great Lakes Information Network, *The Great Lakes, Overview*, available at [<http://www.great-lakes.net/lakes/#overview>] last visited on June 13, 2005.

Figure 1. The Great Lakes Basin



Source: U.S. Army Corps of Engineers, Detroit Division (Detroit, MI: Feb. 1, 2005).

Water Levels and Flows. Since the Great Lakes cover a wide area, physical characteristics such as topography, soils, and climate vary considerably. For example, rates of water retention in the Great Lakes vary widely among lakes. As a system, the Great Lakes annually lose approximately 1% of their water through natural outflows (i.e., via the St. Lawrence River).² For some lakes, such as Lake Superior, water that enters the Lake takes approximately 182 years to be flushed through the lake. By contrast, Lake Erie and Lake Ontario take approximately 3 and 6 years respectively to flush water through. Water levels in the Great Lakes vary according to the season. These changes are based primarily on precipitation and runoff to the lakes. Levels are high in the spring and summer, when runoff is high and rapid but low in the winter, when little or no runoff occurs.

Outflows from the Great Lakes are relatively small compared to the volume of the lakes. The largest outflow is through the St. Lawrence River and has been recorded at an average of approximately 244 thousand cubic feet per second (cfs).³

² U.S. Environmental Protection Agency, *The Great Lakes. An Environmental Atlas and Resource Book* (Chicago, IL: 2002), p. 3. [hereinafter Great Lakes Atlas].

³ Great Lakes Commission, *The Great Lakes Information Network, Great Lakes — St.* (continued...)

Other outflows include evaporation and artificial diversions. Currently, more water is diverted into the Great Lakes Basin than is diverted out of the Basin. There are eight major interbasin diversions in the lakes — four take water out of the lakes. The largest is the Chicago diversion, which diverts water from Lake Michigan to the Mississippi River Basin for water supply, sewage disposal, and navigation. The Chicago Diversion removes an average of 3,200 cfs from Lake Michigan and operates under Supreme Court Decree.⁴ **Table 1** shows the current major diversions of water in and out of the Great Lakes allowed under law.

Table 1. Great Lakes Interbasin Diversions

(as of February 2000)

Existing Diversions in the Great Lakes Basin	Operational Date	Direction (in or out of the Basin)	Lake	Average Annual Flow in cfs
Forest port	1825	out	Ontario	50
Ohio & Erie Canal	1847	in	Erie	12
Chicago	1848	out	Michigan	3,200
Portage Canal	1860	in	Michigan	40
Long Lac	1939	in	Superior	1,490
Ogoki	1943	in	Superior	3,990
Pleasant Prairie	1990	out	Michigan	5
Akron	1998	out and in	Erie	0.5

Source: International Joint Commission, *Report: Protection of the Waters of the Great Lakes, Three Year Review* (Nov. 8, 2002).

Water Uses. The Great Lakes play a vital role in the daily lives of millions of people and the economies of two nations. The Great Lakes Basin is home to more than one-tenth of the population of the United States and one-quarter of the population of Canada. The estimated 45 million people in the Basin rely on the Great

³ (...continued)

Lawrence Water Flows, Overview, available at [<http://www.great-lakes.net/envt/water/levels/flows.html>] last visited on June 20, 2005.

⁴ During the mid-1800s, the City of Chicago reversed the flow of the Chicago River so that instead of flowing into Lake Michigan, it flowed out of Lake Michigan toward the Mississippi River system. This required the diversion of water from Lake Michigan. After years of lawsuits and negotiations among the Great Lakes States, the United States, and the City of Chicago, a Consent Decree was entered into in 1967 regulating the diversion of Great Lakes water into the Chicago River (approx. 3,200 cfs). *See Wisconsin v. Illinois*, 388 U.S. 426 (1967), *amended by* 449 U.S. 48 (1980). The Army Corps of Engineers, however, estimated that 3,439 cfs was actually being diverted. The State of Illinois, through a 1996 Memorandum of Understanding, has agreed to repay the total deficit by the year 2019.

Lakes for jobs, energy, shipping, drinking water, and recreation, among other things. For example, in 1995, nearly 11% of the total employment and 15% of the manufacturing employment for the United States and Canada were sustained by the Great Lakes.⁵ Further, the tourism and fishing industries in the Great Lakes are estimated to be worth about \$4 billion each, and navigation through the Great Lakes is responsible for more than 180 million tons of shipping annually. The Great Lakes Basin also sustains nearly 25% of Canada's agricultural production and 7% of U.S. production.⁶

Ninety percent of the water withdrawals from the Great Lakes Basin are from the lakes themselves, with the remaining 10% coming from tributaries and groundwater sources. Water is withdrawn from the Great Lakes to support a number of purposes, including municipal needs, irrigation, industries, power plants, and livestock. Several studies conducted during the mid-1990s estimated that from 55 to 57 million gallons per day (85-88 cfs) of water is withdrawn (includes diversions) from the Great Lakes.⁷ Most of the water withdrawn, however, returns to the Basin. Only a small percentage — roughly 5% — is actually consumed (e.g., evaporation, incorporated into products or crops) from the Great Lakes and therefore lost from the Basin.⁸

The percentage of water consumed varies with the type of use. For example, approximately 95% of the water withdrawn from the Great Lakes is for hydroelectric power (e.g., driving turbines and cooling reactors); however, less than 1% of that water is consumed.⁹ Public water supply followed by industrial use and irrigation are the highest consumptive uses in the Great Lakes Basin.¹⁰ Reports indicate that 33% of the total consumptive use of water from the Basin is in Canada and 67% is in the United States, with per capita consumptive use approximately equal.¹¹

There is a general consensus that total water withdrawal and consumptive use in the Great Lakes will increase, but it is unclear by how much. Furthermore, there is no agreement on the amount of water that will be consumed and thus, ultimately

⁵ David R. Allardice and Steve Thorp, *A Changing Great Lakes Economy: Economic and Environmental Linkages*, State of the Lakes Ecosystem Conference, Environment Canada and U.S. Environmental Protection Agency, EPA 905-R-95-017 (Dearborn, MI: Aug. 1995).

⁶ Great Lakes Atlas, at 3.

⁷ International Joint Commission, *Protection of the Waters of the Great Lakes*, Final Report of the Governments of Canada and the United States, at 8, Table 1 (Feb. 22, 2000) (citing studies by the Great Lakes Commission and the U.S. Geological Survey) [hereinafter IJC 2000 Report].

⁸ IJC 2000 Report, at 9.

⁹ IJC 2000 Report, at 10. See also Great Lakes Commission, *Toward a Water Resources Management Decision Support System for the Great Lakes — St. Lawrence River Basin* (May 2003), Ch. 3 at 56 (referencing 1998 statistics) [hereinafter *Toward a Water Resources Management Decision Support System*].

¹⁰ *Toward a Water Resources Management Decision Support System*, Ch. 3 at 61 (referencing 1998 statistics).

¹¹ IJC 2000 Report, at 8.

lost from the Great Lakes. One study shows consumptive use falling 2-3% by 2020 in the U.S. section; another projects consumptive use in the entire Basin rising 3% by 2020; and yet, a third study predicts a rise in consumptive use by 25% as a whole in the Basin by 2020.¹² These uncertainties and others have made water management for the future difficult, but have precipitated the call for better record keeping and more studies.

Potential Threats to Water Levels. Potential changes in water levels may come from existing and new diversions; climatic variations;¹³ geologic processes;¹⁴ variations in precipitation, evaporation, and runoff; population growth; and changes in land use (i.e., farm to urban). Yet, many contend the greatest threat to water levels in the Great Lakes would be through excessive consumptive withdrawals without accompanying conservation.¹⁵ Such withdrawals may come as a result of growing domestic and international demand for Great Lakes water.

According to most studies, proposals to withdraw Great Lakes water are most likely to come from growing communities straddling the boundary of or just outside the Great Lakes Basin. The demand for Great Lakes water from these communities is thought likely to increase due to population growth, climatic changes (e.g., persistent drought), and contaminated or exhausted water supplies. For example, the communities of Pleasant Prairie, WI, and Akron, OH, were the first two Basin-neighboring communities to receive permission under U.S. law to divert water from the Great Lakes (see later discussion). The City of Waukesha, WI, another Basin-neighboring community, is seeking 20 million gallons of Lake Michigan water per day.¹⁶ Others speculate that the Great Lakes are only a few years away from serious proposals to divert water to areas in southwest and southeast United States.¹⁷

¹² *Id.* at 10 (citing studies provided by the U.S. Geological Survey, the U.S. Forest Service and private consultants).

¹³ Studies show that the Great Lakes are highly sensitive to climatic variability. See IJC 2000 Report, at 20-21; S.A. Changnon, *Temporal Behavior of Levels of the Great Lakes and Climate Variability*, *Journal of Great Lakes Research*, v. 30, no. 1, at 184-200 (2004).

¹⁴ A significant cause of descending water levels in the lakes Michigan and Huron may be river bottom erosion in the St. Clair River, according to a recent study. Some attribute dredging as the cause of erosion, whereas others argue the cause is rooted in geological changes and increased water in some of the lakes. See W.F. Baird & Associates, *Man Made Intervention and Erosion in the St. Clair River and Impacts on the Lake Michigan — Huron Lake Levels* (Ontario, CA: Jan. 2005).

¹⁵ For a summary opinion, see Allegra Cangelosi, *Sustainable Use of Great Lakes Water: The Diversion Threat's Silver-Lining?* Northeast Midwest Institute (Washington, DC: Apr. 2001).

¹⁶ Dan Egan, JSONline, *Group says Great Lakes water agreement leaves Canada high and dry* (Oct. 22, 2004) available at [<http://www.jsonline.com/news/state/oct04/268959.asp?format=print>] last visited on June, 13, 2005 [hereinafter Egan, *Canada High and Dry*].

¹⁷ Krestia DeGeorge, *Water Watch: Striving to Keep the Great Lakes Ours*, Rochester-Citynews.com (July 28, 2004) available at [<http://www.rochester-citynews.com/gbase/Gyrosite/PrintFriendly?oid=oid%3A2830>] last visited on June 13,

There has also been some concern with the idea of exporting Great Lakes water in bulk to water-thirsty areas around the world that are similarly suffering from poor water quality and exhausted water supplies. While most believe that the prospect of exporting Great Lakes water in bulk by tanker or other means has largely vanished in recent years because of public outcry, political reaction, and high cost,¹⁸ some are becoming increasingly alarmed due to the development of free trade agreements. Since the extent to which water can be traded and protected under such agreements remains unresolved (see later discussion), many fear that water could be traded like any other commodity and that the current regulatory framework may not protect the Great Lakes. The export of water appears to be becoming more common in other parts of the world.¹⁹ In addition, some international organizations, including the World Bank, recognize water as a basic “human need” — a categorization that some view will facilitate the trading and supplying of water on a for-profit basis by corporate interests.²⁰

Potential Impacts of Low Water Levels. Variations in water levels can have potentially significant socio-economic and environmental consequences. Lower water levels can reduce hydroelectric power generation and increase costs to commercial shipping. The Great Lakes-St. Lawrence shipping corridor, which is more than 2,300 miles in length, would need more dredging to maintain current levels of navigation if water levels decrease. Dredging may also be necessary for local areas where recreational boats are used.²¹ Apart from being costly, dredging can affect water quality by resuspending contaminated sediments within the lakes. Lower water levels could also affect water quality by limiting the ability of the lakes to flush out toxic substances and excessive levels of nutrients, such as phosphorous and nitrogen. Coastal wetlands can dry up if water levels significantly recede along the shoreline and wetland habitat may be replaced by forested lands or dunes. Receding shorelines could also create problems in accessing marinas and necessitate change in other infrastructure (e.g., extend water intake pipes) to maintain recreational and other activities. Some contend that changes in scenic areas and the environment would lower tourism and recreation.²²

¹⁷ (...continued)
2005.

¹⁸ See, e.g., IJC 2000 Report, at 13; International Joint Commission, *Protection of the Waters of the Great Lakes, Three Year Review*, at 57 (2002).

¹⁹ For example, in Turkey, pipelines, as well as converted oil tankers, will be used to transfer water from the Manavgat River to markets in Cyprus, Malta, Libya, Israel, Greece, and Egypt. In the United Kingdom, private companies are using polyurethane bags towed by tugboats to transport water to Greece. See MAUDE BARLOW & TONY CLARKE, *BLUE GOLD*, Ch. 6 (The New York Press 2002).

²⁰ *Id.* at Ch. 4, p. 80. If water were defined as a “human right,” it is argued, then it would be the responsibility of governments to ensure that all people would have equal access on a nonprofit basis to water.

²¹ R.C. Schwartz, et al., *Modeling the Impacts of Water Level Changes on a Great Lakes Community*, *Journal of the American Water Resources Association*, at 647-662 (June 2004).

²² U.S. Global Change Research Program, *Preparing for a Changing Climate, The Potential* (continued...)

Lower water levels may have some positive impacts, such as lowering the potential for flooding and increasing the area of beaches in some regions of the Basin.²³

Most experts believe that there is still much to be learned regarding the effects of water withdrawals, climate change, and consumptive uses on the Great Lakes. Moreover, trying to determine the individual impact of a single factor may be difficult to quantify, since one or more may have no measurable impact or may be subject to various interpretations. Accordingly, many have become concerned with the cumulative effects of these factors on the Great Lakes. The lack of certainty in predicting future water levels, in conjunction with the cumulative impact that many of the above factors may have on lake levels, has made many to regard a “precautionary approach” as the most appropriate standard for considering water withdrawals.²⁴

Legal and Policy Frameworks

The withdrawal of water from the Great Lakes has concerned the United States and Canada since the 1800s. Because the Great Lakes Basin borders two countries, several states and provinces, and various tribal territories, lawmakers have generally pursued multi-jurisdictional, regional, and cooperative approaches for the protection of the lakes. Accordingly, the withdrawal of Great Lakes water is governed by a number of federal, state, and provincial laws, international agreements, and tribal water rights. The following analysis focuses on the U.S. federal laws and policies that regulate the withdrawal of water from the Great Lakes, as well as the institutional bodies that play a role in overseeing such regulation.

The Early Years. An early attempt to resolve boundary water disputes between the United States and Canada resulted in the creation of the Boundary Waters Treaty of 1909 (BWT) and the formation of the International Joint Commission (IJC) — a representative body of U.S. and Canadian officials established to resolve situations unique to boundary waters. The BWT defines *boundary waters* as those lakes and rivers along the international boundary between the United States and Canada, “but *not* including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways.” [emphasis added]²⁵

²² (...continued)

Consequences of Climate Variability and Change, The Great Lakes (Ann Arbor, MI: Oct. 2000).

²³ *Id.*

²⁴ IJC 2000 Report, at 18.

²⁵ The specific exclusion of tributary waters from the Treaty could be significant. For example, Lake Michigan — being wholly inside the United States — does not appear to be a part of the boundary waters under this definition, but rather would be considered tributary waters. Article II of the Treaty, nonetheless, appears to allow the other party to have the right to seek legal remedies for any resulting injury from the diversion of tributary waters.

(continued...)

Among other things, the BWT prohibits diversions of boundary waters on one side of the boundary that affect the natural level or flow of boundary waters on the other side without the approval of one of the two nations and the IJC. Article II reserves to each nation the right to divert and control tributaries of boundary waters and transboundary rivers, although the other party would continue to have the right to seek legal remedies for any resulting injury. Article VIII sets priorities that the IJC must consider when contemplating new water diversions (post-1909). The order of preference is: (1) uses for domestic and sanitary purposes; (2) uses for navigation, including the service of canals for the purposes of navigation; and (3) uses for power and for irrigation purposes. Under Article VIII, no use may be permitted that tends to materially conflict with any use which is given preference over it.

During the 1950s, many diversion proposals surfaced to move water out of the Great Lakes Basin. Such proposals included a coal-slurry pipeline linking Lake Superior with Wyoming, a proposed canal linking the Great Lakes with the Mississippi River, and a Grand Canal project connecting the Hudson Bay and the western United States through the Great Lakes.²⁶ In part to address these proposals, the Great Lakes states devised a regional plan — the Great Lakes Basin Compact — to promote the comprehensive development, use, and conservation of the Great Lakes Basin. The Compact established a U.S. intergovernmental agency known as the Great Lakes Commission (GLC) to carry out its provisions. The Compact, as originally conceived by the states, included the provinces of Quebec and Ontario as signatories. When the Compact came to Congress for approval (see later discussion), however, Congress did not consent to the inclusion of the provinces largely because it determined that the matter was of national interest and would interfere with the Executive’s plenary authority to negotiate the nation’s foreign policies.²⁷ Accordingly, the GLC consists of delegates from the Great Lakes states, but allows the provinces of Ontario and Quebec to participate as nonvoting associate members. The GLC has supported a number of water management studies and initiatives.

In 1985, the Great Lakes states and the provinces of Ontario and Quebec completed the Great Lakes Charter, a protocol in which the signatories agreed not to make any new diversion of Great Lakes waters averaging more than five million gallons per day over a thirty-day period (about 1.8 billion gallons annually) without the notification, consultation, and approval of all parties to the Charter. Unlike the BWT, which did not strictly address environmental issues and was limited to boundary waters, the Charter clearly defined environmental protections and pertains to the entire Great Lakes Basin, including tributaries. The Great Lakes Charter, however, is not legally binding and represents “a kind of gentlemen’s agreement

²⁵ (...continued)

²⁶ James P. Hill, *Great Lakes Commentary: The New Politics of Great Lakes Water Diversion: A Canada-Michigan Interface*, 1999 TOL. J. GREAT LAKES’ L. SCI. & POL’Y 75, 77 n. 11 (1999).

²⁷ *The Great Lakes Basin: Hearing on S. 2688 Before the Senate Comm. on Foreign Relations*, 84th Cong. at 83-87 (1956) (statement of Gilbert R. Johnson, Counsel, Lake Carriers Assoc., Cleveland, OH). Congress provided its conditional consent to the Compact in 1968 in P.L. 90-419.

between the Governors of the Great Lakes States and the Provinces of Ontario and Quebec. . . .”²⁸

Congressional Involvement. Congress endorsed some of the prohibitive concepts from the Great Lakes Charter by including a section in the Water Resources Development Act of 1986 (WRDA 1986) that prohibits the diversion of water outside the Great Lakes Basin unless such diversion is approved by the governors of all Great Lakes states.²⁹ Still, the prohibitions in WRDA 1986, as well as the Charter, lacked mechanisms to legally bind Canada and to address the growing concern over the possibility of trading Great Lakes water internationally. This issue came to the forefront in 1998 when the Ontario government granted a permit to the Canadian-based Nova Group to ship up to 600 million liters (159 million gallons) of water annually for five years from Lake Superior to Asia. This amount of water was insufficient to trigger the consultation and approval process of the Charter, but it did prompt lawmakers to reexamine existing Great Lakes water management principles and conservation measures.

In response, one of the first steps the United States and Canada took to address concerns about removals of water from the Great Lakes was to request the IJC to examine and report on the consumption, diversion, and withdrawal of waters from the Great Lakes Basin, as well as on the current laws and policies that affect the sustainability of the water resources in the Basin. In its report, the IJC recommended that the United States and Canada notify each other of any proposals for major new or increased consumptive uses of water and that they develop and strengthen the standards set forth in the Great Lakes Charter.³⁰

The Canadian diversion proposal also sparked active dialogue in the 105th and 106th Congresses. Initially, in October 1998, the House passed H.Res. 566, which called on the President and the Senate to work to prevent the sale or diversion of Great Lakes water in mass quantities until procedures were established that would guarantee that any such sale was approved by the United States and Canada. During the 106th Congress, several bills were introduced that would have required moratoria on water exports from the Great Lakes for certain periods of time, pending further studies and the development of standards for diversions.³¹ Although these measures were not enacted, new restrictive language was included and enacted in the Water Resources Development Act of 2000 (WRDA 2000).³²

Section 504 of WRDA 2000 expanded the prohibition on diversions (from WRDA 1986) to expressly mandate that the *export* of Great Lakes water from the Great Lakes Basin could not occur without unanimous approval of all eight

²⁸ Little Travers Bay Bands of Odawa Indians v. Great Spring Waters of America, Inc., 203 F. Supp. 2d 853, 857 (W. D. Mich. 2002).

²⁹ P.L. 99-662, §1109 (codified as amended at 42 U.S.C. §1962d-20).

³⁰ IJC 2000 Report, at 44.

³¹ See S. 1667, H.R. 2973, and H.R. 2595, 106th Cong. (1999).

³² P.L. 106-541 (codified at 42 U.S.C. §1962d-20).

governors of the Great Lakes states.³³ This language applies domestically and does not bind Canada. WRDA 2000 also encouraged the Great Lakes states, in consultation with Ontario and Quebec, to develop and implement a *common conservation standard* for making decisions concerning the withdrawal and use of water from the Great Lakes Basin.

Recent Events. In response to WRDA 2000, the Great Lakes governors and premiers of Ontario and Quebec signed the Great Lakes Charter Annex of 2001 — a supplementary agreement (to the Great Lakes Charter) committing the governors and premiers to develop and implement a new common, resource-based conservation standard for future water withdrawal proposals from the Great Lakes Basin.³⁴ The Annex also formalized the governors’ and premiers’ commitment to create a binding basin-wide framework.

On July 19, 2004, the Council of Great Lakes Governors released two draft water management proposals to implement the 2001 Annex and announced a public comment period of 90 days. The two draft water management proposals include (1) the Great Lakes Basin Sustainable Water Resources Agreement and (2) the Great Lakes Basin Water Resources Compact. The comment period for these proposals ended on October 18, 2004. According to a March 2005 newsletter by the Council of Great Lake Governors, final documents are anticipated to be ready for review by the summer or fall of 2005.³⁵

Structure of the Draft Proposals

The Great Lakes Basin Water Resources Compact. The proposed Compact would be a binding agreement among the Great Lakes states that would implement a conservation standard for regulating water withdrawals from the Great Lakes Basin. Upon completion of a final draft, the Compact will need to be approved by each state legislature and the U.S. Congress to achieve full force and effect as an interstate compact.

The Compact, in its draft form, has 10 Articles. Article II would establish the Great Lakes Basin Water Resources Council, consisting of the Governors of the Signatory Parties.³⁶ The Council, among other things, would review and vote on submitted water withdrawal, diversion, and consumptive use proposals based on criteria presented in the Compact’s Standard of Review and Decision (Standard).

³³ *Id.* at §504 (codified at 42 U.S.C. §1962d-20(b)(2)).

³⁴ Also in 2001, Canada passed amendments to its International Boundary Water Treaty Act that prohibit any person from using or diverting boundary waters out of the basin and “deem” any such removal, given the cumulative effect of such removals, to affect the natural level or flow of the boundary waters on the other side of the international boundary (*An Act to amend the International Boundary Waters Treaty Act*, R.S. ch. 40 (2001) (Can.)).

³⁵ The Council of Great Lakes Governors, *The Compass*, at 1 (March 2005) available at [<http://www.cglg.org/news/Compass-Issue1-2005.pdf>] last visited on May 17, 2005.

³⁶ The signatory parties would be the eight Great Lakes states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

The Standard is composed of similar sets of criteria for the different types of proposals (diversion, consumptive use, and withdrawal).³⁷ In general, the criteria are designed to “advance the substantial public interest of protecting, conserving, and restoring the overall environmental balance and physical, chemical, and biological integrity of the waters and ‘water dependent natural resources of the Great Lakes Basin.’”³⁸

Under the proposed Compact, a new or increased diversion averaging greater than 1 million gallons per day in any 120-day period, as well as a new or increased consumptive use averaging greater than 5 million gallons per day in any 120-day period, would be reviewed by the Council. These types of proposals will be approved by the Council when they are found “consistent” with all the criteria established in the Standard. See “Appendix 1” for the various criteria. A proposal would also be subject to reviews by the state in which it originates and collectively by the Great Lakes states and provinces (i.e., the Regional Body Review — see discussion below). For new or increased diversion proposals, Council approval is to be given unless one or more Council Members disapproves. Council approval is to be given for new or increased consumptive use proposals unless three or more Council Members disapprove.

A new or increased diversion averaging less than 1 million gallons per day in any 120-day period and (as soon as possible, but no later than 10 years from the effective date of the Compact) new or increased withdrawals averaging greater than 100,000 gallons per day in any 120-period will be managed and regulated by the individual Signatory Party where the proposal originates. These proposals do not require Council review, but they must be declared consistent with the applicable Standard by the Signatory Party.

The Great Lakes Basin Sustainable Water Resources Agreement.

The proposed Agreement would be a non-binding agreement among the eight Great Lakes states and the provinces of Ontario and Quebec. It seeks the commitment of the Great Lakes states and provinces to implement a standard for regulating water withdrawals and diversions from the Great Lakes Basin. The Agreement appears to mirror the same Standards (i.e., the same criteria) and threshold levels established in the Compact for considering withdrawal, diversion, and consumptive use proposals. The Agreement, however, contains as an appendix — a detailed Procedures Manual — which is to be used as a guide for implementing the Standard, and in particular, reviewing the proposals. The Procedures Manual breaks down each of the criteria contained in the Standard into a number of items to be considered in determining whether or not a proposal meets the requirements of the Standard.

Under the Agreement, review of a proposal to determine its consistency with the applicable Standard would be conducted by the Great Lakes Water Resources

³⁷ The Compact also provides for review of combined diversion and consumptive use proposals.

³⁸ The phrase *water dependent natural resources of the Great Lakes Basin* is defined in the Compact as the “interacting components of land, water and living organisms affected by the waters of the Great Lakes Basin.”

Regional Body, which is composed of the signatory governors and premiers from the Great Lakes states and provinces. The Agreement also establishes procedures whereby the public and tribes may comment on the proposals. The Agreement requires that the Regional Body come to a consensus decision on whether the proposal meets the requirements of the Standard. In the event consensus is not reached, the Regional Body may issue a public “Declaration of Finding” that presents different points of view and indicates each party’s position.

Consideration of Draft Proposals

The Compact and Agreement proposed by the CGLG are draft documents. The CGLG received more than 10,000 public comments on these first drafts, some of which applauded the efforts made by the CGLG and others which called for change. The following sections summarize some of the comments voiced by various interest groups.

Legal. According to some, the Compact presents serious challenges to existing legal standards and Canadian and state sovereignty. Some Canadian interest groups, for example, have criticized the Compact because it assigns no role to the Canadian federal government and does not provide either Canada or the provinces of Ontario and Quebec any right to approve or veto a diversion of Great Lakes waters.³⁹ Proponents, however, view the Compact-Agreement combination as a very promising water management tool because, for the first time, all ten jurisdictions are involved in a formal approval procedure for most proposals. For example, some contend the link established in the binding Compact with the formal discussion and voting process outlined in the non-binding international state-provincial agreement is a significant improvement over its 1985 predecessor — a written “consultation” process among the states and provinces.⁴⁰ Furthermore, proponents point out that the United States does not have the right to manage diversions in Canada.⁴¹

The attorney general for the State of Michigan, however, has described the review process contained in the draft proposals as a “process that only weakens current state authority to limit diversions.”⁴² Currently, each Great Lakes state retains

³⁹ Steven Shrybman, *Legal Opinion: Great Lakes Basin Sustainable Water Resources Compact and the Diversion of Great Lakes Waters* at 15, Commissioned by the Council of Canadians, National Water Campaign (Oct. 2004) available at [http://www.canadians.org/documents/legalop_greatlakes_14oct04.pdf] last visited on June 13, 2005 [hereinafter Shrybman Legal Opinion].

⁴⁰ See Environmental Group Comments on the Proposed “Great Lakes Basin Water Resources Compact,” at 19 (Oct. 18, 2004) available at [<http://www.speakongreatlakes.org/joint-engo/engo%20compact%20comments%2010-18-04%20final.pdf>] last visited on June 13, 2005 [hereinafter Environmental Group Comments]; see also Canada and the “Annex” Water Agreements, available at [<http://www.speakongreatlakes.org/joint-engo/canada-and-the-annex-agreements.pdf>] last visited on June 13, 2005.

⁴¹ Egan, Canada High and Dry.

⁴² Press Release, State of Michigan, Department of the Attorney General, *Attorney General* (continued...)

the power to veto and essentially prevent the diversion or export of Great Lakes water outside the Basin under WRDA 1986 (as amended). Should the Compact be approved in its current form, the fact that comparable proposals could potentially be implemented if they meet certain standards arguably limits the ability of the governors to veto diversions. It is unclear whether a court could look to the veto authority described in WRDA or whether it would be forced to require states to exercise the veto authority of the Compact. Some environmental groups, nonetheless, have described the Compact to be potentially as effective as the WRDA veto, especially when viewed in combination with some of the Standard's more stringent criteria, such as the *return flow* requirement.⁴³

Observers have also asserted that the draft proposals seem to ignore some of the legal standards prescribed in the BWT and the Great Lakes Water Quality Agreement of 1978 (GLWQA)⁴⁴ and to marginalize the role of the IJC. For instance, the requirement for returning flows of water withdrawn from a Great Lake, according to some, is so vague that it is unclear whether it requires the required return flow to meet the objectives of the GLWQA or would prohibit the introduction of invasive species.⁴⁵ The creation of the new regional bodies under the draft proposals has some concerned with possible overlap and conflict with the IJC — an international body already mandated by the BWT and the GLWQA to address many water and ecosystem issues in the Great Lakes. Others, nonetheless, contend that the BWT only stops the grandest of diversions and that nothing in the Compact is intended to interfere with the commitments that have been made by both federal governments under the BWT.⁴⁶

⁴² (...continued)

Comments on Water Diversion Proposal (Oct. 19, 2004) available at [http://www.michigan.gov/ag/0,1607,7-164-17345_18167-102508—M_2004_10,00.html] last visited on June 13, 2005 [hereinafter Michigan Press Release (2004)]. The State of Michigan is also concerned with the proposed Compact's regulation over consumptive use proposals, since the state relies almost exclusively on Great Lakes water. By allowing other Great Lakes states to vote on Michigan's consumptive uses of water, the state believes that the Compact would infringe on its sovereignty by restricting its authority to regulate consumptive uses within the state.

⁴³ Environmental Group Comments, at 14. The *return flow* requirement requires all of the water withdrawn from the Great Lakes Basin to be returned to the Basin, less an allowance for consumptive use. Applications for water withdrawals are to describe how the water will be returned, estimate how much water will be returned and consumed, state the location of the return, and describe the anticipated water quality of the return flow.

⁴⁴ The Agreement, first signed in 1972 and renewed in 1978 and again in 1987, expresses the commitment of the United States and Canada to restore and maintain the chemical, physical, and biological integrity of the Great Lakes Basin ecosystem and includes a number of objectives and guidelines to achieve these goals.

⁴⁵ The Sierra Club of Canada, *Submission to the Ontario Ministry of Natural Resources on the subject of the Draft Implementing Agreement for Annex 1 of the Great Lakes Charter* (Sept. 20, 2004); James P. Bruce, *Great Lakes Agreement and Compact: Drafts of July 19, 2004, Review for Gordon Foundation* (Aug. 26, 2004).

⁴⁶ Egan, Canada High and Dry.

Environmental. One of the concerns over removing water from the Great Lakes is the potential environmental impacts it may cause. Some have commented that the Standard inadequately protects the environment. For example, provisions requiring water diversion proposals to contain “resource improvements” for the ecosystem have been argued to necessarily imply an “exchange of money, or at least bartering, with the proceeds going towards meeting the responsibilities of resource abusers, or to agencies dealing with resource abusers or abuses within the basin.”⁴⁷ This feature, however, was one of the recommended themes in the Annex of 2001, and is part of the other numerous proposed environmental safeguards. Critics also contend that the Compact would substantially increase the likelihood of several long-range, low-volume water diversions from the Great Lakes because it imposes *no* limits on the *total* volume of water that may be removed or the duration of such withdrawals.⁴⁸ They contend that this would eventually lead to environmental problems. Others counter by saying that environmental limits to water withdrawals have not been studied, and that determining how much water is too much to remove from the Great Lakes should be an adaptive process based on monitoring and periodic evaluations. The Compact addresses this issue indirectly by stating that no proposal will comply with the Standard if it will result in significant individual or cumulative adverse impacts to the quality and quantity of the natural resources of the Basin.⁴⁹

Trade.⁵⁰ The question of the extent to which water can be regulated by trade agreements, such as the North American Free Trade Agreement (NAFTA) and the General Agreements on Tariffs and Trade (GATT), remains unresolved. The IJC has expressed its belief that water in its natural form is not a good for purposes of trade agreements, and therefore, is not subject to trade agreement obligations.⁵¹ Assuming water in its natural form is not a good, it has been suggested that a nation may exploit or conserve its water domestically as its sovereign right.⁵² But, once water is removed from its natural state and enters into commerce as a saleable commodity, then it may become a good subject to trade agreement obligations. Most relevant is Article XI of the GATT, which prohibits parties from placing quantitative restrictions

⁴⁷ Ralph Pentland, *Great Lakes Compact — Water for Sale?*, Woodrow Wilson International Center for Scholars (Sept. 2004) available at [<http://wwics.si.edu/events/docs/ACF186.pdf>] last visited on June 13, 2005.

⁴⁸ Shrybman Legal Opinion, at 5. Ontario, for example, has indicated that it would not sign the current draft of the Agreement without changes to enhance the level of protection. *See* Greenwire, *Ontario balks at signing water agreement over diversion concerns*, Natural Resources, Vol. 9, No. 10 (Nov. 16, 2004).

⁴⁹ Cumulative impact is the impact on the Great Lakes that results from the individual proposal as well as past, existing, and foreseeable future proposals and projects.

⁵⁰ Prepared with the assistance of Jeanne Grimmer, Legislative Attorney, American Law Division.

⁵¹ IJC Report 2000 Report, at 28.

⁵² *Id.* at 29.

on imports and exports.⁵³ The proposed common conservation Standard in the Compact and Agreement is designed, in part, to address concerns that the current legal framework and institutions governing Great Lakes water diversions are vulnerable to challenge under these trade agreements.

A common conservation standard, according to some, would help the United States — should it be challenged for improperly interfering with water exports — to invoke the “health” or “conservation” exceptions to GATT and NAFTA obligations.⁵⁴ It has been argued, however, that it is “extremely unlikely” that a country outside North America would institute a challenge pursuant to the GATT, because bulk water exports have been found to be both uneconomical and impractical.⁵⁵ There has also been some debate on the applicability of these exceptions to water.⁵⁶

The more likely challenge, according to some, could come from foreign investors under NAFTA investment rules and the requirement for National Treatment.⁵⁷ National Treatment requires each party to “accord to investors of another party treatment no less favorable than that it accords, in like circumstances, to its own investors.” It has been argued that the Standard’s *return flow requirement* is susceptible to an investment challenge because it, *in effect*, discriminates against out-of-basin users — that is, it would be more difficult for users located far from the Basin to return water back to the Great Lakes.⁵⁸ Notwithstanding these legal arguments, because there have been no GATT or NAFTA disputes to date that have addressed restrictions on water exports, many issues regarding the application of international trade obligations in this area remain unsettled.

Industry. The implementation of the Compact and Agreement will likely result in greater regulation and oversight of water withdrawals. Some industrial stakeholders are concerned that new regulations may discourage industrial investment in the region and therefore cost jobs. Further, agricultural interests argue that increased permitting of water supplies may make obtaining water more difficult and add extra requirements for obtaining water in an area where water is especially plentiful. The State of Michigan, for example, has argued that the Compact’s

⁵³ GATT Art. XI is incorporated into the NAFTA in Article 309.

⁵⁴ IJC 2000 Report, at 28. Article XX of the GATT creates specific exceptions to the entire Agreement to aid public policy. As long as there is no “arbitrary or unjustifiable discrimination between countries where the same conditions prevail,” or a “disguised restriction on international trade,” a contracting party may adopt GATT-inconsistent measures, “(b) necessary to protect human, animal or plant life or health;” or “(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.” GATT Article XX is incorporated into the NAFTA in Article. 2101.1.

⁵⁵ Shrybman Legal Opinion, at 8 (citing the IJC).

⁵⁶ IJC 2000 Report, at 52.

⁵⁷ NAFTA, art. 1102(1).

⁵⁸ Shrybman Legal Opinion, at 11 (arguing that when it comes to the requirement for National Treatment, it is the *effect* of the measure, not its *form*, that matters).

regulation of “consumptive use” proposals would severely limit the state’s access to its own natural economic advantage — being wholly within the Great Lakes Basin.⁵⁹ According to others, however, tighter restrictions that help maintain water levels will help support the billion-dollar fishing, shipping, and tourism industries and help ensure adequate water supply for power generation and other future uses.

The Potential Congressional Role

In WRDA 2000, Congress encouraged the Great Lakes states, in consultation with the provinces of Ontario and Quebec, to develop and implement a common conservation standard for making decisions concerning the withdrawal and use of water from the Great Lakes Basin. This ultimately resulted in the formulation of the draft Compact and Agreement discussed herein. Final versions of these proposals are expected to be released during the 109th Congress.

The possible consequences that these proposals may ultimately have on agriculture, trade, navigation, water quality, domestic water supply, hydropower, international relations, and the environment are likely to be of interest to the 109th and subsequent Congresses. While Congress may play some role in overseeing the international provincial-state Agreement, its legally non-binding nature under international law would appear to limit Congress’s direct role. The Compact, on the other hand, would require the consent of Congress to achieve full force and effect after the Great Lakes states approve it. The following paragraphs outline some of the basic legal concepts for compacts, including the procedure that is usually followed for congressional consent.

Authorization for interstate cooperation by means of a compact is found in article I, section 10, clause 3 (the “Compact Clause”) of the Constitution, which provides that “no State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State or with a foreign Power. . . .” Interstate compacts come into existence when (1) the legislatures of the member states authorize identical compact language and (2) Congress consents, if necessary. An interstate compact will be transformed into federal law when it has the express consent of Congress and is a subject matter of appropriate congressional legislation.⁶⁰ Compacts are also basically contracts between states, and a violation of compact terms will generally result in a breach of contract between states. The U.S. Supreme Court is the usual forum for resolving disputes between the member states of a compact.⁶¹ As both a contract and a statute, an interstate compact has the force and effect of statutory law, and once enacted, cannot be unilaterally renounced or amended by a member state except as provided by the compact itself or by mutual consent of the members by adopting identical substantive language.⁶²

⁵⁹ Michigan Press Release (2004).

⁶⁰ *New York v. Hill*, 528 U.S. 110, 111 (2000).

⁶¹ U.S. CONST. Art. III, §2.

⁶² Paul T. Hardy and Carl Vinson, INST. OF GOV’T, UNIV. OF GEORGIA, *Interstate Compacts: The Ties that Bind* 3 (1982) [hereinafter *The Ties that Bind*].

For purposes of the Compact Clause, congressional consent is necessary for a compact if it “tends to increase the political power in the states, which might encroach upon or interfere with the just supremacy of the United States.”⁶³ While states have some legal right to restrict the use of water out of concern for the health, safety, and welfare of their citizens,⁶⁴ the federal interest in the Great Lakes is clear under the Commerce Clause,⁶⁵ as well as under the sovereign authority of the United States to conduct foreign relations. Indeed, the Great Lakes are a multi-state resource, an interstate body of navigable water,⁶⁶ and a pathway of international commerce. Due to these significant federal interests, a compact that regulates the export or diversion of Great Lakes water would necessarily require the consent of Congress.

The Constitution provides neither the means nor the timing of the required consent. Generally, congressional consent takes the form of a joint resolution that sets forth and approves the text of the compact and adds any provision deemed necessary to protect a national interest.⁶⁷ Consent usually is granted to a specific compact already adopted by several of the member states, or Congress may grant advance consent by authorizing all compacts which subsequently may be established in a particular field.⁶⁸ In addition to expressing consent (e.g., joint resolution), Congress may also implicitly consent when it “adopts the particular act by sanctioning its objectives and aiding in enforcing them.”⁶⁹ Congress may also give conditional consent, whereby conditions must be met or changes made before the compact becomes operational. For example, Congress may place limitations on its consent, which can include imposing time constraints, requiring renewed consent, restricting operation to specified functions, or requiring disclosures of information.⁷⁰

⁶³ *Virginia v. Tennessee*, 148 U.S. 503 (1893).

⁶⁴ Brian D. Anderson, *Selling Great Lakes Water to a Thirsty World: Legal, Policy & Trade Considerations*, 6 BUFF. ENVTL. L. J. 215, 229 (1999). See, e.g., WIS. STAT. §30.21(1) (2002) (regulating the use of Great Lakes water by public utilities).

⁶⁵ U.S. CONST. Art. I, §8, cl.2. Congress shall have the Power to “regulate Commerce with foreign Nations and among the several States . . .” *Id.* Commerce clause authority extends to water navigable in interstate or foreign commerce. See *The Daniel Ball*, 77 U.S. 557, 566 (1870). See also *Sporhase v. Nebraska*, 458 U.S. 941 (1982) (groundwater found to be an article of interstate commerce). Classifying water as an article of interstate commerce for Commerce Clause purposes does not necessarily mean it qualifies as a “good” for trade agreement purposes.

⁶⁶ *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 426 (1924) (finding that a riparian state cannot authorize diversions of water from the Great Lakes that will affect lake levels, without the consent of Congress, since withdrawals that affect lake levels may also impair navigation).

⁶⁷ *The Ties that Bind*, at 17.

⁶⁸ *Id.*

⁶⁹ *Id.* In *Virginia v. Tennessee*, (case concerned a dispute over state boundaries described in a compact), consent was implied from the fact that Congress had established judicial districts in recognition of the boundary established by the compact.

⁷⁰ *The Ties that Bind*, at 18-19.

Conclusion

As the largest single supply of surface freshwater in the world, the Great Lakes support a vast web of domestic and international interests. Potential threats to the Great Lakes water levels, including particularly possible increases in domestic and international demand for the water, have many in the United States and Canada reexamining the laws and policies that currently regulate water withdrawals from the lakes. The proposed Agreement and Compact are the most recent products of these reexaminations and seem to be consistent with the views expressed by Congress in WRDA 2000 to create a new conservation-based decision-making standard for withdrawals from the Basin. How this new standard will compare to, involve, or supercede the current regulatory regime remains to be seen. For instance, with the final passage of a conservation-based standard, one could argue that the strict veto authority over diversions and exports granted to the governors in WRDA is at risk of being undermined. Congress could potentially resolve such uncertainties and any other matters it may take issue with when it is called upon to approve the Compact. The development and implementation of these new proposals will undoubtedly continue to be of importance to Great Lakes stakeholders and the Congress.

Appendix 1. Standard of Review and Decision for Reviewable Diversions and Consumptive Use Proposals

	Diversion	Consumptive Use
Amount	New or increased diversion of 1 million gallons per day or greater average in any 120-day period	New or increased consumptive use of 5 million gallons per day or greater average in any 120-day period
Standard	<ol style="list-style-type: none"> 1. There is no reasonable water supply alternative within the Basin; 2. the quantities withdrawn are reasonable for the proposed purpose; 3. the water withdrawn from the Great Lakes Basin would be returned to the Basin, less an allowance for consumptive use; 4. the withdrawal would be implemented so as to ensure no individual or cumulative impacts to the quality or quantity of the waters and water-dependent natural resources of the Great Lakes; 5. the proposal incorporates a conservation plan to demonstrate how measures will be implemented to minimize the effects of the withdrawal; 6. the proposal incorporates a proposal to show how measures will be implemented to improve the water-dependent natural resources of the Great Lakes; 7. the withdrawal will be implemented so as to ensure it is in compliance with all applicable laws and treaties; and, 8. the state in which the proposal originates will be responsible for declaring whether proposals are consistent with paragraph 6 above for new or increased diversions averaging between 1 and 3 million gallons per day in any 120-day period. 	<ol style="list-style-type: none"> 1. The need for all or part of the proposed withdrawal cannot be reasonably avoided through the efficient use and conservation of existing water supplies; 2. the quantities withdrawn are reasonable for the proposed purpose; 3. the water withdrawn from the Great Lakes Basin would be returned to the Basin, less an allowance for consumptive use; 4. the withdrawal would be implemented so as to ensure no individual or cumulative impacts to the quality or quantity of the waters and water-dependent natural resources of the Great Lakes; 5. the proposal incorporates a conservation plan to demonstrate how measures will be implemented to minimize the effects of the withdrawal; 6. the proposal incorporates a proposal to show how measures will be implemented to improve the water dependent natural resources of the Great Lakes; and, 7. the withdrawal will be implemented so as to ensure it is in compliance with all applicable laws and treaties.
Approval	Council approval given unless one or more Council members disapproves.	Council approval given unless three or more Council members disapprove.