



GREAT LAKES, GREAT MICHIGAN WATER USE LEGISLATION PRIORITY PLATFORM

August 27, 2007

This year, the state legislature is expected to review and debate passage of The Great Lakes – St. Lawrence River Basin Water Resources Compact (the Compact), part of the Great Lakes Charter Annex 2001. We advocate passage of the Compact with strong implementing legislation and believe it presents a critical opportunity to improve our current state laws. We propose the following platform to accomplish two important things: 1) Bring Michigan into compliance with the Compact; and 2) Improve implementation of the Compact in Michigan by strengthening our state laws.

Combining passage of the Compact with these changes to Michigan law will result in strong protections for the Great Lakes and our valuable inland lakes, streams, ground water, and wetlands. This not only benefits the citizens of Michigan and the Great Lakes Basin, it also demonstrates our willingness to work with other states in this region and do our part to aggressively protect the waters that are so crucial to our livelihood and lifestyle.

GLGM Bills Package introduced in the House of Representatives:

HB 4343 – Great Lakes Basin Water Resources Compact

HB 5065 through 5073 – Companion Legislation to strengthen Michigan's water use laws

1. Public Trust Extends to All Water. Enact a law affirming that the public trust should include all waters of the state, clearly articulating that the Public Trust Doctrine applies to not only surface waters used for fishing, commerce, and navigability, but also to wetlands, streams and groundwater resources vital to the health and economy of our society and ecosystems.

Problem:

- Increasing global demand for fresh water will pit in-state water users against water takers. Our current system does not distinguish between users and takers, jeopardizing the public control of Michigan's waters.

Solution:

- **HB 5067** gives the Administration the duty to determine that a commercial or industrial groundwater withdrawal does not "impair the waters of the state or other natural resources of the state or the public trust in those natural resources."
- **HB 5072** requires bottled water producers that use more than 100,000 gallons of groundwater per day to demonstrate that this won't affect the rights of other property owners to enjoy the reasonable use of groundwater.

2. Prevent Adverse Impacts to Michigan's Water and Wetlands. Ecosystems function as a unit; their health depends upon the symbiotic relationships of the resources included and none of them are up for grabs.

Problem:

- Our water use permitting program does not adequately capture potential problems. Current water use laws define adverse resource impacts too narrowly, creating regulatory holes that leave the door open for exploitation and damage to our water resources.

Solution:

- **HB 5065** redefines the “index flow” to help determine whether commercial or industrial groundwater withdrawals are having a negative impact. This makes it easier to impose restrictions when withdrawals affect water flow levels in rivers and streams.
- **HB 5069** requires the Administration to create an online “Water Withdrawal Assessment Tool,” which enables commercial and industrial facilities to determine from various factors what impact they are likely to have with their proposed withdrawal. The tool uses data on stream flows throughout the state to assess the potential for an “adverse resource impact” from nearby groundwater withdrawals, based on the volume and location of such withdrawals.
- **HB 5071** requires the Administration to evaluate the impact of a proposed waterworks system for new municipal community water supplies that withdraw more than 1 million gallons of groundwater per day. Under current law, the Administration may but is not required to evaluate systems that withdraw more than 2 million gallons per day.
- **HB 5072** requires bottled water producers that use more than 100,000 gallons of groundwater per day to perform rigorous hydro-geological studies; assess their impact on flows and levels of groundwater, springs, lakes and streams, wetlands, or nearby wells; submit precipitation studies; do pump tests; and participate in public hearings.

3. Meaningful Conservation. We are seeing changes in Michigan. Winters have been milder, lakes levels are lower, lakes don’t freeze over the way they used to, and weather patterns are different. It is appropriate to have legislative language requiring the development of a meaningful conservation program, with goals and objectives and a way to evaluate accomplishment of goals.

Problem:

- Drought, climate change, and a growing global demand for fresh water resources make us vulnerable to demands for Great Lakes water. Michigan cannot say that we won’t allow diversions of our water because we have to protect it – and then turn around and waste it. If we have water to waste, then in the eyes of a US court of law or a World Trade Organization forum, we also have water to send away.

Solution:

- **HB 5066** gives the Administration authority to impose water conservation procedures on commercial or industrial facilities that have the capacity to withdraw 100,000 gallons of groundwater per day. The specific conservation procedures depend on the type of facility.

4. Permitting. Reaffirm the public’s interest in all waters of the state and require any commercial water packaging and sale facility that is not a public water supply to obtain a permit. Require all permit applications to include a complete hydrogeological study and assessment of the water source, including the right to FOIA.

Problem:

- The current permitting thresholds capture very few large-scale users; as a result, Michigan does not have a good handle on the withdrawals occurring in state.

Solution:

- This package of legislation has 5 important permit triggers:
 1. Any new or increased withdrawal using 2 million gpd or more from the Great Lakes must apply for a permit.

2. Any new or increased withdrawal using 1 million gpd or more from inland waters must apply for a permit.
 3. Any party using 100,000 gpd or more is required to register and use the Water Withdrawal Assessment Tool. If the tool flags them as having a potential adverse resource impact, they are required to apply for a permit.
 4. A person who proposes a withdrawal of any volume that would result in more than a 5% reduction in the flow of a stream or river within the state must apply for a permit.
 5. A water bottling facility using 100,000 gpd or more must apply for a permit.
- **HB 5073** gives the Administration authority to write and enforce rules that have the force of law so as to regulate and restrict the use of groundwater by industrial and commercial businesses, as proposed by House Bills 5065 to 5072.

5. Community Involvement. Elevate the level of community involvement and public participation in water use decisions, making sure citizens have adequate time to thoughtfully review complicated data required for permitting. Local actions and decisions reflect the pressures of neighborhoods and communities; these voices must figure prominently in the implementation of any decisions affecting water use. All permit and petition processes should include mandatory 90-day public noticing and comment periods, and opportunities to request public hearings.

Problem:

- Today's permitting and petition process does not include a public notice requirement. As a result, current users have limited input in the approval process for large-scale facilities, which could have an impact upon their ability to use and enjoy water resources and ecosystems.

Solution:

- **HB 5067** authorizes "interested parties" and county prosecutors to sue businesses when they believe a violation has occurred. Civil fines for most violations of water withdrawal regulations written and enforced by the Administration would increase from \$1,000 to \$10,000.
- **HB 5068** lengthens from 120 days to 180 days the time the Administration has to act on a permit request (once it determines that the application is "administratively complete"), and requires a public comment period.
- **HB 5070** gives any "interested persons" the ability to submit a petition to the director of the Department of Environmental Quality if they believe that adverse resource impacts are occurring or are likely to occur as a result of a facility using groundwater, and requires the Administration to investigate the petition. The bill also gives local governments the authority to regulate large quantity commercial and industrial groundwater withdrawals.

6. Investment into Michigan's Waters through Restoration Efforts. All permit holders must be partners in restoration efforts. Require waters of the state used by permit holders to be returned to the sub-watershed of origin, minus that which is consumed. Restoration initiatives should not be measures already required by existing law.

Problem:

- The Great Lakes continue to be under considerable pressure; the restoration needs are running into the billions of dollars. Currently, however, large water users are not required to participate in restoration efforts.

Solution:

- **HB 5066** gives the Administration the discretion and authority to order facilities to perform activities to mitigate hydrologic impacts of water withdrawals.