

Key needed changes in the draft compact

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roman = summary / context
italic = critique / needed changes

Definitions

Diversion definition

- defined as 1) out of the Great Lakes basin and 2) between lake basins
- *should include diversions between major river tributaries*
- *nomenclature should distinguish between traditional diversions (out of the Great Lakes basin) and other diversions*

Required “return flow” definition

- required of all diversions and withdrawals
- defined as return to the “source watershed,” not simply to the Great Lakes basin
- acceptable if source watershed definition changed
- *return flow should be required to take place “in close proximity to the site of withdrawal”*

“Source watershed” definition

- needed to specify location of required return flow
- defined as Great Lake or the St. Lawrence River, or a tributary to them
- *should facilitate definition of return flow as taking place “in close proximity to the site of the withdrawal”*
- *should be defined as the watershed of same scale of the watershed of withdrawal, down to smallest stream level*

“Consumptive loss” definition

- basis for determining quantity of required return flow
- *needs a process for defining by use sector*
- *should not be used basis for determining how proposals are reviewed: thresholds should be defined on the basis of withdrawal quantity*

Conservation “measures” definition

- required of smaller withdrawals
- applicant given complete latitude to choose measures
- *state-provincial agreement “procedures” should indicate minimum acceptable measures*

Conservation

“Environmentally sound and economically feasible water conservation measures”

- “economically feasible” is defined weakly: as cost-benefit analysis, which generally undervalues benefits
- “economically feasible” is also defined strongly, with the cost-benefit analysis expressly to include “avoided environmental costs”
- *“environmentally sound” is not defined: should be defined as “measures that 1) for the applicant’s water use sector, represent best conservation practices for water withdrawals and consumptive uses, as carried out by the best performing withdrawers in the developed world for the given water use sector*, and 2) have been evaluated to assure that they do not cause as adverse ecological impact when implemented”*

“Basinwide conservation plan”

- as distinct from conservation plans required for larger withdrawal proposals and the conservation measures required for smaller proposals
- not currently in the draft compact or state-provincial agreement
- *suggested language: “the Great Lakes basin states (and provinces in the state-provincial agreement) shall collectively develop a basin wide strategy for water conservation that includes targets and timetables for reducing current basin wide water use by individual jurisdiction and use sector, and measures to be taken by the states (and provinces) to increase water conservation by water withdrawers and users”*

No adverse ecological impact

“Significant adverse impacts” definition

- not defined in the draft compact
- extensively defined in a document now part of the now-binding state-provincial agreement
- *state-provincial agreement “procedures” appendix should be referenced in the compact*

Improvement

- not mitigation: not making up for harm; an additional improvement
- *should be predominantly tangible (on-the-ground projects) rather than conceptual (planning)*
- *should exist for the life of the permit*
- *should be weighted toward improving hydrological functioning*

Compact “council”

Council voting power

- regionally reviewed diversions: unanimous
- regionally reviewed withdrawals: majority of six of the eight states
- modification of articles 8–10: unanimous
- rest of compact: majority
- *permitting regionally reviewed withdrawals should require unanimous vote*
- *altering any part of the compact should require a unanimous vote*
- the voting system is less important than the use of the standards and their enforcement

“Regional review”

Diversions of 1 million gallons per day or more

- regional review
- unanimous vote for approval
- no “reasonable alternative,” including conservation
- quantity reasonable for proposed use
- return withdrawn water less consumptive loss factor to source watershed
- no significant adverse impact
- improvement (footnote: state decides on compliance for proposals up to 3 million mgd)

Withdrawals resulting in a consumptive loss of 5 mgd or more

- option one: all the criteria above except 1) six votes for approval (from article 3.4) and 2) unqualified improvement provision
- *obvious differential treatment: should be unanimous and loss threshold much closer to 1 mgd*
- *eliminate option two: regional “prior notice and consultation”*

State-provincial body

- above categories of diversion and withdrawal must be reviewed by state-provincial body
- possible attempt to link the compact and state-provincial agreement by requiring compact votes be the same as state-provincial votes

State review

Diversions under 1 mgd

- state review
- exemption for 250,000 gd or under for near-basin public supply where potable water is “unavailable”
- *delete exemption*
- *minimum acceptable “conservation measures” should be defined*
- *improvement should be required*

Withdrawals over 100,000 gd, but less than quantity/use causing 5 mgd consumptive loss

- state review
- ten years to implement
- *implementation time should be five years*
- *minimum acceptable “conservation measures” should be defined*
- *improvement should be required*

Cumulative impacts

Cumulative impacts study

- study of Great Lakes basin as a whole
- every five years or total increased consumptive loss of 50 mgd or more, whichever is sooner
- *study should consider impacts to major tributary watersheds*
- *for major tributaries, the trigger of an accelerated study should be level of increased withdrawal, expressed as a small percentage of low flow volume, rather than consumptive loss*
- *there should be a requirement to act if the study results merit action*

Enforcement

- left blank in most recent draft compact
- *citizen enforcement of state duties under the compact*
- *citizen review of state decisions made under the compact*
- *compact council enforcement of compact terms*

Public participation

- states and the compact council shall issue public notification of “all proposed new or increased Withdrawals or Diversions of Waters of the Great Lakes Basin” and allow “reasonable opportunity to provide written and oral comments before proposals are acted upon”
- “public accessibility to all documents pertinent” to proposed withdrawals, “including public comment itself”
- “establish specific standards for determining: a) whether a public meeting or hearing is required” for a proposed withdrawal, “b) how much notice should be given for public meetings or hearings and comment periods, and how long comment periods will last, c) where such a meeting(s) or hearing(s) should reasonably be held, and d) meeting procedures. The public shall be consulted in the establishment of these standards.”
- *public participation should include enforcement: avenues for citizen challenge of individual decisions and state enforcement of decisions*