



National Sea Grant Law Center

Legislative Announcement

April 2006



Michigan Passes Water Withdrawal Legislation

On February 28, 2006, Michigan's governor signed into law Senate Bills 850, 851, 852, 854, and 857, creating a comprehensive regulatory framework for the management of water withdrawal and diversion from the Great Lakes basin. Having passed the Legislature with overwhelming bipartisan support, the legislation represents not only a personal victory for the governor but also the fulfillment of a neglected promise made by Michigan more than twenty years ago.

Background

With more than six quadrillion gallons, the Great Lakes contain one-fifth of the world's fresh surface water. Great Lakes States and nearby Canadian provinces have long recognized the value of the immense resource conveniently located in their collective backyards. On February 11, 1985, Michigan, along with seven other Great Lakes States and two Canadian Provinces, signed the Great Lakes Charter, resolving to protect the water resources of the Great Lakes by, among other things, establishing state programs to manage water withdrawals. Until this year, however, Michigan remained the only signatory that had failed to honor its commitment.

The governor began pressing for a water management program in January 2004. A confluence of events contributed to completion of the legislation creating that program. These included public concern over a water bottling operation having alleged effects on surface water, isolated conflicts between large water withdrawals and small domestic wells, and the completion of a report by a legislatively created advisory council on groundwater protection. The new water withdrawal legislation amends Part 327 and 328 of the Michigan Natural Resources and Environmental Protection Act and the Safe Drinking Water Act (SDWA) and creates a water withdrawal management program that allows Michigan to honor its earlier promise to join other members of the Great Lakes Charter in the unified protection of their common natural resource.

Diversions

The new law distinguishes between withdrawals and diversions of water. In general, the legislation prohibits diversions, which involve the transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Great Lakes basin to watersheds outside the basin. Diversions also include the transfer of water withdrawn from the waters of the Great Lakes basin and removed from the basin in a container greater than 5.7 gallons (20 liters).

Large Quantity Withdrawal

Part 327 prohibits new or increased large quantity water withdrawals that cause an adverse resource impact. A withdrawal is the removal of water from its source for any purpose other than hydroelectric generation. An adverse resource impact is considered any impact that could impair the lake or stream's ability to support its characteristic fish populations. For example, withdrawing large quantities of water from a stream can change its temperature and, consequently, its ability to support certain types of fish. Until February 28, 2008, Part 327 prohibits adverse resource impact only to trout streams. After that date, the prohibition applies to all streams and lakes.

A “large quantity water withdrawal” is a withdrawal greater than 100,000 gallons per day (gpd) averaged over a consecutive 30-day period. Every large quantity withdrawal must be registered with the Michigan Department of Environmental Quality (MDEQ) unless it is permitted under Part 327, for agricultural purposes, or a withdrawal by a local unit of government for a community water supply permitted under the SDWA. Certain new or increased large quantity withdrawals need a permit under Part 327. Permits, for example, are needed for a new or increased withdrawal from a Great Lake of greater than five million gpd. The MDEQ will not issue a permit if the withdrawal from the Great Lake would cause an adverse resource impact and all water withdrawn, less consumptive uses, must be returned to the Lake’s watershed. In addition, the proposed use must be reasonable under traditional rules of Michigan water law. Permits are also need for a new or increased withdrawal from an inland lake or stream of greater than two million gpd, unless it is a seasonal withdrawal averaging less than two million gpd over a consecutive 90-day period. A permit for a withdrawal from an inland source cannot be granted if it would create an adverse resource impact.

Water bottling operations that use a new or increased large quantity withdrawal of more than 250,000 gpd must now secure a permit from MDEQ. The permits may only be granted if the bottler satisfies several prerequisites. First, the bottler must demonstrate to the MDEQ that the proposed use will not likely have an adverse resource impact. Second, the use must be reasonable under common law principles of water law in Michigan. Third, the bottler must conduct the use in such a manner as to protect riparian rights. Finally, the bottler must address hydrologic impacts of the withdrawal.

Where can I find the Michigan bills?

Senate Bill 850 – www.legislature.mi.gov/documents/2005-2006/publicact/htm/2006-PA-0033.htm

Senate Bill 851 – www.legislature.mi.gov/documents/2005-2006/publicact/htm/2006-PA-0034.htm

Senate Bill 852 – www.legislature.mi.gov/documents/2005-2006/publicact/htm/2006-PA-0035.htm

Senate Bill 854 – www.legislature.mi.gov/documents/2005-2006/publicact/htm/2006-PA-0036.htm

Senate Bill 857 – www.legislature.mi.gov/documents/2005-2006/publicact/htm/2006-PA-0037.htm

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