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Author: Sponberg, Adrienne Froelich

Source: BioScience, 59(5) : 372

Published By: American Institute of Biological Sciences

URL: <https://doi.org/10.1525/bio.2009.59.5.4>

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Great Lakes: Sailing to the Forefront of National Water Policy?

ADRIENNE FROELICH SPONBERG

While all eyes were on the presidential election last fall, the US Congress quickly—and rather unceremoniously—approved legislation that will shape the face of US water policy for years to come. On 3 October, then President George Bush signed into law the Great Lakes–St. Lawrence River Basin Water Resources Compact (S.J. Res. 45). Although federal passage was swift, the compact itself was nearly a decade in the making, and it represents significant progress in how the Great Lakes are managed. In turn, the compact sets the stage for the future of water policy in the United States.

Accounting for 84 percent of the surface freshwater in North America, the Laurentian Great Lakes represent one-fifth of the world's freshwater supply. Management of the lakes, with their more than 17,000 kilometers of shoreline, has always been complex. Two countries, eight US states, two Canadian provinces, 40 tribal nations, and numerous metropolitan areas, counties, and local governments in the Great Lakes basin share governance of the lakes. The US Environmental Protection Agency (EPA) estimates that within the US federal government alone, 10 agencies administer 140 programs related to the lakes.

The recently approved compact will provide a comprehensive management framework for the Great Lakes. While the compact deals with a large number of issues—conservation and economic development among them—perhaps the diversion of Great Lakes water is the most significant. Proposals to remove or divert water from the Great Lakes have emerged periodically since the 1980s. The original proposals were to transport Great Lakes water through pipelines or other means to the “thirsty

West.” These proposals resulted in the Great Lakes Charter, a good faith agreement signed by states and provinces around the Great Lakes, which requires that, among other things, a governor or premier give notice and consult on removals of water averaging more than 5 million gallons per day in any 30-day period. In 1986, Congress codified a slightly modified version of the charter through the Water Resources Development Act (WRDA).

But in 1998, the holes in the charter and the WRDA provision were exposed as the Far East set its eyes on Great Lakes water. The Nova Group applied for and received a permit from the Ontario Ministry of the Environment to withdraw 160 million gallons per year of water from Lake Superior for transport and sale to Asia. The permit was legal because the amount of water was less than 5 million gallons per day, on average, over any 30-day period, and since the proposal was made to the Canadian federal government, the protections under the Great Lakes Charter and WRDA did not apply.

Although that plan was greeted by a public outcry and scuttled, the governors and premiers set about crafting more solid protections for the Great Lakes. The end result of those negotiations is the Great Lakes–St. Lawrence River Basin Water Resources Compact. According to Noah Hall, assistant professor of law at Wayne State University and executive director of the Great Lakes Environmental Law Center, the compact's protections against diversion are tight: “[It] does everything possible under domestic law to guard against Great Lakes water exports.” As water supplies become more limited across the nation, other water basins may look to the compact as a model for protec-

tion. Hall notes that some other interstate compacts already ban diversions out of the watershed, and he expects more to do so as water pressures and conflicts grow. Indeed, western interest in water diversion projects refuses to be quelled. In January 2009, Pat Mulroy, general manager of the Southern Nevada Water Authority, suggested that floodwater from the Mississippi River be diverted to the West.

With watertight protections against large-scale export and diversion in place, Great Lakes advocates are pressing forward with other items on their legislative agenda, such as cleaning up contaminated sediments and battling invasive species. They see great opportunity with the Obama administration in place. After all, the Great Lakes states awarded all of their 141 electoral votes to the former senator from Illinois and Great Lakes Congressional Task Force member. Tim Eder, director of the Great Lakes Commission, writes that President Obama “can make solid progress in protecting the nation's most valuable freshwater resource, while investing in regional economic growth.” And in fact, the Obama administration has already signaled that the Great Lakes will play a key role in the nation's water policy. Speaking at the semi-annual meeting of the Great Lakes Commission, EPA administrator Lisa Jackson said, “As the Great Lakes go, so goes the national policy as to water.”

Adrienne Froelich Sponberg (e-mail: sponberg@aslo.org) is the director of public affairs and coeditor of the Limnology and Oceanography Bulletin for the American Society of Limnology and Oceanography.

doi:10.1525/bio.2009.59.5.4