

April 27, 2008

VIA E-MAIL, FAX AND POSTAL MAIL

Ms. Lisa Wojnarowski  
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Re: Draft Water Use Information Reporting Protocols

Dear Ms. Wojnarowski:

On behalf of the Alliance for the Great Lakes (Alliance), National Wildlife Federation (NWF) and our below collective organizations across the Great Lakes basin — we appreciate this opportunity to comment on the Draft Water Use Information Reporting Protocols. Our organizations are committed to working with the states and provinces to implement the Great Lakes–St. Lawrence River Basin Water Resources Compact (Compact) and the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement). Unfortunately, as we explain below, the State/Provincial Reporting Protocols to the Regional Database (Regional Reporting Protocols) do not comply with the requirements of the Compact and Agreement. We call your attention to the following concerns:

**Aggregate Reporting Is in Conflict with the Compact and Agreement**

Both the Compact and Agreement require each Party to gather information on significant withdrawals<sup>1</sup> and diversions of any amount, and to report this information to a data base repository. Section 4.1 of the Compact and Article 301 of the Agreement make clear that the water use data to be collected and reported is individual data—not aggregated data as called for in the Regional Reporting Protocols.

Under Section 4.1.1 of the Compact, each state must create a comprehensive water resources inventory, including the location, type, and quantity of withdrawals, diversions and consumptive uses. To help the states develop and maintain a compatible base of water use information, Section 4.1.3 of the Compact specifies that each person who makes a significant withdrawal or diverts water of any amount is required to register with the state. A registration includes specific information about that user, such as the locations and sources of the withdrawal or diversion, the capacity and amount withdrawn, and the uses made of the water. Under Section 4.1.4 of the Compact, the registrant must also submit annual reports containing monthly volumes in gallons.

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<sup>1</sup> There is a discrepancy between the Compact and the Agreement on the reporting threshold for significant withdrawals. Under the Compact, states gather water use information from persons who withdraw 100,000 gallons per day (gpd) or greater. (Section 4.1.3.) Under the Agreement, the states and provinces are directed to gather information on withdrawals "in excess of 100,000 gpd or greater." (Article 301(1).) The latter appears to be a drafting error. As the Compact is the binding document on eight of the 10 Parties, the states and provinces should use this opportunity to clarify that the correct formulation of the threshold is the one found in the Compact.

Section 4.1.5 then states that "[e]ach Party shall annually report *the information gathered pursuant to this Section*" to a water use data base repository (emphasis added).

Similarly, in order to develop and maintain a compatible base of water use information, Article 301(1) of the Agreement requires each Party to annually gather information on all significant withdrawals, including consumptive uses, and all diversions. Article 301(2) of the Agreement states that the parties "shall report *this information*" to a water use data base repository (emphasis added). Under Article 301(3), users are also required to report monthly volumes on an annual basis.

The Compact and the Agreement, read together, define a detailed data set that is to be reported by individual users to the respective parties. In turn, the Compact and Agreement require this data set to be reported to the repository. By consistently calling for submission of aggregated data, the Regional Reporting Protocols are in direct conflict with the text of these agreements.

To the extent that there remains any question about the meaning of the text, Section 4.1.5 of the Compact and Article 301(2) of the Agreement provide that only aggregated information from the data base repository shall be made publicly available, consistent with confidentiality requirements. There would be no reason to specify that only aggregated information is to be shared with the public if that was the only level of data reported by the states and provinces to the repository.

#### **High Level of Data Aggregation Prohibits Improved Scientific Understanding**

Section 4.1.6 of the Compact and Article 301(4) of the Agreement state that the purpose of collecting and sharing the water use information is to improve scientific understanding of the resources in the Great Lakes Basin. The Compact and Agreement commit each Party "to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making." (Section 1.4.1; Article 302(1).) Specifically, "the strategy shall guide the collection and application of scientific information to support:

- a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;
- b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;
- c. Improved scientific understanding of the Waters of the Basin;
- d. Improved understanding of the role of groundwater in Basin Water resources management; and,
- e. The development, transfer and application of science and research related to Water conservation and Water use efficiency."

Section 1.4.2; Article 302(2).

Scientific understanding will not be improved by reporting highly aggregated data, nor will a collaborative science strategy be able to obtain its objectives. For example, each water use sector has classes with distinctively different water user characteristics. Being able to share and study those differences is critical to improving the scientific understanding of the impacts of withdrawals from various locations and water sources and by various user types. As another example, specific information on the aquifers from which groundwater is withdrawn is necessary to gain a better understanding of relationships between Great Lakes Basin surface water

and groundwater. And assembling watershed source data at a tertiary or HUC-8 watershed scale is critical to understanding the impacts of withdrawals. While some parties may not be able to identify or report such finer scale information, the Regional Reporting Protocols should call for the reporting of such data where available, and set timetables for reporting such data by all Parties.

### **Confidentiality Is Not a Reason for Aggregate Repository Reporting**

Reporting individual data need not compromise commercially sensitive user information. Section 8.3.1 of the Compact and Article 704(1) of the Agreement state that nothing in these documents "requires a Party to breach confidentiality obligations or requirements prohibiting disclosure [that it has under its own laws], [or] to compromise security of commercially sensitive or proprietary information." In addition, Section 8.3.2 of the Compact and Article 704(2) of the Agreement give each Party the authority to "take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties."

For the Public Water Supply Sector, there should be no presumption of confidentiality. While data is specific to each public water supply, user information is already aggregated. The Regional Reporting Protocols should start with a presumption that all data reported by public water supply is public information and should be reported to the regional data base without further aggregation.

Regarding water use information for sectors other than public water supply, we believe that large amounts of detailed data can be made available without identifying individual users. Presumably, distribution of specific information is only a concern if the user can be reasonably identified. In compliance with Section 8.3 of the Compact and Article 704 of the Agreement, the Parties should delete or redact confidential, proprietary or commercial sensitive individual data that can be used to identify a specific user prior to reporting. The repository also should have a responsibility to identify, delete or redact such information if it remains in the data set.

### **Confidentiality Protocol for Repository Could Be Included**

If there is a concern about the regional data base repository's ability to responsibly manage and control sensitive information, this concern should be addressed through a protocol, not circumvented by aggregating reported data. For example, the Parties could include a protocol for the regional data base repository that mirrors the responsibilities of the Parties under Section 8.3 of the Compact and Article 704 of the Agreement.

### **Non-Aggregated Data Will Not Overburden the Repository**

The submission of non-aggregated data will not overburden the regional data base repository. Accepting non-aggregated data from the states and provinces, presumably in electronic form, would not place an increased burden on the repository unless or until someone wants analysis of the data. Receiving non-aggregated data places no greater burden on the repository than receiving aggregated data. Receipt of the data places no obligation or burden on the repository for analysis or reporting, only an obligation for receipt and preservation.

### **Data Media or Transmission Format Protocol Should be Included**

The Regional Reporting Protocols should specify that the data is to be collected and submitted in an electronic form that allows the data to be shared, sorted and aggregated. This would simplify the aggregated reporting to

the public and the scientific analysis of the data. The Protocols should define the means of electronic submittal, preferably to a web-based data entry tool, and allow the Parties to consider changes to the means of collecting and reporting data as technology evolves.

### **Further Work Is Needed on Regional Reporting Protocols**

Under Section 4.1 of the Compact, the states are not required to annually report information to a data base repository until they have gathered the data. The deadline for creating a registration program and a water resources inventory is December 8, 2013. According to Article 709(3) of the Agreement, Article 301 does not come into force until five years after certain other provisions, or 60 days after the last Party has notified the others that it has completed measures to implement the article.

Most of the Parties are already gathering information on significant withdrawals, but they have not yet created a comprehensive water resources inventory. In light of the issues raised here, the anticipated challenges in coordinating regionally compatible data at a finer scale, and the timeline in the Compact and Agreement, we suggest that the Parties take more time to consider the issue of how to best create reporting protocols and seek the continued input of stakeholders through the Advisory Committee.

### **Conclusion**

During negotiations on the Compact and Agreement, all of the stakeholders recognized that considerable effort would be required to make the activities of ten different jurisdictions, with different levels and types of management programs, work together at the regional level. This is particularly true in the area of collection and reporting of data. In seeking solutions for working together, it is imperative that the Parties not accept the lowest common denominator, but push for a higher level of capability.

We request that the Council of Great Lakes Governor's Water Use Information Committee:

- (1) Recommend to the Regional Body and Council that approval of the Regional Reporting Protocols be postponed while the Committee seeks further input from stakeholders; and
- (2) Continue working to develop protocols as soon as practicable that are in full compliance with the Compact's and Agreement's requirement to report individual water use data. The final Regional Reporting Protocols should:
  - (a) call for the reporting of individual data gathered by the Parties so as to improve scientific understanding, and set timetables for reporting such data;
  - (b) call for reporting of all water use information from the public water supply sector without alteration;
  - (c) call for reporting of all water use information from sectors other than the public water supply sector, except for data that should be deleted or redacted in compliance with Section 8.3 of the Compact and Article 704 of the Agreement;
  - (d) include a protocol for the regional data base repository that mirrors the responsibilities of the Parties under Section 8.3 of the Compact and Article 704 of the Agreement; and

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- e) define the means of electronic submittal, preferably to a web-based data entry tool, and allow the Parties to consider changes to the means of collecting and reporting data as technology evolves.

Thank you for the opportunity to submit these comments.

Sincerely,

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