



The Valley's Homepage

Issue to privatize water ownership

By Marc Kovac

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State Issue 3

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The director of the Ohio League of Conservation Voters opposes Issue 3.

COLUMBUS — President Bush recently added his signature to a multistate agreement that will control future use of Great Lakes waters.

The move capped approval by the U.S. Congress and lawmakers in eight states on the much-debated Great Lakes Compact.

But the federal action may not have come to fruition without a compromise measure approved by Ohio lawmakers earlier this summer, in the form of a constitutional amendment to be decided by voters Nov. 4.

In fact, the state's passage of the Great Lakes Compact hinged on Senate Joint Resolution 8, offered by Sen. Tim Grendell, a Republican from Northeast Ohio. His chamber waited, on the last voting session day before breaking for the summer, until the Ohio House approved the placement of the constitutional amendment on the general election ballot before acting on the larger compact.

Earlier, Grendell had fought hard against some of the wording in the legislation for the compact, sponsored by Cleveland-area Republican Matthew Dolan. Grendell even offered his own version of the compact with a few words changed.

Both bills ratified the Great Lakes-St. Lawrence River Basin Water Resources Compact, prohibiting "with certain exceptions, all new or increased diversions of water resources," according to an analysis by the state Legislative Services Commission.

The compact also creates a governance structure and decision-making process for managing and regulating water resources among its members (Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Wisconsin and a couple of Canadian provinces).

The most notable differences in the two bills related to what Grendell said could lead to a legal taking of water rights from Ohio property owners. Dolan's version included "tributary groundwater and nonnavigable surface waters," while the senate version did not.

"Well-respected attorneys who specialize in property rights issues have found fault with the existing language," Grendell testified at the time. "I fear that if adopted as it stands today, ownership of waters within the Great Lakes Basin, including tributaries, wells and groundwater, would be in dispute and ultimately left up to costly litigation and the whims of a federal judge in Washington, D.C. Meanwhile, individual property owners would have little recourse."

Dolan's version of the compact, however, had been hammered out in agreement with the other state members, and proponents feared changes would undo four years of negotiations.

Grendell's bill "is irresponsible and will destroy years of hard work and negotiation by the Council of Great Lakes Governors and a myriad of interested parties," Bill DeMora, executive director of the Ohio League of Conservation Voters, said in a statement at that time. "If the Senate continues to allow one radical member to derail this process and sink a compact that a majority of our lawmakers support, our greatest opportunity to protect Ohio's largest resource will be lost."

SJR 8, which is Issue 3 on the November ballot, was the compromise position reached by both sides.

It formalizes, within the Ohio Constitution, property owners' rights to the groundwater on their land. It states that property owners have interests in the groundwater and non-navigable waters located on or flowing through their land and that that water "cannot be held in trust by any governmental body," according to an analysis compiled by the state's Legislative Services Commission.

Before the final floor vote on the resolution, Grendell said, "We will make it clear that Ohio law favors the private-property owners' right to the reasonable use and control of the water within their property."

While no organized opposition groups have formed to counter the issue, the Ohio Ballot Board noted that the amendment could be considered an "unnecessary addition" to the state constitution.

It wrote, "The Supreme Court of Ohio already determined that private property owners have rights to the ground water underlying their land and to the watercourse flowing on and through their land."

It added, "Property owners do not actually own the water beneath their land. They have a right to a reasonable use of that water, but the state always has the power to regulate how it is used and take it for just compensation."

The League of Women Voters of Ohio also opposes Issue 3, noting that its board members believe it is "unnecessary; in addition, it might result in unanticipated changes in land-use rights. In either case, it does not belong in the constitution."

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