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Professor offers alternative in plan to divert Great Lakes water

By Peter Caughey - National View

Support for passing the proposed Great Lakes-St. Lawrence River Basin Water Resources Compact is gaining momentum (*Wading forward, falling back on protecting the Great Lakes*, Feb. 13), but University of Colorado law professor Mark Squillace urges the parties in the eight Great Lakes Basin states to take a step back and to rethink their entire approach. He makes his argument in a soon-to-be-published article in the Michigan State Law Review: "Rethinking the Great Lakes Compact."

Both the New York Assembly and the Ohio House of Representatives approved the compact late last year. The Minnesota Senate yesterday approved the compact, a historic agreement that would restrict diversions of large amounts of Great Lakes water to arid regions. The Minnesota House already approved the measure, and Gov. Tim Pawlenty is expected to sign it this week. The compact is under review by the remaining state governments.

"The proposed compact imposes cumbersome requirements on every basin state as well as on most new water users, and yet the benefits are negligible," Squillace argues. "Most importantly, while the compact gives the illusion of protecting the ecological health of the basin, it actually affords very little protection because it fails to provide for the regulation or management of the myriad existing uses and activities that already significantly impact the water resources of the Great Lakes Basin."

Squillace proposes an alternate framework that allocates among the basin states and Canadian provinces a fair percentage of the available water supply. The available water supply is conservatively defined in terms of that amount of water that is in excess of what is needed to protect the ecological health of the Great Lakes. Ownership of existing uses and activities could be granted to individual states and provinces to provide them with an incentive to conserve.

"This alternate framework has many advantages," Squillace says. "It avoids micromanaging individual water uses on a regional level, while being readily adaptable to address the impacts of uncertain events such as drought and climate change."

"If smaller water supplies are available in the future each party may have to make proportionate reductions in their withdrawals and consumptive uses, but no new program would need to be developed."

Notably, the alternate framework proposed by Squillace essentially ignores the contentious problem of out-of-basin diversions. But he makes a case for his claim that the Great Lakes will be far better protected under the system he proposes even without a ban on out-of-basin diversions.

"Each state and province will have access to a fixed supply of water over a given period of time to use as it sees fit," Squillace says. "But political and practical considerations make it highly unlikely that any party will send a significant part of its share of the water to any faraway place and more importantly, however, from the perspective of the other parties, the locus of use shouldn't matter."

Squillace adds that the impact on the Great Lakes Basin and on other parties would be the same whether the water was consumed inside or outside the basin. In this way, he said, "We can protect the ecological health of the Great Lakes efficiently and effectively without worrying about where the water is being used."