



**ENVIRONMENTAL
ADVOCATES OF NEW YORK**
YOUR GOVERNMENT WATCHDOG



August 14, 2009

Great Lakes Basin Advisory Council Report
c/o NYSDEC Region 9
270 Michigan Avenue
Buffalo, New York 14203

Re: Our Great Lakes Water Resources: Conserving and Protecting Our Water Today for Use Tomorrow

Dear Dr. Smardon, Mr. Zelazny, and members of the Great Lakes Basin Advisory Council:

Introduction

Environmental Advocates of New York and the National Wildlife Federation thank the Great Lakes Basin Advisory Council (GLBAC) for your work on 'Our Great Lakes Water Resources: Conserving and Protecting Our Water Today for Use Tomorrow'. This draft report represents New York's first step in the process of implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact (the Compact)—the multi-state and international agreement to responsibly manage water-use throughout the Great Lakes Basin.

Environmental Advocates' mission is to protect our air, land, water and wildlife and the health of all New Yorkers. Based in Albany, we monitor state government, evaluate proposed laws, and champion policies and practices that will ensure the responsible stewardship of our shared environment. We work to support and strengthen the efforts of New York's environmental community and to make our state a national leader. National Wildlife Federation inspires Americans to protect wildlife for our children's future.

Compact implementation is an opportunity for New York State to reassert itself as a leader on water management issues. As a result of the Great Lakes Water Withdrawal Registration Program, Susquehanna River Basin Compact, Delaware River Basin Compact, Long Island Groundwater Protection Program, and the statewide public water supply program, New York has ample experience to draw from as we seek to collaboratively manage water resources within the Great Lakes Basin.

That being said, the comprehensive nature of the Compact presents unique challenges. New York must identify baselines and set thresholds for water management programs, establish efficiency and conservation goals and measures, develop a water resources inventory, and assess

the cumulative impacts of ground and surface water withdrawals. Additionally, New York must report on these various programs and work with the Regional Body and other states to ensure that our water resources are managed efficiently.

Recognizing these challenges, New York's Compact language established sections 21-1005 and 21-1007 in Environmental Conservation Law. This language calls on the Department of Environmental Conservation (DEC) and GLBAC to recommend legislative actions and advise the agency on the rules and regulations needed to comply with the Compact.

Developing these recommendations is no small task— especially given that GLBAC is a volunteer council for which important vacancies have gone unfilled for years. Further, as has been well documented by Environmental Advocates in *Endangered Agency I* and *Endangered Agency II*, staff levels and non-personnel dollars allocated for DEC are dwindling, forcing the Department to do more with less. Or, as is often the case, less with less.

For example, the DEC report due by January 2009 outlining “recommendations for any legislative action deemed by the department advisable, including amendments to the statutes of the state of New York as well as recommendations for rules or regulations which it determines are necessary to carry out the intent and purposes of the Compact” has yet to be produced (ECL§21-1005).

Instead DEC deferred to GLBAC's draft report to outline the process for Compact implementation in New York. Unfortunately, due in no small part to the challenges outlined above, ‘Our Great Lakes Water Resources’ poses more questions than answers. Ultimately, it is DEC's responsibility to promulgate rules and regulations and recommend legislative actions to bring the promise of the Compact to fruition. That being said, it is in every New Yorkers' best interest that the report is as strong and authoritative as possible.

The following comments provide our input on various issues as they were framed in the draft report. Regarding process, according to the Compact GLBAC is required to report to DEC and the Legislature in September of 2009. However, given the draft's lack of actionable recommendations and the need for substantive revisions to protect New York's Basin, we urge GLBAC to take the time needed to perfect this report.

a.) Evaluation and Recommendations of Threshold Levels for Regulating New or Increased Water Withdrawals in the State.

The draft report acknowledges that thresholds need to be set, blurs the line between establishing thresholds for withdrawals to be included in a regulatory program and identifying baselines that must be assessed to determine a new or increased withdrawal or diversion.

We propose that threshold levels for including new or increased withdrawals in a permitting program be set at 50,000 gallons per day (gpd) or greater and that any withdrawals of 10,000 gpd or greater be included in a registration program with both levels determined by the limiting capacity within the system. Conservative levels such as these will allow the State to closely monitor water use in the Great Lakes Basin and better assess cumulative impacts.

There is precedent for these proposed levels – the Susquehanna River Basin Commission (SRBC) requires that any withdrawals of greater than 10,000gpd be registered, and there is movement in the New York State Assembly to lower the reporting thresholds recently adopted in

§15-3301 (water withdrawal registration) to 50,000 gpd or more (see A.8806-Sweeney). Furthermore, both Vermont and New Hampshire regulate groundwater withdrawals of 50,000 gpd or greater.

b.) The Establishment of a Water Withdrawal Permitting Program or Alternative Program

As stated above, NWF and Environmental Advocates of New York support a mandatory permitting program for new or increased withdrawals over 50,000 gpd. We also support bringing current registrants under a permitting program to ensure that all major water users within the Basin are under DEC oversight, operating within permitted allowances, implementing conservation practices, operating within accepted stream flow protection standards, and not adversely impacting ecosystems or other users. The permitting program should be based on individual, not general, permits. In addition, DEC should impose strict fees and penalties to ensure that permittees are compliant with permit limits.

By 2011, the permitting program should require permits for all new or increased withdrawals; by 2013, all existing withdrawers should come under the permitting program. In order for the Compact to be fully protective of our water resources, all withdrawers must be included in the permitting program—water withdrawal is water withdrawal—and New York should not discriminate between end uses when deciding how to apply the program.

Permits should have reasonable application fees that are used to support agency staff. Given DEC's current staff shortages all funds generated by the program should support the program.

Any permitting program should include the following components:

- Information requirements for applicants. DEC should require that applicants for water withdrawal permits provide specific information, including:
 - purpose of the proposed water withdrawal;
 - location and source of the proposed water withdrawal;
 - adequacy of supply selected;
 - limiting capacity of the proposed project and the planned mean and peak daily, monthly and annual withdrawal volumes;
 - location of the applicant's proposed return water flows;
 - anticipated impact of the withdrawal on surface water characteristics (quality, quantity, flow regimen and other hydrologic characteristics), threatened or endangered species and their habitats, and existing water withdrawals;
 - assessment of a proposed withdrawal's impacts on other users;
 - supporting studies, reports, and other information upon which assumptions and assertions have been based; and
 - conservation measures instituted by the applicant prior to the application and the applicant's long-range water conservation plan to be implemented or continued after the issuance of a permit.
- Criteria upon which DEC may accept or deny an application (in addition to the Compact standard), including that the withdrawal:
 - will not exceed the natural replenishment or safe yield of the water resources to be utilized;
 - will not adversely impact public or private drinking water supplies ;
 - will be implemented to ensure there are no significant individual or cumulative adverse impacts on the quantity or quality of the resource and the water dependent

- natural resources including the protection, propagation and management of fish and other aquatic life, wildlife and the preservation of endangered species;
 - will not adversely affect wastewater treatment needs, flood management, water-based recreation, waste assimilation, agriculture, fish and wildlife, and low flow and thermal requirements;
 - will not contribute to the violation of state water quality standards;
 - will not violate any other condition the DEC Commissioner deems necessary for the conservation and protection of ground or surface waters of the State;
 - will be fully compliant with provisions of all other federal, state and local environmental laws;
 - will not adversely impact the health or safety of the community or surrounding communities where the water will be extracted;
 - will not adversely affect existing and planned water uses in the area such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture; and
 - will be compatible with the policies and programs of the State of New York, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the State.
- Permit that contain information and conditions, including but not limited to:
 - the purpose of the proposed water withdrawal;
 - the location and source of the proposed water withdrawal;
 - the adequacy of supply selected;
 - the limiting capacity of the proposed project;
 - the location of the applicant's proposed return water flows;
 - a requirement for annual verification that measurement equipment is accurate to within 5 percent;
 - requisite continuous, accurate records of withdrawals or consumptive use;
 - requisite baseline groundwater level measurement, surface water level measurement and stream flow measurements and quarterly re-assessment;
 - monthly reporting requirements for all measurements and test results;
 - requisite reporting of any permit violations to DEC within 48 hours;
 - adherence to all conservation measures identified by the applicant and the agency;
 - 100 percent metering throughout the system and meter calibrations every five years;
 - annual inspections for leaks;
 - ongoing practices to detect and repair water leaks;
 - identification and installation of state-of-the-art water-conserving fixtures;
 - mandatory employee training regarding appropriate water conservation techniques;
 - public education regarding water conservation in connection with the use of water for which the applicant's permit is granted;
 - other water-conservation measures and goals as stipulated including drought protection measures, limiting unaccounted for water, etc.
 - withdrawal limits and identified conservation and efficiency measurements as "conservation plans";
 - a list of other department permits associated with the project/withdrawal (including State Pollution Discharge Elimination [SPDES] permits, Title V permits, etc.);

- provisions for identifying and repairing leaks;
- compliance schedules for current withdrawers who must upgrade systems or practices to meet conservation and efficiency standards or any other requirements promulgated through rules and regulations or includes in permits, including water audits; and
- a term of no more than five years.

Public input is also a critical component of a successful permitting program. The public should have the opportunity and reasonable time to comment on all applications and draft permits. Furthermore, the DEC should post all permits and compliance information online.

The New York State Assembly and Governor's Office have advanced proposals to include many of these recommendations in a statewide permitting program (A.8806 and Program Bill #51 of 2009). However, until such proposals are acted upon we call on GLBAC to recommend the preceding as part of the final report.

c.) Development of the State's Water Conservation and Efficiency Programs

The Compact calls on the State to develop water conservation and efficiency programs in addition to a water management (permitting) program. Many conservation and efficiency measures can be mandatory and written into permit terms, but there are other options that New York should implement and enforce to ensure that we are protecting our water and water-dependent resources.

Environmental Advocates and NWF strongly support making conservation and efficiency standards mandatory statewide across all industry and users, and calls on GLBAC to issue this recommendation. GLBAC should first recommend that the DEC work with partners to develop and implement a comprehensive public outreach program to inform New Yorkers of ways to reduce water use in an effort to protect this valuable resource.

To encourage conservation through pricing for public water users, GLBAC should recommend that New York adopt a full-cost pricing policy that includes calculations of environmental costs and an assessment of the loss of the resource. A potential drawback to this proposal is that low-income communities could be adversely affected. One way to balance promoting conservation through pricing while ensuring environmental justice is to embrace a block pricing program, whereby users are charged a higher-unit price as consumption rises. Seattle WA, Action MA, Sharon MA, and Wayland MA already implement this type of pricing as do other cities around the country. This should be part of GLBAC's recommendations.

GLBAC should also recommend that New York provide incentives for those who successfully incorporate conservation measures into daily practice. Some potential recommendations include creating a New York "Water Sense" program that identifies companies, suppliers, and products that incorporate stringent conservation practices. This type of recognition would identify conservation-minded withdrawers while publicly recognizing and encouraging their actions.

An incentive for public suppliers could be to include conservation as a criterion for priority ranking within the Drinking Water State Revolving Fund's Intended Use Plan. Linking conservation initiatives to funding would send a strong message about New York's commitment

to water resources while encouraging those who are running their systems most efficiently. Another possibility is to lower interest rates for those suppliers that implement stringent conservation programs. These concepts could also be applied to other sectors, including industry and agriculture, which apply to the state for various grants or loans. For example, Ohio's Water Pollution Control Fund currently incorporates rate reductions based on conservation efforts and could be considered a model for a New York program.

Furthermore, GLBAC should look to other states to identify and suggest best practices for New York to adopt. Massachusetts' "Water Conservation Standards" (http://www.mass.gov/Eoeea/docs/eea/wrc/water_conservation_standards.pdf) serve as another good example.

d.) Methods for Establishing the Baseline

The Compact is clear with regard to establishing baselines—they are either the existing withdrawal approvals or the limiting capacities for withdrawers' systems as of December 8, 2008. In the draft report, GLBAC correctly identifies that registration of water withdrawals is not a withdrawal approval. If the DEC gathers accurate information on withdrawers' most restrictive capacity through the Great Lakes withdrawal registration program, then the agency can rely on this data to determine baselines. Otherwise, restrictive capacity information must be obtained and verified.

The draft report explores many considerations that are superfluous to the baseline discussion. Actual uses (as discussed in the 'recommendations' portion of the baseline section), maximum historical uses (as discussed in the 'pertinent alternatives' portion of the baseline section), and projections (as discussed in the 'pertinent alternatives' portion of the baseline section) are not relevant to the development of baselines and should not be included in recommendations to the New York State Legislature and DEC. Again, the Compact only allows for withdrawer's existing approvals or most restrictive capacities as of December 8, 2008 to develop baselines. There is also no need to review consumptive uses in developing baselines for diversions.

Because New York is state at the bottom of the watershed, with potentially the most to lose, we must be as conservative as the Compact allows to credibly demand that other states follow suit.

e.) The Collection and Application of Scientific Information

Environmental Advocates of New York and NWF support the recommendations included in this section and are pleased to see a focus on quantitative stream flow and water-level protection standards throughout the draft report. We are also pleased to see a call for universal metering and community "water budgets" for all of New York's rivers, estuaries, aquifers and/or watersheds.

Other Considerations

Adequate funding will be critical for implementing the Compact. The legislation calls for new permitting and administrative functions at the DEC, and those functions include staff and program requirements (new databases, expanding the agency's public reporting capacity—especially on the website, etc.) in order to execute the program. Though we are facing tough economic times, if New York does not act to protect this valuable natural resource—clean, abundant water—the costs to the State down the road will be exponentially higher.

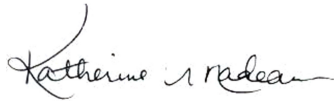
Therefore, GLBAC must use its powers of reporting and recommendation to discuss staffing requirements with the DEC in order to accurately report the amount these new programs may need.

GLBAC should also report on potential revenue, reasonable application and administrative fees and fines, and recommend that fees are directed to support the program's operating expenses.

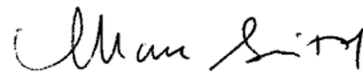
Conclusion

This draft report has detailed questions that must be considered in order to implement the Compact but provides little in the way of recommendations for the public to evaluate. While we are appreciative of GLBAC's time and efforts on the draft, we respectfully request that major revisions are made prior to issuing a final report. As this is New York's first official action to implement the Compact, it is all the more important that the report outline the most protective and conservative water management plans as possible.

Sincerely,



Katherine Nadeau
Water & Natural Resources Program Associate
Environmental Advocates of New York



Marc Smith
State Policy Manager
National Wildlife Federation