

# milwaukee **journal sentinel**

**NEWS**

## **Great Lakes Compact protects water access. But that doesn't mean thirsty neighbors won't challenge it.**



**Caitlin Looby**

Milwaukee Journal Sentinel

Published 6:00 a.m. CT Feb. 13, 2023

Water tension in the U.S. is on the rise.

The overused and drought-stricken Colorado River that supplies water to seven states is shrinking. Lakes Mead and Lake Powell, which lie along the river and are the two largest reservoirs in the country, repeatedly have broken low water level records.

While the West is running dry, the water-rich Great Lakes region is watching with growing unease.

Plans to divert water from the Great Lakes to other states date back more than a century. But in 2008, the eight Great Lake states signed a formal agreement, known as the Great Lakes Compact, outlining how states will manage and protect the Great Lakes-St. Lawrence River Basin. The two Canadian provinces that border the lakes, Ontario and Québec, have a parallel agreement.

The landmark agreement among the states bans diversions with very limited exceptions, but the concern is that climate change and the western megadrought would test those limits.

“Whenever there’s water scarcity elsewhere, even though we have the compact, people are still worried that political pressure would overrule environmental protection to the

detriment of the Great Lakes ecosystem,” said Peter Annin, author of *The Great Lakes Water Wars*.

And the political power of the water-scarce states is rising. Over the past few decades, Americans have been leaving the Midwest and northeastern U.S., resulting in a loss in congressional seats. After the 2020 Census alone, the Great Lakes states lost five total seats in Michigan, Illinois, Ohio, Pennsylvania and New York.

Still, the Great Lakes have never been better protected in their history from long-range diversions, according to experts.

“The bottom line is the compact is the compact, no matter how many members of Congress are from the Great Lakes states,” said Joel Brammeier, the CEO of the Alliance for the Great Lakes. The nearly 15-year-old compact has given other states “fair notice” that the region isn’t going to share its water, he added.

Instead the water battles will likely come much closer to home.

Since 2008, four applications have been approved in southeastern Wisconsin to bring water to communities lying on, or just outside the basin, including the much-debated city of Waukesha diversion, approved in 2016.

Contaminated and dwindling groundwater supplies will likely incite more communities to reach for Great Lakes’ water, especially throughout what Annin called the “arc of water tension,” stretching around Lake Michigan from Milwaukee through northern Illinois to Gary, Ind.

## **Great Lakes compact creates a fence around the watershed**

There are only a few exceptions in who can ask for Great Lakes’ water, according to the compact. It’s so strict that even seven out of the eight Great Lake state capitals within the basin can’t tap into the lakes’ water. Only communities that lie on the basin line, or right along the edge, can ask.

Communities that straddle the watershed line can apply, with the state governor giving the final say on whether it's approved. The right-along-the-edge exception is for communities just outside the basin that are still within a county that straddles the divide. For these diversions, the other states and provinces need to weigh in.

To date, the Waukesha diversion is the only diversion of the second type approved.

Further, in any diversion, the water is only borrowed. Treated water must be returned to the watershed, minus consumptive use.

Diversions can also bring water into the basin, like the Long Lac and Ogoki diversions in northern Ontario bringing in water from the Hudson Bay watershed.

For the eight states, finding common ground didn't come easy. For more than a century, they were suing each other over water rights. And to this day, Michigan – the only state to sit almost entirely within the watershed – has positioned itself as the unofficial watchdog for the lakes, according to Annin.

The states have really come into a new era, though, where they are working together, Annin said.

But that doesn't mean the compact is without its cracks.

## **218 Chicago suburbs use Lake Michigan water**

The oldest and longest out-of-basin diversion is in the city of Chicago. It's also one of the many diversions that predate the compact.

In the late 1800s, the Chicago reversed the flow of its river to carry pollution and sewage away from Lake Michigan into a canal system bound for the Mississippi River.

Throughout much of the 1900s, the state of Illinois and the other Great Lake states fought over how much Lake Michigan water should flow through the backwards river. In 1967, the

U.S. Supreme Court set the water limit where it still stands today – 2.1 billion gallons of water to be sent wherever the state wanted.

That diversion, which has lowered water levels in Lakes Michigan and Huron by 2.5 inches, faced a lot of scrutiny over the years, especially because many see the connection as an entry point for invasive species into the lakes.

**More:** Chicago River has become invasive species super highway

**More:** Restoring continental divide in Chicago would be costly, complex

The Lake Michigan water is used for drinking, keeping water levels in the canal system high enough for navigation, and diluting the river’s pollution before it heads toward the Mississippi River, Brammeier said.

“The Chicago diversion was an engineering marvel that we should never do again,” he said, noting that Great Lakes water shouldn’t be used to dilute pollution.

Over the years, groundwater issues in the suburbs of Chicago have caused the state to add communities one at a time to the water flowing through the diversion.

Today, 218 communities in Chicago’s suburbs are on Lake Michigan’s water, according to the Illinois Department of Natural Resources.

The state has yet to ask for an increase in the water limit, which Annin said would likely pit the state of Illinois against the other states once again.

“The groundwater system in the greater Chicago area is one of the most stressed groundwater systems in the entire Great Lakes region,” Annin said.

## **Billions of gallons removed because of loophole**

Another highly scrutinized aspect of the compact is popularly known as the “water bottle loophole.”

Before the compact was sent to Congress, the states negotiated where to draw the line when it came to taking “virtual water” out of the watershed through water bottles. Virtual water is water used to produce goods and services that people need or enjoy. Water bottles, beer and pharmaceutical products are just a few of the ways that water can leave the watershed “virtually.”

According to the agreement, water can be removed from the watershed if it's in containers that are 5.7 gallons or less.

Blue Triton, formerly known as Nestlé, withdrew 3.4 billion gallons of Michigan’s groundwater for bottled water between 2005 and 2015. A Pfizer pharmaceutical manufacturing plant near Kalamazoo, the largest user of groundwater in the state, pulls out billions of gallons of water a year for products. They're considered acceptable because the eventual products are within the container limit.

The loophole has been largely litigated in Michigan, and just last year, Michigan policymakers reintroduced legislation to close this loophole within the state. It continues to be a controversial issue for environmental groups and Indigenous communities.

When it comes to the tribes, First Nations and Métis, they are invited to the biannual meetings with the compact council, consisting of the Great Lake state governors, and the regional body, which includes the Canadian Premiers, said Jen Vanator, the Great Lakes program coordinator at the Great Lakes Indian Fish and Wildlife Commission.

But often the tribes don't have the capacity to attend, she said.

And when a diversion application comes in, the tribes can participate in the hearings the same way the public can. Vanator said that some tribes have voiced concern that there will be more applications in the future, especially with climate change.

## **Water access is a 'game-changer' for Waukesha**

The city of Waukesha had problems with their drinking water for decades. Groundwater supplies were dwindling, raising the concentration of naturally occurring radium to levels

that exceeded the U.S. Environmental Protection Agency's standards.

And despite its close proximity to the lake, the city falls on the wrong side of the subcontinental divide – at least when it comes to lake diversions. On that side of the divide, water runs to the Mississippi River, over 150 miles away.

The county of Waukesha, however, straddles the divide, making it eligible to submit a proposal as long as it met the requirements, like returning the treated water back.

It was clear soon after the compact was passed that the city was going to apply for a diversion, said Jennifer Bolger Beceda, the executive director at Milwaukee Riverkeeper. The diversion was met with intense scrutiny, she said, as a coalition of state, regional and national conservation groups formed to make sure that the diversion “would fit in the spirit and intent” of the compact.

She believes that there were better options than taking water from the lakes.

The city is finalizing construction on the project, expecting Lake Michigan's water to start flowing later this year. The project cost an estimated \$286 million, and will pump 8.2 million gallons of water per day.

“It's a game changer for the city,” said Dan Duchniak, the general manager at Waukesha Water Utility. “We won't have to worry about water again.”

The water will come at a cost though, tripling residents' water bills by 2027.

And the scrutiny over the project has yet to subside.

Bolger Beceda worries that over time the diversion will bring in more development and bigger highways as well as more stormwater runoff and road salt, all of which will impact the environment. Organizations around the region are watching, she said, making sure they do their due diligence to conserve water, a requirement of the compact.

Duchniak said the process proved that the compact works.

And while the requirement for diversions is to return the water minus consumptive use, the city will return 100% of its water, so there will be no net loss to the lakes.

This will set a high bar for future diversion applicants, Duchniak said.

## **Southern Lake Michigan now 'ground zero' for future diversions**

More and more communities will be looking to the lakes for water. So far, Wisconsin has taken center stage.

Along the southern Lake Michigan the subcontinental divide that separates the Great Lakes and Mississippi River watersheds lies extremely close to the lake, sometimes only a few miles. That, mixed with groundwater contamination and depletion in the area, will likely make it “ground zero” for future diversions, Annin said.

Besides Wisconsin, no other state has approved diversions since the compact’s inception.

Three communities that straddle the basin line have been approved in the state: the city of New Berlin, the city of Racine and the Village of Somers.

**More:** Wisconsin approved massive water diversion for Pleasant Prairie without public notification

**More:** Does Foxconn's need for Lake Michigan water meet the test of the Great Lakes Compact?

When they are all up and running, these three diversions along with Waukesha’s will pump out 18.5 million gallons of lake water per day. This will be on top of the 12 pre-existing diversions in Wisconsin that predate the compact, nine of which are also in the southeastern part of the state.

While these straddling communities didn't need regional approval, they have been controversial.

The diversion for the city of Racine isn't actually for the city. The city filed the application for 7 million gallons per day on behalf of Foxconn Technology Group, a Taiwanese electronics manufacturer.

Bolger Beceda called the diversion "troubling," saying the industrial purpose of the diversion "flies in the face of the compact and is a complete violation of it."

The company recently received tax credits from the state for meeting employment goals at the end of last year, but it's still unclear what their plans are.

According to Bolger Beceda, the state needs to figure out what to do with "bait and switch" situations that may become more prevalent in the future.

And although Wisconsin is seemingly considering regulations for "forever chemicals," or PFAS, if those standards don't come into place, Bolger Beceda believes the state will be seeing a lot more diversion applications in the future. To date, the state only has standards for two compounds.

**More:** 'Forever chemicals' are a growing problem. Here's what we found when we tested Wisconsin's drinking water.

**More:** Key GOP lawmaker pledges action on toxic 'forever chemicals'

Even though the compact has been around for more than a decade, the state of Wisconsin is currently in the process of establishing rules that will codify the diversion application process.

The rules won't change what's already been established by the compact, but they will help clarify the process for future applicants and provide opportunities for public comment when applications are reviewed, said Nicki Clayton, a water specialist with Wisconsin's Department of Natural Resources.

The state DNR was so busy with applications after the compact went into effect that it hasn't been able to finalize the rulemaking process, Clayton said. Now, she said, it is drafting the



rule with “lessons learned.”

She anticipates that the rules will go into effect in fall 2024.

## **‘Putting our guard up for the Mississippi River’**

The retreating Colorado River also has a compact – but it hasn’t aged well.

As a result, the states along the river have been forced to rethink and renegotiate their agreement, sending a clear warning sign about the importance of sustainable water use.

The Great Lakes Compact will likely see rule changes and court cases that modify things, Brammeier said. But the compact was written to last well over a century, just like the Boundary Waters Treaty of 1909 that laid the foundation for how the U.S. and Canada would work together to protect shared waters.

“The best thing we can do every year, every decade is to refresh our understanding of how well protected the Great Lakes are, defend them when there's proposals to take them away, and make sure that we're using our own water sustainably,” he said.

Annin said he’s once again heard talk about large-scale water diversions – this time for the Mississippi River.

“If these climate-driven weather patterns continue in the southwest, the Great Lakes states that are Mississippi River states are going to need to turn their attention to... where they have their other signature water body,” he said.

The river isn’t protected by a compact, and doesn’t garner the same bipartisan support like the lakes do. Even the Mississippi River Restoration and Resilience Initiative, a program to help restore the river and modeled after a similar one for the Great Lakes, has had difficulty gaining traction among policymakers.

“We can never let our guard down completely on the Great Lakes, but we need to be thinking about putting our guard up for the Mississippi River,” Annin said.

*Caitlin Looby is a Report for America corps member who writes about the environment and the Great Lakes. Reach her at [clooby@gannett.com](mailto:clooby@gannett.com) or follow her on Twitter [@caitlooby](https://twitter.com/caitlooby).*

*Please consider supporting journalism that informs our democracy with a tax-deductible gift to this reporting effort at [jsonline.com/RFA](https://jsonline.com/RFA) or by check made out to The GroundTruth Project with subject line Report for America Milwaukee Journal Sentinel Campaign. Address: The GroundTruth Project, Lockbox Services, 9450 SW Gemini Dr, PMB 46837, Beaverton, Oregon 97008-7105.*