



ADVANCING PUBLIC TRUST SOLUTIONS
TO SAVE THE GREAT LAKES

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PROPOSED OHIO LAKE ERIE WATER BILL TAKES BLOOM OFF SPRING

The Ohio Senate may take up a bill to regulate water law this week that could drain the brilliant blue off the color of Lake Erie. The bill, known as H.B. 473, with some variations in the senate, may fall far short of what most citizens and businesses in Ohio would want: Save Lake Erie and the rivers that replenish it are the life-blood of quality of life, jobs, and economy. The Senate has an opportunity to get this right, and should not pass the bill until it does. And if the senate does not get it right, then Governor Kasich should veto it just like he did last summer.

The present bill fails to meet the Great Lakes Compact's objectives of establishing a line of defense against diversions out of the Great Lakes. This could turn Lake Erie into a reservoir or product for the rest of the country or even the world. This is exactly what the Compact's diversion ban was supposed to prevent. Basically, the bill would allow the withdrawal and abuse of water in all of the creeks, streams, and rivers and Lake Erie until Lake Erie "as a whole" is harmed. This means a water withdrawal permit in an upper section of a river that flows into Lake Erie can't be denied, even if the section of river would be seriously harmed. On top of this, the bill would declare to the rest of the world to come and get Ohio's water.

The Great Lakes Compact, which Ohio signed with the visionary leadership of Governor Taft, requires all states, including Ohio, to apply a "no significant adverse impact" standard to all water withdrawals. The purpose of this criterion is to protect the ecosystem and uses and demonstrate under international trade laws, like NAFTA, that the states are serious about protecting the Great Lakes basin. If the states do not do this, they will not be able to establish an environmental or conservation resource defense, and the diversion ban will be unenforceable or the government will end up paying billions to fix a mistake. For example, assume a foreign corporation buys up land all over Ohio and starts using millions of gallons daily for its private needs, and rivers, streams, and lakes start dropping, and this impairs boating, fishing, other recreation, or farming. Then assume Ohio passes a new water law that prevents the withdrawal and harm from this kind of water use. The foreign corporation would respond by stating that it purchased land and developed in Ohio in reliance on H.B. 473, which gave them the right to take as much water as they wanted unless it damaged Lake Erie "as a whole, and that since Lake Erie hasn't been damaged yet, you can't stop us and you can't make the law more stringent. The corporation would point to international trade law, like NAFTA, that gives it the right to prevent Ohio from passing the more protective law or pay billions of dollars to the corporation for the right to do so. In other words, it is difficult to turn off the spigot once it has been turned on with a bill like H.B. 473.



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“If adopted, this water bill will allow just about anyone to get a permit to take as much water as they want. It will not protect the fundamental quality, quantity and uses made of the water by people in Ohio, but encourage investments based on huge volumes of water. Ohio will be targeted as a mother lode for satisfying increasing demands for water,” Jim Olson said, a water law expert in the Great Lakes region and chairperson of Flow for Water, an independent water policy center. “Ohio like the other Great Lakes states must be careful not to undermine the conservation or environmental protection standards of the Compact, or it and the rest of the states may end up seeing the diversion ban collapse and the thirsty and dry states, countries, and others coming to take our water.”

The current water bill falls short of the requirements of the Great Lakes Compact and curtails if not ties the hands of farmers, businesses, and citizens who may be harmed in areas of water withdrawals from complaining preventing harm before the agency or by going to court. The bill is contrary to the Great Lakes Compact declaration that the Great Lakes and their tributary rivers and streams are a “public resource held in trust,” and it violates the conservation and environmental quality measures that prevent significant harm. Olson added, “Why open the door now with relaxed protections when climate change and world and domestic water shortages and demands will only proliferate? The Ohio Senate has a chance to get this right, and hopefully it will seize the opportunity to do so, without rushing the current version of the bill. Fortunately, with a few simple changes it can be fixed and Lake Erie and its waters saved from a slippery slope.”

Flow for Water’s Water Public Trust Policy Center sent a letter to key legislative leaders in Ohio last Thursday that explained the need and recommended the key changes to the bill that will protect citizens, communities, local farmers and landowners and the Great Lakes from serious harm or loss.

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FLOW is non-profit organization working to educate the public about the public trust doctrine as a unifying framework to address the systemic threats to water, public lands, and the environment throughout the Great Lakes Basin.