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If not Changed Great Lakes Plan Could Convert Water into Product for Export

Mecosta - For the past five years, negotiators for the eight Great Lakes states and Ontario and Quebec have been trying to reach agreement over a pact that bans diversions, with some narrow exceptions for extension of public water supplies to areas that straddle the drainage divide of the Great Lakes Basin. Yesterday, in Milwaukee, Governor Jennifer M. Granholm signed the agreement along with seven governors of the other Great Lakes states and the premiers of Ontario and Quebec. Michigan Citizens for Water Conservation, the group that won a landmark victory protecting a stream and two lakes from the export of water in bottles by Nestle, the Swiss food giant, cautions that the pact does not do what officials and environmental organizations close to the negotiating process say it does.

Michigan Citizens for Water Conservation's attorney and members have been writing letters to the Governor's office, the Council of Great Lakes Governors, and other key negotiators, urging them not to sign the Annex agreement or compact until the definition of "Diversion" and "Product" as they now appear are changed. However, the last minute effort to correct these definitions was lost in the lights of the fanfare. The signed pacts exempt products from the ban on diversions.

The definition of "Product" includes water "intended for intermediate or end-use consumers" outside of the Basin. "This literally exempts water in any amount for export as a product anywhere in North America or the world," Jim Olson, MCWC's attorney said. "If this hole is not plugged, the states and its citizens and businesses will have a very hard time saving our water from interests who want to claim the water for themselves and sell it outside of the Basin."

While water may not be diverted to the West or around the world in pipelines, ships, railcars, or trucks, it can be exported as a Product by putting it in bottles, jugs, water bags, and other containers. The agreements provide that diversions of water as a "Products" are not a diversion. Because of this, the agreements are inherently flawed and need to be fixed before approved as a compact or enacted by the states in the coming years.

"Once water is defined as a Product it will belong to whoever captures it from the ground, stream, or lake. Any container less than 5.7 gallons is allowed and there is no limit to the amount to be treated differently," Terry Swier, President of MCWC, said. "Any container larger than 5.7 gallons is to be prohibited like a diversion, but the agreements have also defined large container shipments of water as a 'product,' and that could call into question the prohibition because of anti-discrimination of commerce provisions of the U.S. Constitution and free trade agreements like NAFTA," she said.

Government officials and others have pointed out that the pact provides states with the power to treat water exports, like bottled water, as diversions and to regulate them as they see fit. "The problem is, once water is defined as a product or export, the states won't have the oar-power to adequately control or license it," Olson said. "On the one hand, the agreements say this water is a public resource, on the other they tilt the Basin in favor of private water exports. As much water can be exported out of the Basin in small containers as large ones."

The Michigan Senate passed a bill on Friday, December 9, to regulate water withdrawals, but the bill does not assert public control over water exports or deal with the diversion issue. "If the Senate bill

represents what the states will do with their reserved power to treat water exports or bottled water differently, then the reservation of power to the states is a paper tiger," Olson said.

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