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Memorandum

TO: Senator Mary Lazich
FR: Senator Tim Grendell
DT: January 11, 2007
RE: Great Lakes Compact

You recently requested that my office provide to yours a one-page summary of concerns with the Great Lakes Compact. Although this is not a complete list of concerns, I have endeavored to identify the most pressing of these concerns. Please feel free to contact my office if I can provide further information or clarification.

- Loss of Sovereign control over waters and lands of Lake Erie (See Section 3.1)
- Creates a broad third-party right of action (See Section 7.3)
- Section 8.6 contains a severability clause, but Section 9.3 contains language claiming that all parts of the Compact are material to the whole. These provisions would seem to conflict.
- Section 9.3 also clearly states that any intent language or change in implementing language is not effective, unless it is agreed upon by all member states and Congress.
- Powers of Council are vague, overly broad, undefined, and (in many ways) unlimited. See, for example, the budgeting and hiring authority provided to the council (Section 2.4.3 and Section 2.5)
- The public records requirement of the Compact (and the Council) is limited to requiring that individuals (who travel to the Council's office) may review the official minutes of the Council (see section 6.1.2).
- Once a state joins the Council, it cannot withdraw without majority consent of the members, an act that would disband the Compact (Section 8.7).
- Section 1.3.1.a declares that all of the waters of the Basin (defined previously as all surface and groundwater) are part of the public trust. This is a fundamental change in property rights, as in most states (including Ohio), groundwater (along with non-navigable surface water) have not been considered public trust property. This section would mean that all drainage ditches, wetlands, private ponds, and private wells, would be expressly converted to public trust property. Although section 8.1 contains language that would seem to say that the Compact is not "intended" to change common law water rights, the truth is that in defining "ALL" the waters of the Basin to be public trust, we are expressly changing those rights, so intent does not matter. At a minimum, this conflict should be resolved before any state gets into a Compact from which it cannot withdraw.