Attached, per your request, is the Lake Michigan Federation testimony presented at NIRPC on 8/25/04.

Thank you for the opportunity to comment.

Sarah

Sarah Nerenberg
snerenberg@sbcglobal.net
574-261-1468 (mobile)

LAKE MICHIGAN FEDERATION

TESTIMONY OF SARAH N. NERENBERG

ON THE DRAFT GREAT LAKES BASIN WATER RESOURCES COMPACT

Good afternoon. My name is Sarah Nerenberg, representing the Lake Michigan Federation, the oldest citizens' Great Lakes organization in North America. I have a deep personal and professional interest in Great Lakes Basin Water Resources Compact because I live in South Bend and have worked on water resources management for most of my professional career.

I also have an interest because the Great Lakes belong to all of us. They are a resource for us to use and protect, not a commodity to sell to the highest bidder. Nor are they a resource to be squandered by any one industry, interest, or even individual at the expense of all of us. That's why we all have a responsibility to protect the lakes, not for a single interest, but for our families and future generations.

Our Waters Need Greater Protection

For a long time, many of us in the region have operated under the myth that our Great Lakes are inexhaustible and because of that, we don't need to regulate water use. This is the same thinking that has crippled commercial fishing and caused harm to our forests for decades. Water is too critical to our future to leave decisions regarding its use unregulated. We need greater protections – and we need them soon. As such, the

220 South State Street, Suite 1900 • Chicago, Illinois 60604 • (312) 939-0838 • Fax (312) 939-2708 • e-mail: chicago@lakemichigan.org
700 Washington Avenue, Suite 150 • Grand Haven MI 49417 • (616) 850-0745 • Fax (616) 850-0765 • e-mail: michigan@lakemichigan.org
www.lakemichigan.org

Lake Michigan Federation commends Governor Joe Kernan and his staff members at the Indiana Department of Natural Resources and Indiana Department of Environmental Management for what we believe is a strong draft compact. It includes forward-looking provisions guaranteeing public participation in decision making and enforcement to ensure no water user benefits at the expense of others. As strong as the compact is, however, we believe that it can be improved in the following ways. More is available online at www.lakemichigan.org, but I'd like to raise some of those points today.

Require Better Water Conservation

The compact can do a better job of requiring water conservation practices that minimize our use of water, thereby minimizing harm to water and the life that depends on it. It is our ability to use water efficiently that allows us to fight wasteful diversions to other places.

The document requires conservation "plans and measures" for various water withdrawers, but provides no definition of those terms. To ensure conservation will be effective, the document needs to provide guidance and goals for such plans and measures based on sector-specific "best practices." The Lake Michigan Federation will provide definitions in its written comments soon.

Allow No Adverse Impacts

The compact may allow a water withdrawal to occur if there are "no significant impacts" on water and water dependent natural resources, in addition to other requirements. However, the term "significant impacts" is not defined. The Lake Michigan Federation believes that "significant impacts" must be defined to allow no damage to occur to the

Great Lakes or any related water resources. This is because if damage can be observed or even predicted, it can cause a chain reaction of consequences that could harm our Great Lakes. That's unacceptable.

Require Water Users to Actively Heal the Great Lakes, not Just Keep them from Getting Hurt Worse

Too many laws designed to protect the environment allow some "minimal" impact on natural resources. The Great Lakes Governors and Premiers agreed three years ago that protection of the Great Lakes deserved better. Given a population within the basin of 33 million people and growing, they agreed that a law should be designed to require restoration of the Great Lakes by those who were benefiting from its use. In other words, it's time to stop trying to keep the ecology of the Great Lakes from getting worse. It's time to start making it better for people, fish, and wildlife. As such, the compact requires an "improvement" project for most new or increased water uses. This is a good first step.

But the improvement standard should apply to all withdrawals. Subjecting withdrawals to the standards of no harm, conservation, and improvement was the governor's core commitment in calling for the compact. As currently drafted, the improvement standard will not apply to the vast majority of water withdrawal proposals. While the improvement standard will apply to some diversions and consumptive uses, water that is withdrawn then returned to the Great Lakes has the potential to cause as much, if not more damage to parts of the Great Lakes.

Water Must Be Returned to Its Waterway of Origin

Common law has for hundreds of years recognized the concept of “reasonable use” when it comes to water. It has also acknowledged that withdrawals that take water out of its basin of origin can be limited as unreasonable due to their obvious potential impacts. Any regulatory scheme should strictly limit the conditions under which water could be taken out of its watershed of origin. Take for example; removing water from Burns Ditch and sending it back through the Maumee River. Though that “return flow” would still go back to the Great Lakes Basin, it could cause as much or even more damage than an out-of-basin diversion, depending on how the return flow is conducted. As such, return flows must go back to their waterway of origin in a way that is similar in characteristic to the withdrawal itself. To do anything but this runs the risk of not being considered a reasonable use.

“New or Increased” Withdrawals Must be Carefully Defined

The compact applies to new or increased withdrawals. However, those withdrawals are calculated using a 120-day average of use. Averaging for periods of more than 30 days will exempt from oversight many withdrawal projects certain to cause ecosystem damage to various water sources.

The Compact Cannot Discriminate Among Water Withdrawals

Approval is needed from all eight Great Lakes governors for a diversion—water removed from the Great Lakes that is not returned—of 1 million gallons per day or more. Approval is only needed from six Great Lakes governors for in-basin water losses of 5 million gallons per day, which could have an even greater impact on Great Lakes waters. This discrepancy is discriminatory and as such, runs the risk of making the

compact liable under the U.S. Constitution and international trade agreements that prohibit unfair commerce and trade practices, respectively. Thresholds requiring approval from all eight Great Lakes governors should be diversions of 1 million gallons per day or more and in-basin water losses or 1 million gallons per day or more.

Federal Safety Net

We also believe that the Water Resources Development Act needs to remain in place to safeguard the Great Lakes until the compact is successfully implemented. The Act says that diversions can't take place over a certain amount unless it receives the affirmative approval of each of the Great Lakes governors.

The Compact Must be Put in Place Sooner, Not Later

States would have 10 years from the time of approval until the time the Compact is fully implemented. With proposals to tank water from the Great Lakes overseas happening as recently at 1998, we believe the Great Lakes can't wait. We urge Governor Kernan to support fast implementation of the Compact, within five years, in recognition of this urgency.

Thank you for this opportunity to provide the Lake Michigan Federation's thoughts. We will follow up with more detailed written comments in the near future.

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Formed in 1970, the Lake Michigan Federation is the oldest citizens' Great Lakes organization in North America. Its mission is to restore fish and wildlife habitat, conserve land and water, and eliminate pollution in the watershed of the largest lake within U.S. borders. With staff in Milwaukee, Chicago, and Grand Haven, Michigan, more on the Federation is available at www.lakemichigan.org.