

**THE GREAT LAKES COMPACT DOES NOT APPLY
TO JOLIET'S ALTERNATIVE WATER SOURCE PROGRAM**

The City of Joliet, Illinois (“Joliet”) is planning to either purchase treated Lake Michigan water from the City of Chicago or construct the necessary pipelines and intake structures to withdraw untreated water from Lake Michigan at a point in Indiana and treat the water in Illinois. This action is needed in order to secure an alternative water supply, because Joliet’s current water source, a deep groundwater aquifer, will not be able to meet maximum day water demands by 2030.

Water withdrawals from any of the Great Lakes, including Lake Michigan, are generally governed by the Great Lakes—St. Lawrence River Basin Water Resources Compact (“Compact”). Illinois and seven other states signed the Compact in 2007 to coordinate the protection of Lake Michigan and the other Great Lakes. The Compact was incorporated into Illinois law later that year and, in 2008, became federal law. *45 ILCS 147/5; Public Law 110-342*.

The Compact’s aims include “to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin,” and to “prevent significant adverse impacts of Withdrawals and losses on the Basin’s ecosystems and watersheds.” *Compact § 1.3(2)(a), (f)*. To do so, there is a ban with limited exceptions for certain water “diversions,” or moving water from the Great Lakes watershed to a point outside the watershed or from the watershed of one Great Lake Basin to another. If a state (on behalf of a municipality or other entity) seeks to avail itself of one of these exceptions, it must make a showing to the body that administers the Compact. *Compact §§ 4.8-4.9*.

The focus of the Compact is on the state that ultimately consumes or uses the water from the Great Lakes, not the state through which the water is withdrawn. In other words, the Compact regulates the source of the water (Great Lakes) and the location of the water’s end user (the state), but is otherwise silent with respect to any states that would be traversed in moving the water from source to end user. Therefore, from the Compact’s perspective, because Joliet is in Illinois, Joliet’s withdrawal of Lake Michigan water via Indiana is considered an “Illinois withdrawal.”

Illinois is carved out of the Compact’s approval process for Withdrawals because of an existing consent decree, which states that any withdrawals “by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact.” *Compact § 4.14(1)*.

In 1967, the Supreme Court issued its decree in *Wisconsin v. Illinois* that limited Illinois’ annual diversions of Lake Michigan water to 3,200 cubic feet per second (“cfs”). *388 U.S. 426, 427 (1967)* (“Decree”). Under the terms of this Decree, the “State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities” are allowed, at the State’s discretion, to “divert[] any of the waters of Lake Michigan or its watershed into the Illinois waterway . . . by way of domestic pumpage from the lake” so long as it does not exceed 3,200 cfs. *Decree at 427*. Similar to the Compact, the Decree regulates the source of the water (Lake Michigan) and the location of the water’s end user (Illinois and its municipalities), but is otherwise silent with respect to any states that would be traversed in moving the water from source to end user.

Therefore, the Compact does not apply regardless of whether Joliet obtains Lake Michigan water from a location in Illinois or Indiana, because the Decree governs Illinois withdrawals.