ID # (assigned by CSG): 12-MW-01-GLG

Please provide the following information, adding space as necessary:

State: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

Program Category: Natural Resources--Water Resources

  Program Name: Great Lakes-St. Lawrence River Basin Water Resources Compact (Great Lakes Compact)

  Administering Agency: Great Lakes-St. Lawrence River Basin Water Resources Council

  Contact (Name and Title): David Naftzger, Executive Director

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1. How long has this program operated (month and year)? Note: the program must be between 9 months and 5 years old as of April 5, 2012 to be eligible for this year's award.

   The Great Lakes Compact became State and federal law on December 8, 2008.

2. Describe the program:
   • Why was it created?

   In 2003, the Governors identified nine priorities for protecting and restoring the Great Lakes. The first of these is “(To) ensure the sustainable use of our water resources while confirming that the States retain authority over water use and diversions of Great Lakes waters.” Water supply is essential to ecosystem health and, of course, water use depends on availability. Throughout their history, these waters have provided water for drinking; habitat for fish and wildlife; transportation;
water for crops and industry; and natural beauty. Today, the regional economy, and much of the United States’ and Canada’s, depends on the Great Lakes.

From 1909 when the International Boundary Waters Treaty was created until 2001 when the Governors began the negotiations that led to the Great Lakes Compact, it became increasingly apparent that regional water management tools were incomplete and that enhancements were needed to more effectively manage the resource and avoid conflicts. Leaders recognized that a problem existed—a legally vulnerable and ineffective regional water management regime—and shared a sense that collective action was urgently needed. Regional leaders also shared a fear that, if they could not reach a negotiated agreement, day-to-day decisions over the Great Lakes would no longer be under their control. Intervention by the Courts or Congress was seen as a real possibility, with potentially unfavorable consequences for the region.

The development of the Great Lakes Compact represents one of the most intensive and ambitious resource management and governance efforts in recent years anywhere in the world. The Compact among the Great Lakes States and the companion Great Lakes Agreement among the Great Lakes States, Ontario and Québec took about ten years to negotiate and approve, building on decades of previous, related work. The effort involved thousands of contributors and disparate interests spread across eight U.S. States--Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin--and the Canadian Provinces of Ontario and Québec. It involved an unprecedented process to bring together these eight States and two Provinces and their citizens, stretched across two different countries, to protect about 20 percent of the world’s surface fresh water. Then-Administrator Michael Leavitt of the U.S. Environmental Protection Agency described the process this way, “It is a textbook example of collaboration—two nations, multiple jurisdictions, NGOs, agriculture and industry—all working together for the greater good of the Lakes.”

- Why is it a new and creative approach or method?

Fundamentally, the Great Lakes Compact reflects a unique approach that Wayne State Law Professor Noah Hall has described as “horizontal federalism,” or cooperative management. This approach is reviewed in detail in Professor Hall’s article, *Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region*, 77 U. Colo. L. Rev. 405 (2006), available at [http://www.greatlakeslaw.org/blog/files/Hall_Colorado.pdf](http://www.greatlakeslaw.org/blog/files/Hall_Colorado.pdf)

The Great Lakes Compact model differs fundamentally from other water compacts which tend to rely for their routine management either on allocation (common to water compacts in the western States) or collective decision-making (illustrated by, for example, the Delaware River Basin Compact or the Susquehanna River Basin Compact). The Great Lakes Compact principally relies on coordinated actions to be taken by the individual States within a common and enforceable regional framework. Through this approach, the States can achieve shared environmental protection goals while retaining needed flexibility that reflects the region’s diverse history, geography and political landscape. The promise of this approach is tremendous.

Because of its creative approach and uniqueness, the Great Lakes Compact has been recognized and cited repeatedly by the academic and legal community, and has been featured as the topic of many conferences and publications. For example, it was featured as a case study in the book *Whose Drop Is It, Anyway? Legal Issues Surrounding Our Nation’s Water Resources*, published by the American Bar Association Section of State and Local Government Law. It was also included as “An Example of Cooperation and Common Cause: Enhancing Canada-United States
On December 13, 2005, the eight Great Lakes Governors endorsed the Compact. The terms of the Compact spelled out that it would become effective as State and federal law following ratification by each of the eight Great Lakes State legislatures and consent by the U.S. Congress. This was a daunting task requiring affirmative action by 18 legislative chambers adopting Compact language that had to be identical. Beyond the political consensus that this would require, the historic average time for interstate compacts dealing with natural resources from signing to the date of federal consent, without including the period of negotiation, was six years and nine months.

Ultimately, the following actions were taken:
- On February 2, 2007, Governor Pawlenty signed Minnesota’s Compact ratification legislation.
- On January 20, 2008, Governor Daniels signed Indiana’s Compact ratification legislation.
- On March 4, 2008, Governor Spitzer signed New York’s Compact ratification legislation.
- On May 27, 2008, Governor Doyle signed Wisconsin’s Compact ratification legislation.
- On June 27, 2008, Governor Strickland signed Ohio’s Compact ratification legislation. Its effective date was December 8, 2008.
- On July 4, 2008, Governor Rendell signed Pennsylvania’s Compact ratification legislation.
- On July 9, 2008, Governor Granholm signed Michigan’s Compact ratification legislation.
- On October 3, 2008, President Bush signed the U.S. Congress’s consent legislation.

Thus, pursuant to the terms of the Compact and the various actions described above, the Compact came into force as State and federal law on December 8, 2008. As then Wisconsin Governor and Council of Great Lakes Governors (CGLG) Chair Jim Doyle said, “It is remarkable that just about three years ago the Governors concluded this landmark accord.”

The Compact Council that was created by the Compact held its inaugural meeting on December 8, 2008, in Chicago, Illinois. It designated the CGLG to serve as its Secretariat.

During the past several years, each State has taken steps to implement the Compact in advance of legal deadlines. For example, in December 2009, each State submitted to the Compact Council its list of existing withdrawals as of the Compact’s effective date. These lists are being used for the “baseline” to determine what is new or increased and, accordingly, subject to management or regulation. Separately, in December 2009 the States submitted an initial report to the Compact Council on State water management and regulation programs, and water conservation/efficiency programs. The Compact Council, in cooperation with the Provinces, formally reviewed the State
reports and declared that they meet the Compact’s terms. By December 2010, each State established a State water conservation and efficiency program.

In addition to these individual State actions, the States are coordinating regional steps through the Compact Council. These include the adoption of bylaws, interim guidance and procedural measures for this new interstate regulatory agency.

- Is it effective? Provide tangible results and examples.

The Great Lakes Compact has succeeded in achieving the first of the Governors’ priorities for protecting and restoring the Great Lakes—ensuring the sustainable use of our water resources while confirming that the States retain authority over water use and diversions of Great Lakes waters. The Great Lakes Compact now provides strong legal protections for the region’s water supply. As a result of the Compact, regional collaboration is firmly entrenched, protective laws are in place in each of the States, and collective institutions are ready to tackle current and emerging challenges.

The major provisions of the Compact include a ban on new or increased diversions of water from the Basin. Limited exceptions could be allowed, such as for public water supply purposes in communities near the Basin, but exceptions are strictly regulated.

The States are also establishing in-Basin water management programs and will use a consistent standard (criteria) to review proposed uses of Basin water. The States have developed regional objectives for water conservation and efficiency, and each State has developed and implemented a water conservation and efficiency program. The States have taken specific steps to improve the collection of water use data and information-sharing in order to improve decision-making by the governments.

Thousands joined in the creation of the Compact, thousands have participated in its implementation, and the region is united in its commitment to long-term protection of the Great Lakes. A remarkable consensus has been forged. More than 1300 State legislators and nearly 500 members of Congress voted to ratify the Compact—about 95% of all legislators who cast a vote on the Compact approved it. President Bush and the Canadian federal government endorsed the Compact and its protections. The Great Lakes Compact now provides strong and durable legal protections for the lakes.

The Great Lakes Compact has been recognized by many leaders and independent organizations for its innovation and significance. For example, then-Senator Barack Obama said, “[The Great Lakes Compact] is, perhaps, the most significant legal action to protect the Lakes in the last 100 years since the Boundary Waters Treaty between the U.S. and Canada.” The Compact was included as a case study in interstate water management in a book published by the American Bar Association and as an example of cooperation and common cause in the Canada-United States Law Journal. Those most involved in the Compact’s developments have also been recognized for their role in developing this unique model. The Great Lakes Fishery Commission is awarding Peter Johnson, CGLG Deputy Director, the 2012 Buzz Besadny Award for Fostering Great Lakes Partnerships.

3. Did this program originate in your state? If YES, please indicate the innovator’s name, present address, telephone number, and e-mail address.
Yes, the Compact originated in and among the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. It is a collaborative effort among governmental and non-governmental partners including the eight Governors, State staff who served on their Water Management Working Group and designees who represent the Governors on the Compact Council, and stakeholders.

The CGLG facilitated the Compact negotiation and development process and serves as Secretariat to the Compact Council. David Naftzger (dnaftzger@cglg.org) is Executive Director and the address is 20 N. Wacker Drive, Suite 2700, Chicago, Illinois, 60606. The phone number is (312) 407-0177.

4. Are you aware of similar programs in other states? If YES, which ones and how does this program differ?

There are currently 42 interstate water compacts that have been entered into by the party States and consented to by the U.S. Congress over a period of decades. 45 States and the District of Columbia currently belong to at least one interstate water compact and many States belong to more than one. Despite this, the Great Lakes Compact is fundamentally unique and reflects an approach to governance that some have described as “horizontal federalism.” This model of cooperative interstate management is unique and contrasts with the allocation regime common to water compacts in the western States or the eastern model illustrated by, for example, the Delaware River Basin Compact or the Susquehanna River Basin Compact.

5. What limitations or obstacles might other states expect to encounter when attempting to adopt this program?

Development and implementation costs may be a challenge, particularly in light of State budgets. In total, over 100 days of face-to-face meetings and several hundred conference calls were held to develop the Great Lakes Compact. The costs in both staff time and general meeting costs was several million dollars. While implementation costs remain somewhat uncertain since some States are still developing their programs, these must be taken into account. Regardless, costs must be compared to those of alternative or no actions, and set against the value of the natural resource to be protected. On balance, the Great Lakes Compact has had relatively small development and implementation costs while providing long-term protections for a priceless ecological treasure and a resource whose annual economic value is many billions.

The time commitment and duration of development may also be a challenge. For the Great Lakes Compact, this led to a general fatigue towards the end of the process. The negotiations took nearly five years from the Governors’ and Premiers’ appointments to the Water Management Working Group to their endorsement of the final Compact and Agreement in 2005. Of course, this required substantial and sustained commitment by high-level policymakers. Keeping this level of engagement over a similar period of time may be difficult.

Managing communication and outreach throughout the development and implementation process must be a priority in order to build the needed consensus. Although a remarkable level of agreement was achieved in support of the Great Lakes Compact, as with any complex and multi-faceted negotiation, not everyone was satisfied with all of the compromises that were included in the final accord.

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