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ENST-70: Senior Seminar

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Working Title: The Great Lakes – St. Lawrence River Basin Compact:

Success, Failure, Law Issues and What it means for Obama’s Federal Water Plan

Introduction:

1. The Great Lakes-St. Lawrence River Basin Water Resources Compact is a legally binding agreement between the eight U.S. Great Lakes states – Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, Michigan, Minnesota, and New York, that ran into some issues during its creation.
   1. Outline the major details of the compact
      1. Why was it necessary?
      2. How is it a success?
      3. Introduce the Held in Trust Issue
2. Briefly touch on Obama’s federal water plan
   1. What is it/what are its intentions?
   2. How can it benefit from the Great Lakes Compact?
3. Thesis: Formulate a two-part statement that addresses and closes the Great Lakes Held in Trust Issue and ties in Obama’s water plan

Part 1 -Section 1: Detail why the Great Lakes Compact was necessary

* 1. Diversion concerns
  2. Environmental cleanup
  3. Economic Future

Section 2: What the compact does

1. On a State level
2. On a national level
3. On an international level
4. What it does for the local regions

Section 3: How the compact was passed

1. What state’s/provinces had 0 problems vs. those who did
2. What particular issues came up on its way to being passed
3. Segue into the Held In Trust Issue

Section 4: The Held In Trust Issue

1. "Waters of the Basin are precious public natural resources shared and held in trust by the States"

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- The concern with this statement, or the “Held in Trust” issue, is that it could potentially affect the rights of property owners to a reasonable use of water.

b. What could this potentially be interpreted into

c. The arguments behind addressing this issue

Section 4 – Part 2: The Arguments against this interpretation

1. Many key actors involved in the creation and passage of the compact argued that this statement, again in the preamble, is **not** an operative part of the compact. The Compact prohibits diversions with limited exceptions and creates a flexible framework for each State to regulate water withdrawals using a common conservation standard as a floor.
2. Many key players also cite Section 8.1.1 and section 8.1.2 to offset what the preamble might imply. Under Section 8.1.1 of the Compact, "[n]othing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin." And under 8.1.2, “n]othing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights."

Section 4 – Part 3: How this issue was resolved

1. Ohio State Senator Tim Grendell had been the leading opponent of the proposed Great Lakes compact, arguing that the compact would lead to a “taking” of private groundwater rights by extending the public trust doctrine to groundwater. Enacting the Compact as written, this would potentially **convert ground water and non-navigable surface water** that flows through or under one’s property **to public trust water**, giving the state and/or Council overreaching power to regulate Ohio property owners access to water that which they held a right to reasonable use.
2. The Constitutional Amendment
3. Tying together the direct quotes of those involved and providing a cohesive conclusion of the intention of the compact and how it is NOT to be interpreted.

Part 2 – Section 1: President Obama’s national water legislation

1. What does he intend?
   1. • The need for a strong, clear, overarching policy mandate and the setting of national ocean priorities;
   2. • The need for high-level direction and policy guidance from a clearly designated and identifiable authority;
   3. • The need for more consistent and sustained senior-level participation and attention on ocean-related issues from all member agencies and departments;
   4. • The advantages of stronger linkages between management and science;

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* 1. • The need for an improved, clear structure for ongoing and active engagement with State, tribal, and local authorities, and regional governance structures to address relevant issues; and
  2. • The need for improved coordination with other Executive branch policy committees

1. How is it similar/different to the Great Lakes Compact

Section 2: Learning from the Great Lakes Compact

1. While ambitious, and using the passage of the Great Lakes Compact as a basis for reasoning, my view is that structuring, organizing, and ultimately passing such a law will be incredibly difficult and possibly ineffective.
2. If a handful of states took several years to pass a mutually beneficial water rights law, how does the federal government intend to pass a national water rights law that must satisfy the needs and interests of all 50 states?
3. How this legislation can be effective and what it can aim to concretely accomplish

Conclusion: Summation and tying it all together

* 1. Closing the door on the Held in Trust issue
  2. What the Great Lakes Compact means for Obama’s plan
  3. What Obama’s plan can accomplish