

Proposed Michigan water bills renege on compromise contract

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Environmentalists still haven't accepted compromises that led to passage of comprehensive Great Lakes protection legislation in 2008. They're seeking tighter restrictions on property owners' rights through a bill declaring that Michigan groundwater is to be held as a public trust.

The bill would have the government take control of water under residents' land. But property owners have always enjoyed the legal right to the use water under their land as they see fit, provided its use doesn't interfere with neighbors' rights to do the same.

Not only does the new proposal threaten to undermine that principle, but it dredges up a controversy that was supposed to be settled by state laws, passed with strong bipartisan support, to accompany the eight-state Great Lakes Compact Congress approved last year.

House Bill 5319, introduced in September by Democratic Rep. Dan Scripps of Leland, would place all state waters in public trust and empower the attorney general to take any required legal action to protect it. The proposal is similar to a provision sought by environmentalists in the 2008 legislation, but left out of the final version to achieve a consensus.

Perhaps the chief proponent of the public trust idea is Traverse City environmental attorney Jim Olson, who argues that there's a flaw in the Great Lakes Compact, allowing water to be treated as a commodity that could be exported outside the Great Lakes Basin in any size container or quantity. That's debatable, and the proposed government-control solution he offers is equally objectionable.

Russ Harding, senior environmental analyst at the Mackinac Center for Public Policy and a former director of the state Department of Environmental Quality, notes that most states east of the Mississippi follow riparian-use water rules, giving property owners control over the water table under their land. This approach has worked particularly well here because of our abundant groundwater supply.

The House proposal would replace that with policies similar to those followed in the arid western states, where government control of water leads to countless disputes and court cases.

The Legislature supposedly resolved this issue three years ago with rules requiring land owners to obtain state permits for use of groundwater under certain circumstances, such as nearness to trout streams. The rules are part of the process leading up to the Great Lakes protection act.

They have made it more difficult to use water in Michigan and have taken away some of the competitive advantage our plentiful water gives us, but are part of a trade-off that arguably benefits all Michigianians. Businesses and farmers accept added government intrusion as the price of an assured water supply to meet their needs.

Environmentalists get safeguards against farmers or businesses depleting waterways and private wells.

The compromise is barely in effect. This isn't the time to rewrite it. More important, there's no reason -- other than a legal theory -- to overturn Michigan's private water use traditions.