



Testimony of Marc Smith, Senior Policy Manager, National Wildlife Federation

Hearing on Ohio House Bill 473 Committee on Agriculture and Natural Resources

April 24th, 2012

Chairman Hall, Ranking Member Fedor, and Members of the Committee, good morning. Thank you for this opportunity to testify on House Bill 473, legislation to implement the Great Lakes-St. Lawrence River Basin Water Resources Compact. My name is Marc Smith and I am the Senior Policy Manager with National Wildlife Federation's Great Lakes Office.

Since 1936, the National Wildlife Federation has sought greater protection and restoration of our Great Lakes. Our efforts are based on sound science and finding common sense solutions to the challenges facing the Great Lakes region.

The National Wildlife Federation played a major role in the development and passage of the Great Lakes Compact. We provided significant policy, legal, and strategic advice to the governors in drafting the proposed agreements, in passing the Compact in each state legislature – including here in Ohio - and in securing passage in Congress. Moreover, we worked creatively with a range of water users to find common ground and balanced solutions. This process enjoyed an unprecedented level of cooperation among state and provincial leaders in developing the Compact and the companion Agreement and working with numerous and diverse stakeholders to finally put the Compact into law.

Ohio is blessed to have Lake Erie. It supplies the state with more than \$10 billion in economic revenue each year and more than a quarter of a million jobs resulting from recreational and commercial fishing, hunting, wildlife watching, tourism and travel.

Ohio's tributaries are a vital part of a healthy ecosystem and are essential for maintaining water levels, providing clean water and providing habitat and spawning grounds for prized sport fish, such as steelhead and walleye.

Lake Erie is the most biologically productive of all the Great Lakes and produces more fish for human consumption than all the other Great Lakes combined. Its tributaries, such as the Grand, Vermillion and the Chagrin, provide world class steelhead fishing opportunities and is commonly referred to as 'steelhead alley'. It also supplies drinking water to 11 million people across the area, 3 million of whom live in Ohio.

In other words, Lake Erie and its tributaries truly make Ohio special – and deserve protection.

We have some concerns with House Bill 473 and specifically its lack of protection for Lake Erie and its highly valuable and fragile tributaries.

House Bill 473 is the second attempt to pass legislation to implement the Great Lakes Compact. Governor Kasich wisely recognized that the first bill, House Bill 231, failed to protect Lake Erie and its tributaries and violated the Great Lakes Compact – and thus vetoed it last summer.

We again applaud Governor Kasich for standing up and protecting Lake Erie.

National Wildlife Federation commends Governor Kasich, Ohio Department of Natural Resources (ODNR), and Representative Wachtmann for their work on crafting HB 473. While HB 473 is an improvement over the bill that was vetoed last summer, we believe a small number of adjustments to the bill are needed to achieve full compliance with the Great Lakes Compact and protect Lake Erie and its tributaries from unwise use.

National Wildlife Federation has the following concerns with House Bill 473:

- 1) Definition/Interpretation of “Source watershed”**
- 2) Definition/Interpretation of “Aggrieved persons”**

1) Definition/Interpretation of “Source watershed”:

Under the minimum decision-making standard required by the Compact, states must prohibit proposed withdrawals that have significant adverse impacts on the source watershed. The Compact defines ‘source watershed’ as the watershed of each Great Lake - for Ohio that would be Lake Erie - with a preference to the direct tributary from which the water is withdrawn. This means that the ODNR must not only prohibit proposed withdrawals that have significant adverse impacts on the Lake Erie watershed, but also at least consider whether to prohibit proposed withdrawals based on significant adverse impacts to direct tributaries.

However, HB 473 does not comply with the Compact because the definition of 'source watershed' does not include a preference for direct tributaries. Instead, the ODNR only may consider significant impacts on the Great Lakes Basin as a whole and the Lake Erie basin as whole.

This means that, under this legislation if passed, there could be a large water withdrawal or consumptive use on a direct tributary – such as the Grand or Vermillion – that will not impact the entire Great Lakes or Lake Erie basin, but could have serious adverse resource impacts to the ‘source’ tributary. This could have serious consequences for the western basin of Lake Erie.

Algal Blooms

Lake Erie is consistently plagued by extensive toxic algal blooms and last year experienced its worst crisis since the 1960s. Under HB 473, a facility could withdraw or consume water from a tributary – such as the Maumee – that could reduce the amount of water flowing into Lake Erie. This could substantially concentrate the phosphorus flowing into western Lake Erie, further fueling the harmful algal blooms. Under the “no significant adverse impact” standard, this type of withdrawal should not be allowed to happen, but because the legislation allows for a withdrawal that does not impact the WHOLE Lake Erie basin, the reality is that such a proposal could be allowed to go forward.

The binding agreement that Ohio entered into with the other seven Great Lakes states requires that each state’s management agency extend – at least in some circumstances – the “no significant adverse” impact provision to the tributaries, not just the Great Lakes basin and Lake Erie basin. This requirement under the Compact is the perfect opportunity for the state to ensure that it is doing its part to protect the quantity and quality of Lake Erie’s waters. The whole is only as good as the sum of its parts.

Recommendation:

National Wildlife Federation recommends that the definition of ‘source watershed’ in this bill remain consistent with the source water definition in the Compact, which includes a preference for the direct tributary watershed when evaluating the impacts of proposed withdrawals.

2) Definition/Interpretation of “Aggrieved persons”:

The Great Lakes Compact states that any “Person aggrieved by a Party action shall be entitled to a hearing” in accordance with each state’s administrative procedures and laws. It further provides that, “after exhaustion of such administration remedies...any aggrieved Person shall have the right to judicial review of a Party’s action in the relevant Party’s court of competent jurisdiction.”

Yet, House Bill 473 changes the definition of ‘aggrieved persons’ by limiting it to those who were issued a permit, or those who have a direct economic or property interest impacted by a withdrawal. This narrow definition of aggrieved person would take a step backward and essentially eliminate Ohio’s citizen’s rights to enjoy and recreate in Ohio’s Lake Erie Basin.

Recommendation:

The definition of ‘aggrieved person’ should either be deleted or amended to include those whose *‘use, benefit or enjoyment of the waters of the Lake Erie basin’* has been impacted.

Conclusion:

In conclusion, thank you again for this opportunity to testify with our concerns about HB 473 and the future of Lake Erie. National Wildlife Federation is committed and ready to work with Members of this Committee, ODNR, the Governor and all related stakeholders in finding common ground and solutions to the concerns we outline above. Protecting Lake Erie and its tributaries is vital to the health of Ohio's wildlife and economy. Without adjusting this lack of protection for Lake Erie's tributaries, the consequences may be vast – including an increase in toxic algal blooms that will kill fish and limit recreational use of our waters. HB 473 must be strengthened to protect Lake Erie and the many connected water resources that provide immeasurable value to our economy, our heritage, and our way of life. Again, while we applaud the improvements made to HB 473 over last years version, and the Governor's commitment to ensuring that we move closer to compliance with the Great Lakes Compact, National Wildlife Federation has no choice but to oppose this current version of the legislation until these specific definitions are strengthened.