

Bad groundwater proposals will sink Michigan's economy

The Michigan Senate is holding hearings this week on legislation to regulate groundwater use by farmers and manufacturers, as well as to bar diversions from the Great Lakes. If enacted, some of these proposals would revoke centuries-old private water rights and further undermine Michigan's economy.

The proposed regulations would not improve water quality, but instead stem from unfounded fears that Michigan is at risk of a water shortage. There is no scientific evidence for such concerns. Michigan has more than ample supplies of both groundwater and surface water. To the extent that unusual geological conditions in very limited areas might produce localized scarcity, the state Department of Environmental Quality has the authority to protect groundwater supplies.

The greater threats are the forfeiture of riparian rights and the economic impacts of Draconian regulations. The imposition of permit requirements would eviscerate the common-law water rights that have prevailed since the state's founding. This shift from individual control to state control of groundwater would invite mismanagement.

Some proponents of the regulations believe that state control of groundwater is necessary to curtail development and prevent "sprawl." Ill-advised as such attitudes are, some politicians evidently feel they must "do something." The result is two competing legislative packages that differ in their degree of regulation.

The original legislation, conceived by Gov. Jennifer Granholm as the "Water Legacy Act," would assign almost unlimited discretion to

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the DEQ to grant or deny water use permits and to impose indiscriminate conditions on the use of groundwater. This proposed regulatory regime would also create extensive opportunities for "interveners" to impede the construction or operation of new facilities or manufacturing processes.

These proposed regulations would have dramatic economic consequences. Investors and entrepreneurs would be understandably reluctant to locate new facilities in Michigan if faced with the regulatory uncertainties this legislation would invite.

Moreover, the dangers of new government controls over water use were recently exposed when Granholm unilaterally banned the export of bottled water from Michigan, despite a determination by the DEQ that the targeted operations of Nestle Waters in Mecosta County posed no threat to the environment.

A second package of legislation, Senate Bills 850 to 852, is more modest in scope. This legislation would regulate the very largest water withdrawals and strictly limit the permitting discretion of the DEQ. Essentially, the proposed legislation would establish a "shall issue" regime, with permits granted automatically under strict deadlines unless a use would cause a narrowly defined "adverse impact" on the environment.

None of this is necessary, of course.

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