

Fishermen prepare gillnet, Lake Superior, Two Harbors, MN.

# Protecting the Great Lakes

## FROM ANNEX AND OVERUSE

MINNESOTA SEA GRANT BILL KIELCZEWSKI

By U.S. Representative Dennis J. Kucinich

The Great Lakes inspire a strong connection with the millions of people who live on her shores. Connecting with the Great Lakes is personal as well as collective. In my lifetime, the Great Lakes have been a source of recreation and sustenance, as well as conscience-calling moments. I'm thinking of the shameful chapter in history when the Cuyahoga River, which empties into Lake Erie, caught fire. Our awareness and behavior changed as a result.

Today, a threat that could eclipse the more commonly known threats, like chemical contamination and invasive species, now confronts us. The ongoing challenges of overuse and systematic under-replenishment could now be catastrophically magnified by new trade laws that will exacerbate, not solve, the problem. I am concerned about the future of the Great Lakes.

Maintaining the quantity of water in the Great Lakes is a well-established problem. There are several major diversions and withdrawals already allowed under law, including a diversion of water for the City of Chicago, which pulls two billion gallons per day from Lake Michigan. Urban sprawl

has created new demands for water while robbing aquifers of the chance to be replenished (by paving over previously permeable ground). Water supplies that are contaminated or depleted need to be replaced. In 2004, the U.S. Geological Survey found that ground water is now flowing away from Lake Michigan instead of replenishing it.

There are good reasons to think the demand for this already strained water source will increase significantly. Most educated guesses say that evaporation resulting from increased temperatures associated with climate change will result in significant water losses. The population in the basin is expected to grow from 34 million to 50 million people in the next 30 years. Many experts fear that the thirsty and rapidly growing southwestern U.S. will need water so desperately that it will soon become financially viable for them to divert it from the Great Lakes. And that region is expected to experience more frequent, prolonged and more severe droughts as a result of climate change.

Finally, and perhaps most perniciously, attempts to privatize Great Lakes water pose an unprecedented threat. Currently,

the only way anyone can withdraw or divert water from the Lakes in significant quantities is to get the approval of every governor of all eight states in the Great Lakes basin. Acknowledging that some diversions of water for the public good may be necessary, the eight Great Lakes governors and two Canadian premiers in the Great Lakes basin decided there should be guidelines created to specify the conditions under which an entity can be expected to get approval for a new or increased withdrawal. The negotiations between the Great Lakes Governors and Premiers, which concluded in December of 2005, proposed groundbreaking levels of protection as written in the Annex Implementing Agreements (Annex). Unfortunately, bottled water companies also managed to leave themselves a loophole that could pave the way for a massive privatization and export of Great Lakes water.

The bottled water language was cleverly written. The Annex needed to respond to the widespread desire for a ban on diversions that was exemplified by the public outcry that squashed two recent efforts by companies to privatize Great Lakes water in bulk. "In bulk" is the key. The language

redefines water that is in containers of 5.7 gallons (20 liters) or less as a product, not a natural resource managed by the public for the benefit of the public. It therefore exempts bottled water from the ban on bulk water withdrawals. In other words, in order to export a seemingly indefatigable amount of water and make a handsome profit from it, you need only to put it in bottles instead of trucks or enormous tankers. It is a loophole big enough to float a tanker through.

Once Great Lakes water is legally defined as a commodity instead of a public resource, the door to private gain at the expense of public benefit is pried open a few inches. After that comes the effort to swing it wide open. Laws or regulations that may be designed to protect an essential natural resource like the Great Lakes can be challenged in court by businesses because they are restricting trade. For example, let's say that Ohio decided that excessive withdrawals by a bottled water company were irreparably damaging the Great Lakes and they decided to reduce or stop the withdrawals. The company, knowing the water was a product and not a public resource, would be able to use the Commerce Clause of the Constitution or the North American Free Trade Agreement (NAFTA) to challenge Ohio's efforts to pro-



tect the Lakes. In fact, NAFTA gives companies the right to sue governments in situations like this for future profits they might lose. That would have the chilling effect of discouraging all governments from trying to protect the Great Lakes. Indeed, once water is a legal "product," even the part of the Annex that provides worthwhile protection of the Lakes could be challenged. We could be left with private control over much of a life-giving resource.

Privatization of a commons is often destabilizing and regressive. The resource becomes less reliably accessible and its quality can decline because public oversight is absent. A formerly free resource can then become too expensive for the most vulnerable to afford. In fact, this is a primary reason that myriad communities in the U.S. and all over the world have fought efforts to privatize water systems.

Furthermore, contrary to what ideological conservatives often espouse, privatization frequently decreases efficiency. For example, the added costs of profit, CEO salaries, marketing and administration can be a strong driver of increased costs. By encouraging Great Lakes water to be shipped in smaller bottles, the privatization loophole in the Annex creates incentives for tremendous waste. The plastic in water bottles is made from petroleum, bringing the social, political and environmental problems that come with it. The manufacturing process creates hazardous and toxic waste like vinyl chloride. Plastic bottles require hundreds of years or more to degrade in a landfill with no light or water to aid in their breakdown. And wherever trash is burned, plastics create highly toxic dioxins that are released into the air, falling down on our soil and roofs. Thanks to countless studies, we now know the toxic waste from the manufacturing and disposal process is disproportionately borne by people of color.

There is another equity component to consider. The Annex rightly contains requirements for the public to reduce its water usage in recognition of the fact that we are already withdrawing more than is sustainable. We will be asked to take shorter showers, install water saving fixtures, load our dishwashers more fully and water our lawns more judiciously. These are low effort, high return behavior modifications that we, as citizens, can do to help take care of the natural world on which we depend for life.

But the Annex puts the water saved by the collective actions of conscientious Great Lakes residents into millions of bottles and ships them out of the Great Lakes basin. Where conservation efforts would normally go to enhancing the public good in the form of restoring flows to the Great Lakes, they



Congressman Dennis Kucinich speaks as country music legend Willie Nelson looks on during a news conference about the importance of revitalizing family farming on Capitol Hill Wednesday, Oct. 6, 2004. They said that the government must commit all necessary resources to encourage growth in family farming and protect farmers so that they can continue to be economically viable.

would now go to the profits of bottled water companies and their parent companies. It sets into international law the untenable idea that peoples' personal sacrifices benefit corporations rather than the common good. This could be the end of environmental altruism. It is a dangerous precedent to set. As President Franklin Delano Roosevelt said, "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."

The next step for the Annex is that it has to be approved by each of the Great Lakes state and provincial legislatures. If it moves through unchanged, Congress then approves it. If any state amends it, it will have to go through each of the other state and provincial legislatures again. Since it took over five years for the Governors and Premiers to get it to this stage, there will be considerable resistance to making any changes. Fighting the bottled water loophole will not be easy. Powerful corporations will support it (and tout their green "credentials" in the process). But principled organizations like Waterkeeper, along with attentive community groups and elected officials like me are committed to protecting the Great Lakes, our common heritage, from privatization. I hope you will stand with us.