

jurisdictions and with the approval, as hereinafter provided of a joint commission, to be known as the International Joint Commissionnor are (these) provisions intended to interfere with the ordinary use of such waters for domestic or sanitary purposes.

However, it should be noted that this treaty provision applies only to diversions that affect the “natural level or flow of the boundary waters”, thus limiting its applicability to large scale diversions and to “boundary waters”, which the U.S. argues does not include Lake Michigan.¹⁵ These two caveats would prove to be important limitations on the ability of Canada to control the issue of smaller scale diversions from Lake Michigan.

Finally, the anti-diversion trilogy of authority was completed by provision added to the Water Resources Development Act of 1986, which included the following provision:

*“(d) No water shall be diverted from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such a diversion is approved by the Governor of each of the Great Lakes States”. [Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin]*¹⁶

Despite continued water shortage issues in other regions of the United States and the shrinking political power of the Congressional delegation to stop repeal or modification of the statutory veto Congress granted the basin’s governors, the Great Lakes states generally turned their attention to water quality issues¹⁷ and left unarticulated how to handle requests for diversions utilizing their newly acquired veto authority.

However, the seeds of political disunity in the region became apparent even before Congress granted gubernatorial veto power to the Great Lakes states. Preserving water levels against water diversions in 1985 and 1986 when all of the Great Lakes states except Lake Ontario reached their highest level in a century raised mixed sentiments by shoreline property owners victimized by beach erosion, who saw water diversion as a “quick fix” for reducing the damaging high water levels. In 1988, the Governor of Illinois was the first governor to officially to break ranks among the region’s states on the no diversion regional strategy by requesting the U.S. Corps of Engineers to increase the diversion of water at Chicago to handle drought-induced low water navigation problems in the Mississippi River (affecting ships in Illinois connecting waters). The response was swift from Canada, with the headline in a

¹⁵Since Lake Michigan is entirely within U.S. waters, it is argued that the IJC has no jurisdiction over diversions from that lake, even though it flows into the boundary waters.

¹⁶42 USC sec. 1962d-20 (Water Resources Development Act of 1986, sec. 1109).

¹⁷However, as U.S. Supreme Court Justice Sandra Day O’Connor noted in *Jefferson County Public Utility District v. Washington* No. 92-1911, the distinction between water quality and water quantity is an artificial one. (May 31, 1994)