When Charles Fishman, author of the acclaimed book “The Big Thirst,” praised the Great Lakes compact this summer at the Midwestern Legislative Conference Annual Meeting, he also called for Kansas and Nebraska to lead an effort to create a similar interstate agreement to protect the Ogallala Aquifer.

But what are compacts and how do they work? How well do they work? And how could they help the Midwest preserve and protect its water resources?

“In my mind’s eye, the Great Lakes compact is a great place to start. It’s a pretty important instrument,” says Todd Jarvis, an Oregon State University professor and global expert on water management and conflict.

The Council of State Governments’ National Center for Interstate Compacts defines compacts as “contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters.”

Currently, there are more than 200 active interstate compacts; the CSG center counts 38 water compacts. For any compact, it recommends that the document clearly spell out how the governing body is created, staffed and named, as well as how votes are distributed and how frequently it meets (those meetings should be open to the public).

When it comes to water compacts, Jarvis suggests they include a designated time to revisit or re-determine the terms and conditions of the compact.

“Things change — climate change, pollution, land use, etc.,” he says. “So a compact developed in the 1920s probably has great importance to the legal issues, but little connection to new realities. This is especially important for groundwater, as every time a pump is turned on, some groundwater is mined from the aquifer.”

Water compacts governing groundwater also need to define a post-depletion use of the aquifer storage space, whether it be for “manufactured” water such as treated storm water that is injected underground for later recovery, or “waste” such as carbon sequestration.

One area that Jarvis says doesn’t get enough attention during the drafting process is how to address conflicts in science, whether they arise over a genuine dispute of facts or as a function of “dueling experts.”

One promising alternative to the “dueling experts” scenario, he adds, is “scientific mediation,” — a conflict resolution process that has stakeholders themselves work on coming to a consensus based on the scientific information.

Finally, though there is little discussion on the role of business in drafting legal instruments such as compacts, Jarvis says the private sector should have a place at the table. “Everything has a connection to water, whether it be corn to computer chips,” notes Jarvis, adding that including many stakeholders at the start of the process will improve the compact’s chances of success.

As for the Great Lakes compact, the first big test of how it would be implemented came earlier this year, when eight states and two Canadian provinces considered the city of Waukesha’s proposal to divert Lake Michigan water. The region’s state governors approved the Wisconsin town’s plan (unanimous consent was needed), though with some changes — for example, reducing the average amount of water diverted every day and scaling back the water service area. Waukesha will use Lake Michigan for its drinking water and then return what it doesn’t use to the basin.

“The regional process [for considering the Waukesha diversion] was quite functional, regardless of what you think of the
outcome," Peter Annin, author of the "The Great Lakes Water Wars, [4]" said during a presentation this summer to CSG’s Great Lakes Legislative Caucus.

He noted, too, that language of the interstate agreement prevents most diversions outside the Great Lakes basin. Waukesha was able to seek an exception to the diversion ban because it lies in a county that “straddles” the basin.

Jarvis, though, has one suggestion: expand the regional compact to include protecting and preserving groundwater. “Why do you think all the bottled water companies are hovering around? You’ve got a gold mine,” he says.

Capital Closeup is an ongoing series of articles focusing on institutional issues in state governments and legislatures.

By:
Thursday, August 25, 2016 at 12:52 PM

Attachment

Stateline Midwest: August 2016 [5] 2.63 MB

Tags:


© 2016 The Council of State Governments. All Rights Reserved.

Source URL:
http://knowledgecenter.csg.org/kc/content/interstate-compacts-are-valuable-tool-protecting-invaluable-resource-water

Links