

SUBSTITUTE FOR
HOUSE BILL NO. 5065

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32701, 32702, 32703, and 32727 (MCL 324.32701,
324.32702, 324.32703, and 324.32727), sections 32701, 32702, and
32703 as amended and section 32727 as added by 2006 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32701. **(1)** As used in this part:

2 (a) "Adverse resource impact" means ~~either~~ **ANY** of the
3 following:

4 (i) ~~Decreasing~~ **SUBJECT TO SUBPARAGRAPH (v), DECREASING** the flow
5 of a stream ~~by part of the index flow such that the stream's~~
6 ~~ability to support characteristic fish populations is functionally~~
7 ~~impaired.~~ **COLD RIVER SYSTEM BY PART OF THE INDEX FLOW AS FOLLOWS:**

1 (A) FOR A COLD STREAM, THE WITHDRAWAL WILL RESULT IN A 1% OR
2 MORE REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS
3 DETERMINED BY THE THRIVING FISH CURVE.

4 (B) FOR A COLD SMALL RIVER, THE WITHDRAWAL WILL RESULT IN A 1%
5 OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS
6 DETERMINED BY THE THRIVING FISH CURVE.

7 (ii) SUBJECT TO SUBPARAGRAPH (v), DECREASING THE FLOW OF A
8 COLD-TRANSITIONAL RIVER SYSTEM BY PART OF THE INDEX FLOW AS
9 FOLLOWS:

10 (A) FOR A COLD-TRANSITIONAL STREAM, THE WITHDRAWAL WILL RESULT
11 IN A 5% OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH
12 POPULATIONS AS DETERMINED BY THE THRIVING FISH CURVE.

13 (B) FOR A COLD-TRANSITIONAL SMALL RIVER, THE WITHDRAWAL WILL
14 RESULT IN A 5% OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH
15 POPULATIONS AS DETERMINED BY THE THRIVING FISH CURVE.

16 (C) FOR A COLD-TRANSITIONAL LARGE RIVER, THE WITHDRAWAL WILL
17 RESULT IN A 5% OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH
18 POPULATIONS AS DETERMINED BY THE THRIVING FISH CURVE.

19 (iii) SUBJECT TO SUBPARAGRAPH (v), DECREASING THE FLOW OF A COOL
20 RIVER SYSTEM BY PART OF THE INDEX FLOW AS FOLLOWS:

21 (A) FOR A COOL STREAM, THE WITHDRAWAL WILL RESULT IN A 10% OR
22 MORE REDUCTION IN THE ABUNDANCE OF CHARACTERISTIC FISH POPULATIONS
23 AS DETERMINED BY THE CHARACTERISTIC FISH CURVE.

24 (B) FOR A COOL SMALL RIVER, THE WITHDRAWAL WILL RESULT IN A
25 15% OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS
26 AS DETERMINED BY THE THRIVING FISH CURVE.

27 (C) FOR A COOL LARGE RIVER, THE WITHDRAWAL WILL RESULT IN A

1 12% OR MORE REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS
2 AS DETERMINED BY THE THRIVING FISH CURVE.

3 (iv) SUBJECT TO SUBPARAGRAPH (v), DECREASING THE FLOW OF A WARM
4 RIVER SYSTEM BY PART OF THE INDEX FLOW AS FOLLOWS:

5 (A) FOR A WARM STREAM, THE WITHDRAWAL WILL RESULT IN A 5% OR
6 MORE REDUCTION IN THE ABUNDANCE OF CHARACTERISTIC FISH POPULATIONS
7 AS DETERMINED BY THE CHARACTERISTIC FISH CURVE.

8 (B) FOR A WARM SMALL RIVER, THE WITHDRAWAL WILL RESULT IN A
9 10% OR MORE REDUCTION IN THE ABUNDANCE OF CHARACTERISTIC FISH
10 POPULATIONS AS DETERMINED BY THE CHARACTERISTIC FISH CURVE.

11 (C) FOR A WARM LARGE RIVER, THE WITHDRAWAL WILL RESULT IN A
12 10% OR MORE REDUCTION IN THE ABUNDANCE OF CHARACTERISTIC FISH
13 POPULATIONS AS DETERMINED BY THE CHARACTERISTIC FISH CURVE.

14 (v) DECREASING THE FLOW OF A STREAM, SMALL RIVER, OR LARGE
15 RIVER BY MORE THAN 25% OF ITS INDEX FLOW.

16 (vi) ~~(ii) Decreasing the level of a body of surface water~~
17 NATURAL LAKE OR POND WITH A SURFACE AREA OF 5 ACRES OR MORE THROUGH
18 A DIRECT WITHDRAWAL FROM THE LAKE OR POND IN A MANNER THAT WOULD
19 NOT MEET THE REQUIREMENTS OF SECTION 30106, OR such that the ~~body~~
20 ~~of surface water's~~ ability OF THE LAKE OR POND to support
21 characteristic fish populations is functionally impaired.

22 (b) "Agricultural purpose" means the agricultural production
23 of plants and animals useful to human beings and includes, but is
24 not limited to, forages and sod crops, grains and feed crops, field
25 crops, dairy animals and dairy products, poultry and poultry
26 products, cervidae, livestock, including breeding and grazing,
27 equine, fish and other aquacultural products, bees and bee

1 products, berries, herbs, fruits, vegetables, flowers, seeds,
 2 grasses, nursery stock, trees and tree products, mushrooms, and
 3 other similar products, or any other product, as determined by the
 4 commission of agriculture, that incorporates the use of food, feed,
 5 fiber, or fur.

6 (C) "ASSESSMENT TOOL" MEANS THE WATER WITHDRAWAL ASSESSMENT
 7 TOOL PROVIDED FOR IN SECTION 32706A.

8 (D) ~~(e)~~ "Baseline capacity", SUBJECT TO SUBSECTION (2), means
 9 either ~~ANY~~ of the following, WHICH SHALL BE CONSIDERED THE EXISTING
 10 WITHDRAWAL APPROVAL AMOUNT UNDER SECTION 4.12.2 OF THE COMPACT:

11 (i) The following applicable withdrawal capacity as reported to
 12 the department or the department of agriculture, as appropriate, by
 13 the person making the withdrawal in the ~~April 1, 2007~~ annual report
 14 submitted under section 32707 **NOT LATER THAN APRIL 1, 2009** or in
 15 the ~~April 1, 2007~~ water use conservation plan submitted under
 16 section 32708 **NOT LATER THAN APRIL 1, 2009**:

17 ~~—— (A) For a community supply, the total designed withdrawal~~
 18 ~~capacity for the community supply under the safe drinking water~~
 19 ~~act, 1976 PA 399, MCL 325.1001 to 325.1023, on the effective date~~
 20 ~~of the amendatory act that added this subparagraph.~~

21 (A) ~~(B)~~ Unless reported under a different provision of this
 22 subparagraph, for a quarry or mine that holds an authorization to
 23 discharge under part 31 that includes a discharge volume, the
 24 discharge volume stated in that authorization on ~~the effective date~~
 25 ~~of the amendatory act that added this subparagraph~~ **FEBRUARY 28,**
 26 **2006.**

27 (B) ~~(C)~~ The system capacity used or developed to make a

1 withdrawal on ~~the effective date of the amendatory act that added~~
2 ~~this subparagraph~~ **FEBRUARY 28, 2006**, if the system capacity and a
3 description of the system capacity are included in an annual report
4 that is submitted under this part **NOT LATER THAN APRIL 1, 2009**.

5 (ii) If the person making the withdrawal does not report under
6 subparagraph (i), the highest annual amount of water withdrawn as
7 reported under this part for calendar year 2002, 2003, 2004, or
8 2005. **HOWEVER, FOR A PERSON WHO IS REQUIRED TO REPORT BY VIRTUE OF**
9 **THE 2008 AMENDMENTS TO SECTION 32705(2)(D), BASELINE CAPACITY MEANS**
10 **THE PERSON'S WITHDRAWAL CAPACITY AS REPORTED IN THE APRIL 1, 2009**
11 **ANNUAL REPORT SUBMITTED UNDER SECTION 32707.**

12 (iii) **FOR A COMMUNITY SUPPLY, THE TOTAL DESIGNED WITHDRAWAL**
13 **CAPACITY FOR THE COMMUNITY SUPPLY UNDER THE SAFE DRINKING WATER**
14 **ACT, 1976 PA 399, MCL 325.1001 TO 325.1023, ON FEBRUARY 28, 2006 AS**
15 **REPORTED TO THE DEPARTMENT IN A REPORT SUBMITTED NOT LATER THAN**
16 **APRIL 1, 2009.**

17 (E) **"CHARACTERISTIC FISH CURVE" MEANS A FISH FUNCTIONAL**
18 **RESPONSE CURVE THAT DESCRIBES THE ABUNDANCE OF CHARACTERISTIC FISH**
19 **POPULATIONS IN RESPONSE TO REDUCTIONS IN INDEX FLOW AS PUBLISHED IN**
20 **THE DOCUMENT ENTITLED "REPORT TO THE MICHIGAN LEGISLATURE IN**
21 **RESPONSE TO 2006 PUBLIC ACT 34" BY THE FORMER GROUNDWATER**
22 **CONSERVATION ADVISORY COUNCIL DATED JULY 2007, WHICH IS**
23 **INCORPORATED BY REFERENCE.**

24 (F) **"CHARACTERISTIC FISH POPULATION" MEANS THE FISH SPECIES,**
25 **INCLUDING THRIVING FISH, TYPICALLY FOUND AT RELATIVELY HIGH**
26 **DENSITIES IN STREAM REACHES HAVING SPECIFIC DRAINAGE AREA, INDEX**
27 **FLOW, AND SUMMER TEMPERATURE CHARACTERISTICS.**

1 (G) "COLD RIVER SYSTEM" MEANS A STREAM OR SMALL RIVER THAT HAS
2 THE APPROPRIATE SUMMER WATER TEMPERATURE THAT, BASED ON STATEWIDE
3 AVERAGES, SUSTAINS A FISH COMMUNITY COMPOSED PREDOMINANTLY OF COLD-
4 WATER FISH SPECIES, AND WHERE SMALL INCREASES IN WATER TEMPERATURE
5 WILL NOT CAUSE A DECLINE IN THESE POPULATIONS, AS DETERMINED BY A
6 SCIENTIFIC METHODOLOGY ADOPTED BY ORDER OF THE COMMISSION.

7 (H) "COLD-TRANSITIONAL RIVER SYSTEM" MEANS A STREAM, SMALL
8 RIVER, OR LARGE RIVER THAT HAS THE APPROPRIATE SUMMER WATER
9 TEMPERATURE THAT, BASED ON STATEWIDE AVERAGES, SUSTAINS A FISH
10 COMMUNITY COMPOSED PREDOMINANTLY OF COLD-WATER FISH SPECIES, AND
11 WHERE SMALL INCREASES IN WATER TEMPERATURE WILL CAUSE A DECLINE IN
12 THE PROPORTION OF COLD-WATER SPECIES, AS DETERMINED BY A SCIENTIFIC
13 METHODOLOGY ADOPTED BY ORDER OF THE COMMISSION.

14 (I) ~~(d)~~—"Community supply" means that term as it is defined in
15 section 2 of the safe drinking water act, 1976 PA 399, MCL
16 325.1002.

17 (J) "COMPACT" MEANS THE GREAT LAKES-ST. LAWRENCE RIVER BASIN
18 WATER RESOURCES COMPACT PROVIDED FOR IN PART 342.

19 (K) ~~(e)~~—"Consumptive use" means that portion of water
20 withdrawn or withheld from the Great Lakes basin and assumed to be
21 lost or otherwise not returned to the Great Lakes basin due to
22 evaporation, incorporation into products or agricultural products,
23 use as part of the packaging of products or agricultural products,
24 or other processes. Consumptive use includes a withdrawal of waters
25 of the Great Lakes basin that is packaged within the Great Lakes
26 basin in a container of 5.7 gallons (20 liters) or less **AND IS**
27 **BOTTLED DRINKING WATER AS DEFINED IN THE FOOD CODE, 2005**

1 RECOMMENDATIONS OF THE FOOD AND DRUG ADMINISTRATION OF THE UNITED
2 STATES PUBLIC HEALTH SERVICE.

3 (I) "COOL RIVER SYSTEM" MEANS A STREAM, SMALL RIVER, OR LARGE
4 RIVER THAT HAS THE APPROPRIATE SUMMER WATER TEMPERATURE THAT, BASED
5 ON STATEWIDE AVERAGES, SUSTAINS A FISH COMMUNITY COMPOSED MOSTLY OF
6 WARM-WATER FISH SPECIES, BUT ALSO CONTAINS SOME COOL-WATER SPECIES
7 OR COLD-WATER SPECIES, OR BOTH, AS DETERMINED BY A SCIENTIFIC
8 METHODOLOGY ADOPTED BY ORDER OF THE COMMISSION.

9 (M) "COUNCIL" MEANS THE GREAT LAKES-ST. LAWRENCE RIVER BASIN
10 WATER RESOURCES COUNCIL CREATED IN THE COMPACT.

11 (N) ~~(f)~~ "Department" means the department of environmental
12 quality.

13 (O) ~~(g)~~ "Designated trout stream" means a trout stream
14 identified on the document entitled "Designated Trout Streams for
15 the State of Michigan", as issued under order of the director of
16 the department of natural resources, FO-210.04, on October 10,
17 2003.

18 (P) ~~(h)~~ "Diverted" means a transfer of water by pipeline,
19 canal, tunnel, aqueduct, channel, modification of the direction of
20 a watercourse, tanker ship, tanker truck, rail tanker, or similar
21 means from the Great Lakes basin into a watershed outside of the
22 Great Lakes basin. Diverted "DIVERSION" MEANS A TRANSFER OF WATER
23 FROM THE GREAT LAKES BASIN INTO ANOTHER WATERSHED, OR FROM THE
24 WATERSHED OF 1 OF THE GREAT LAKES INTO THAT OF ANOTHER BY ANY MEANS
25 OF TRANSFER, INCLUDING, BUT NOT LIMITED TO, A PIPELINE, CANAL,
26 TUNNEL, AQUEDUCT, CHANNEL, MODIFICATION OF THE DIRECTION OF A WATER
27 COURSE, TANKER SHIP, TANKER TRUCK, OR RAIL TANKER BUT DOES NOT

1 APPLY TO WATER THAT IS USED IN THE GREAT LAKES BASIN OR A GREAT
2 LAKE WATERSHED TO MANUFACTURE OR PRODUCE A PRODUCT THAT IS THEN
3 TRANSFERRED OUT OF THE GREAT LAKES BASIN OR WATERSHED. DIVERTED HAS
4 A CORRESPONDING MEANING. DIVERSION includes a transfer of water
5 withdrawn from the waters of the Great Lakes basin that is removed
6 from the Great Lakes basin in a container greater than 5.7 gallons
7 (20 liters). ~~Diverted~~ DIVERSION does not include any of the
8 following:

9 (i) A consumptive use.

10 (ii) The supply of vehicles, including vessels and aircraft,
11 whether for the needs of the persons or animals being transported
12 or for ballast or other needs related to the operation of vehicles.

13 (iii) Use in a noncommercial project on a short-term basis for
14 firefighting, humanitarian, or emergency response purposes.

15 (iv) A TRANSFER OF WATER FROM A GREAT LAKE WATERSHED TO THE
16 WATERSHED OF ITS CONNECTING WATERWAYS.

17 (Q) ~~(i)~~—"Environmentally sound and economically feasible water
18 conservation measures" means those measures, methods, technologies,
19 or practices for efficient water use and for reduction of water
20 loss and waste or for reducing a withdrawal, consumptive use, or
21 diversion that meet all of the following:

22 (i) Are environmentally sound.

23 (ii) Reflect best practices applicable to the water use sector.

24 (iii) Are technically feasible and available.

25 (iv) Are economically feasible and cost-effective based on an
26 analysis that considers direct and avoided economic and
27 environmental costs.

1 (v) Consider the particular facilities and processes involved,
2 taking into account the environmental impact, **THE** age of equipment
3 and facilities involved, the process employed, energy impacts, and
4 other appropriate factors.

5 (R) ~~(j)~~ "Farm" means that term as it is defined in section 2
6 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

7 ~~(k) "Generally accepted water management practices" means~~
8 ~~standards or guidelines for water use that ensure water is used~~
9 ~~efficiently.~~

10 (S) "FLOW-BASED SAFETY FACTOR" MEANS A PROTECTIVE MEASURE OF
11 THE ASSESSMENT TOOL THAT REDUCES THE PORTION OF INDEX FLOW
12 AVAILABLE FOR A WITHDRAWAL TO 1/2 OF THE INDEX FLOW FOR THE PURPOSE
13 OF MINIMIZING THE RISK OF ADVERSE RESOURCE IMPACTS CAUSED BY
14 STATISTICAL UNCERTAINTY.

15 (T) "GREAT LAKES" MEANS LAKES SUPERIOR, MICHIGAN AND HURON,
16 ERIE, AND ONTARIO AND THEIR CONNECTING WATERWAYS INCLUDING THE ST.
17 MARYS RIVER, LAKE ST. CLAIR, THE ST. CLAIR RIVER, AND THE DETROIT
18 RIVER. FOR PURPOSES OF THIS DEFINITION, LAKES HURON AND MICHIGAN
19 SHALL BE CONSIDERED A SINGLE GREAT LAKE.

20 (U) ~~(l)~~ "Great Lakes basin" means the watershed of the Great
21 Lakes and the St. Lawrence river.

22 (V) ~~(m)~~ "Great Lakes charter" means the document establishing
23 the principles for the cooperative management of the Great Lakes
24 water resources, signed by the governors and premiers of the Great
25 Lakes region on February 11, 1985.

26 (W) ~~(n)~~ "Great Lakes region" means the geographic region
27 composed of the states of Illinois, Indiana, Michigan, Minnesota,

1 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,
2 and the provinces of Ontario and Quebec, Canada.

3 (X) ~~(e)~~—"Index flow" means the 50% exceedance flow for the
4 lowest **SUMMER** flow month of the flow regime, for the applicable
5 stream reach, as determined over the period of record or
6 extrapolated from analyses of the United States geological survey
7 ~~stream-flow~~ gauges in Michigan, **ON DECEMBER 31, 2007.**

8 (Y) **"INTRABASIN TRANSFER" MEANS A DIVERSION OF WATER FROM THE**
9 **SOURCE WATERSHED OF A GREAT LAKE PRIOR TO ITS USE TO THE WATERSHED**
10 **OF ANOTHER GREAT LAKE.**

11 (Z) **"LAKE AUGMENTATION WELL" MEANS A WATER WELL USED TO**
12 **WITHDRAW GROUNDWATER FOR THE PURPOSE OF MAINTAINING OR RAISING**
13 **WATER LEVELS OF AN INLAND LAKE OR STREAM AS DEFINED IN SECTION**
14 **30101.**

15 (AA) ~~(p)~~—"Large quantity withdrawal" means 1 or more
16 cumulative total withdrawals of over 100,000 gallons of water per
17 day average in any consecutive 30-day period that supply a common
18 distribution system.

19 (BB) **"LARGE RIVER" MEANS A FLOWING BODY OF WATER WITH A**
20 **DRAINAGE AREA OF 300 OR MORE SQUARE MILES.**

21 (CC) ~~(q)~~—"New or increased large quantity withdrawal" means a
22 new water withdrawal of over 100,000 gallons of water per day
23 average in any consecutive 30-day period or an increase of over
24 100,000 gallons of water per day average in any consecutive 30-day
25 period beyond the baseline capacity of a withdrawal.

26 (DD) ~~(r)~~—"New or increased withdrawal capacity" means new or
27 additional water withdrawal capacity to supply a common

1 distribution system that is an increase from the person's baseline
2 capacity. New or increased capacity does not include maintenance or
3 replacement of existing withdrawal capacity.

4 ~~—— (s) "Political subdivision" means that term as it is defined~~
5 ~~in section 2 of the safe drinking water act, 1976 PA 399, MCL~~
6 ~~325.1002.~~

7 (EE) "ONLINE REGISTRATION PROCESS" MEANS THE ONLINE
8 REGISTRATION PROCESS PROVIDED FOR IN SECTION 32706.

9 (FF) ~~(t)~~ "Registrant" means a person who registers ~~HAS~~
10 REGISTERED A water withdrawal capacity under this part UNDER
11 SECTION 32705.

12 (GG) "RESTORATIVE MEASURE" MEANS AN ACTION AFFECTING A STREAM,
13 SMALL RIVER, OR LARGE RIVER THAT WILL PROVIDE ADDITIONAL STREAM OR
14 RIVER FLOW BEYOND THE INDEX FLOW OR WILL IMPROVE THE TEMPERATURE
15 REGIME OF THE STREAM OR RIVER.

16 (HH) "SITE-SPECIFIC REVIEW" MEANS THE DEPARTMENT'S INDEPENDENT
17 REVIEW UNDER SECTION 32706C TO DETERMINE WHETHER THE WITHDRAWAL IS
18 A ZONE A, ZONE B, ZONE C, OR ZONE D WITHDRAWAL AND WHETHER A
19 WITHDRAWAL IS LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT.

20 (II) "SMALL RIVER" MEANS A FLOWING BODY OF WATER WITH A
21 DRAINAGE AREA OF 80 OR MORE SQUARE MILES BUT LESS THAN 300 SQUARE
22 MILES.

23 (JJ) "SOURCE WATERSHED" MEANS THE WATERSHED FROM WHICH A
24 WITHDRAWAL ORIGINATES. IF WATER IS WITHDRAWN DIRECTLY FROM A GREAT
25 LAKE, THEN THE SOURCE WATERSHED SHALL BE CONSIDERED TO BE THE
26 WATERSHED OF THAT GREAT LAKE AND ITS CONNECTING WATERWAYS. IF WATER
27 IS WITHDRAWN FROM THE WATERSHED OF A DIRECT TRIBUTARY TO A GREAT

1 LAKE, THEN THE SOURCE WATERSHED SHALL BE CONSIDERED TO BE THE
2 WATERSHED OF THAT GREAT LAKE AND ITS CONNECTING WATERWAYS, WITH A
3 PREFERENCE FOR RETURNING WATER TO THE WATERSHED OF THE DIRECT
4 TRIBUTARY FROM WHICH IT WAS WITHDRAWN.

5 (KK) "STREAM" MEANS A FLOWING BODY OF WATER WITH A DRAINAGE
6 AREA OF LESS THAN 80 SQUARE MILES.

7 (ll) "STREAM REACH" MEANS A SEGMENT OF A STREAM, SMALL RIVER,
8 OR LARGE RIVER.

9 (MM) "THRIVING FISH CURVE" MEANS A FISH FUNCTIONAL RESPONSE
10 CURVE THAT DESCRIBES THE INITIAL DECLINE IN DENSITY OF THRIVING
11 FISH POPULATIONS IN RESPONSE TO REDUCTIONS IN INDEX FLOW AS
12 PUBLISHED IN THE DOCUMENT ENTITLED "REPORT TO THE MICHIGAN
13 LEGISLATURE IN RESPONSE TO 2006 PUBLIC ACT 34" BY THE FORMER
14 GROUNDWATER CONSERVATION ADVISORY COUNCIL DATED JULY 2007, WHICH IS
15 INCORPORATED BY REFERENCE.

16 (NN) "THRIVING FISH POPULATION" MEANS THE FISH SPECIES THAT
17 ARE EXPECTED TO FLOURISH AT VERY HIGH DENSITIES IN STREAM REACHES
18 HAVING SPECIFIC DRAINAGE AREA, INDEX FLOW, AND SUMMER TEMPERATURE
19 CHARACTERISTICS.

20 (OO) "WARM RIVER SYSTEM" MEANS A STREAM, SMALL RIVER, OR LARGE
21 RIVER THAT HAS THE APPROPRIATE SUMMER WATER TEMPERATURE THAT, BASED
22 ON STATEWIDE AVERAGES, SUSTAINS A FISH COMMUNITY COMPOSED
23 PREDOMINANTLY OF WARM-WATER FISH SPECIES, AS DETERMINED BY A
24 SCIENTIFIC METHODOLOGY ADOPTED BY ORDER OF THE COMMISSION.

25 (PP) ~~(u)~~"Waters of the Great Lakes basin" means the Great
26 Lakes and all streams, rivers, lakes, connecting channels, and
27 other bodies of water, including groundwater, within the Great

1 Lakes basin.

2 (QQ) ~~(v)~~ "Waters of the state" means groundwater, lakes,
3 rivers, and streams and all other watercourses and waters,
4 including the Great Lakes, within the territorial boundaries of the
5 state. Waters of the state do not include drainage ways and ponds
6 designed and constructed solely for wastewater conveyance,
7 treatment, or control.

8 (RR) ~~(w)~~ "Withdrawal" means the removal ~~of water from its~~
9 ~~source for any purpose, other than for hydroelectric generation at~~
10 ~~sites certified, licensed, or permitted by the federal energy~~
11 ~~regulatory commission~~ OF WATER FROM SURFACE WATER OR GROUNDWATER.

12 (SS) "ZONE A WITHDRAWAL" MEANS THE FOLLOWING:

13 (i) FOR A COLD STREAM OR SMALL RIVER, LESS THAN 50% OF THE
14 WITHDRAWAL THAT WOULD RESULT IN AN ADVERSE RESOURCE IMPACT.

15 (ii) FOR A COLD-TRANSITIONAL RIVER SYSTEM, THERE IS NOT A ZONE
16 A WITHDRAWAL.

17 (iii) FOR A COOL RIVER SYSTEM, AS FOLLOWS:

18 (A) FOR A COOL STREAM, LESS THAN A 10% REDUCTION IN THE
19 DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING
20 FISH CURVE.

21 (B) FOR A COOL SMALL RIVER, LESS THAN A 5% REDUCTION IN THE
22 DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING
23 FISH CURVE.

24 (C) FOR A COOL LARGE RIVER, LESS THAN AN 8% REDUCTION IN THE
25 DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING
26 FISH CURVE.

27 (iv) FOR A WARM RIVER SYSTEM, LESS THAN A 10% REDUCTION IN THE

1 DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING
2 FISH CURVE.

3 (TT) "ZONE B WITHDRAWAL" MEANS THE FOLLOWING:

4 (i) THERE IS NOT A ZONE B WITHDRAWAL FOR A COLD STREAM OR SMALL
5 RIVER.

6 (ii) FOR A COLD-TRANSITIONAL RIVER SYSTEM, LESS THAN A 5%
7 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
8 BY THE THRIVING FISH CURVE.

9 (iii) FOR A COOL RIVER SYSTEM, AS FOLLOWS:

10 (A) FOR A COOL STREAM, A 10% OR MORE BUT LESS THAN A 20%
11 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
12 BY THE THRIVING FISH CURVE.

13 (B) FOR A COOL SMALL RIVER, A 5% OR MORE BUT LESS THAN A 10%
14 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
15 BY THE THRIVING FISH CURVE.

16 (C) FOR A COOL LARGE RIVER, AN 8% OR MORE BUT LESS THAN A 10%
17 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
18 BY THE THRIVING FISH CURVE.

19 (iv) FOR A WARM RIVER SYSTEM, AS FOLLOWS:

20 (A) FOR A WARM STREAM, A 10% OR MORE BUT LESS THAN A 15%
21 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
22 BY THE THRIVING FISH CURVE.

23 (B) FOR A WARM SMALL RIVER OR A WARM LARGE RIVER, A 10% OR
24 MORE BUT LESS THAN A 20% REDUCTION IN THE DENSITY OF THRIVING FISH
25 POPULATIONS AS DETERMINED BY THE THRIVING FISH CURVE.

26 (UU) "ZONE C WITHDRAWAL" MEANS THE FOLLOWING:

27 (i) FOR A COLD STREAM OR SMALL RIVER, 50% OR MORE OF THE

1 WITHDRAWAL THAT WOULD RESULT IN AN ADVERSE RESOURCE IMPACT BUT LESS
2 THAN A 1% REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS
3 DETERMINED BY THE THRIVING FISH CURVE.

4 (ii) THERE IS NOT A ZONE C WITHDRAWAL FOR A COLD-TRANSITIONAL
5 RIVER SYSTEM.

6 (iii) FOR A COOL RIVER SYSTEM, AS FOLLOWS:

7 (A) FOR A COOL STREAM, A 20% OR MORE REDUCTION IN THE DENSITY
8 OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING FISH
9 CURVE BUT LESS THAN A 10% REDUCTION IN THE ABUNDANCE OF
10 CHARACTERISTIC FISH POPULATIONS AS DETERMINED BY THE CHARACTERISTIC
11 FISH CURVE.

12 (B) FOR COOL SMALL RIVERS, A 10% OR MORE BUT LESS THAN A 15%
13 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
14 BY THE THRIVING FISH CURVE.

15 (C) FOR COOL LARGE RIVERS, A 10% OR MORE BUT LESS THAN A 12%
16 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
17 BY THE THRIVING FISH CURVE.

18 (iv) FOR WARM RIVER SYSTEMS, AS FOLLOWS:

19 (A) FOR WARM STREAMS, A 15% OR MORE REDUCTION IN THE DENSITY
20 OF THRIVING FISH POPULATIONS AS DETERMINED BY THE THRIVING FISH
21 CURVE BUT LESS THAN A 5% REDUCTION IN THE ABUNDANCE OF
22 CHARACTERISTIC FISH POPULATIONS AS DETERMINED BY THE CHARACTERISTIC
23 FISH CURVE.

24 (B) FOR WARM SMALL RIVERS AND WARM LARGE RIVERS, A 20% OR MORE
25 REDUCTION IN THE DENSITY OF THRIVING FISH POPULATIONS AS DETERMINED
26 BY THE THRIVING FISH CURVE BUT LESS THAN A 10% REDUCTION IN THE
27 ABUNDANCE OF CHARACTERISTIC FISH POPULATIONS AS DETERMINED BY THE

1 CHARACTERISTIC FISH CURVE.

2 (VV) "ZONE D WITHDRAWAL" MEANS A WITHDRAWAL THAT IS LIKELY TO
3 CAUSE AN ADVERSE RESOURCE IMPACT.

4 (2) FOR PURPOSES OF DETERMINING BASELINE CAPACITY, A PERSON
5 WHO REPLACES HIS OR HER SURFACE WATER WITHDRAWAL CAPACITY WITH THE
6 SAME AMOUNT OF GROUNDWATER WITHDRAWAL CAPACITY FROM THE DRAINAGE
7 AREA OF THE SAME STREAM REACH MAY RETAIN THE BASELINE CAPACITY
8 ESTABLISHED UNDER THIS SECTION.

9 Sec. 32702. (1) The legislature finds and declares that:

10 (a) A diversion of water out of the basin of the Great Lakes
11 may impair or destroy the Great Lakes. The legislature further
12 finds that a limitation on such diversions is authorized by and is
13 consistent with the mandate of section 52 of article IV of the
14 state constitution of 1963 that the legislature provide for the
15 protection of the air, water, and other natural resources of the
16 state from pollution, impairment, and destruction.

17 (b) Water use registration and reporting are essential to
18 implementing the principles of the Great Lakes charter and
19 necessary to support the state's opposition to diversion of waters
20 of the Great Lakes basin and to provide a source of information on
21 water use to protect Michigan's rights when proposed water losses
22 affect the level, flow, use, or quality of waters of the Great
23 Lakes basin.

24 (c) The waters of the state are valuable public natural
25 resources held in trust by the state, and the state has a duty as
26 trustee to manage its waters effectively for the use and enjoyment
27 of present and future residents and for the protection of the

1 environment.

2 (d) The waters of the Great Lakes basin are a valuable public
3 natural resource, and the states and provinces of the Great Lakes
4 region and Michigan share a common interest in the preservation of
5 that resource.

6 (e) Any new diversion of waters of the Great Lakes basin for
7 use outside of the Great Lakes basin will have significant economic
8 and environmental impact adversely affecting the use of this
9 resource by the Great Lakes states and Canadian provinces.

10 (f) The continued availability of water for domestic,
11 municipal, industrial, and agricultural water supplies, navigation,
12 hydroelectric power and energy production, recreation, and the
13 maintenance of fish and wildlife habitat and a balanced ecosystem
14 are vital to the future economic health of the states and provinces
15 of the Great Lakes region.

16 (g) Future interbasin diversions and consumptive uses of
17 waters of the Great Lakes basin may have significant adverse
18 impacts upon the environment, economy, and welfare of the Great
19 Lakes region and of this state.

20 (h) The states and provinces of the Great Lakes region have a
21 duty to protect, conserve, and manage their shared water resources
22 for the use and enjoyment of present and future residents.

23 (i) The waters of the Great Lakes basin are capable of
24 concurrently serving multiple uses, and such multiple uses of water
25 resources for municipal, public, industrial, commercial,
26 agriculture, mining, navigation, energy development and production,
27 recreation, water quality maintenance, and the maintenance of fish

1 and wildlife habitat and a balanced ecosystem and other purposes
2 are encouraged, recognizing that such uses are interdependent and
3 must be balanced.

4 **(J) THE WATERS OF THE GREAT LAKES BASIN ARE INTERCONNECTED AND**
5 **PART OF A SINGLE HYDROLOGIC SYSTEM.**

6 (2) The legislature has the authority under sections 51 and 52
7 of article IV of the state constitution of 1963 to regulate the
8 withdrawal and uses of the waters of the state, including both
9 surface water and groundwater, to promote the public health,
10 safety, and welfare and to protect the natural resources of the
11 state from pollution, impairment, and destruction, subject to
12 constitutional protections against unreasonable or arbitrary
13 governmental action and the taking of property without just
14 compensation. This authority extends to all waters within the
15 territorial boundaries of the state.

16 Sec. 32703. Subject to section 32704, **A DIVERSION OF** the
17 waters of the ~~Great Lakes basin within the boundaries of this state~~
18 ~~shall not be diverted~~ **STATE** out of the Great Lakes basin **IS**
19 **PROHIBITED.**

20 Sec. 32727. (1) ~~A withdrawal pursuant to part 111, 115, 201,~~
21 ~~or 213 is~~ **THE FOLLOWING WITHDRAWALS ARE** exempt from the
22 requirements of this part ~~—~~ **AS LONG AS THEY DO NOT RESULT IN A**
23 **DIVERSION:**

24 **(A) A WITHDRAWAL UNDERTAKEN AS PART OF AN ACTIVITY AUTHORIZED**
25 **BY THE DEPARTMENT UNDER PART 111, 115, 201, 213, OR 615.**

26 **(B) A WITHDRAWAL UNDERTAKEN AS PART OF AN ACTIVITY AUTHORIZED**
27 **BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER EITHER**

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1 OF THE FOLLOWING:

2 (i) THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND
3 LIABILITY ACT OF 1980, PUBLIC LAW 96-510.

4 (ii) THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, PUBLIC
5 LAW 94-580.

6 (C) A WITHDRAWAL THAT IS UNDERTAKEN FOR HYDROELECTRIC
7 GENERATION AT SITES CERTIFIED, LICENSED, OR PERMITTED BY THE
8 FEDERAL ENERGY REGULATORY COMMISSION.

9 (D) A HYDROELECTRIC FACILITY AUTHORIZED UNDER SECTION 12 OF
10 CHAPTER 264 OF THE ACT OF MARCH 3, 1909, COMMONLY KNOWN AS THE
11 RIVER AND HARBOR ACT OF 1909, 35 STAT. 821.

12 (E) A HYDROELECTRIC FACILITY AUTHORIZED UNDER SECTION 1075(C)
13 OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991,
14 PUBLIC LAW 102-240.

15 (F) A HYDROELECTRIC FACILITY AUTHORIZED UNDER PUBLIC LAW 85,
16 CHAPTER 1368, 34 STAT. 102.

17 (G) REMOVAL OF WATER FROM AN ARTIFICIALLY CREATED SURFACE
18 WATER BODY THAT HAS AS ITS PRIMARY SOURCE OF WATER EITHER OF THE
19 FOLLOWING:

20 (i) A WITHDRAWAL THAT IS NOT A NEW OR INCREASED LARGE QUANTITY
21 WITHDRAWAL.

22 (ii) A REGISTERED NEW OR INCREASED LARGE QUANTITY WITHDRAWAL
23 THAT HAS BEEN DETERMINED BY THE ASSESSMENT TOOL, A SITE-SPECIFIC
24 REVIEW, OR A PERMIT ISSUED UNDER SECTION 32723 AS A WITHDRAWAL THAT
25 IS NOT LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT.

[(H) A WITHDRAWAL FROM A NONCOMMERCIAL WELL LOCATED ON SINGLE-
FAMILY RESIDENTIAL PROPERTY NOT EXCEEDING 4 UNITS AND NOT MORE THAN 3
ACRES IN SIZE. HOWEVER, THE EXEMPTION PROVIDED FOR IN THIS SUBDIVISION
DOES NOT APPLY TO LAKE AUGMENTATION WELLS.]

26 (2) THE DIRECTOR OF THE DEPARTMENT SHALL ENSURE THAT DATA IN
27 THE POSSESSION OF THE STATE RELATED TO WITHDRAWALS THAT ARE NOT

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1 REGULATED UNDER THIS PART ARE COMPILED AND SHARED WITH DEPARTMENTAL
2 PERSONNEL RESPONSIBLE FOR IMPLEMENTING THIS PART.

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