

COMMENT

THE FEDERAL FLOODGATES: CAN THE GREAT LAKES COMPACT WITHSTAND EXPANSIVE EXERCISE OF EXECUTIVE POWER?

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Data centers are rapidly reshaping the United States—and straining its water systems. As demand for water-intensive data centers increases, companies increasingly look to the largest source of freshwater in the United States: The Great Lakes. Simultaneously, the Trump Administration has claimed, and exercised, increasingly expansive presidential powers to advance policy priorities like AI dominance. This convergence raises a pressing legal question: Can the President circumvent or override the Great Lakes Compact to drive data center deployment?

This Comment argues that the answer is no. It contends that no President can exercise presidential powers to increase withdrawals, consumptive uses, or diversions to drive data center deployment in ways contrary to the Great Lakes Compact—an interstate agreement with the force of federal law. The Compact’s emergency exemption does not provide a plausible route, nor does the Defense Production Act supply the clear congressional authorization necessary to override the Compact’s carefully calibrated safeguards on withdrawals, consumptive uses, and diversions.

Ultimately, this Comment shows that even in an era of technological urgency and expansive executive ambition, the rule of law endures. The Great Lakes Compact remains a durable safeguard against potential executive efforts to unilaterally reallocate one of the nation’s most vital shared resources, reinforcing environmental stewardship and the constitutional balance of power.

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INTRODUCTION

Data centers are straining water systems across the United States.¹ The explosive growth of data centers—driven by cloud computing, cryptocurrency mining, and artificial intelligence (AI) adoption—has led to heightened demand for energy and water.² Because they can demand enormous amounts of water, directly and indirectly, data centers pose serious implications for the watersheds and communities in

1. Peyton McCauley, Cora Sutherland & Melissa Scanlan, *Powering Progress or Peril? The Hidden Environmental Costs of Data Centers and AI*, 51 RUTGERS COMPUT. & TECH. L.J. (SPECIAL EDITION) 1, 7–8 (2025); HELENA VOLZER, MARIA ITURBIDE-CHANGE, MEGAN CUNNINGHAM, MELEAH GEERTSMA & ANGELA LARSEN, A REGIONAL PLAYBOOK FOR MANAGING DATA CENTER IMPACTS IN THE GREAT LAKES 5–6, 9–10 (2026), https://greatlakes.org/wp-content/uploads/2026/03/AGL_DataCenter_Playbook_2026_Final.pdf [<https://perma.cc/Q49H-D99D>].

2. EMILIE WASHER, TRESSIE KAMP & MELISSA K. SCANLAN, AI DATA CENTERS: LEGISLATIVE MODEL TO PROMOTE TRANSPARENCY AND ENVIRONMENTAL PROTECTIONS 4–5 (2026), <https://uwm.edu/centerforwaterpolicy/wp-content/uploads/sites/667/2026/03/Legislative-Model-for-Data-Centers-2026.pdf> [<https://perma.cc/Q3KZ-ZSH6>]; McCauley, Sutherland & Scanlan, *supra* note 1, at 4–8; VOLZER, ITURBIDE-CHANGE, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 8–14.

which they operate.³ The rapid rise in water demand means less water is available for agricultural, residential, and other uses, and it contributes to water shortages, groundwater conflicts, and contaminated aquifers.⁴ To meet the enormous demand, many companies are turning to the largest source of freshwater in the United States: the Great Lakes.⁵

The data center industry is receiving support from a powerful entity: the Executive Branch.⁶ The Trump Administration has demonstrated its policy agenda to promote “AI dominance.”⁷ And as it entered office, the Administration threatened to tear up agreements between the United States and Canada that govern the Great Lakes.⁸ The President, along with federal officers, aligned policymakers, and invested industry, likely view the Great Lakes as having an important part to play in driving data center deployment.

But the Great Lakes do not stand unprotected. The Great Lakes Compact (Compact) erects multiple protections around the Great Lakes–St. Lawrence River Basin (Basin).⁹ The Compact is a formal agreement between the eight Great Lakes States detailing how to collaboratively manage and protect the Basin.¹⁰ The Compact sorts water usage into three categories: withdrawals, consumptive uses, and diversions.¹¹ A withdrawal is “the taking of water from surface or

3. See McCauley, Sutherland & Scanlan, *supra* note 1, at 7 (“[T]he environmental consequences of data centers may harm vulnerable and at-risk communities.”); VOLZER, ITURBIDE-CHANG, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 5–14, 16–19. The “nascent academic literature” regarding the environmental impacts of data centers raises significant concerns, but decisionmakers and the public often lack key information. McCauley, Sutherland & Scanlan, *supra* note 1, at 9.

4. McCauley, Sutherland & Scanlan, *supra* note 1, at 8; VOLZER, ITURBIDE-CHANG, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 5–14, 16–19.

5. JOAO-PEDRO FERREIRA, WILLIAM SHOBE, TERRANCE REPHANN & MATTHEW SCHEFFEL, ECONOMIC, FISCAL AND ENERGY-RELATED IMPACTS OF DATA CENTERS IN THE GREAT LAKES REGION 11–16 (Jan. 13, 2026), <https://virginia.app.box.com/s/8qq2ggbdgwhf4atrorghtcqsq64wd74> [<https://perma.cc/BNX8-ZAAA>].

6. Exec. Order No. 14179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

7. *Id.*

8. Gary Wilson, *Trump Threatens Great Lakes Agreements Between U.S. and Canada*, CIRCLE OF BLUE (March 19, 2025), <https://www.circleofblue.org/2025/great-lakes/trump-threatens-great-lakes-agreements-between-u-s-and-canada/> [<https://perma.cc/KW5G-33Y8>].

9. See generally Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, 122 Stat. 3739 (2008) (banning diversions of water from the Basin and establishing procedural requirements for proposals).

10. *Great Lakes Compact and Diversions*, WIS. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/WaterUse/Compact.html> [<https://perma.cc/NV3N-5BQP>] (last visited July 27, 2024).

11. Great Lakes–St. Lawrence River Basin Water Resources Compact, § 1.2.

groundwater” from the Basin.¹² A consumptive use is the portion of the water withdrawn from the Basin that does not return to it due to evaporation, incorporation into products, or other processes.¹³ And a diversion is the transfer of water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another.¹⁴ The Compact recognizes that future consumptive uses and diversions from the Basin could threaten the entire Great Lakes region by sucking the lakes dry.¹⁵ Through the Compact, the Great Lakes States committed themselves to safeguarding these “crown jewels of the freshwater systems of North America” for current and future generations.¹⁶

Consequently, the Compact safeguards the Great Lakes through key provisions that regulate withdrawals, consumptive uses, and diversions.¹⁷ Codified into federal law, the agreement has long acted as a bulwark against pressures to sharply increase water usage within the Basin or to siphon water outside the Basin.¹⁸ But certain exemptions and exceptions allow qualifying projects to bypass these provisions.¹⁹

This Comment analyzes the Compact amid accelerating data center installation and contemporary exercise of presidential powers, including emergency powers. In particular, it explores how the President may attempt to increase withdrawals or consumptive uses of water from the Basin, or even channel new diversions of water from the Basin, in order to drive data center development and operation. This Comment argues that no President can exercise presidential powers to unilaterally²⁰ increase withdrawals, consumptive uses, or diversions in order to drive data center deployment. The most directly applicable intra-Compact route, the emergency exemption, does not provide a plausible channel. And the most directly relevant path outside the Compact, the Defense Production Act (DPA), likewise fails because it does not override or repeal the Compact’s provisions. Incorporating a law-in-action approach, this Comment examines how the Compact

12. *Id.*

13. *Id.*

14. *Id.*

15. *See id.* § 1.3(1)(d) (“Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes–St. Lawrence River region.”).

16. Russell A. Moll et al., *The Great Lakes: An Overview of Their Formation, Geology, Physics, and Chemistry*, in GREAT LAKES FISHERIES POLICY AND MANAGEMENT: A BINATIONAL PERSPECTIVE 3 (William W. Taylor, Abigail J. Lynch & Nancy J. Leonard eds., 2d ed. 2013).

17. *See infra* Section I.C.

18. *See infra* Section I.C.

19. *See infra* Section I.C.

20. I am using unilaterally here to mean without congressional approval or approval by the states in which the proposed projects occur.

interacts with political and economic pressures. Further, it builds upon previous research to recommend preserving the Compact's unique cooperative governance structure.

Part I provides a brief introduction to data centers and reviews the history of Great Lakes governance that led to the current Compact. Further, Part I provides background on presidential powers and the DPA. Part II explores whether the President can lawfully exercise presidential powers to increase withdrawals, consumptive uses, or diversions in order to drive data center deployment in ways contrary to the Compact. It will first analyze whether the President can trigger the Compact's emergency exemption by exercising presidential powers during, or in the absence of, a national emergency. Then it will examine whether the President can use the DPA to override the Compact's provisions. Finally, this Comment highlights how preserving the Compact's unique cooperative governance structure and stewarding the Basin reinforces technological advancement, economic welfare, and national security.

I. DATA CENTERS, THE GREAT LAKES COMPACT, AND PRESIDENTIAL POWERS

This Part provides a brief introduction to data centers. It then reviews the history of Great Lakes governance that led to the current Compact, followed by a detailed look at the applicable provisions of the Compact. Finally, this Part contextualizes presidential powers in relation to the Compact's provisions and cooperative governance structure.

A. What Are Data Centers?

Data centers are facilities that organizations use to operate critical infrastructure and data.²¹ Different classifications of data centers exist, each with distinct characteristics that affect demand for energy and

21. Alexandre d'Orgeval, Stuart Sheehan, Quentin Avenas, Edi Assoumou & Valentina Sessa, *Generative AI Impact Assessment Through a Life Cycle Analysis of Multiple Data Center Typologies*, 406 APPLIED ENERGY 1, 2 (2026), <https://www.sciencedirect.com/science/article/pii/S0306261925020185?via%3Dihub> [https://doi.org/10.1016/j.apenergy.2025.127288]. There are four main categories of data centers: (1) enterprise data centers, which an organization uses to store in-house information on its own computers; (2) hyperscale data centers, which are owned by organizations like Amazon or Meta and which provide virtual services to other organizations; (3) edge data centers, which are smaller buildings closer to the end user that provide near instantaneous digital connectivity; and (4) colocation data centers, which lease space to other organizations that hook up their servers to cables belonging to the data center company. WASHER, KAMP & SCANLAN, *supra* note 2, at 35 n.2.

water.²² For instance, tech giants like Amazon, Google, and Microsoft use mainly hyperscale data centers to train AI models.²³ Hyperscale data centers are massive; many are over ten thousand square feet, and can demand between one and five million gallons of water per day.²⁴ Annually, that can add up to between 365 million to over 1.8 billion gallons.²⁵

Furthermore, many data centers consume at least part of this water, meaning the water does not return to its water source due to evaporation or other processes.²⁶ For example, Google's Council Bluffs data center facility used about 1.75 billion gallons of water and consumed approximately 1.35 billion gallons (78%) of that water in 2025.²⁷ Because of this substantial water demand, data centers rank in the top ten most intensive water users across the industrial and commercial sectors.²⁸

A data center's water use comprises direct and indirect use. Direct use includes facility needs like onsite cooling systems and reserve water for fire protection.²⁹ Indirect water use encompasses primarily electricity generation that powers the data center.³⁰ Factors that affect direct and indirect water use include the data center's cooling

22. See d'Orgeval, Sheehan, Avenas, Assoumou & Sessa, *supra* note 21 at 4–6; see also WASHER, KAMP & SCANLAN, *supra* note 2, at 35 and accompanying text (describing four main categories of data centers).

23. See Karen Weise, *Big Tech's A.I. Spending Is Accelerating (Again)*, N.Y. TIMES, (Oct. 31, 2025), <https://www.nytimes.com/2025/10/31/technology/ai-spending-accelerating.html> (describing how the tech industry's wealthiest companies continue to pour billions into AI buildout); see d'Orgeval, Sheehan, Avenas, Assoumou & Sessa, *supra* note 21, at 5 (“[T]he training of AI models [is] mainly done in the colocation of large hyperscale infrastructure.”).

24. HELENA VOLZER, A FINITE RESOURCE: MANAGING THE GROWING WATER NEEDS OF DATA CENTERS, CRITICAL MINERALS MINING, AND AGRICULTURE IN THE GREAT LAKES REGION 17 (2025), https://greatlakes.org/wp-content/uploads/2025/08/AGL_WaterUse_Report_Aug2025_Final.pdf [<https://perma.cc/32DH-7N7F>]; Miguel Yanez-Barnuevo, *Data Centers and Water Consumption*, ENV'T & ENERGY STUDY INST. (June 25, 2025), <https://www.eesi.org/articles/view/data-centers-and-water-consumption> [<https://perma.cc/5GAW-D9DF>]; see WASHER, KAMP & SCANLAN, *supra* note 2, at 4–5 (describing hyperscale data centers and their impacts on energy and water).

25. VOLZER, *supra* note 24, at 17; Yanez-Barnuevo, *supra* note 24.

26. WASHER, KAMP & SCANLAN, *supra* note 2, at 5.

27. GOOGLE, ENVIRONMENTAL REPORT 2026, at 97 (2026), <https://storage.googleapis.com/gweb-mobius-cdn/sustainability/uploads/7f477eb723fe0c23d03f94b90a08882b9f28187d.pdf> [<https://perma.cc/QH2G-DV3M>].

28. McCauley, Sutherland & Scanlan, *supra* note 1, at 25.

29. ARMAN SHEHABI ET AL., 2024 UNITED STATES DATA CENTER ENERGY USAGE REPORT 39 (2024); see McCauley, Sutherland & Scanlan, *supra* note 1, at 23–25, 25 n.100.

30. SHEHABI ET AL., *supra* note 29, at 56.

technology,³¹ energy source,³² computational complexity,³³ and geographic location.³⁴

A variety of cooling technologies exist, each with varying energy and water demands. Two of the most widespread cooling methods are evaporative cooling, which is a water-based cooling method, and air cooling, which is not.³⁵ Water-based cooling methods are relatively more energy efficient than air cooling methods, but they use and consume more water directly.³⁶ Inversely, air-cooling methods, like computer room air conditioners, reduce direct water use and consumption but are generally less energy efficient than water-based cooling.³⁷ Researchers call this relationship between water efficiency and energy efficiency the “water-energy nexus.”³⁸

Figure 1 provides a simple diagram of data center cooling systems. It portrays both liquid-cooling and air-cooling infrastructure around the server stacks. And it displays an evaporative cooling tower that data centers employ when operating evaporative cooling systems.

31. See McCauley, Sutherland & Scanlan, *supra* note 1, at 13–14; FERREIRA, SHOBE, REPHANN & SCHEFFEL, *supra* note 5, at 41–42.

32. See SHEHABI ET AL., *supra* note 29, at 56–57; WASHER, KAMP & SCANLAN, *supra* note 2, at 5–6; Manuel Herrera, Xiang Xie, Andrea Menapace, Ariele Zanfei & Bruno M. Brentan, *Sustainable AI Infrastructure: A Scenario-Based Forecast of Water Footprint Under Uncertainty*, J. CLEANER PROD., Oct. 2025, at 4, <https://www.sciencedirect.com/science/article/pii/S0959652625018785?via%3Dihub> [<https://perma.cc/5G4Z-ZD9K>].

33. See Herrera, Xie, Menapace, Zanfei & Brentan, *supra* note 32, at 2 (explaining how AI workloads demand more computational power than traditional data center applications and how that greater computational demand generates more heat and hence requires exponentially greater cooling).

34. See ELEC. POWER RSCH. INST., TECHNOLOGY INNOVATION SPOTLIGHT: WATER USAGE IN DATA CENTERS 3 (May 2025), <https://www.epri.com/research/products/000000003002033251> [<https://perma.cc/KT9X-W9L8>].

35. See McCauley, Sutherland & Scanlan, *supra* note 1, at 13–14; see FERREIRA, SHOBE, REPHANN & SCHEFFEL, *supra* note 5, at 41–42 (examining air cooling and evaporative cooling methods and explaining how improving data center energy efficiency often depends on employing evaporative cooling).

36. ELEC. POWER RSCH. INST., *supra* note 34, at 1–2.

37. McCauley, Sutherland & Scanlan, *supra* note 1, at 13–14; FERREIRA SHOBE, REPHANN & SCHEFFEL, *supra* note 5, at 41–42.

38. E.g., Great Lakes Comm’n, *Water-Energy Nexus for Datacenters, Artificial Intelligence (AI), Quantum, and Semiconductor Infrastructure Development Resolution*, at 1 (Oct. 30, 2025), <https://www.glc.org/wp-content/uploads/FINAL-GLC-Resolution-WEN-for-AQS-Development-20251030.pdf> [<https://perma.cc/ZA5P-ZCEE>].

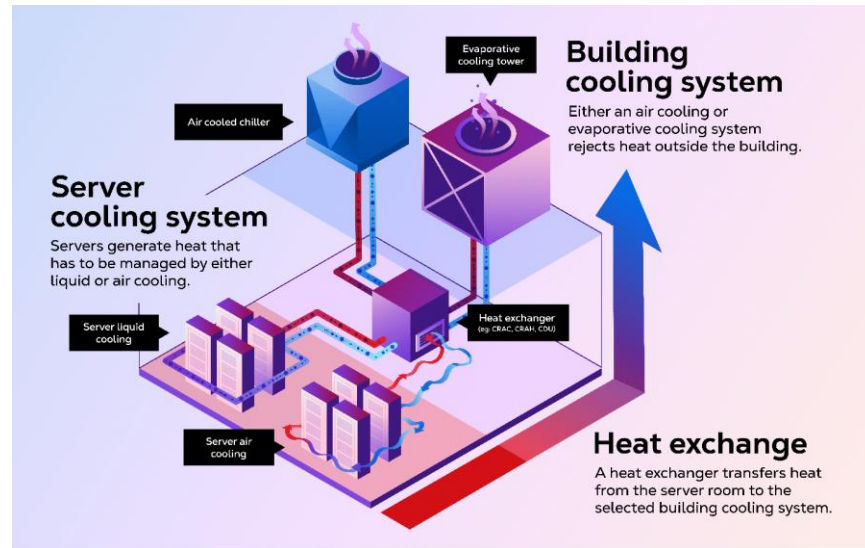


Figure 1.³⁹

This water-energy nexus is key to understanding a data center's total—direct and indirect—water usage, particularly because a data center's indirect water use often dwarfs its direct water use.⁴⁰ In 2023, United States data centers directly consumed approximately 17.4 billion gallons of water, while they indirectly consumed 211 billion gallons.⁴¹ Researchers expect those figures to double by 2028.⁴² Electricity grids across the Great Lakes region comprise seventy percent or more water-intensive fossil fuel and nuclear sources.⁴³ Therefore, even if data centers in the Great Lakes utilized cooling methods like air cooling, which are more water-efficient but require more electricity, their indirect water use and consumption would still increase.⁴⁴

39. EQUINIX, *How to Speak Like a Data Center Geek* (Apr. 8, 2025), <https://blog.equinix.com/blog/2025/04/08/how-to-speak-like-a-data-center-geek-cooling/> [https://perma.cc/KS8B-MD96].

40. See SHEHABI ET AL., *supra* note 29, at 55–56; Sameer H. Shah, *Four Water Insecurity Concerns About Datacenters Driving the AI Revolution*, PLOS WATER, at 2 (Jan. 13, 2026), <https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000500> [https://perma.cc/H92L-UTKJ].

41. See Shah, *supra* note 40, at 2.

42. SHEHABI ET AL., *supra* note 29, at 55–56, 56 fig. 5.9.

43. FED. ENERGY REGUL. COMM'N, 2025 STATE OF THE MARKETS 41 fig. 34 (2026), https://www.ferc.gov/sites/default/files/2026-03/26_State-of-the-Market_0324_1430.pdf [https://perma.cc/FX9R-MTVN]; Herrerra, Xie, Menapace, Zanfei & Brentan, *supra* note 32, at 4.

44. FERREIRA, SHOBE, REPHANN & SCHEFFEL, *supra* note 5, at 41; see HANNAH RICHESON, ANALYSIS: OFFSITE WATER USE OF DATA CENTERS (Nov. 3, 2025), https://www.cleanwisconsin.org/wp-content/uploads/2025/11/20251103_DateCenterOffsiteWaterUseAnalysis.pdf [https://perma.cc/T5AK-S8NR].

However, data center operators have begun to implement alternative cooling methods at certain data centers, like closed-loop systems and liquid immersion cooling, which can reduce total water use and consumption.⁴⁵ And operators have pledged to reduce their water consumption.⁴⁶ Microsoft deploys a closed-loop cooling system at its hyperscale data center facility in Mount Pleasant, Wisconsin.⁴⁷ Its facility uses about 8.44 million gallons of water annually and consumes approximately 2.44 million gallons of that water.⁴⁸ While that annual use is still as much water as about seventy-seven households use annually,⁴⁹ the facility uses and consumes (at least directly) less water than evaporative cooling facilities like Council Bluffs.⁵⁰

But water-intensive evaporative cooling remains one of the predominant cooling methods.⁵¹ Even if data center operators implement less water-intensive methods, existing data centers continue to perform increasingly complex computations, and new data centers

45. Yanez-Barnuevo, *supra* note 24; see also Brad Smith, *Made in Wisconsin: The World's Most Powerful AI Datacenter*, MICROSOFT: ON THE ISSUES (Sep. 18, 2025), <https://blogs.microsoft.com/on-the-issues/2025/09/18/made-in-wisconsin-the-worlds-most-powerful-ai-datacenter/> [<https://perma.cc/2LVL-WNPB>] (stating that Microsoft's new Mount Pleasant data center plans to rely on a closed-loop liquid cooling system).

46. E.g., *How AWS Uses Recycled Water in Data Centers*, AMAZON (Nov. 5, 2025), <https://sustainability.aboutamazon.com/stories/how-aws-uses-recycled-water-in-data-centers> [<https://perma.cc/88F7-DEBA>]; *Advancing Responsible Water Use at Our Data Centers*, GOOGLE DATA CTRS., <https://datacenters.google/water/> [<https://perma.cc/JN3M-DGT5>] (last visited July 27, 2026).

47. Smith, *supra* note 45.

48. USA Today Network, *Wisconsin Data Center Boom Will Demand Massive Water, Energy Resources*, THE DAILY REP. (Apr. 9, 2026), <https://dailyreporter.com/2026/04/09/wisconsin-data-center-boom-water-energy-demand/> [<https://perma.cc/35NG-XFUV>].

49. According to the EPA, the average American family uses more than 300 gallons of water per day. *How We Use Water*, EPA (Aug. 4, 2026), <https://www.epa.gov/watersense/how-we-use-water> [<https://perma.cc/7P32-ZBVQ>]. That equals about 109,500 gallons per household annually. And 8.44 million gallons used by Microsoft divided by 109,500 gallons per household equals 77.1 households.

50. See *supra* note 27 and accompanying text. See also Harrison Lee, *Why Data Centers Can No Longer Treat Water as an Afterthought*, VALICOR ENV'T SERVS., <https://www.valicor.com/blog/data-center-water-management-afterthought> [<https://perma.cc/G2F4-4TCK>] (last visited Sep. 20, 2026).

51. VOLZER, ITURBIDE-CHANGE, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 10; Yang Jin et al., *Field Test of Cooling Systems in Two Air-Cooled Data Centers: Various Regions, Air Distributions and Evaporative Cooling Technologies*, APPLIED THERMAL ENG'G, July 2024, at 3, <https://www.sciencedirect.com/science/article/pii/S1359431124008573?via%3Dihub> [<https://doi.org/10.1016/j.applthermaleng.2024.123189>] (stating that evaporative cooling towers remain the prevalent method for cooling data centers).

continue to proliferate.⁵² Microsoft, for example, projects its annual water needs, for about one hundred data center complexes, to grow by 150 percent to about 4.8 billion gallons from 2020 to 2030.⁵³ Consequently, despite potential technology-driven efficiencies, researchers project that data centers' cumulative water consumption will continue to rise, which can contribute to water shortages, groundwater conflicts, and contaminated aquifers.⁵⁴

B. Management of the Great Lakes: A (Brief) History

The five Great Lakes form a hydrologically connected system that accounts for ninety-five percent of the freshwater in the United States.⁵⁵ Because they are hydrologically connected, the lakes are essentially “one giant, slow-motion river flowing west-to-east, with each lake dumping like a bucket into the next” until the water flows into the Atlantic Ocean via the St. Lawrence River.⁵⁶ Water from the Great Lakes tributaries generally balances out the water lost to the Atlantic Ocean.⁵⁷

Despite their vast size, history demonstrates that large bodies of water like Great Lakes remain vulnerable to water depletion.⁵⁸ The Aral Sea in central Asia—once 26,300 square miles—shrank to ten percent of its original volume between 1959 and 2007 primarily due to diversions for irrigation.⁵⁹ While the Aral Sea might be an extreme

52. McCauley, Sutherland & Scanlan, *supra* note 1, at 8, 12; FERREIRA SHOBE, REPHANN & SCHEFFEL, *supra* note 5, at 11–16; Ken Silverstein, *America's AI Boom Is Running into an Unplanned Water Problem*, FORBES (Jan. 11, 2026, at 10:15 ET), <https://www.forbes.com/sites/kensilverstein/2026/01/11/americas-ai-boom-is-running-into-an-unplanned-water-problem/> [https://perma.cc/5EPG-ZMLS].

53. WASHER, KAMP & SCANLAN, *supra* note 2, at 5; Adam Satariano, Paul Mozur & Karen Weise, *Microsoft Pledged to Save Water. In the A.I. Era, It Expects Water Use to Soar.*, N.Y. TIMES (Feb. 1, 2026), <https://www.nytimes.com/2026/01/27/technology/microsoft-water-ai-data-centers.html>.

54. See SHEHABI ET AL., *supra* note 29, at 52 fig. 5.5; McCauley, Sutherland & Scanlan, *supra* note 1, at 8; VOLZER, ITURBIDE-CHANGE, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 6–14, 16–17; Silverstein, *supra* note 52.

55. John V. Casey, Note, *Irrigating Industry: Is the Great Lakes Compact Being Drowned for Industrial Gain?*, 2020 U. ILL. L. REV. 307, 312 (citing Katherine Hanson, Note, *The Great Lakes Compact and Transboundary Water Agreements*, 34 WIS. INT'L L.J. 668, 670 (2017)).

56. Casey, *supra* note 55, at 312 (citing DAN EGAN, *THE DEATH AND LIFE OF THE GREAT LAKES* 13 (2017)).

57. *Id.*

58. *Id.* at 313.

59. Jamie R. Banks, Bernd Heinold & Kerstin Schepanski, *Impacts of the Desiccation of the Aral Sea on the Central Asian Dust Life-Cycle*, 127 J. GEOPHYSICAL RSCH.: ATMOSPHERES 1, 2 (2022); PETER ANNIN, *THE GREAT LAKES WATER WARS* 24, 29–30 (Island Press. Rev. ed. 2018)).

example, lowering the Great Lakes by mere inches could cause massive ecological and economic damage; for every one-inch drop in the Great Lakes, freighters that ply the lakes, as part of the region's economy, must eliminate 270 tons of cargo from their holds to avoid scraping the lake bottom.⁶⁰ Thus, even relatively minor water depletion can significantly affect the Great Lakes region.

For thousands of years, and still today, Indigenous peoples have managed the Great Lakes water system.⁶¹ Since at least the early twentieth century, Canada, the United States, the Great Lakes States, and other actors have also managed the Great Lakes.⁶² But conflicts frequently arose; for instance, water disputes between Canada and the United States led to the Boundary Waters Treaty in 1909.⁶³ Multiple laws and agreements followed, each attempting to manage the Great Lakes and each evolving from the former in designing a more effective collective resource management framework.⁶⁴ Those efforts culminated in the Great Lakes Compact, which became effective on December 8, 2008 after congressional ratification and presidential approval.⁶⁵

C. The Great Lakes Compact

The Compact is an interstate compact: a congressionally approved and judicially enforceable agreement between states.⁶⁶ The Constitution preserves States' sovereign power to form compacts, provided Congress consents.⁶⁷ Once Congress approves an interstate compact, it becomes federal law.⁶⁸ Consequently, federal courts interpret compacts

60. Casey, *supra* note 55, at 313 (citing PETER ANNIN, *THE GREAT LAKES WATER WARS* 18 (Island Press rev. ed. 2018)).

61. Deborah McGregor et al., *Towards Meaningful Research and Engagement: Indigenous Knowledge Systems and Great lakes Governance*, 49 J. GREAT LAKES RSCH. 22, 22–23 (2023).

62. Hanson, *supra* note 55, at 670.

63. Casey, *supra* note 55, at 314–16 (citing PETER ANNIN, *THE GREAT LAKES WATER WARS* 75 (Island Press rev. ed. 2018)).

64. See *id.* at 314–15 (providing background about the evolution of resource management in the Great Lakes from the Boundary Waters Treaty to the Great Lakes Compact).

65. *Id.* at 317 (citing PETER ANNIN, *THE GREAT LAKES WATER WARS* 243 (Island Press rev. ed. 2018)).

66. Daniel E. Andersen, Note, *Straddling the Federal-State Divide: Federal Court Review of Interstate Agency Actions*, 101 IOWA L. REV. 1601, 1620 (2016) (citing *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 105 (3d Cir. 2008)).

67. *Id.* (citing U.S. CONST. art. I, § 10, cl. 3); see *Virginia v. Maryland*, 540 U.S. 56, 66 (2003) (explaining that for a Compact “to be given effect,” the Compact “must be approved by Congress”).

68. See, e.g., *Virginia*, 540 U.S. at 66 (“We interpret a congressionally approved interstate compact just as if we were addressing a federal statute.”) (citation omitted).

as both contracts and as federal law, analyzing them under both contract theory and federal statutory principles.⁶⁹

The Great Lakes States formed the Compact to “protect, conserve, restore, improve, and effectively manage” the waters and resources of the Basin through a “cooperative” and “consistent” framework.⁷⁰ To effectuate this purpose, the Compact regulates withdrawals, consumptive uses, and diversions.⁷¹ First, the Compact bans all new or increased diversions, with three narrow exceptions: the straddling communities exception, the community within a straddling county exception, and the intra-Basin transfer exception.⁷² Under the straddling communities exception, a community that lies only partially within the Basin can apply to divert Great Lakes water even if it is for use in the area of the community that lies outside the Basin.⁷³ Relatedly, the straddling county exception allows a city, town, or equivalent that is located entirely outside the Basin but is wholly within a county that lies partly within the Basin to apply to divert Great Lakes water.⁷⁴ Third, the intra-Basin transfer exception allows the transfer of water from the watershed of one Great Lake into the watershed of another.⁷⁵

For a proposed project to qualify for one of the exceptions, the project proponent must submit an application and obtain approval from the originating party.⁷⁶ The originating party is the state within whose jurisdiction the proponent applies.⁷⁷ After the application is submitted, the proposal enters a graduated regulatory structure: The rigor of the review process increases as the amount of affected water increases.⁷⁸

69. *Id.*; Andersen, *supra* note 66, at 1620 (citing *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 628 (2013)).

70. Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, § 1.3(2), 122 Stat. 3739 (2008). Each of the Great Lakes States enacted statutes to implement the Compact in their respective jurisdictions. *E.g.*, WIS. STAT. § 281.343 (2023–24); MICH. COMP. LAWS. § 324.34201 (2026).

71. Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 4.7–4.12.

72. *Id.* §§ 4.8–4.9.

73. Casey, *supra* note 55, at 318; Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 1.2, 4.9(1).

74. Casey, *supra* note 55, at 318; Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 1.2, 4.9(3).

75. Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 1.2, 4.9(2).

76. *Id.* §§ 4.4–4.5.

77. *Id.* § 1.2. States establish procedures governing how applicants submit proposals. *Id.* § 4.3. These procedures must be in accordance with the Compact. *Id.*

78. A diversion proposal under the straddling community exception must satisfy merely the originating party’s requirements if the diversion will result in a new or increased withdrawal of less than 100,000 gallons per day (gpd) average over any ninety-day period. *Id.* § 4.9(1). But, if the diversion will result in a new or increased withdrawal of between 100,000 gpd and 5,000,000 gpd, then the proposal must also

Regardless of the amount of water affected, the proposal must always obtain approval from the originating party.⁷⁹ The originating party cannot approve the proposal if it is inconsistent with the Compact.⁸⁰ And depending on the type of diversion proposal and the amount of water affected, the proposal must also undergo regional review and obtain approval from the Great Lakes–St. Lawrence River Basin Water Resources Compact Council (the “Compact Council”).⁸¹ The Compact Council comprises members of the Great Lakes States and has the power to conduct collective review as described in article 4 of the Compact.⁸² Consequently, the Compact designs a review structure that requires originating party approval as a baseline and establishes additional procedural safeguards the more significant the proposal is.

Additionally, the Compact regulates withdrawals and consumptive uses from the Basin.⁸³ Like proposals for diversions, a proposal to increase only a withdrawal or a consumptive use (without a diversion)⁸⁴ requires that the proponent submit an application to the originating party.⁸⁵ And like diversion proposals, the originating party cannot approve a proposal for an increased withdrawal or consumptive use if it is inconsistent with the Compact.⁸⁶ But the requirements a withdrawal or a consumptive use proposal must meet differ from those a diversion proposal must satisfy. For instance, proposals to increase a withdrawal or a consumptive use need not show eligibility under one of the

satisfy the exception standard. *Id.* § 4.9(1)(b). If above 5,000,000 gpd, the proposal must also undergo regional review. *Id.* § 4.9(1)(c). The regional body conducts regional review pursuant to the Compact. *Id.* §§ 1.2, 4.5. The regional body comprises members of the Compact Council and representatives of Ontario and Quebec. *Id.* § 1.2. Intra-Basin transfers navigate a similar graduated regulatory structure as straddling community diversions. *Id.* § 4.9(2). A diversion proposal under the straddling county exception, however, must satisfy the originating party’s requirements, satisfy the exception standard, undergo regional review, and obtain Compact Council approval regardless of the water amount. *Id.* § 4.9(3).

79. *Id.* § 4.4.

80. *Id.* § 4.3(3).

81. See *supra* note 78 and accompanying text (describing graduated regulatory structure); Great Lakes–St. Lawrence River Basin Water Resources Compact, § 1.2 (defining “Council”).

82. Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 1.2, 2.1–2.2, 4.7.

83. *Id.* §§ 4.10–4.11.

84. A withdrawal can become a diversion if the water is sent to a watershed outside the Basin. *Id.* § 1.2.

85. *Id.* § 4.4.

86. *Id.* § 4.3.

diversion ban exceptions.⁸⁷ However, these proposals must ensure that all withdrawn water is returned to the source watershed, minus an allowance for consumptive use.⁸⁸ And they must result in no significant adverse impacts to the quantity or quality of Great Lakes waters, water dependent natural resources, or the watershed.⁸⁹ Further, the withdrawal or consumptive use must incorporate environmentally sound and economically feasible water conservation measures, among other requirements.⁹⁰ Thus, a proposal to increase a withdrawal or a consumptive use must meet multiple requirements that are usually less stringent in application than the requirements diversion proposals must meet, but which still establish water conservation safeguards and are designed to ensure that Great Lakes water remains within the Basin.

However, the Compact exempts certain withdrawals from these requirements.⁹¹ The most directly relevant exemption here is the emergency exemption, which permits withdrawals from the Basin “[t]o use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.”⁹² This exemption includes three elements: noncommercial use, short-term use, and serving a humanitarian or emergency response purpose.⁹³ The Compact leaves these terms undefined.⁹⁴

D. Presidential Powers

Presidential powers come from two sources: the Constitution and statutes.⁹⁵ Constitutional presidential powers, including constitutional emergency powers, are the subject of rich debate, much of which lies largely outside the scope of this Comment.⁹⁶ In brief, the Constitution

87. See *id.* §§ 4.8–4.10. Section 4.10 regulates new or increased withdrawals and consumptive uses that occur separate from a diversion, while sections 4.8 and 4.9 apply if the withdrawal or consumptive use occurs as part of a diversion. *Id.*

88. *Id.* § 4.11(1).

89. *Id.* § 4.11(2).

90. *Id.* § 4.11(3). Section 4.11 lists these requirements. *Id.* § 4.11.

91. *Id.* § 4.13.

92. *Id.* § 4.13(2).

93. Caitlyn Lothian, *Planning for Drinking Water in the Great Lakes Basin After Terrorism, Or: How I Stopped Worrying and Loved the Great Lakes Compact*, 16 U. DENV. WATER L. REV. 349, 375 (2013).

94. Great Lakes–St. Lawrence River Basin Water Resources Compact, § 1.2 (providing no definitions for those terms).

95. See generally DAVID S. RUBENSTEIN, MODERN CONSTITUTIONAL LAW § 38:1 (3rd ed. 2026) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)) (“The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”).

96. See, e.g., *id.* § 38:9 (explaining that the constitutionality of presidents’ actions which exert control over the economy without express congressional

grants to the President enumerated powers through clauses like the Executive Vesting Clause⁹⁷ and the Take Care Clause.⁹⁸ The Constitution is also the source of implied presidential powers.⁹⁹ Additionally, the Constitution's design creates procedural and substantive limits on presidential power.¹⁰⁰ Structurally, the Constitution separates powers among the different branches of government.¹⁰¹ The principle of separation of powers controls who within the government exercises authority, as well as what checks apply to the wielders of power.¹⁰² But because the nature of implied powers is vague, the line between what powers are wholly within a single branch is blurry.¹⁰³

The legal field typically turns to Justice Robert Jackson's conceptual framework from *Youngstown Sheet & Tube Co. v. Sawyer*.¹⁰⁴ when analyzing presidential power in relation to congressional power.¹⁰⁵ When the President acts in conjunction with the legislative branch, the two branches together wield the total,

authorization remain “in doubt”); see also Patrick J.D. Griffin, Note, *An Overview of Federal Emergency Powers*, 15 N.Y.U. J.L. & LIBERTY 859, 860–61 (2022) (exploring the theoretical and constitutional basis for federal emergency power); David Landau, *Rethinking the Federal Emergency Powers Regime*, 84 OHIO ST. L.J. 603, 605–06, 610–11 (2023) (arguing that the fragmented emergency powers scheme of the United States contributes to risks of presidential overreach). To touch briefly on constitutional emergency powers, presidents and legal scholars treat the President's war powers as a major source of implied presidential power. See Griffin, *supra*, at 878–79 (citations omitted). Examples include President Lincoln raising troops, blockading the South, and suspending habeas corpus without congressional approval; FDR's internment U.S. citizens of Japanese ancestry during WWII to prevent espionage and sabotage; and Truman seizing steel mills to break a labor strike and to maintain production during the Korean War. *Id.* at 880, 892.

97. U.S. CONST. art. II, § 1, cl. 1.

98. *Id.* § 3.

99. Implied powers are those the Court finds useful in carrying out some express authority but do not themselves lie within an enumerated power. David M. Driesen & William C. Banks, *Implied Presidential and Congressional Powers*, 41 CARDOZO L. REV. 1301, 1321 (2020).

100. See RUBENSTEIN, *supra* note 95, § 37:1; Griffin, *supra* note 96, at 881–82. The Constitution has two conceptual halves: the structural Constitution and the rights-based Constitution. Griffin, *supra* note 96, at 881. Both halves design limits on the exercise of federal emergency power, including exercise of presidential powers. *Id.* at 881–82.

101. RUBENSTEIN, *supra* note 95, § 37:1; Griffin, *supra* note 96, at 889–90.

102. RUBENSTEIN, *supra* note 95, § 37:1; Griffin, *supra* note 96, at 889–90.

103. RUBENSTEIN, *supra* note 95, § 37:1; Griffin, *supra* note 96, at 889–90.

104. 343 U.S. 579 (1952).

105. Driesen & Banks, *supra* note 99, at 1306; *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 692 (2026) (Kavanaugh, J., dissenting) (discussing Justice Jackson's analytical framework in *Youngstown*).

constitutionally maximal power of the entire federal government.¹⁰⁶ When the President acts in absence of either a congressional grant or denial of authority, there is a “zone of twilight” in which the President and Congress may have concurrent authority, or in which the distribution of power is uncertain.¹⁰⁷ In this zone of twilight, congressional inertia or inactivity may practically enable, if not invite, independent presidential action.¹⁰⁸ Finally, when the President acts contrary to the will of Congress, the President’s authority rests exclusively on the enumerated Article II powers.¹⁰⁹ Thus, under this framework, the President must generally show an implied power directly and solely sourced from an enumerated power in Article II when exercising power without authorization or delegation from Congress.¹¹⁰

Statutory presidential powers arise where Congress delegates powers to the President via statute. For instance, Congress has delegated powers to the President through the DPA,¹¹¹ and it has delegated certain emergency powers to the President through the National Emergencies Act (NEA).¹¹² The NEA is the most invoked statutory framework for emergency powers since its passage in 1976.¹¹³ The relevant text states: “With respect to acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency.”¹¹⁴ Because the statute lacks a definition for “national emergency,” it effectively authorizes the President to “invoke this authority capaciously to address a remarkably diverse set of emergencies.”¹¹⁵ For instance, presidents have declared emergencies on issues ranging from the 9/11 terrorist attacks,¹¹⁶ to the COVID-19

106. Griffin, *supra* note 96, at 890 (citing *Youngstown Sheet & Tube Co.*, 343 U.S. at 635–41 (Jackson, J., concurring)).

107. *Youngstown Sheet & Tube Co.*, 343 U.S. at 637 (Jackson, J., concurring).

108. *Id.* (Jackson, J., concurring).

109. *Id.* (Jackson, J., concurring).

110. Griffin, *supra* note 96, at 890–91 (citing *Youngstown Sheet & Tube Co.*, 343 U.S. at 637–38 (Jackson, J., concurring)); see *Medell n v. Texas*, 552 U.S. 491, 524–25 (2008) (applying Justice Jackson’s conceptual framework).

111. See *infra* Section I.E.

112. 50 U.S.C. § 1621(a).

113. See Griffin, *supra* note 96, at 903.

114. 50 U.S.C. § 1621(a).

115. Mark P. Nevitt, *Is Climate Change a National Emergency?*, 55 U.C. DAVIS L. REV. 591, 618 (2021).

116. *Declared National Emergencies Under the National Emergencies Act, 1978–2018*, BRENNAN CTR. FOR JUST. (Aug. 14, 2026), <https://www.brennancenter.org/sites/default/files/analysis/NEA%20Declarations.pdf> [<https://perma.cc/XWA4-WEF4>].

pandemic,¹¹⁷ to national energy emergencies.¹¹⁸ The NEA itself is procedural, not substantive; it governs how the President can declare an emergency, instead of specifying delegated powers the President has upon declaring an emergency.¹¹⁹ Consequently, the primary utility in declaring an emergency under the NEA is that the President can then exercise powers under the statutory provisions which become available.¹²⁰

E. The Defense Production Act

The DPA is a Cold-War-era statute (1950) with ancestry in World-War-II-era legislation.¹²¹ Congress passed the DPA to “ensure the vitality of the domestic industrial base.”¹²² The Act aims to “promote industrial resources preparedness” and to “provide for the national security” through the “development of domestic productive capacity.”¹²³ Domestic productive capacity should meet “essential national defense needs that can result from emergency conditions” and “unique technological requirements.”¹²⁴ The DPA itself contains numerous provisions, of which this Comment will focus on 50 U.S.C. §§ 4511, 4512, 4531, and 4533 because they connect most directly to the government-driven data center development and operation examined here.

Section 4511 delegates certain powers to the President once they make two findings: (1) that a particular material is scarce, critical, and essential to national defense; and (2) that the nation cannot meet its national defense requirements but for the scarce and critical material and without significantly disturbing the normal distribution of the

117. Proclamation No. 9994, 85 Fed. Reg. 15337 (Mar. 13, 2020).

118. Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

119. 50 U.S.C. § 1621(a).

120. *See generally* BRENNAN CTR. FOR JUST., A GUIDE TO EMERGENCY POWERS AND THEIR USE (2019), https://www.brennancenter.org/sites/default/files/legislation/Emergency%20Powers_Printv2.pdf [<https://perma.cc/TCJ3-CZTN>] (listing provisions that become available upon an emergency declaration). For instance, one of the emergency-triggered statutes that “unlocks” is 50 U.S.C. §§ 1701–07. Known as the International Emergency Economic Powers Act (IEEPA), those provisions confer broad authority to regulate commercial transactions involving designated entities. *Id.* at 42.

121. JOEL DODGE, JOEL MICHAELS, LENORE PALLADINO & N. TUCKER, *Progressive Preemption: How the Defense Production Act Can Override Corporate Extraction, Boost Worker Power, and Expedite the Clean Energy Transition*, ROOSEVELT INST., at 7 (Dec. 9, 2022), <https://ssrn.com/abstract=5245861> [<https://perma.cc/6J58-VG69>].

122. 50 U.S.C. § 4502(a)(2).

123. *Id.* § 4502(a)(2)–(3).

124. *Id.* § 4503(a)(3).

material in the civilian market to such a degree as to create appreciable hardship.¹²⁵ Upon these findings, § 4511 authorizes the President to prioritize “contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense” over “any other contract or order.”¹²⁶ Further, the statute empowers the President to “allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.”¹²⁷ The definition of “national defense” includes “programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity.”¹²⁸ In other words, once the President makes the two requisite findings, they can require performance of contracts or orders deemed necessary or appropriate for national defense; require priority over other contracts; and allocate materials, services, and facilities to promote the national defense.

Section 4512 prohibits persons from hoarding materials that (1) the President designates scarce under § 4511, or (2) the supply of which would be threatened by excessive accumulation.¹²⁹ Under either prong, the statute prohibits persons from accumulating (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices higher than prevailing market prices.¹³⁰ The President may prescribe conditions as they deem necessary as to when persons accumulate materials in excess of the reasonable demands of business, personal, or home consumption.¹³¹

Third, § 4531 authorizes the President to guarantee loans to finance “production capabilities . . . deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defense.”¹³² While the provision proceeds to list criteria the President must determine exist before guaranteeing loans, those criteria need not be satisfied “during a period of national emergency declared by Congress or the President.”¹³³ Thus, § 4531 enables the President to deem certain products and services essential to the national defense and to incentivize private financing to businesses that support those products

125. *Id.* § 4511(b).

126. *Id.* § 4511(a).

127. *Id.*

128. *Id.* § 4552(14).

129. *Id.* § 4512.

130. *Id.*

131. *Id.*

132. *Id.* § 4531(a)(1).

133. *Id.* § 4531(a)(2).

and services. Under § 4531(a)(2), a declared emergency further streamlines this process.

Fourth, § 4533 authorizes a host of other presidential actions that “create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense.”¹³⁴ Notably, § 4533 authorizes making “provisions . . . for the increased use of emerging technologies . . . and the rapid transition of emerging technologies . . . from commercial research and development to national defense applications.”¹³⁵ In other words, § 4533 authorizes the President to accelerate emerging technologies for national defense purposes.

II. THE SHOWDOWN BETWEEN PRESIDENTIAL POWERS AND THE GREAT LAKES COMPACT

This Part contends that no President can unilaterally increase withdrawals, consumptive uses, or diversions to drive data center deployment in ways contrary to the Compact. First, the most directly applicable intra-Compact route—the emergency exemption—does not provide a plausible channel. And the most directly relevant path outside the Compact—the DPA—likewise fails because it does not override or repeal the Compact’s provisions.

A. Expansive Presidential Powers Do Not Trigger the Compact’s Emergency Exemption

The Trump Administration has ratcheted up the exercise of presidential emergency powers in ways quantitatively and qualitatively distinct from prior administrations.¹³⁶ Quantitatively, the second Trump Administration invoked eight emergencies in its first one hundred days of office alone—more than any other modern administration has in the

134. *Id.* § 4533(a)(1).

135. *Id.*

136. See David K. Young, John Gardner & Mallory Block, *National Emergencies: Presidential Authority and Trends in Usage*, THE CONF. BD. (June 16, 2025), <https://www.conference-board.org/research/ced-policy-backgrounders/national-emergencies-presidential-authority-and-trends-in-usage> [<https://perma.cc/FES9-K7B5>] (describing how the second Trump Administration declared eight emergencies in its first one hundred days of office alone); see also Allan C. Stam, *The “Ratchet Effect”: Presidents, Emergency Powers, and the Crisis of Institutional Faith*, UVA: MILLER CTR. (Sep. 10, 2025), <https://millercenter.org/conference-on-the-presidency-2025/essays/ratchet-effect-presidents-emergency-powers-and-crisis-institutional-faith#sidenote-1> [<https://perma.cc/Q8X3-NZ6G>] (stating that “presidential recourse to emergency powers” accelerates institutional decay because it normalizes crisis governance—a “ratchet effect” takes hold as “[e]ach president’s use of unilateral power sets a new, marginally lower threshold for its use by subsequent administrations, regardless of party”).

same period.¹³⁷ Qualitatively, its exercise of emergency powers departs from historical uses in at least three ways: First, while most past uses targeted geographically-specific crises, President Trump has routinely invoked emergency powers to target geographically nonspecific emergencies.¹³⁸ Second, unlike most past uses, he has invoked emergency powers to address issues of primarily domestic policy, not issues of international policy.¹³⁹ Third, he is the only President to invoke emergency powers to justify imposing tariffs against United States allies.¹⁴⁰ The Trump Administration's actions indicate that it views emergency powers as options to invoke in order to further its political agenda, rather than as powers to use only in extraordinary circumstances.¹⁴¹

This distinctly cavalier approach to exercising emergency powers, combined with the Trump Administration's drive to promote "AI dominance,"¹⁴² warrants consideration of the following scenario: The President seeks to unilaterally increase withdrawals, consumptive uses, or even diversions of water from the Basin in order to accelerate data center deployment. To the extent these actions will result in a new or increased diversion, then the proponent (here the President or an agency) must submit accompanying proposals to the originating party.¹⁴³ And the proponent must show that these proposals satisfy the Compact's numerous requirements, including eligibility for one of the three exceptions to the diversion prohibition.¹⁴⁴ Even if the President's actions resulted in only new or increased withdrawals or consumptive uses, the proponent must still submit proposals and show they satisfy the applicable requirements.¹⁴⁵ Applicable requirements include that all

137. Young, Gardner & Block, *supra* note 136.

138. CHRISTOPHER A. CASEY, JENNIFER K. ELSEA & LIANA W. ROSEN, CONG. RSCH. SERVS., R45618, *THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE* 22–26 (2025).

139. PBS NEWS, *WATCH: Judy Woodruff Joins UVA Discussion on Presidents and Emergency Powers*, at 23:40 (YouTube, Sep. 25, 2025), <https://www.pbs.org/newshour/nation/watch-live-judy-woodruff-joins-uva-discussion-on-presidents-and-emergency-powers> (on file with Wisconsin Law Review).

140. *Id.* at 18:31; see Jeannie Suk Gersen, *How Far Can Donald Trump Take Emergency Power?*, THE NEW YORKER (Nov. 6, 2025), <https://www.newyorker.com/news/the-lede/how-far-can-donald-trump-take-emergency-power> [<https://perma.cc/278N-AURQ>] ("No President has previously used [IEEPA] to impose tariffs, but this year Trump invoked it to declare that the trafficking of drugs into the country . . . pose[s] unusual and extraordinary threats to our security and economy.").

141. PBS NEWS, *supra* note 139, at 24:30.

142. Exec. Order No. 14,179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

143. Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, § 4.4, 122 Stat. 3739 (2008).

144. *Id.* §§ 4.8–4.9.

145. See *supra* notes 76–77 and accompanying text.

withdrawn water must be returned to the source watershed (minus an allowance for consumptive use), and that no significant adverse impacts result to the quantity or quality of Great Lakes waters, water dependent natural resources, or the watershed.¹⁴⁶ Further, approval must be obtained from the originating party that contains the project.¹⁴⁷

The President may try to bypass those provisions by attempting to trigger the Compact's emergency exemption, potentially also after declaring an emergency under the NEA.¹⁴⁸ As the Trump Administration has pushed legal bounds by invoking emergency powers to impose sweeping tariffs,¹⁴⁹ so too might it test emergency powers here. This Section argues that the President cannot exploit the Compact's emergency exemption to increase withdrawals or consumptive uses of water from the Basin for data center operation because data centers are commercial in nature, require water for long-term use, and do not support the humanitarian or emergency response purposes contemplated under the Compact.

1. Withdrawals to Run Data Centers Are for a Commercial Project

Withdrawals of water from the Basin to operate data centers fall outside the "non-commercial project" element because data centers provide services for profit.¹⁵⁰ Courts enforce interstate compacts according to their terms.¹⁵¹ Hence, when examining a presidential emergency declaration seeking to leverage the emergency exemption to accelerate data center deployment, courts will consider whether the withdrawal is for a "non-commercial project."¹⁵² Because the Compact leaves "non-commercial" undefined, courts will give the term its plain

146. See *supra* notes 88–90 and accompanying text.

147. See *supra* Section I.C. (explaining the requirements a proponent must satisfy under the Compact to obtain approval for an increased withdrawal or consumptive use).

148. The emergency exemption exempts only new or increased withdrawals, although section 4.11 allows withdrawals to include an allowance for consumptive use. Great Lakes–St. Lawrence River Basin Water Resources Compact, §§ 4.11–4.13. The emergency exemption does not exempt diversions. See *id.* § 4.13(2).

149. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 635–41 (2026).

150. Vivek Narasayya & Surajit Chaudhuri, *Multi-Tenant Cloud Data Services: State-of-the-Art, Challenges and Opportunities*, 2022 PROC. 2022 INT'L CONF. ON MGMT OF DATA 2465, 2466–67.

151. *Kansas v. Nebraska*, 574 U.S. 445, 455–56 (2015) (“[An interstate compact], having received Congress’s blessing, counts as federal law. . . . [T]hat legal status underscores a limit on [the Court’s] enforcement power: [the Court] may not order relief inconsistent with a compact’s express terms.”) (cleaned up).

152. Great Lakes–St. Lawrence River Basin Water Resources Compact, § 4.13(2).

meaning.¹⁵³ The plain meaning of “commercial” is “of, relating to, or involving the selling of goods or services for profit.”¹⁵⁴

Most data centers, including all hyperscale data centers (hyperscalers), are commercial because their operators charge users when providing services.¹⁵⁵ To be sure, in-house data centers operated solely for noncommercial purposes may satisfy the noncommercial element. But data centers, particularly hyperscalers, service a variety of customers to maximize revenue.¹⁵⁶ Companies are likely to consider an uneconomical data center which provides services only for noncommercial uses.¹⁵⁷ Therefore, the circumstances that might satisfy the noncommercial element have yet to arise, and withdrawals of water for the purpose of operating data centers are unlikely to satisfy the noncommercial use element.

2. Withdrawals to Run Data Centers Are Not for a Short-Term Project

Withdrawals of water from the Basin to operate data centers cannot be considered a short-term project because data centers continuously use water for long periods of time.¹⁵⁸ Indeed, a hyperscale data center can use between one and five million gallons of water daily to cool servers.¹⁵⁹ Because it evaporates, most of that water does not return to the watershed.¹⁶⁰ Even data centers that use recirculation technology,

153. See, e.g., *Learning Res., Inc.*, 146 S. Ct. at 642 (applying plain meaning of “regulate”).

154. *Commercial*, BLACK’S LAW DICTIONARY (12th ed. 2024).

155. See generally Mary Zhang, *Hyperscale Data Centers: Who Are the Hyperscalers?*, DGT FINANCE, <https://dgtlinfra.com/hyperscale-and-hyperscalers/> [https://perma.cc/48NV-WGMU] (last visited July 27, 2026) (explaining that hyperscale data centers are operated by large companies called “hyperscalers” and listing those companies).

156. See Narasayya & Chaudhuri, *supra* note 150 (“Multi-tenancy is a key tenet for public cloud data service providers since it allows consolidation of tenants (i.e., databases) by sharing resources, which reduces cost.”).

157. *Id.* But modular data centers, which are portable and smaller than conventional data centers, may be more likely to economically service only one tenant. See Brian T. Horowitz, *How Modular Data Centers Provide Options for State and Local Governments*, STATETECH (Nov. 25, 2024), <https://statetechmagazine.com/article/2024/11/modular-data-centers-options-state-local-perfcon> [https://perma.cc/J8Z4-64C9]. While governments may increase their use of modular data centers for certain services, like non-commercial national defense or emergency response, in the future, this use has yet to become widespread. See *supra* note 155 and accompanying text.

158. See discussion *supra* Section I.A.

159. See discussion *supra* Section I.A.

160. See VOLZER, ITURBIDE-CHANG, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 10–11. This analysis would likely change if the hyperscale data center utilized solely air cooling or an alternative cooling method, like immersion cooling in

like closed loop cooling systems, use the water for long periods and eventually replace the water due to scaling and changes in pH.¹⁶¹ Thus, withdrawals of water to run data centers do not satisfy the short-term project element.

3. Withdrawals to Run Data Centers Are Not for Humanitarian or Emergency Response Purposes

Withdrawals of water from the Basin to operate data centers fall outside both humanitarian and emergency response purposes because data centers use water primarily as server coolant, rather than to promote human welfare or to address emergencies like firefighting or replacing contaminated water.

Use of water as server coolant generally does not constitute a humanitarian purpose. “Humanitarian” means “showing concern for the welfare of humanity” or “being a situation in which many human lives are in danger of harm or death.”¹⁶² Current use of water as coolant does not directly show concern for the welfare of humanity, nor does it address a situation where many human lives are in danger of harm or death. To be sure, one could argue that the coolant allows the data center to operate, and the data center provides services to users like hospitals that in turn promote humanitarian interests.¹⁶³ But it stretches the Compact’s language to assert that “humanitarian” encompasses those uses because they are multiple degrees removed from the actual purpose of the withdrawal—to cool servers. This argument also runs into other obstacles; for instance, the proliferation of data centers itself poses significant public health implications.¹⁶⁴ And as explained above, data centers are unlikely to only service users with

dielectric fluids, because the data center would withdraw much less water for direct consumption. See Yanez-Barnuevo, *supra* note 24.

161. VOLZER, ITURBIDE-CHANG, CUNNINGHAM, GEERTSMA & LARSEN, *supra* note 1, at 10.

162. *Humanitarian*, THE AM. HERITAGE DICTIONARY, <https://ahdictionary.com/word/search.html?q=humanitarian> [<https://perma.cc/Q7DD-84AK>].

163. Shiva Maleki Varnosfaderani & Mohamad Forouzanfar, *The Role of AI in Hospitals and Clinics: Transforming Healthcare in the 21st Century*, BIOENGINEERING, Apr. 2024, at 1–2, <https://www.mdpi.com/2306-5354/11/4/337> [<https://doi.org/10.3390/bioengineering11040337>] (describing multiple use cases for AI in healthcare settings, including optimizing operational efficiency, enhancing the accuracy of image analysis in radiology and pathology, and improving telemedicine).

164. Yu Tao & Peng Gao, *Global Data Center Expansion and Human Health: A Call for Empirical Research*, ECO-ENVIRONMENT & HEALTH, Sep. 2025, at 1, <https://www.sciencedirect.com/science/article/pii/S2772985025000262?via%3Dihub> [<https://doi.org/10.1016/j.eehl.2025.100157>] (“A recent model indicates that the U.S. data centers in 2030 could contribute to nearly 1300 deaths annually, resulting in a public health burden of more than \$20 billion.”).

humanitarian interests because most data centers, especially hyperscalers, are operated by companies that service multiple customers to maximize revenue.¹⁶⁵

Furthermore, courts are likely to give “humanitarian” a more limited meaning in applying widely used canons of statutory construction like *noscitur a sociis*.¹⁶⁶ Translated as “it is known from its associates,” *noscitur a sociis* counsels courts to give words like “humanitarian” “more precise content by the neighboring words with which [they are] associated.”¹⁶⁷ Hence, courts will likely interpret “humanitarian” in a way similar to “firefighting” and “emergency response purposes,” both of which target short-term emergencies.¹⁶⁸ And as explained previously, server coolant is not a short-term use. Rather, in applying the canon, it becomes clear that the purpose here is more like withdrawing water to replace contaminated drinking water following severe flooding or other natural disaster.

Likewise, use of water as sever coolant falls outside “emergency response purposes.” “Emergency” means “an urgent need for assistance or relief.”¹⁶⁹ “Response” is “something done as a reaction.”¹⁷⁰ And “purpose” means “the reason something is done or used.”¹⁷¹ Hence the ordinary meaning of emergency response purposes is acting to respond to an urgent need for assistance or relief. The use of water as server coolant falls outside that definition because it is a continuous use for non-urgent interests (like facilitating supply chain operations).¹⁷²

Additionally, like “humanitarian,” courts will apply canons in interpreting “emergency response purposes.” Particularly applicable is the canon *ejusdem generis*, which means “of the same kind.”¹⁷³ *Ejusdem generis* instructs that where general words follow specific words, like “firefighting,” courts should interpret the general words as

165. See *supra* note 156 and accompanying text.

166. NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:16 (7th ed. 2014).

167. *Id.*

168. Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, § 4.13(2), 122 Stat. 3739 (2008).

169. *Emergency*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/emergency>.

170. *Response*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/response>.

171. *Purposes*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/purposes>.

172. *The AI Dossier: 80+ AI Use Cases*, DELOITTE, <https://www.deloitte.com/us/en/what-we-do/capabilities/applied-artificial-intelligence/content/ai-use-cases.html> [<https://perma.cc/F94T-MU52>] (listing 86 AI use cases, including autonomous supply chain operations).

173. SINGER & SINGER, *supra* note 166, § 47:17.

encompassing only things similar to those enumerated by the preceding specific words.¹⁷⁴ Because the purpose element of the emergency exemption lists specific terms, courts should interpret the general phrase “emergency response purposes” to embrace only those purposes like firefighting and humanitarian aid.¹⁷⁵ As discussed above, server coolant is unlike firefighting or short-term humanitarian responses. Therefore, in applying the canon, a withdrawal of water for use as server coolant falls outside “emergency response purposes.”

But what about withdrawals for data centers that provide services which themselves fall under “emergency response purposes?” For instance, a data center provides services to emergency response teams. Would the withdrawal then satisfy “emergency response purposes?” Probably not. Like the response to the parallel argument regarding the “humanitarian” sub-element, the multiple degrees of separation between the withdrawal’s purpose—to provide server coolant—and servicing emergency response teams, at best, raises uncertainty about its sufficiency. But even if a court decided the withdrawal was sufficiently connected to an emergency response purpose, no data center is likely to provide only these services for the same reasons as explained above: Data centers, especially hyperscalers, provide a variety of services to multiple customers; they do not only provide services for emergency response purposes (like aiding an emergency response team).¹⁷⁶ Therefore, the circumstances that approach satisfying the emergency response purposes sub-element have yet to arise.

Moreover, even if a court concluded that a federal emergency declaration alongside a presidential directive to use data centers for only emergency response was sufficient to place the water withdrawals under the humanitarian or emergency response purposes sub-elements, the withdrawal must still satisfy the other two elements: noncommercial use and short-term basis. As discussed previously, no withdrawal for a conventional data center is likely to satisfy those elements because declaring an emergency does not alter the commercial or long-term nature of the withdrawal.¹⁷⁷ Therefore, courts are not likely to find that the President can exploit the Compact’s emergency exemption to justify withdrawals for data centers, even under a declared emergency.

174. *Id.* § 47:16.

175. Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, § 4.13(2) 122 Stat. 3739 (2008).

176. *See supra* note 156 and accompanying text (explaining that data centers, especially hyperscalers, are unlikely to service only one customer); *but see supra* note 157 and accompanying text (acknowledging modular data centers).

177. To be sure, we could attempt to design a hypothetical that would be more likely to satisfy these remaining elements, such as a government-owned modular data center deployed solely for disaster relief on a short-term basis. *See supra* note 157 and accompanying text.

B. Presidential Powers Under the DPA Do Not Override the Compact

Alternatively, or in addition to the emergency exemption route, the President may seek to employ the DPA to increase withdrawals, consumptive uses, or diversions to accelerate data center deployment. The DPA seemingly provides a direct, flexible route to drive domestic industry.¹⁷⁸ And while the President need not declare an emergency to exercise DPA powers,¹⁷⁹ the two frequently occur together.¹⁸⁰ Declaring an emergency affords the President greater flexibility under the DPA, and advisors may suggest declaring an emergency as part of a broader strategy to defend presidential action.¹⁸¹ Consequently, as the Trump Administration has pushed legal boundaries by exercising presidential powers to impose tariffs¹⁸² and by reviving power plants against states' wills,¹⁸³ so too might it test the DPA—potentially under an emergency declaration—in an attempt to override or repeal the Compact.

The DPA provisions most relevant to accelerating data center deployment are 50 U.S.C. §§ 4511, 4512, 4531, and 4533. To illustrate their application, consider the following scenario: The President claims that water-delivery infrastructure (pipes, pump systems, treatment systems, and cooling systems) constitutes “materials, services, or facilities” under § 4511.¹⁸⁴ He then issues executive orders requiring states—regardless of their consent—and state

178. See JAMIE BAKER, CTR. FOR SEC. & EMERGING TECH., A DPA FOR THE 21ST CENTURY: SECURING AMERICA’S AI NATURAL SECURITY INNOVATION BASE 3 (2021), https://cset.georgetown.edu/publication/a-dpa-for-the-21st-century/?utm_source=perma.cc/C4EK-MHBZ (arguing that the DPA “establishes a national mobilization capacity to bring the industrial might of the U.S. to bear on broader national security challenges,” including artificial intelligence); DODGE, MICHAELS, PALLADINO & TUCKER, *supra* note 121, at 7–10.

179. See generally Defense Production Act, 50 U.S.C. § 4501 (containing no language that requires an emergency declaration to use most DPA provisions).

180. See, e.g., *Buljic v. Tyson Foods, Inc.*, 22 F.4th 730, 734–36 (8th Cir. 2021) (illustrating how the President declared a national emergency and exercised DPA powers to spur domestic meat production); see also Exec. Order No. 14156, 90 Fed. Reg. 8433, 8433–34, 8436 (Jan. 20, 2025) (directing federal agencies to use “any . . . lawful authorities they may possess” to drive domestic energy production, including the DPA).

181. See, e.g., 50 U.S.C. § 4531(a)(1) (explaining that when Congress or the President has declared a national emergency, the President need not make otherwise-required determinations about how the loan guarantee will serve national defense purposes).

182. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 640–46 (2026).

183. See Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025) (ordering coal and natural gas power plants to continue running despite longstanding state plans to close them); Claire Brown & Harry Stevens, *Coal and Gas Plants Were Closing. Then Trump Ordered Them to Keep Running*, N.Y. TIMES (June 6, 2025), <https://www.nytimes.com/2025/06/06/climate/trump-coal-gas-plants-energy-emergency.html>.

184. 50 U.S.C. § 4511(a).

utilities to prioritize water infrastructure construction that supports data center operations he deems “necessary to promote the national defense.”¹⁸⁵ Along with § 4511, the President exercises § 4512 to claim that processed water suitable for server coolant is “scarce” and essential to operate data centers.¹⁸⁶ Additionally, he invokes § 4531 to fund the expansion of water-infrastructure capacity and to subsidize utilities that deliver water to prioritized data centers.¹⁸⁷ And he uses § 4533(a)(1) to further justify accelerating data center deployment—particularly AI data centers as “emerging technologies”—because doing so will expand domestic industrial base capabilities essential for the national defense.¹⁸⁸ The President has found a key toolkit for driving AI dominance: the DPA.¹⁸⁹

But upon legal challenge, this Comment contends that these actions contradict the Compact—a contract under the Compact Clause¹⁹⁰ and a federal statute.¹⁹¹ Should the President assert that the DPA overrides or repeals the Compact, courts, under the presumption against implied repeals, will require him to point to “clearly expressed congressional intent” that the DPA indeed displaces the Compact.¹⁹² No such clear statement exists.¹⁹³ And any irreconcilability claim would fail.¹⁹⁴ Ultimately, this Comment contends that no President can invoke the DPA to override the Compact’s withdrawal, consumptive use, or diversion provisions. Rather, presidential action to increase

185. *Id.*

186. *Id.* § 4512.

187. *Id.* § 4531(a). And during a declared national emergency, the President can forego otherwise necessary determinations. *Id.* § 4531(a)(2).

188. *Id.* § 4533(a)(1).

189. Although this scenario is hypothetical, recent presidential exercise of the DPA to drive the President’s energy policy inspired its design. *See* Exec. Order No. 14391, 91 Fed. Reg. 13199 (Mar. 18, 2026) (delegating authority to Secretary of Commerce and the Secretary of Energy to direct offshore oil company to seek to restore operations of California oil pipeline despite contrary California law).

190. U.S. CONST. art. I, § 10, cl. 3.

191. *See* Benjamin M. Barczewski & Valerie C. Brannon, CONG. RSCH. SERV., LSB11084, CLEAR STATEMENT RULES, TEXTUALISM, AND THE ADMINISTRATIVE STATE 1 (2023); Andersen, *supra* note 66, at 1620 (citing *Tarrant Reg’l Water Dist. v. Herrmann*, 569 U.S. 614, 628 (2013)); *see also* *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (examining whether Secretary of the Interior violated the statutory language “now under Federal jurisdiction” in the Indian Reorganization Act and applying clear congressional statement analysis).

192. *Carcieri*, 555 U.S. at 395 (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). The list of questions this Comment examines is not exhaustive. Other questions include whether challengers can satisfy applicable justiciability requirements like standing and how courts would examine federal infringement on states’ authority over the waters they hold in public trust.

193. *See infra* Section II.B.2.a.

194. *See infra* Section II.B.2.b.

withdrawals, consumptive uses, and diversions must occur in collaboration with the Great Lakes States in which those projects occur.

1. The President's Actions Would Contradict the Compact

The President's actions and their claimed DPA anchor violate the Compact's statutory language, and they contradict the Great Lakes States' intent in forming the Compact. Because courts interpret interstate compacts as federal statutes for the purpose of judicial review, contradicting the Compact's provisions contradicts federal law.¹⁹⁵

The President's actions violate the Compact's language. Consider the exercise of § 4511 previously: The President asserts that the DPA delegates to him the power to issue orders requiring states and utilities to increase withdrawals, consumptive uses, or diversions without obtaining approval from the originating party—the state containing the project.¹⁹⁶ And the President takes action according to that assertion to accelerate data center deployment. Because sections 4.3 and 4.4 of the Compact require originating party approval, that action violates their requirements.¹⁹⁷ And to the extent the President seeks a new or increased diversion, he also violates the Compact's diversion ban unless the proposed diversion falls within one of three exceptions: the straddling communities exception, the community within a straddling county exception, or the intra-Basin transfer exception.¹⁹⁸ Even then, the diversion proposal must meet procedural requirements, which the President's actions above do not insofar as they evade the originating party approval requirement.¹⁹⁹ This analysis for § 4511 likewise applies to the exercise of §§ 4512, 4531, and 4533 because action under their invocation also contradicts sections 4.3 and 4.4 and, to the extent diversions occur, the diversion ban. Therefore, the President's actions violate the Compact's statutory language.

The Great Lakes States' intent in forming the Compact reaffirms this result. The Great Lakes States formed the Compact to design a collective resource management framework that protects, conserves,

195. Andersen, *supra* note 66, at 1620–21 (citing Sonya F. Palay, Note, *Muddy Waters: Congressional Consent and the Great Lakes–St. Lawrence River Basin Water Resources Compact*, 36 HASTINGS CONST. L.Q. 717, 727 (2009)); *Virginia v. Maryland*, 540 U.S. 56, 66 (2003). Courts interpret interstate compacts using federal statutory principles and contract theory. *See supra* notes 66–69 and accompanying text.

196. Great Lakes–St. Lawrence River Basin Water Resources Compact, Pub. L. No. 110–342, § 1.2, 122 Stat. 3739 (2008).

197. *Id.* §§ 4.3–4.4.

198. *Id.* §§ 4.8–4.9.

199. *Id.* §§ 4.3–4.4; *see supra* Section I.C.

restores, improves, and effectively manages the Basin.²⁰⁰ Within this collective framework, the states also sought to retain “State management authority over [w]ater management decisions within the Basin.”²⁰¹ By exercising the DPA to accelerate withdrawals, consumptive uses, or even diversions contrary to states’ interests, the President blatantly disregards their express intent: he undermines the collaborative resource management framework and contravenes their objective to retain authority to manage water within their territory. Therefore, his actions violate the Compact’s statutory language and contradict the states’ contractual intent.

2. The President Cannot Point to a Clear Statement or Show Irreconcilability

Because the President’s DPA actions contradict the Compact, the President must show one of the following to overcome the presumption against implied repeals: (1) “clearly expressed congressional intention” that the later act displaces the earlier,²⁰² or (2) that the DPA and the Compact are irreconcilable.²⁰³ Only when the President overcomes that presumption will courts interpret a DPA provision to repeal a provision in the Compact.²⁰⁴ The DPA provides no clear congressional statement

200. See *supra* Section I.B.

201. Great Lakes–St. Lawrence River Basin Water Resources Compact, § 1.3(2)(d).

202. *Carcieri v. Salazar*, 555 U.S. 379, 395 (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). In examining which statute came first, the DPA or the Compact, federal courts will examine their enactment dates. See *United States v. Casson*, 434 F.2d 415, 417–419 (D.C. Cir. 1970) (holding that a bill becomes law on the date the President signs it into law); see also *United States v. Clizer*, 464 F.2d 121, 123 n.2 (9th Cir. 1972) (“In the absence of an express provision in the statute itself, an act takes effect on the date of its enactment.”). For statutes signed by the President, the enactment date is the date and time of presidential signature. *Casson*, 434 F.2d at 417–19. After the DPA expired in late 2025, the President signed Congress’s reauthorization of the statute in February 2026. See National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, § 8101, 139 Stat. 718, 1837 (2025) (amending the DPA’s expiration provision from “September 30, 2025” to “September 30, 2026”). Consequently, the DPA’s enactment date is in early 2026, after Congress ratified the Compact into federal law. CAMERON M. KEYS, ADAM G. LEVIN & ALEXANDRA G. NEENAN, CONG. RSCH. SERV., IN12484, REAUTHORIZING THE DEFENSE PRODUCTION ACT 2 (2026), <https://www.congress.gov/crs-product/IN12484> [<https://perma.cc/3KS5-KXZ8>]; see Casey, *supra*, note 55, at 317 (“President George W. Bush signed the Compact in 2008 and Congress passed a corresponding bill approving the agreement The Compact became effective on December 8, 2008.”). Thus, the Compact has an earlier enactment date than the DPA.

203. See *Carcieri*, 555 U.S. at 395 (quoting *Branch v. Smith*, 538 U.S. 254, 273 (2003) (plurality opinion)).

204. *Id.* (quoting *Branch*, 538 U.S. at 273 (plurality opinion)); *Morton*, 417 U.S. at 550.

that displaces the Compact's provisions. And the Compact and the DPA are far from irreconcilable. Therefore, the DPA does not repeal the Compact's provisions.

a. The DPA Provides No Clear Statement That Displaces the Compact

No DPA provision provides a clear congressional statement that displaces the Compact. The strongest candidate is § 4533(b), which provides, in relevant part, "purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law."²⁰⁵ Like notwithstanding clauses in other statutes, "without regard to" in the DPA seems to empower the President to override conflicting state and even federal law in carrying out DPA provisions.²⁰⁶ So why does this phrase not constitute a sufficiently clear statement to override the Compact?

Because the text in § 4533(b) cabins that without regard to clause to apply only to "purchases and commitments to purchase and sales" under § 4533(a)(1)(A).²⁰⁷ In other words, § 4533(b) allows the President to disregard other laws only in making purchases, commitments to purchase, and sales; he must still adhere to other laws in exercising all the other provisions within § 4511, § 4512, § 4531, and § 4533.²⁰⁸ Thus, the § 4533(b) without regard to clause does not apply to the provisions most relevant to the government-driven data center deployment discussed here. For instance, the key provisions in § 4533 are those that authorize the President to "increase use of emerging technologies" and to drive "the rapid transition of emerging technologies."²⁰⁹ Because § 4533(a)(1)(A) does not cover those provisions, the without regard to clause in § 4533(b) does not apply.²¹⁰ Thus, if the court did find that the without regard to clause constituted a clear statement, it would apply only to a limited part of the DPA that is not directly relevant here. Therefore, the without regard to clause in

205. 50 U.S.C. § 4533(b).

206. See, e.g., *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) ("Likewise, the Courts of Appeals generally have interpreted similar notwithstanding language to supersede all other laws, stating that a clearer statement is difficult to imagine.") (cleaned up); see also DODGE, MICHAELS, PALLADINO & TUCKER, *supra* note 121, at 10 (arguing that certain DPA sections empower the President to override other limitations of existing law when initiating strategically important projects).

207. 50 U.S.C. § 4533(b).

208. *Id.* § 4533(a)(1)(A); see *id.* §§ 4511, 4512, 4531, 4533 (containing no other applicable "without regard to" or applicable "notwithstanding" clauses).

209. *Id.* § 4533(a)(1)(D).

210. For similar reasoning, see *Carcieri v. Salazar*, 555 U.S. 379, 394–95 (2009) (rejecting the argument that 25 U.S.C. § 2202, part of the Indian Land Consolidation Act, repealed the restrictions on the Secretary of the Interior's trust authority under part of the Indian Reorganization Act).

§ 4533(b) does not authorize overriding the Compact's withdrawal, consumptive use, and diversion provisions.

And no other DPA provision provides the kind of clear statement federal courts require. To be sure, notwithstanding and without regard to clauses appear throughout the DPA.²¹¹ But the next-strongest candidates after § 4533(b) are also insufficient to override the Compact: Relevant provisions that apply to law outside the DPA's provisions are narrowly targeted.²¹² And other notwithstanding provisions as well as without regard to provisions apply only to other parts of the DPA.²¹³

But what about language other than notwithstanding and without regard to clauses? For instance, say the President claims that under §§ 4511 and 4512, water is a scarce and critical material, that national defense requirements for water to fuel data centers cannot otherwise be met without significantly disturbing the normal distribution of water in the civilian market,²¹⁴ and that the Compact's shared governance framework for water in the Basin constitutes "accumulation in excess of the reasonable demands of business, personal, or home consumption."²¹⁵ Thus, the President would argue that these provisions provide clear authorization to override the Compact's water management provisions.

That argument faces challenges. Even assuming courts uphold the President's prerequisite § 4511(b) findings, courts may treat with skepticism the argument that those provisions in §§ 4511(a) and 4512 encompass federal statutes like the Compact, let alone provide language that satisfies the clearly expressed congressional intent standard. Section 4512 prevents accumulation on the part of persons.²¹⁶ The DPA defines "person" as "an individual, corporation, partnership, association, or any other organized group of persons . . . or any State or local government or agency thereof."²¹⁷ In contrast, the Compact is an interstate compact and federal law.

211. *E.g.*, 50 U.S.C. § 4531(a)(3)(B) ("Loans under this section may be . . . made without regard to the limitations of existing law.").

212. For instance, § 4531(a)(3)(B)(1) applies only to loan guarantees, which themselves do not override the relevant Compact provisions, and § 4531(a)(3)(A) still requires congressional approval through passage of an appropriations Act. *Id.* § 4531(a)(3)(A).

213. *E.g.*, *id.* § 4511(c)(1) ("Notwithstanding any other provision of this Act. . . .").

214. *Id.* § 4511(b).

215. *Id.* § 4512.

216. *Id.*

217. *Id.* § 4552(15).

b. The Compact and the DPA Are Far from Irreconcilable

Additionally, an irreconcilability claim here would fail because the DPA and the Compact address different, yet complementary, problems, and the DPA provisions are of more general application than the Compact's provisions. The standard to show two acts are in irreconcilable conflict is a "stringent standard that renders implicit repeals a 'rarity.'"²¹⁸ Rather, courts strive to give effect to both statutes.²¹⁹

Additionally, unless Congress provides clear congressional intention to the contrary, a general act does not control or nullify a more specific act, even if the government enacted the more general act second and the acts govern the same subject.²²⁰ In *Morton v. Mancari*,²²¹ the Court held that the Equal Employment Opportunity Act of 1972 (1972 Act) did not override or repeal an employment preference for Indians in the Bureau of Indian Affairs (BIA) under the Indian Reorganization Act of 1934.²²² The Indian Reorganization Act accorded an employment preference for Indians in the BIA.²²³ Later, Congress enacted the 1972 Act, which proscribed discrimination in most areas of federal employment.²²⁴ The Court rejected the argument that the anti-discrimination provisions in the 1972 Act overrode the employment preferences for Indians in the BIA because nothing in the 1972 Act indicated an affirmative congressional intent to repeal the preferences under the Indian Reorganization Act.²²⁵ Rather, Congress designed the anti-discrimination provisions in the 1972 Act to deal with an entirely different problem: alleviating minority discrimination in employment.²²⁶ Further, the Indian employment preference provision was a specific provision applying to a specific situation, while the 1972 Act was of general application.²²⁷

218. *Syngenta Crop. Prot., LLC v. Willowood, LLC*, 944 F.3d 1344, 1356 (Fed. Cir. 2019) (quoting *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 142 (2001)).

219. *Posadas v. Nat'l City Bank of N.Y.*, 296 U.S. 497, 503 (1936).

220. *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974).

221. *Id.*

222. *Id.* at 549–50.

223. *Id.* at 537. The Federal government implemented a hiring preference policy for Indians to the BIA under the Indian Reorganization Act. *Id.* at 538. The purpose of these preferences was to give Indians a greater participation in their own self-government, to further the Federal government's trust obligation, and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life. *Id.* at 541–42.

224. *Id.* at 546–47.

225. *Id.* at 550.

226. *Id.*

227. *Id.*

Here, the DPA and the Compact are far from irreconcilable. The DPA aims to ensure resource preparedness and to promote national security.²²⁸ That purpose is readily reconcilable with the Compact's provisions that foster stewardship of one of the nation's most important water systems.²²⁹ Indeed, water conservation is a key national security priority;²³⁰ the Great Lakes provide life-sustaining water and underpin one of the nation's key industrial centers.²³¹

Additionally, the DPA and the Compact's political and economic context illustrate they were enacted to address different (even if broadly related) problems, like the Indian Reorganization Act of 1934 and the 1972 Act in Morton dealt with entirely different problems.²³² While the Compact was formed and ratified to foster collaborative management of the Basin,²³³ Congress enacted the DPA to delegate to the President certain powers to promote domestic industrial preparedness.²³⁴ Furthermore, like the 1972 Act's more general anti-discrimination provision and the Indian Reorganization Act's more specific Indian employment preference, the DPA provisions are of more general application than the more specific Compact provisions. The DPA applies across industries, technologies, and circumstances that broadly implicate national security,²³⁵ whereas the Compact targets resource stewardship in the Basin.²³⁶ Any irreconcilability claim here would thus fail. Because the President's actions contradict the Compact, no clear statement displaces it, and the DPA and Compact provisions here fall well short of the stringent irreconcilability standard, the DPA does not override or repeal the Compact's withdrawals, consumptive uses, or diversion provisions.

228. See *supra* notes 122–24 and accompanying text.

229. See *supra* notes 70–71 and accompanying text.

230. See generally Major David J. Struckenberg & Anthony L. Contento, *Water Scarcity: The Most Understated Global Security Risk*, HARV. L. SCH. NAT'L SEC. J. (May 18, 2018), <https://journals.law.harvard.edu/nsj/2018/05/water-scarcity-the-most-understated-global-security-risk/> [<https://perma.cc/KVG4-QMQV>] (explaining how growing water scarcity is creating a global crisis that disrupts regional stability).

231. See CHRISTIAN KETELS, CLUSTERS AND REGIONAL ECONOMIES: IMPLICATIONS FOR THE GREAT LAKES–ST. LAWRENCE REGION 2–3, 6 (2015); John C. Austin, *The Great Lakes Region Has a Chance to Replace the Rust Belt with the Blue Belt*, BROOKINGS (July 12, 2024), <https://www.brookings.edu/articles/the-great-lakes-region-has-a-chance-to-replace-the-rust-belt-with-the-blue-belt/> [<https://perma.cc/6RUY-NPMV>].

232. *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974).

233. See *supra* Section I.C.

234. See *supra* Section I.E.

235. See *supra* Section I.E; see DODGE, MICHAELS, PALLADINO & TUCKER, *supra* note 121, at 5–6 (discussing the DPA's broad application).

236. See *supra* Section I.C.

Moreover, condoning this exercise of the DPA would create dangerous precedent by granting the President near-boundless authority to shape domestic industry as he sees fit—bulldozing federal statutes and raising several constitutional questions.²³⁷ To be sure, the DPA provides the President important tools to meet a variety of threats and to promote national security preparedness.²³⁸ But while “comprehensive presidential powers hold . . . practical advantages for the country,” they also pose “grave dangers.”²³⁹ Upholding claims of unilateral presidential power to override other federal law under the, at best, vague language in the DPA tips the scales too far in favor of expansive presidential power, to the detriment of separation of powers and federalism principles. “Most major decisions affecting the rights and responsibilities of the American people . . . are funneled through the legislative process for a reason.”²⁴⁰ The legislative process “tempers impulse, and compromise hammers disagreements into workable solutions.”²⁴¹ And, perhaps most importantly, the legislative process “helps ensure each of us has a stake in the laws that govern us and in the Nation’s future.”²⁴²

In sum, the President’s DPA actions contradict the Compact. No clearly expressed congressional intent exists to displace the Compact. And the two acts are far from irreconcilable. Therefore, this Comment ultimately contends that the answer to whether the President can lawfully exercise the DPA to increase withdrawals, consumptive uses, or diversions contrary to the Compact’s provisions in order to accelerate data center deployment, is no.

CONCLUSION

Presidents will likely continue to push the boundaries of their power.²⁴³ But invoking expansive presidential powers to trigger the

237. See *supra* note 192 and accompanying text. Under the constitutional avoidance doctrine, the quantity and gravity of these questions alone may give courts pause in approving the President’s exercise of the DPA here. See, e.g., *Bond v. United States*, 572 U.S. 844, 855 (2014) (“[I]t is ‘well-established principle . . . that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.’”) (quoting *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) (per curiam)).

238. See *supra* Section I.E.

239. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring).

240. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 672 (2026) (Gorsuch, J., concurring).

241. *Id.*

242. *Id.*

243. See THE FEDERALIST No. 51, at 268–69 (James Madison) (George W. Carey & James McClellan eds., 2001) (describing separation of powers and checks and

emergency exemption strains that exemption beyond its language and intended purpose. Additionally, while the DPA is a powerful statute, courts are unlikely to condone exercise of it to override the Compact's water management provisions.

And, perhaps more importantly, they should not. In addition to undermining the Compact's collective resource management framework, those decisions will implicate over 270 interstate compacts across the nation.²⁴⁴ If courts decide that the President can rely upon at best ambiguous statutory language to unilaterally override federally ratified interstate compacts, they will redefine vertical and horizontal federalism as it stands today.²⁴⁵ Furthermore, that decision would both establish dangerous precedent by granting the President authority to circumvent federal statutes and would raise several constitutional questions.²⁴⁶ Even in an era of technological urgency and expansive presidential ambition, the rule of law must endure.

Many consider the Compact successful in achieving its primary goal of preventing large-scale diversions out of the Basin through its cooperative governance structure and approach to water management.²⁴⁷ We should work within it. The Compact is not at odds with technological change or national security. Rather, it aims to better ensure that millions of stakeholders—with a shared interest in safeguarding the Great Lakes—have a say in how, and to what purpose, we use that one-time gift of life-sustaining freshwater.

balances principles to protect against abuses of concentrated power in the hands of one individual or entity).

244. *Where States Work Together*, NAT'L CTR. FOR INTERSTATE COMPACTS, <https://compacts.csg.org/> [<https://perma.cc/HNB6-MAUU>] (last visited July 27, 2026). Over three dozen of these interstate compacts address shared water systems. *Explore Compact Database*, NAT'L CTR. FOR INTERSTATE COMPACTS (Aug. 5, 2026), <https://compacts.csg.org/compact-database/>.

245. See Noah D. Hall, *Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region*, 77 U. COLO. L. REV. 405, 406–07 (2006) (describing the Compact as an example of cooperative horizontal federalism—a new federalist model to collectively protect interstate environmental systems).

246. See *supra* note 191 and accompanying text.

247. E.g., Bradley C. Karkkainen, *The Great Lakes Water Resources Compact and Agreement: A Model for Transboundary Governance at Subnational Scales?*, 9 SEA GRANT L. & POL'Y J. 37, 37–38 (2018).

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