

January 23, 2001

TO: Ontario Water Resource Stakeholders

RE: Release of Draft *Annex to Great Lakes Charter* for Public Review

I wish to inform you that the attached draft *Annex* to the *Great Lakes Charter* was released by the Council of Great Lakes Governors for public review on December 14, 2000. The public review period continues until February 28, 2001.

The *Great Lakes Charter* was signed by the premiers of Ontario and Quebec and the governors of the eight Great Lakes states in 1985 to protect and conserve the waters of the Great Lakes Basin. The agreement helps to control water diversions and consumption, in part, by requiring consultation among Great Lakes jurisdictions for any proposal over 19 million litres per day. The Annex is being negotiated among Great Lakes jurisdictions to strengthen this protection through enhanced water use information, a common standard to evaluate proposed Basin water uses and a pathway toward more binding protection.

John Snobelen, Ontario's Minister of Natural Resources, expressed mixed reaction to the draft Annex in a news release, encouraging the Ontario public to comment on the draft. The minister expressed Ontario's support for the Annex's promotion of water conservation while highlighting concern with provisions to consider small-scale diversions out of the Basin. A copy of Ontario's news release is attached for your information.

Following the public review period, negotiations among Great Lakes jurisdictions will resume. If you wish to provide input to the Annex, please comment directly to the Council of Great Lakes Governors, with a copy to the Minister of Natural Resources. Details are provided on the attached news release. I would also appreciate receiving a copy of your comments at the above address.

If you have any questions or wish to discuss the proposed Annex to the *Great Lakes Charter*, please contact Ron Running at (705) 755-1278 or Paula Thompson at (705) 755-1218. Also, if you wish to view the Council of Great Lakes Governors' news release and backgrounder on the Annex, they are posted on the Council's website at www.cglg.org.

Sincerely,

Original signed by:

David de Launay
Director
Lands and Waters Branch

Encl.

Annex 2001 to the Great Lakes Charter – Stakeholder Distribution List

Canadian Environmental Law Association
Canadian Institute for Environmental Law and Policy
Canadian Water Resources Association
Conservation Council of Ontario
Council of Canadians
Ducks Unlimited
Federation of Ontario Cottagers' Associations
Federation of Ontario Naturalists
Great Lakes United
Ontario Environment Network
Ontario Federation of Anglers and Hunters
Pollution Probe Foundation

Brewers Association of Canada
Canadian Bottled Water Association
Canadian Chemical Producers' Association
Canadian Plastics Industry Association
Canadian Soft Drink Association
Canadian Steel Producers Association
Independent Power Producers Society of Ontario
St. Lawrence Seaway Management Corporation
Shipping Federation of Canada
Ontario Aquaculture Association
Ontario Commercial Fisheries Association
Ontario Forest Industries Association
Ontario Marina Operators Association
Ontario Mining Association
Ontario Power Generation

Association of Municipalities of Ontario
Canadian Water and Wastewater Association
Conservation Ontario
Municipal Engineers of Ontario
Rural Ontario Municipalities Association

AGCare
Ontario Farm Environmental Coalition
Ontario Federation of Agriculture

Mohawk Council of Akwesasne
Assembly of First Nations
Chiefs of Ontario
Union of Ontario Indians – Anishinibek Nation
United Chiefs and Councils of Manitoulin
First Nations Environment Network

December 14, 2000

ANNEX 2001

**A SUPPLEMENTARY AGREEMENT TO
THE GREAT LAKES CHARTER**

WHEREAS, the Governors and Premiers of the Great Lakes States and of the Provinces of Ontario and Quebec reaffirm their commitment to the Great Lakes Charter of 1985, and reaffirm that all provisions of the Charter will continue in full force and effect, except that to the extent inconsistent herewith the terms of this Annex shall control; and

WHEREAS, since adopting the Great Lakes Charter, the Governors and Premiers have exercised their authorities over the Waters and Water-Dependent Natural Resources of the Great Lakes Basin consistent with the purposes and principles of the Charter; and

WHEREAS, the Governors and Premiers reaffirm their commitment to develop and use common and cooperative principles, policies, and programs to implement their responsibilities to manage, protect, conserve, restore, and improve the Waters and Water-Dependent Natural Resources of the Great Lakes Basin for the sustainable use and benefit of this and future generations; and

WHEREAS, the Governors and Premiers commit to pursuing the goals of protecting, conserving, restoring, and improving the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and

WHEREAS, protecting, conserving, restoring, and improving the Waters and Water-Dependent Natural Resources of the Great Lakes Basin must be the foundation for the legal standard upon which decisions concerning water withdrawals are based; and

WHEREAS, the Governors' authority was enhanced by passage of the Water Resources Development Act of 1986 (WRDA), 42 U.S.C. 1962d-20, which states that "...no water shall be diverted from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lake(s) States," and which leaves to the Governors the establishment of a standard, along with mechanisms to implement that standard, to guide decisions regarding out-of-Basin water diversions; and

WHEREAS, the Governors of the Great Lakes States agree that, in order to confirm historic practice, promote comity with the Great Lakes Provinces, and assure the continued achievement of the goals of the Great Lakes Charter and this Annex, the Premiers should be formally included in the consultation process established under the Charter, and employed by the Governors through the exercise of their authority under the WRDA; and

WHEREAS, despite significant progress in restoring and improving the health of the ecosystem of the Great Lakes Basin, the Waters and Water-Dependent Natural Resources of the Basin remain at risk of damage from pollution, environmental disruptions, and water withdrawals which individually and cumulatively alter the hydrological regime thereof; and

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WHEREAS, the Governors and Premiers must comply with their respective federal laws and international trade law when considering new or increased water withdrawal proposals; and

WHEREAS, the Governors and Premiers agree that the authority of the States and Provinces to protect, conserve, restore, and improve the Waters and Water-Dependent Natural Resources of the Great Lakes Basin should be permanent, enforceable, and applicable to all withdrawals of the Waters of the Great Lakes Basin; and

WHEREAS, the International Joint Commission (IJC) recognized in its February 22, 2000 report that "The Great Lakes Charter is an effective arrangement among the Great Lakes states and provinces of Ontario and Quebec" and recommended that "Without prejudice to the authority of the federal governments of the United States and Canada, the Great Lakes States and Ontario and Quebec, in carrying out their responsibilities under the Great Lakes Charter, should develop, within 24 months, with full public involvement and in an open process, the standards and procedures... that would be used to make decisions concerning removals or major new or increased consumptive uses;" and

WHEREAS, there is a continuing need to determine the impacts that water withdrawals have, individually and cumulatively, on the Waters and Water-Dependant Natural Resources of the Great Lakes Basin; and

WHEREAS, currently there is a lack of consistent and reliable technical scientific information about water use of the Waters of the Great Lakes Basin including groundwater; and

WHEREAS, the Governors and Premiers are committed to the further development of a database and information gathering system for future water resources planning and management; and

WHEREAS, the protection, conservation, restoration, and improvement of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin requires active participation and consultation with affected citizens, institutions, units of government, and businesses.

NOW THEREFORE BE IT RESOLVED

That the Governors of the Great Lakes States and Premiers of the Great Lakes Provinces hereby amend the Great Lakes Charter pursuant to this Annex and agree to:

- I. **Establish a framework for Basin-wide decisions that retains authority within the Basin.**
The Governors and Premiers agree to immediately prepare a Basin-wide binding agreement(s), such as an interstate Compact, and such other agreements, protocols or other arrangements between the States and Provinces as may be necessary to create said binding agreement(s) within three years of approval of this Annex. Said agreement(s) will be based upon this Annex and will further the Governors' and Premiers' goal to protect, conserve, restore, improve, and manage the Waters and Water-Dependent Natural Resources of the Great Lakes Basin. After adoption of these agreement(s), the Governors and Premiers will seek appropriate ratification and the passage of necessary implementing legislation.

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II. **Establish a new decision making standard.** The aforementioned agreement(s) will include a standard that no State or Province will allow a new or increased withdrawal of the Waters of the Great Lakes Basin, except for those withdrawals deemed to have *de minimis* impact, unless the applicant for the withdrawal establishes that its proposal, together with the applicant's existing use:

- A. Includes implementation of all reasonable and appropriate water conservation measures; and
- B. Does not, individually or cumulatively, together with current basin-wide water uses, cause significant adverse impact to the quantity or quality of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- C. Results in an Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- D. Complies with all applicable laws.

The Governors and Premiers will determine, during the course of the creation of the aforementioned agreement(s), which water withdrawal proposals may have *de minimis* impact and the mechanism by which individual and cumulative impacts of water withdrawals will be assessed. These determinations will be based upon the foundation of reliable water use information as referred to in Section IV of this Annex.

III. **Implement the new standard for interim decisions under the U.S. Water Resources Development Act.**

- A. Pending the finalization of the agreement(s) outlined in Section I, the Governors of the Great Lakes States agree that they will exercise their authority under the WRDA using the new standard as outlined in Section II. In making such a determination, the Governors will consult with the Premiers utilizing the prior notice and consultation process established in the Great Lakes Charter of 1985 until the aforementioned agreement(s) are implemented.
- B. The Governors and Premiers recognize that the Canadian Provinces are not subject to, or bound by, the U.S. Water Resources Development Act or the provisions of this Annex relating to the statutory implementation of the WRDA. The Governors further agree that any proposed new or increased diversion subject to review under the WRDA during the interim period shall be presumed to have *de minimis* impact and therefore be deemed approved under the WRDA if the proposal meets all of the following criteria:
 - (i) The net quantitative loss of water to the Great Lakes Basin, taking into account any return flow, is less than one million gallons of water per day on average in any 30-day period, which is less than one one-thousandth of one percent of the average annual renewable capacity of the Great Lakes system (approximately 162 billion gallons per day, as currently reported by the IJC); and
 - (ii) It is the only practical alternative available; and

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- (iii) It includes implementation of all reasonable and appropriate water conservation measures; and
- (iv) The withdrawal will be subject to state water withdrawal or diversion permitting and/or regulatory oversight; and
- (v) It is necessary for a public water supply system to protect public health and safety.

The Governors of the Great Lakes States or their duly appointed representatives shall have standing to rebut the presumptions contained this section.

IV. Develop a decision support system that ensures that the best information is available to Basin citizens, government agencies, and water project proponents. The system will include information on the nature and extent of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin, the human uses thereof, the relationship between existing and potential uses and withdrawals, and the health of the Basin's Water-Dependent Natural Resources. The Governors and Premiers will complete the design of an information gathering system to be implemented by the States and Provinces in support of the Charter, this Annex, and the agreement(s). This design will include an assessment of available information and existing systems, an identification of needs, and provisions for a better understanding of the role of groundwater, and a plan to implement the ongoing support system.

As part of this effort, the State, Provincial and Federal governments should endeavor to improve the sources and applications of scientific information regarding the Waters of the Great Lakes and better understand the role of groundwater in the Great Lakes Basin by coordinating their data gathering and analysis efforts.

V. Make further commitments to continue to improve the Great Lakes water management system. The Governors and Premiers of the Great Lakes States and Provinces further commit to:

- A. Coordinate the implementation and monitoring of the Charter and this Annex.
- B. Seek (where necessary) and implement legislation establishing programs to manage and regulate new or increased water withdrawals from the Great Lakes Basin.
- C. Identify and implement effective mechanisms for decision-making and dispute resolutions.
- D. Initiate a process to actively involve the public in the implementation of this Annex, including participation by affected citizens, institutions, units of government, and businesses.
- E. Develop guidelines regarding the implementation of mutually agreed upon measures to promote the efficient use and conservation of the Waters of the Great Lakes Basin within their jurisdictions.
- F. Develop a mechanism by which individual and cumulative impacts of water withdrawals will be assessed.

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VI. Implement the Great Lakes Charter of 1985 and Annex 2001. The Governors and Premiers reaffirm that all provisions of the Charter will continue in full force and effect, except that to the extent inconsistent herewith the terms of this Annex shall control. This Annex shall be effective during the interim period between the date on which all Great Lakes Governors and Premiers have completed signing this Annex and the effective date of the new agreement(s) aforementioned in Section I. This Annex shall expire no later than three years from the date on which this Annex is signed by all Great Lakes Governors and Premiers.

DEFINITIONS. As used herein, terms shall be as defined in the Great Lakes Charter, except that for purposes of this Annex, the following terms shall have the following meanings:

- A. "Waters of the Great Lakes Basin" (also termed in the Great Lakes Charter as "Water Resources of the Great Lakes Basin") means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.
- B. "Water-Dependent Natural Resources" means the interacting components of land, water, and living organisms affected by the Waters of the Great Lakes Basin.
- C. "Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin" means additional beneficial, restorative effects to the physical, chemical, and biological integrity of the Waters and Water-Dependent Natural Resources of the Basin, resulting from any associated conservation measures above and beyond those required by Section II, or enhancement, or restoration measures undertaken by, or on behalf of the withdrawer.



Ministry of Ministère des
Natural Richesses
Resources naturelles

news release communiqué

December 14, 2000

Ontario Invites Public Comment on Proposed Annex To Great Lakes Charter

Natural Resources Minister John Snobelen expressed mixed reaction to the release of Annex 2001, a proposed amendment to the Great Lakes Charter of 1985. The Annex was released by the governors of the eight U.S. states bordering the Great Lakes.

"Elements of the proposed Annex 2001 are certainly a step forward in strengthening the Great Lakes Charter," Snobelen said. "However, we have noted some areas of concern that we need to discuss with the governors."

Annex 2001 would retain water management authority in the Great Lakes Basin, establish a common standard to review proposed water uses, and strengthen information as the foundation for decision-making.

While pleased that Annex 2001 seeks to promote conservation and careful use within the basin, Snobelen pointed out that two provisions related to diverting water could result in negative effects on the Great Lakes.

"We need to make sure that the cumulative results of small-scale diversions are considered," Snobelen said. "Ontario continues to support the approach of the International Joint Commission that there be no net loss of water from the basin."

The International Joint Commission also calls on the provinces and Great Lakes states not to permit any removal of water from the Great Lakes Basin that would endanger the integrity of the basin ecosystem.

"We are eager to discuss Annex 2001 and to see to it that the spirit of the Great Lakes Charter – which is to conserve, protect, restore and improve the waters of the Great Lakes Basin – is maintained," Snobelen added. "Given the release of the Annex, Ontario encourages the public to make their views known."

Ontario is a signatory to the Great Lakes Charter and has demonstrated critical leadership through a Water Taking and Transfer Regulation that prohibits the transfer of water out of the Great Lakes Basin and other major water basins in the province.

People who wish to express their views on Annex 2001 should contact the Council of Great Lakes Governors directly by e-mail at cglg@cglg.org, by fax at (312) 407-0038, or by mail at:

Annex 2001 Comments
Council of Great Lakes Governors
35 East Wacker Drive, Suite 1850
Chicago, IL 60601
U.S.A.



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Members of the public can send copies of their comments to Natural Resources Minister John Snobelen, by e-mail at minister@mnr.gov.on.ca, by fax at (416) 314-2450, or by mail at:

Annex 2001 Comments
Ontario Minister of Natural Resources
6th Floor, Room 6641, Whitney Block
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Toronto, ON M7A 1W3

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FOR MORE INFORMATION:

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