

Great Lakes Charter Annex Annex Advisory Panel Meeting

Wednesday Sept 27, 2006
St. Michael's College, Toronto
9:30am – 3:30pm

Proceedings from the Meeting

1. Welcome (Kevin Wilson)

- Kevin welcomed everyone to the meeting and expressed the continued spirit of confidentiality in order to continue the open and informed process we have established
- Status report on implementation in other jurisdictions:
 - i. *Illinois* – Legislation introduced in House and Senate
 - ii. *Indiana* – Working toward draft legislation for discussion with stakeholders by fall; package for '08 session
 - iii. *Michigan* – Anticipated next session which begins in January
 - iv. *Minnesota* – '07 at the earliest (likely by next session, which begins in January)
 - v. *New York* – Legislation introduced in Assembly (approved end of June) and Senate (ran out of time – hopeful for Oct. '07 approval)
 - vi. *Ohio* – Introduced in House and Senate, but ran out of time – expected to reconvene in November/December
 - vii. *Ontario* – 3 Work Groups being established and AAP continued
 - viii. *Pennsylvania* – Anticipated in new 2 year term which begins in January
 - ix. *Quebec* – Agreement to be adopted by national Assembly in fall '06 with legislative/regulative changes to follow
 - x. *Wisconsin* – Legislative Council review committee set up – first meeting in September. Anticipate legislation in 2007.
- Upcoming elections in many of the Great Lakes states may lead to changes in leadership which could alter projected implementation timelines and necessitate re-engagement of new governments
 - **Dan McDermott noted that Ohio industry are lobbying against the Annex, which could impede its implementation**
 - *Kevin asked Dan to follow up with his U.S. counterparts and share any further information with MNR that may assist Ontario in working with the other jurisdictions. This information will be shared with panel members.*

ACTION: Dan McDermott to provide MNR with further information on potential challenges that could impede Ohio's implementation of the Agreement

- **How will Annex implementation be affected by potential political changes in Ontario?**
 - *Kevin responded that it will not likely be a problem in Ont. because there is public support for the Annex*
 - *Ontario is moving forward now to put in place changes needed to implement Agreement commitments. Ontario also assumes*

the chair of the Regional Body in Dec., which will provide added impetus to proceed with implementation

- **Mary Muter highlighted that the Great Lakes- St. Lawrence Cities Initiative Mayors have publicly endorsed the Annex**

2. Agenda Overview, Action Items from August 24th Conference Call (Rob Messervey)

- A summary of action items from the last AAP meeting:
 - i. Great Lakes – St. Lawrence Cities Initiative resolutions were circulated to AAP
 - Ted Bowering provided an overview of the Initiative
 - Mayor Miller of Toronto is currently Chair of Initiative
 - Great Lakes Mayors met in Parry Sound in June, 2006
 - Passed a number of resolutions urging action
 - Passed a resolution endorsing Compact/Agreement and urging action to implement
 - Passed a resolution committing to develop a Water Conservation and Stewardship Framework Plan. The Board will meet to begin discussions on specific goals and actions to meet those goals.
 - **Do initiative resolutions only ‘urge’ action or do they also take action directly?**
 - *In some cases the mayors are urging action by state, provincial and federal governments where they have a strong interest but do not have a leadership role. In the case of the Conservation and Stewardship Framework the mayors plan to take direct action.*
 - ii. AAP members were asked for additional names to be added to the Panel
 - 8 – 10 new names were provided and they were invited to the meeting
 - iii. MNR to explore the feasibility of developing a web portal
 - MNR has committed to establishing a web portal and hopes to have it running by mid-November
 - iv. Members were asked if they had an interest in participating on the Regional Advisory Committee. In the near term the focus of the committee will be on providing input to the development of Basin-wide water conservation objectives.
 - Several members have expressed interest in participating on this Committee

3. Legislation, Regulation and Agreement Administration Work Group Business (Rob Messervey, Paula Thompson)

- Rob M. summarized Ontario’s commitments under the Agreement and provided an overview of the province’s proposed implementation strategy
- Paula provided an overview of the key legislative/regulatory amendments that are required for Ontario to implement the Agreement:
 - i. Ban on Diversions:
 - Ontario already bans diversions out of the Basin, but this will have to be broadened to include *intra*-Basin transfers

- Ban will have to include the Agreement's exceptions and associated criteria (e.g., straddling communities, intra-basin transfers)
 - Need to determine scale of "city/town" to be identified as a straddling community
- ii. Withdrawals/Consumptive Uses:
- Agreement calls for each jurisdiction to implement a decision-making standard to regulate new/increased withdrawals (up to 5 year phase-in)
 - Ont. has management practices in place which meet many elements of the standard already but some additions will have to be made.
 - The Agreement also commits Ontario to provide other jurisdictions with prior notice and an opportunity to comment on larger consumptive use proposals. This is not a significant change from current practice under the Great Lakes Charter.
- iii. Water Conservation:
- The Agreement standard includes implementation of water Conservation measures. Under the Permit to Take Water program water users are required to identify any water conservation measures they are implementing. Some modifications may be necessary.
 - Over the longer term legislative/regulatory changes may be needed to deliver on Ontario's water conservation and efficiency goals, objectives and program once it is developed
- iv. Judicial Review:
- Province must grant other Great Lakes jurisdictions standing to seek judicial review of Ont.'s decisions on water withdrawals, diversions, and consumptive uses
 - This will require legislative amendment to grant standing
- v. Information and Science:
- The Agreement commits to mandatory annual reporting of monthly withdrawals, diversions, and consumptive uses
 - Ont. to annually report water use data to a regional database, as well as contribute to a Basin-wide collaborative science strategy (e.g. establishment of a mechanism for cumulative impact assessment)
 - Will need to determine baseline water-use data to establish grand parenting of existing uses
 - Modification of the Water Taking Reporting System under the Permit to Take Water Program may be needed to facilitate reporting of consumptive uses and diversions
 - Work needed to establish standards to assist water users in estimating consumptive use
- vi. Public Information and Involvement:
- The Agreement commits jurisdictions to introduce the regional review process, including consultation with the public and First Nations. It also commits to provide public access to water use proposals, decisions. Ontario provides public access to most proposals and decisions through the Environmental Bill of Rights registry.
 - Possible inconsistencies in Permit to Take Water exemptions and Environmental Bill of Rights posting exemptions must be further assessed and may require modification

- AAP members were invited to comment on the legislative/regulatory amendment requirements:
 - Are we going to measure cumulative impacts in Information and Science actions?
 - *Mary Muter is worried about cumulative impacts on water levels – EA process is separate from PTTW*
 - *Rob Taylor noted that we have some of the tools/data in place to carry out cumulative impact assessment and can go above the obligations of the Agreement if we choose to*
 - Sarah Miller believes that we should extend our Great Lakes conservation work to the entire province
 - Dan McDermott believes that we are missing an opportunity to have conservation added into the Clean Water Act. Christine Elwell (Panel member, FOE) is advocating and working to try and accomplish this.
 - *Paul Norris agreed that the Clean Water Act is the appropriate vehicle*
 - *Lino Grima pointed out that the logical connection between Bill 43 and the Great Lakes Charter Annex is water budgets*
- Rob T. specifically noted the complexity of moving forward – we want to proceed quickly, but we have to make sure that we are thorough (e.g., we do not want to open up our courts before we get reciprocal access elsewhere)
- Rob M. gave the Panel an overview of Ont.'s proposed milestones:
 - Drafting of Phase 1 amendments to legislation, regulation, and policy this fall/winter with public review/EBR postings afterwards
 - Initiate Phase 2 amendments in Spring '07 and table in early '08
 - **Where does the AAP fit into the proposed milestones/timeframe?**
 - *The AAP will continue to meet approximately once a month by telecom or full face-to-face meeting as appropriate (consistent with approach taken during the negotiation process)*
 - *The date of the next AAP meeting will be depend on how quickly we need to proceed this fall*
 - *We anticipate being able to share more on the Legislation/Regulation package at the next meeting*

4. York Region Case Study (Wendy Kemp)

- Wendy provided a presentation on York Region's (YR) long term water supply and wastewater situation and how it could be affected by the Agreement
 - YR's population is expected to grow from 923,000 to 1.3 million by 2026
 - Ban on intra-Basin diversions could impact YR's plans to expand water/wastewater supply servicing to meet this increase in demand
 - 3 discussion points were raised:
 - i. Is Aurora/Newmarket/Holland Landing/Sharon considered to be a 'straddling community'?
 - *Paul Norris pointed out that a 'straddling community' will be what you want it to be – could consider towns or regions as 'straddling communities'*
 - *will most likely see York Region as a 'straddling community'*

- *Rob Taylor believes that we have some flexibility in how we interpret the Agreement however we must maintain the spirit of the Agreement when we amend our legs/regs*
 - *Identifying the region as a straddling community could be challenged by other jurisdictions as being contrary to the spirit of the Agreement*
 - ii. Is this a new or existing connection when overall there is a reduction in net transfer due to the reduced groundwater usage?
 - Net transfer is expected to decline due to improved conservation and an increased use of Lake Ont. water
 - iii. Is the extension of the existing YDSS wastewater network without the increase in water withdrawal considered to be an intra-Basin diversion?
 - *Sarah Miller noted that the Class EA isolates and does not look at complete ecological effects (“looks at only one section of pipe at a time”)*
 - *She argues that we must get Annex triggers and assessments in first to look at greater ecological impacts early*
- Rob M gave some other examples of potential challenges to the new Agreement:
 - New Berlin, Wisconsin – seeking to replace contaminated ground water with a diversion from Lake Michigan. Ontario has informally responded that we would need more information in a formal proposal before we could comment on whether the proposal would meet the Agreement
 - Waukesha, Wisconsin – considering a legal challenge that the Agreement does not apply to their proposed Lake Michigan diversion. Their argument is that the taking would not be a “new diversion” as their current ground water takings are already diverting water from Lake Michigan.
 - Rob T pointed out that because the Agreement has not been put into law yet, the above two proposals are still informal. The existing U.S. Water Resources Development Act, which requires unanimous approval of the 8 Great Lakes governors, and the Great Lakes Charter, which also requires prior notice and consultation with Ontario and Quebec, would apply.
- Rob M concluded the morning session by facilitating Panel discussion about legislative/regulatory timing, phasing, etc.
 - **Dan McDermott emphasized that conservation will be tough to get implemented because it goes against consumers – we need political will to proceed, especially if Ont. is to be the lead.**
 - **Glen Pleasance promised to contact AWWA to see who will be our allies in the States regarding conservation.**

ACTION: Glen Pleasance to contact AWWA to provide MNR/MOE with details on which states are most likely to strongly push forward with conservation commitments.

5. Water Conservation and Efficiency Work Group Business (Rob Messervey)

- The afternoon session of the meeting began with a slide presentation by Rob Messervey (MNR) that highlighted the *Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement* commitments and timeline. It provided:
 - A summary of Objective 1: Review of current practices and input into basin-wide objectives.
 - A review of Ontario's status as co-chairs of the Regional Water Conservation Committee
 - A summary of Objective 2: Developing Ontario's water conservation goals, objectives and programs
- The presentation finished with a lengthy discussion period for AAP members. This discussion period addressed the following questions:
 - What should be included in the Regional Objectives?
 - What type of approach should be taken?
 - Are there any initiatives that can be linked to the Agreement?
- The session was generally broken down into three parts:
 - i. Review of AAP Comments on Water Conservation and Efficiency
 - ii. Review of Sectoral Concerns Surrounding Water Conservation and Efficiency
 - iii. Approaches & Ideas to be Included in the Regional Objectives
- The following is a summary of the ideas put forward by panel members during these three general discussions:
 - i. **Review of AAP Comments on Water Conservation and Efficiency:**
 - There needs to be a public information program
 - We will not get results without public support
 - The linkage between energy conservation and water conservation was brought up
 - In the past couple of years the energy sector has had some success in improving public conservation and efficiency
 - Good examples in California of pairing water and energy conservation programs
 - Emphasize the financial savings that will result from increased water conservation and efficiency
 - Water rates are often hidden in utility bills, which leads people to overlook the true cost of their water consumption/use
 - Rainwater harvesting is becoming an increasingly important tool and should be considered in goals/objectives
 - In terms of scope, maybe we should put a limit on the amount of water that can be taken out of water bodies and then work down from there
 - Make sure to consider/utilize federal projects and linkages where possible
 - Beware not to go too far – creating over-restrictive goals and objectives will have negative effects on the economy, etc.
 - Do not forget that water conservation requires a close linkage between water quality and water quantity
 - Water conservation is often much cheaper than increasing infrastructure to meet a rising population and/or increasing water demands
 - Water/wastewater infrastructure is often the problem itself (i.e., when it is inefficient) – have to change and improve design codes in Ontario

- In June 2007, the American Water Works Association is having its annual conference in Toronto – possibly try to utilize this opportunity
- Emphasize ‘efficiency’ over ‘conservation’
 - ‘efficiency’ implies cutting waste and saving water, while ‘conservation’ is often envisioned as a burden that requires inconvenient lifestyle changes
 - Studies show saving money through increased efficiency works better than ‘bribing’ people with loans, grants, etc.
- Emphasis should be on policy and policy objectives
 - e.g., The policy changes made in the Building Code have helped improve water efficiency
 - e.g., Approximately 70 percent of municipalities’ current policies enforce declining block rates, which favour larger water users – this needs to be changed!
- Improved metering will make water-users more aware of their use and the costs associated with this use
 - e.g., Apartments are currently metered as a single unit, which masks the consumption rates of each occupant
- We have to make sure that we look at the bigger picture when developing our goals, objectives
 - e.g., it was suggested that rainwater harvesting be added to the goals/objectives, but this can deplete ground water levels!
- Some financial barriers to water suppliers were brought up:
 - In places where water conservation programs have been extremely successful water suppliers have faced a harmful decline in revenue
 - Raising prices helps a bit, but this will also lead to lower water use, so it less of an option
 - One suggested solution here is to have variable rate structures
- We need to look at Best Management Practices by sector, rather than simply using generalizations
- Population increases will naturally increase water usage; therefore, we need to remember this when setting our goals, objectives, targets
- We cannot solely rely on policy changes – we also need to consider technological changes to accompany these changes
 - e.g., Originally the Building Code changes were useless because low-flush toilets were inferior to regular toilets, but now that the technology has improved it has supported the Building Code requirements
 - “Water Sense” labeling (e.g., of toilets) should be supported

ii. Review of Sectoral Concerns Surrounding Water Conservation and Efficiency:

- Agriculture:
 - BMPs (e.g., irrigation BMPs) are already in place that will support water conservation goals and objectives
 - Water storage projects are being advocated
 - Agriculture sees flaws/inconsistencies in the PTTW as a barrier
 - Cost of irrigation efficiency is often a barrier

- Protect/enhance natural features in the basin (for example, wetlands)
 - how is ‘improvement’ to be measured in ecosystems?
- Ownership of goals and objectives
- Incentive program promoting good water stewardship
- Increased knowledge of water transfers in the basin (water-balance, recognition of water interactions)
- Objective to develop a measurement for attitude shifts toward conservation
- A focus should be placed on education and awareness
- Must be relevant and balanced – do not want to handcuff the economy
- Requirements cannot conflict with an industries’ proprietary obligations
- List of keywords to be included in the regional goals and objectives:
 - › “Efficiency of use”
 - › “Reasonable”
 - › “Phased”
 - › “Information-based”
 - › “Science-based”
 - › “Flexible”
 - › “Climate change”
 - › “Enforceable”
 - › “Adaptive”
 - › “Relevant”
 - › “Sector-specific” / “Sector-based”
 - › “Measurable”

6. Discussion of Other Issues (Rob Messervey)

- Rob M asked the Panel if there were any linkages/contrasts with other water initiatives that should be discussed:
 - **Mary Muter thought that there might be a connection between the Annex and Lakewide Management Plans**
 - *Joy Rayner discussed exploring the potential linkage with the Environmental Farm Plan*
 - Potential linkages with the Clean Water Act were discussed earlier in the meeting
- It was agreed that because the appropriate provincial legal staff were not in attendance, the discussion of citizen’s rights would be deferred to the next face-to-face meeting of the AAP

ACTION: Add Citizen Rights to next AAP Agenda

- The issue of the Waukesha, Wisconsin legal dispute was raised earlier in the meeting

7. Next Steps (Rob Messervey)

- The First Nations Engagement Strategy is scheduled to commence in October with a meeting between MNR and Union of Ontario Indians
- Information and Science Work Group scoping meeting in October
- Regional water conservation goals and efficiency:

- Face-to-face Regional Conservation Committee meeting in Chicago on Oct. 2-3, 2007
- Face-to-face Regional Conservation Committee plus Regional Advisory Panel and Tribes/First Nations meeting in Chicago on Nov. 28-29, 2007
- We anticipate that the next AAP meeting will be a conference call at the end of October with a follow up face-to-face meeting in November (dates TBD)
- Summary of Action Items:
 - Dan McDermott to provide MNR/MOE with greater detail on potential problems in Ohio's implementation of the Agreement
 - Glen Pleasance to contact AWA to provide MNR/MOE with details on which states are most likely to strongly push forward with conservation commitments.
 - Rob Messervey requested that all studies, reports, etc. mentioned during the meeting be sent to MNR and MOE.
 - MNR was asked to provide feedback to the AAP on the progress of First Nation discussions
 - MNR will work on developing a web portal for the Panel

MEETING ADJOURNED AT 3:30pm