

**GOVERNMENT OF CANADA'S RESPONSE TO THE SECOND REPORT OF THE  
STANDING COMMITTEE ON ENVIRONMENT AND SUSTAINABLE  
DEVELOPMENT:**

***GREAT LAKES CHARTER ANNEX 2001 IMPLEMENTING AGREEMENTS***

**INTRODUCTION**

1. On November 26, the Parliamentary Standing Committee on Environment and Sustainable Development tabled its final report on the Council of Great Lakes Governors' (CGLG) draft Great Lakes Charter Annex implementing agreements in which it made a range of recommendations for improving them. The Government of Canada has benefited from the Standing Committee's work in this area, and thanks the Standing Committee for its efforts.
2. After obtaining the views of the Standing Committee, consulting with provincial partners and taking into account the concerns of Canadians who want to ensure that the waters of the Great Lakes / St. Lawrence basin are protected, the federal government believes that the agreements in their present form are too permissive and require strengthening. The Government of Canada's submission (Appendix 1) agrees with the Standing Committee's position on the draft implementing agreements. It points out the ongoing fundamental importance of the *Boundary Waters Treaty* and the International Joint Commission (IJC) in managing and protecting the Great Lakes / St. Lawrence basin, and endorses an ecosystem perspective supported by a precautionary approach as reflected in its legal prohibition on out-of-basin transfers. Canada further encourages the Council of Great Lakes Governors to extend to the entire international basin the same high degree of protection available within Canadian boundary waters, where bulk out-of-basin transfers are prohibited, and to ensure that the eventual implementing agreements are better informed by sound science.
3. Although the Government of Canada is not a party to the Annex negotiations, the Government has monitored the development of the Great Lakes Charter Annex and the associated draft implementing agreements. In February 2001 the Government provided the CGLG with detailed comments on the proposed Annex 2001 and has made presentations to the CGLG on the Canadian approach to protecting the integrity of the waters of the Great Lakes. Throughout the CGLG process the Government has, through its consulates and in discussions with Ontario and Quebec, followed the negotiations leading up to the release in July 2004 of draft implementing agreements. The Government will continue its on-going dialogue with the CGLG and its members and to work with Ontario and Quebec as the development of the implementing agreements proceeds.
4. The following is the Government of Canada's response to each recommendation made by the Standing Committee. The submission provided by the Government of Canada to the CGLG is also appended to this response.

## **RECOMMENDATIONS & RESPONSES**

### **Recommendation 1**

**The Committee therefore recommends that, in its response to the Council of Great Lakes Governors, the Canadian government urge the Governors and the Premiers to base the criteria in the Standard on the Precautionary Principle.**

5. The Government of Canada agrees with this recommendation. The Standing Committee observes that a number of witnesses expressed concern about uncertainty in knowledge of groundwater, cumulative effects, and climate change in the Great Lakes/ St. Lawrence basin. Accordingly, it is suggested that precaution should inform the implementing agreements. The Government of Canada's comments to the CGLG reflect similar concerns.

6. Precaution requires prudent action in the face of potentially serious risk without having to await scientific certainty. In its report, *Protection of the Waters of the Great Lakes*, the IJC endorses this approach given current uncertainty about future availability of Great Lakes water. This uncertainty stems from an insufficient understanding of climate change, future demand, the impact of removals and consumptive uses on ecosystem integrity and general doubts about the reliability of existing Great Lakes data. In particular, in the light of studies on the potential impacts of climate change in reducing lake levels, decisions about Great Lakes water occur in an uncertain setting demanding caution.

7. In its submission to the CGLG, the Government of Canada points out that its prohibition on bulk out-of-basin transfers from boundary waters, principally the Great Lakes, is based on commitments to sound science, sustainable management and a precautionary approach. This approach provides an effective means of minimizing the spread of pollutants, invasive alien species and pathogens. Accordingly, the Government's submission notes the need for further research to inform the draft implementing agreements' thresholds, consumptive uses and their impacts, including research on consumptive use coefficients. The submission notes that the draft implementing agreements are silent on the potential effects of climate change. It also points to the need for further study in this area, and recommends that the implementing agreements be written to take into account the implications of climate change for Great Lakes / St. Lawrence basin. As explained in the response to the Standing Committee's sixth recommendation, the Government of Canada remains committed to freshwater research to ensure that solid science informs decision making.

### **Recommendation 2**

**The Committee therefore recommends that, in its response to the Council of Great Lakes Governors, the Canadian government urge the governors and the premiers to include specific language in the Agreements stating clearly that in the final analysis of proposals for water removal, the *Boundary Waters Treaty* will prevail and that the IJC must remain the final arbiter of decisions regarding such proposals.**

8. The Government agrees with this recommendation and considers the *Boundary Waters Treaty* (BWT) to be fundamental to the management and protection of the shared waters of the Great Lakes / St. Lawrence basin. In its submission to the CGLG the Government reaffirms that the obligations of the Governments of Canada and the United States under the BWT and the *Great Lakes Water Quality Agreement* (GLWQA) would be unaffected by the proposed Great Lakes Charter Annex implementing agreements. Canada's submission to the Council requests that specific references to the primacy of the GLWQA and the BWT be included in the main text and appendices of the final Great Lakes Charter Annex implementing agreements.

9. The Government's submission recognizes the centrally important role played by the International Joint Commission (IJC), specifically under Article III of the BWT. Under the Treaty, any use, obstruction or diversion that affects the natural flow of boundary waters will require independent approval by the IJC, or a special agreement by the Governments of Canada and the United States. Since its creation, the IJC has provided important advice and guidance to Canada and the United States in resolving and helping to prevent boundary and transboundary water problems.

### **Recommendation 3**

**The Committee therefore recommends in the strongest of terms that, in its response to the Council of Great Lakes Governors, the Canadian government urge the Governors and the premiers to revise and strengthen the Agreements. In so doing the Agreements should adopt the language and the intent of the recommendations of the IJC as outlined in their year 2000 report on the Protection of the Waters of the Great Lakes as minimum requirements for the approval of projects to remove water from the Great Lakes Basin, as the IJC has recommended.**

10. The Government of Canada agrees with this recommendation. In its response to the CGLG, the Government states that the draft implementing agreements are too permissive, do not afford a sufficient level of protection to the waters of the basin and require strengthening. The Government's submission notes that the IJC's 2000 report, *Protection of the Waters of the Great Lakes*, and its August 2004 review provide comprehensive advice to Governments on a range of matters including water uses, cumulative effects, climate change, groundwater, conservation and legal and policy considerations. Although the Government of Canada supports the recommendations contained in the IJC's report, the Government has adopted a stricter approach through its amendments to the *International Boundary Waters Treaty Act* (IBWTA) by prohibiting bulk removal of boundary waters out of their water basins. Those amendments, together with measures adopted by Ontario and Quebec, provide an effective approach to protecting the integrity of the waters of the Great Lakes / St. Lawrence Basin. In its 2004 review, the IJC commended the Governments of Canada, Ontario and Quebec for the added protection their approaches are providing to the basin. The Government has encouraged the CGLG to afford this same level of protection in the Great Lakes Charter Annex implementing agreements.

### **Recommendation 4**

**The Committee recommends that, until the IJC is satisfied that the Agreements meet their recommendations and that their implementation will not cause harm to the ecological**

**integrity of the Great Lakes Basin, Foreign Affairs Canada adopt the position of placing a moratorium on any new bulk sales or removals of surface water or groundwater from the Great Lakes Basin, and that the Government of Canada recommend this position in its response to the Council of Great Lakes Governors.**

11. The Government agrees with the intent of this recommendation and believes that the recommended level of protection is already in place in Canada. Since the provinces have jurisdiction over groundwater, a combined federal-provincial approach is required to ensure the protection of both surface water and groundwater. As noted, in 2002 the federal government amended the *International Boundary Waters Treaty Act* and regulations to prohibit the bulk removal of boundary waters, which includes the Great Lakes, from Canadian basins for any purpose, including export. Provinces and territories have extended similar safeguards. In addition, in January 2005 the Province of Ontario introduced new rules for assessing applications for permits to take water for use within the basin. These rules will require regulators to consider: existing water uses in the watershed; impacts to water flow and levels; relationships between groundwater and surface water; water quantity and quality; and, ensure conservation measures are implemented before a permit can be issued. This combined federal-provincial approach is the most effective means to preserve the integrity of the Great Lakes and St. Lawrence River basin. In its submission to the CGLG, the Government encourages the council to afford the same level of protection and certainty in future drafts of the Charter Annex implementing agreements as provided for in Canada.

#### **Recommendation 5**

**The Committee therefore recommends that the Canadian government remove its support for the 5% maximum use threshold which it considers to be too high and urge the IJC to revisit this provision of its year 2000 recommendations.**

12. The Government of Canada shares the Standing Committee's interest in ensuring that the Great Lakes are afforded a very high degree of protection. In its 2000 report, the International Joint Commission has already comprehensively and independently addressed the matter of Great Lakes protection in response to a joint Canada-U.S. reference. One of the recommendations made by the IJC in its report, *Protection of the Waters of the Great Lakes*, proposed that governments "should not permit any new proposal for removal of water from the Great Lakes Basin to proceed unless the proponent can demonstrate that the removal would not endanger the integrity of the ecosystem of the Great Lakes Basin." The Commission recommended a number of terms and strict criteria that should be applied when reviewing potential removal projects, including that "there be no net loss" or "no greater than 5 percent loss" of water which is removed. In the Government of Canada's February 2002 response to the Commission's report, it was noted that although the Commission's recommended approach was not as strict as Canada's, the Government of Canada supported the Commission's recommendation as it "takes account of the concerns of all governments in the Great Lakes Basin, and affords protection to the integrity of the Basin, while effectively preventing any large-scale or long-distance removals of water."

13. Canada's submission to the Council of Great Lakes Governors recommends extending to the entire international basin the higher standard of protection currently in place in Canada, where

out-of-basin transfers in bulk are prohibited from boundary waters under the *International Boundary Waters Treaty*.

14. The Government also notes that the Governments of Canada and the United States supported the IJC's request to undertake a three year review of the recommendations contained in the 2000 report. That review was completed by the Commission and in their 2004 review report the IJC recommended that the implementing agreements include a management and standard regime consistent with the IJC's 2000 report recommendations. In addition, the Government of Canada supports the Commission's initiative to review the recommendations contained in the 2000 report at ten year intervals, subject to the IJC referring the issue back to the governments of Canada and the United States prior to the 10th anniversary of the original 1999 reference.

#### **Recommendation 6**

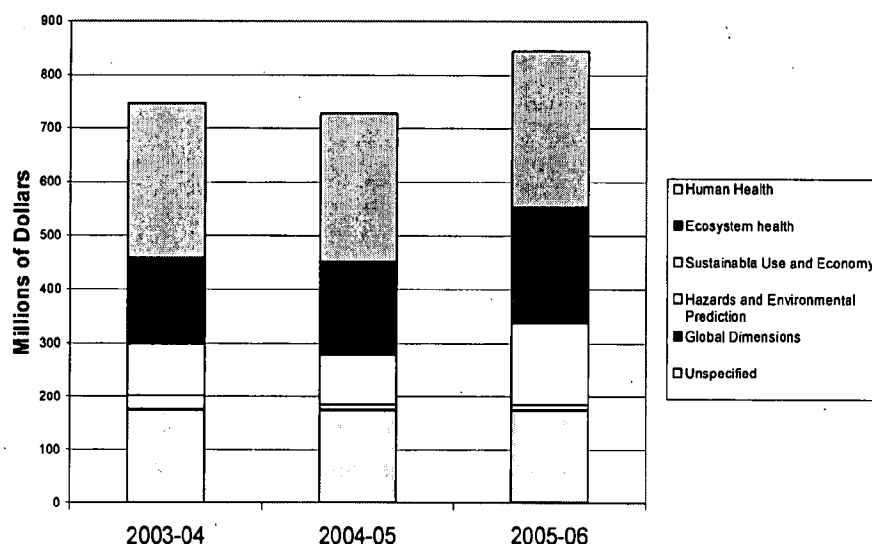
**The Committee recommends that the Canadian government, with the Department of the Environment as lead agency, carry out an interdepartmental analysis of its scientific capacity in freshwater research as well as federal water policy and that it report back to the Committee the results of this analysis. Subsequent to this, the Committee recommends that, in its efforts to reallocate money between and within departments to priority areas, the government apportion, in a coordinated manner, significantly increased resources to freshwater research.**

15. The Government agrees that the type of review recommended by the Standing Committee is necessary, and work is ongoing to identify federal investments in freshwater research and policy capacity, and understand where these investments might be strengthened and better integrated. On behalf of the Interdepartmental Water ADM Committee, the Treasury Board Secretariat began a Water Information Gathering Exercise in 2004 to assemble information on federal water activities, expenditures, and results to support policy development and the coordination of federal activities related to water.

The Water Exercise also categorized federal activities by type of activity, including water research, related science-activities, and policy development. Initial data suggest that since 2003-2004 the federal government has been spending an average of over \$770 million per year on water programs (see graph). At a departmental level, Environment Canada, for example, spent just over \$76 million on water activities in 2003-04, with 49% of these expenditures directed towards achieving ecosystem health outcomes, 25% to sustainable water use, 24% to avoiding hazards and 2% human health. The information collected through the Water Exercise provides a basis for further analysis of federal scientific capacity in freshwater research and federal water policy, and informs decisions regarding the reallocation of money between and within priority water areas.

16. To help ensure an integrated and coordinated approach to freshwater activities, the Interdepartmental Water Assistant Deputy Ministers Committee (IWAC), representing 19 federal departments and agencies, has been engaged in advancing federal water-related policies and programs including the development of the Federal Water Framework. The Framework consists of a common vision associated with the five key ultimate outcomes that have been determined to encompass the scope of federal activity with regard to water. Similarly, on an intergovernmental

### Spending by Horizontal Outcome by Fiscal year



*Draft material - preliminary estimates of direct expenditures are for illustrative purposes only.*

basis, work continues through the Canadian Council of Ministers of the Environment (CCME) to coordinate better federal-provincial freshwater activities. Capacity to advance water policy will become more integrated through the Minister of Environment's pursuit of an environmental sustainability framework to enhance the health and well-being of Canadians, preserve and protect our natural environment, and advance Canada's long-term competitiveness.

17. A draft Federal Freshwater Research Agenda that identifies broad research directions and research priorities for Human Health, Ecosystem Health, Sustainable Use and Hazards Outcomes of the Federal Water Framework has been developed. Based on interdepartmental and stakeholder input, it identifies priority areas for collaboration on federal research. More specifically, in pursuit of sustainable use, the draft agenda currently includes a broad research objective of developing the knowledge necessary for identifying and predicting changes in availability, optimum use and quality of water in relation to multiple users of surface and groundwater. Input has been solicited from federal policy/program staff, provinces, territories and other key interest groups towards completing this integrated research agenda based on the knowledge needs of these agencies and stakeholders. The agenda will be used to provide a coherent framework for addressing strategic planning needs of the federal government and opportunities for collaboration, as well as to ensure federal research complements and builds on research conducted by others, including provinces, territories and academia.

18. The Government remains committed to protecting and enhancing the quality of Canada's freshwater resources, and ensuring that freshwater as a key to a healthy environment is protected and managed wisely and efficiently reflective of its value to all sectors of society and the environment. The Government would be pleased to provide additional information or address any further questions the Standing Committee might have.

## **Recommendation 7**

**The Committee recommends that the Canadian government more fully explore its referral options under the *Boundary Waters Treaty* and that it support the IJC by supplying it with more timely information, better following up on its recommendations, and ensuring that its resources are adequate.**

19. The Government of Canada agrees with this recommendation. Under Article IX of the BWT, the Government of Canada or the United States may request the IJC to investigate and report on questions or matters of difference along the boundary. Known as a reference, this function serves as an important means of addressing Canada-United States boundary environmental issues in an independent and impartial manner. IJC recommendations under a reference are advisory in nature and are not binding on governments. Canada believes that the most effective way to ensure that IJC recommendations are considered by governments is through references made jointly with the Government of the United States. All references made to the IJC have been made jointly with the United States.

20. The Government values the critical and ongoing role of the IJC in providing essential advice and guidance to governments in Canada and the United States on a wide range of matters pertaining to boundary and transboundary waters, including issues of water quality and quantity. The Government of Canada agrees it is important that the information needs of the IJC are met in a timely manner, that governments respond to IJC recommendations and that the IJC receives adequate resources to carry out its functions. The Government of Canada considers all recommendations put forward by the IJC and attempts to provide substantive. For example, in February 2002, the Government provided a detailed response to the IJC's recommendations contained in their report entitled "*The Protection of the Waters of the Great Lakes.*"

21. As part of a larger commitment to the Great Lakes, the October 2004 Speech from the Throne reaffirmed the Government's commitment to work with the IJC on issues such as clean air, water and invasive species. Canada will continue to provide the IJC with stable long term core funding to ensure that the IJC is able to carry out its functions.

## **APPENDIX 1:**

**Submission from the Government of Canada  
to the  
Council of Great Lakes Governors  
on the Proposed  
Great Lakes Basin Sustainable Water Resources Agreement and  
Great Lakes Basin Water Resources Compact  
January 7, 2005**

### **International Obligations**

1. The Great Lakes and St Lawrence River are of national importance to Canadians and, as a result, the Government of Canada is committed to protecting the Great Lakes / St. Lawrence ecosystem for the long term. As a Party to the *Boundary Waters Treaty* of 1909 and therefore responsible, together with the United States, for the rights and obligations contained in the Treaty, Canada considers the Treaty to be fundamental to managing and protecting the shared waters of the Great Lakes.
2. Obligations under the *Boundary Waters Treaty* (BWT) and *Great Lakes Water Quality Agreement* (GLWQA) are unaffected by the proposed agreements. Any project that affects the natural level or flow of boundary waters will require an independent approval by the International Joint Commission (IJC), or a special agreement by the governments of Canada and the United States, as specified in the Treaty. The Parties have also agreed to not pollute waters on the other side of the boundary and to restore and maintain the chemical, physical and biological integrity of the Great Lakes / St Lawrence Basin Ecosystem. Canada notes the references to the BWT and the IJC in the preamble to the proposed agreements, however, in the light of the obligations under the Treaty and the purpose of the GLWQA, specific references in the main text, including appendices, should be included in the final agreements.

### **Canadian Prohibition on Out-of-Basin Diversions**

3. Canada's amendments to its *International Boundary Waters Treaty Act* and regulations, which prohibit bulk removal of boundary waters out of their water basins, principally from the Great Lakes / St. Lawrence Basin in Canada, came into effect on December 2002. The prohibition is a non-discriminatory environmental measure of general application aimed at preserving the integrity of ecosystems and communities within water basins that depend on a sustainable supply of water. All provinces and territories have adopted similar measures, based on scientific principles, sustainable management and the precautionary approach. These provide effective means of minimizing the spread of pollutants, invasive alien species and pathogens – all matters of concern for the Great Lakes.
4. Canada encourages the Council of Great Lakes Governors to afford the same level of protection and certainty in its proposed Great Lakes Basin Sustainable Water Resources Agreement and associated interstate compact on these shared resources. International trade obligations do not prevent Canada and the United States from taking measures to protect water

resources and preserve the integrity of the Great Lakes / St. Lawrence basin ecosystem. The Government of Canada is concerned that by allowing out-of-Basin diversions, the proposed agreements may lead to removals out of the Basin, that would be a permanent loss of water.

### **Advice of the International Joint Commission**

5. Canada recognizes the critical and ongoing role of the International Joint Commission (IJC), established by the *Boundary Waters Treaty* (1909). This important binational organization has provided essential advice and guidance to governments in Canada and the United States on a wide range of matters pertaining to boundary and transboundary waters, including issues of water quality and quantity. In particular, the Commission's February 2000 report, *Protection of the Waters of the Great Lakes* and the recent August 2004 review, provide comprehensive advice to governments on many of these important issues, including water uses, cumulative effects, climate change, groundwater, conservation and legal and policy considerations.

### **Specific Comments**

6. Canada appreciates the efforts of the eight Great Lakes states, Quebec and Ontario to develop new standards for regional review, management and regulation of water in the Great Lakes / St. Lawrence Basin. In particular, the conservation goals to promote the efficient use and minimize water withdrawals are welcomed and should include specific targets and time frames, based on sound science. The inclusion in the proposed agreement of groundwater, reporting requirements, sharing of accurate and comparable data, cumulative effects assessment, water programs and the procedures manual, will be of critical importance to future Great Lakes water sustainable management. It will be important that all jurisdictions implement these provisions and the appendices in a consistent manner and to give effect to the new standards within the Great Lakes / St. Lawrence Basin.

7. The threshold for regional review of uses within the Basin is based on estimates of consumptive use and not on proposed withdrawals of water. This would mean that only very large withdrawals would be reviewed. In addition, much research needs to be done to strengthen the scientific basis for designated thresholds, consumptive uses and their impacts, including the need for research on consumptive use coefficients for various water uses. The agreements are too permissive, as there is no maximum level for water withdrawals, nor recognition that the protection of tributaries, connecting channels or wetlands of national or binational interest may require specific consideration.

8. Applicants for new or increased withdrawals would be required to submit an improvement plan for the waters or water dependent natural resources. While resource improvement is valuable in itself, as a means of ensuring ecological integrity, given the unique importance of water and its finite supply, a proposed improvement should not be used to offset harm to aquatic or other natural resources. In addition, projects should first receive an environmental assessment where appropriate, which is not specified in the agreements. Regional coordination should facilitate broad-based public participation in all stages of assessment, review and implementation, including with First Nations.

9. It is not apparent to the Canadian government why the proposed agreements allow for any exceptions to the provisions for managing Great Lakes water. Notably, the Chicago diversion - the largest diversion out of the Great Lakes - is not subject to the proposed agreements.

10. The proposed agreements are silent on climate change. In this respect, climate change research and the associated vulnerability of the Great Lakes is critical for making sound choices on the management of the basin's water. Water level decreases of some degree are likely, but the timing of the impact of climate change on the Great Lakes is uncertain. The interaction of human activity and climate variability could have dramatic effects. Therefore, Canada suggests that these agreements should be written within the context that climate change could have important implications for water supply to the Great Lakes / St. Lawrence Basin.

11. Canada appreciates that there was an urgent need to conduct public consultations on the proposed agreements and it is the intent of the Council to resume negotiations, to further refine language and concepts in the agreement. Stronger agreements and greater precision are required to afford the highest possible level of protection for the Great Lakes / St Lawrence Basin, to ensure that the proposed water management regime is consistent with the *Boundary Waters Treaty* and other international obligations and to reduce exposure to potential legal challenges. Once finalized, the agreements must require states and provinces to adopt and implement measures, to ensure compliance.

## **Conclusion**

12. Canada recognizes the important role that members of the Council of Great Lakes Governors, including Quebec and Ontario, play in the protection of the ecological integrity of the Basin and in the promotion of sustainable management. However the Canadian government is concerned that the proposed agreements do not afford a sufficient level of protection to the waters of the Basin and should therefore be strengthened. Canada looks forward to an on-going dialogue with the Council and its members on the development of the implementing agreements. In the future, challenges to environmental protection and sustainable development in the Great Lakes / St. Lawrence Basin are expected to increase, requiring an enduring commitment from all jurisdictions.