

Inter-provincial International Agreement(s) Sub-Committee

It is crucial that all Great Lakes States and Provinces are on equal footing and have equal powers and rights to be involved in decisions on withdrawal proposals. These same rights should be extended to the citizens of each jurisdiction. Both of these provisions should be made legally enforceable in each jurisdiction.

1. How and at what point should the public input or comment on proposals be included in the process? Who is the Public?

Each State or Province currently has or will have a public process for involvement in water withdrawal proposals, allowing the public to comment on initial withdrawal proposals within a timeframe. (It would be valuable to compare these systems for best practices). The process set up in the Annex should not diminish the access, rights and transparency of current public notification and participation systems. Efforts should be made to have public rights be equitable across the Basin. Records of initial public intervention and comments on a proposal should be submitted to the regional review body. The public should have the right to intervene and comment at all stages of project consideration for approval.

In our revised diagram of the decision-making tree we would expect opportunity for public input prior to each ruling on the proposal and whenever the proposal under consideration is altered or modified. This presumes that the public would have access to proposal applications, supporting studies, communications between governments and the applicants and all relevant studies to the proposal as well as the record of others' comments in a timely way.

2. How do we see the Regional Advisory Committee process working among the ten jurisdictions? Are there particular issues raised by cross-border consultation that the jurisdictions should take into consideration? *Boundary Waters Treaty*

While states and Provinces cannot sign international treaties, it will be important to ensure that no proposal can conflict with the *Boundary Waters Treaty*.

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Important development~ Yesterday, December 10th, the Canadian Government passed implementing regulations defining its powers under the *BWT*. To quote from their press release " Regulations include the prohibition of bulk removal of boundary waters from Canadian basins for any purpose, including export. In addition, from now on, water-related projects in Canada that affect the level or flow of waters on the US side of the border will require licences. These will be granted following approval by both the Minister of Foreign Affairs and the International Joint Commission. ..."Our federal strategy to protect water, at the source, not at the border, strengthens our commitment to securing water supplies for Canadians," said Environment Minister David Anderson. "This approach is supported by the Provinces and territories". The trigger level for federal government is 50,000 litres per day removals and diversions...Provincial approvals cannot override or bypass these federal obligations.

The question this raises is if one federal government in the Basin has now drawn a line in the sand in its implementation regulation trigger level should we now be asking for 50,000 litres for all jurisdictions? ***

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Parallel Powers

While constitutional prerogatives require different systems for the regional review, the Compact Commission and the Inter-provincial body, both should carry out the regional review together and have parallel powers. This means veto rights enjoyed by the States should be extended to the Provinces and vice versa. These powers should be set out in the legally binding legislation in each jurisdiction. Who makes up the Compact Commission and Inter-Provincial Body? It could be the current Water Management Board under the Charter.***

As all parties have a veto, the goal of their deliberations should be consensus. If consensus cannot be reached then the matter will need to go to another body for appeal.

Appeals

Careful thought needs to be given to the makeup of the regional appeal body.

Several bodies will likely be necessary to ensure that the unprecedented effort and collective work that has gone into Annex 2001 are implemented over the long-term.

Appeals should go to a quasi-judicial body. This body should be arm length from the jurisdictions. They should be able to draw on outside expertise and should have adjudication skills necessary to hold hearings. All of their deliberations should be public. (The NAFTA panels have been discussed as a model. Each panel is put together from a pool of experts. This means different panels can be put together from people with expertise specific to the issue and time delays could be avoided when individuals are unavailable.)***

Prior Notice and Consultation

Evidently this committee has spent time discussing this. While we do not know what issues were discussed, are there concerns we should be addressing? For instance -should only the trigger level determine prior notice or should there be other factors considered such as the precedent setting nature of the proposal? What obligations and deadlines should there be for jurisdictions to notify the public of receiving prior notice? What about the timing of Prior Notice and Consultation?***

3.Reg can you cut and paste in your #3 and 4 please

5. State-Provincial Advisory committee (Compact Commission and Inter-Provincial Body) scheduling and timetables.

The various means for scheduling decision-making about water withdrawal proposals should be expeditious to balance ecological protection with efficiency. Initially meetings should be convened as referrals are made.

Should a State-Provincial Advisory Body meet every year or periodically to assess and evaluate the agreements and consider changes?

There definitely needs to be an evaluative body to assess the over all process and the integrity of the system in the long run. The

current Advisory Committee expanded to include other important stakeholders Tribes and First Nations could serve this function. They could meet to evaluate progress and effectiveness of the Annex.

Other functions

Some further thought should also be given to how the Basin Water Management Program promised in the Great Lakes Charter is integrated with the new needs set out in the Annex.

Another expert body will be needed to infuse new science and best management practices into decision-making, to assess cumulative and ecological impacts of water withdrawals, to ensure data collection is thorough, timely, and to carry out restoration planning. The work of this group will be very demanding at the outset and must be adequately funded and staffed by technical experts from a variety of disciplines and parts of the Basin. Because of the intensive technical nature of this work it would not be practical for these functions to be carried out by the joint Compact Commission and Inter-provincial body.