

## LOWELL, INDIANA GREAT LAKES DIVERSION

### SUMMARY:

The Town of Lowell, Indiana (South of Gary) requested approval in 1991 to permanently divert up to 3.8 million gallons/day of Lake Michigan water into the Mississippi River watershed. The town's public wells are contaminated with excessive levels of naturally-occurring fluoride and the US EPA has ordered them to replace it. Because of the questionable legality of the Pleasant Prairie, Wisconsin diversion of 1990, the Council of Great Lakes Governors (CGLG) has carefully followed the legal approval process, which requires clear approvals of all 8 Great Lakes Governors, as stipulated by federal law P.L. 99-662 (and also a NY state law requiring NY Governor's approval).

- \* The governors plan to hold a conference call to formally issue their votes, followed by a public announcement. The CGLG says they are aiming for somewhere between Feb. 6 to 11. (Canada and Ontario have already formally opposed it, but they do not veto power).
- \* At the last moment, Indiana Governor Bayh put in writing for the first time that the diversion request was for 1.7 million gal/day (reduced from 3.8 mgd) to make it more palatable to the governors. However, the pipe's capacity will remain at 3.8 mgd, which makes it easier for an expanded diversion to be proposed in the future.
- \* The 25-mile pipeline to Lake Michigan was chosen out of financial expediency—and the fact the Lake Michigan offers the best quality water! Many other non-diversion options were never considered.
- \* It is very likely that other nearby communities share a similar well water problem or want more water to expand, and are looking at the Lowell decision with interest.
- \* The Lowell decision is the first one to follow the legal approval process of federal law and the Great Lakes charter. Therefore, it will set an important precedent. Many other diversion requests by other communities are likely to surface in the future.
- \* GLU organized a basin-wide response and sent out a news release and formal letters urging disapproval signed jointly by 15 groups last August. We have also testified, participated in the Governors' conference call and extensively communicated with the media and the governments to keep up the pressure.
- \* *a water conservation plan be required*

## RECOMMENDATIONS:

1. Send a letter to the Great Lakes Governors (before their decision is made) informing them we would accept a temporary diversion (as was done with Pleasant Prairie). But the temporary condition must be put into legally-binding agreement and permit, with a specific year by which the return of the water must occur. Furthermore, Michigan Governor Engler sent a January 14 letter to GLU and LMF specifically requesting our advice for his decision before January 31.

The benefit of such a letter (allowing a temporary decision) is that it:

- shifts the emphasis to a financial decision, not a human health emergency decision. If Pleasant Prairie and Wisconsin could agree to find the money to build a return pipeline, so can Lowell and Indiana.
  - inserts GLU into a pro-active role right up to the last moment (as opposed to sitting back waiting for their decision).
  - puts us in a position of offering a constructive alternative, rather than being labelled "obstructionist and uncompromising", as has already been charged.
2. Promptly respond to the Governors' decision on Lowell through a joint news release, commending or strongly criticizing them, depending upon the decision.

- Bruce Kershner

**PROPOSED RESOLUTION**  
**GREAT LAKES DIVERSIONS**

**WHEREAS**, Great Lakes United has previously taken a strong position opposed to out of basin diversions of Great Lakes water because of their serious implications to Great Lakes ecology, habitat and economy, **AND**

**WHEREAS**, more than ten diversion projects have surfaced during the last ten years,

**NOW THEREFORE BE IT RESOLVED**, that Great Lakes United reaffirms its opposition to any out-of-basin diversion, **AND**

**THEREFORE BE IT FURTHER RESOLVED**, that Great Lakes United specifically opposes the Lowell, IN diversion.

**SPONSORED BY: Capitol Area Audubon**

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OFFICE OF THE GOVERNOR  
INDIANAPOLIS, INDIANA 46204-8197EVAN BATH  
GOVERNOR

May 1, 1992

The Honorable Robert Keith Rae, Premier  
Province of Ontario  
Legislative Building  
Queen's Park  
Toronto, Ontario M7A 1A1, CANADA

Dear Premier Rae:

A conference call among representatives of the governors of the Great Lakes states and the premiers of the Great Lakes provinces has been arranged for Friday, May 8, 1992 to vote on the Lowell diversion proposal. This letter sets forth the terms and conditions of the Lowell proposal.

The Town of Lowell will divert an average daily amount of 1.1 million gallons of water and a maximum daily amount of 1.7 million gallons through connection with the Gary-Hobart water system. The diversion is subject to the following conditions:

1. The State of Indiana will <sup>provide</sup> ensure a mechanism acceptable to all the states to measure the amount of water leaving the Lake Michigan Basin and to report such amounts to the Great Lakes governors, the Canadian premiers and the Council of Great Lakes Governors on a monthly basis. Details of the measurement mechanism will be submitted to the above parties. Also the Council will make such reports available to the public upon request. No increase in the diversion amount is contemplated and none could be implemented without the approval of the Great Lakes states, which would have to be sought as a new request.
2. The Town of Lowell and the State of Indiana will guarantee the return of an equal or greater amount of water from other than existing sources to the Great Lakes Basin. A plan for the return of water will be submitted

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to the state of Indiana on or before July 1, 1995 and the return will be implemented on or before July 1, 2000. The location and details of the proposed return shall be provided to the Great Lakes States and Provinces on or before [that date]. [Any] water so returned shall meet all applicable water quality standards on the receiving stream. The Town and the State will submit progress reports every six months during each of these phases to the Council of Great Lakes Governors for distribution to the Great Lakes governors and premiers and, upon request, to the public.

3. The State of Indiana will continue to work with the Town of Lowell in developing additional voluntary and regulatory conservation measures as allowed by State law and will report to the Council of Great Lakes Governors on the progress of these efforts. By May 1, 1993 the Town of Lowell shall implement a water conservation plan.
4. No further water diversion requests of any size shall be approved pursuant to the Great Lakes Charter or the Water Resources Development Act of 1986 until the following conditions are met:
  - a. The governors and premiers shall, by consensus, <sup>adopt</sup> [approve] a specific process for the submission of diversion requests. This process must detail the form and content of material necessary for consideration to occur, and must outline a schedule for completion of the review;
  - b. The governors and premiers shall, by consensus, adopt specific criteria which must be satisfied for diversions to receive approval;
  - c. The governors and premiers shall, by consensus, develop specific guidelines for assessing the cumulative impact of diversions.

[ All elements of the above shall be made available for public review and comment. ]

The governors and premiers will reconstitute the Water Resources Management Committee established by the Charter to develop the above terms.

Recognizing that a failure to move speedily on the development and adoption of the above terms will be as injurious to regional consensus as a breakdown in the Charter process, a commitment is made to complete the development of all three products within one year.

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The specific timeline agreed to is as follows:

- Reconstitution of the Water Resources Management Committee .....June 30, 1992
- Completion of element (a).....September 30, 1992
- Completion of element (b).....January 1, 1993
- Completion of element (c).....May 1, 1993

A final report shall be submitted to the governors and premiers by May 1993.

The Water Resources Management Committee shall prepare a basin-wide conservation and use plan by July 1, 1997; such plan shall be implemented immediately thereafter.

After the discussions of the concerns of state, provincial and private organizations, I believe a diversion subject to these conditions represents the best way to compromise and solve Lowell's water supply problem, and at the same time advance the goals of the G.L.C.

I have been motivated throughout this process by a single fact that I would appreciate your taking into account: the 6,000 residents of Lowell face a very real and current risk to their health from a contaminated water supply. The diversion of this insignificant amount of water will solve that problem without in any way harming the Great Lakes.

I would very much appreciate your supporting the Lowell diversion proposal.

With best personal wishes.

Sincerely,

Evan Bayh

EB/tlb

3:00 pm  
April 29th



OFFICE OF THE GOVERNOR  
INDIANAPOLIS, INDIANA 46204-2797

EVAN BAYH  
GOVERNOR

April 24, 1992

The Honorable John Engler  
Governor of the State of Michigan  
State Capitol  
Lansing, Michigan 48909

Dear John:

A conference call among representatives of the governors of the Great Lakes states has been arranged for Friday, May 1, 1992 to vote on the Lowell diversion proposal. This letter sets forth the terms and conditions of the Lowell proposal.

The Town of Lowell will divert an average daily amount of 1.1 million gallons of water and a maximum daily amount of 1.7 million gallons through connection with the Gary-Hobart water system. The diversion is subject to the following conditions:

1. ~~The Gary-Hobart Water Corporation~~ will provide a mechanism acceptable to all the states to measure the amount of water leaving the Lake Michigan Basin and to report such amounts to the ~~State of Indiana~~ on a monthly basis. No increase in the diversion amount is contemplated and none could be implemented without the approval of the Great Lakes states, which would have to be sought as a new request.

*and the State of Indiana guarantee*

2. The Town of Lowell will ~~ensure~~ the return of an equal or greater amount of water to the Great Lakes Basin. A plan for the return of water will be submitted to the State of Indiana on or before July 1, 1994 and the plan will be implemented on or before July 1, 2002. The location and details of the proposed return shall be ~~provided to the Great Lakes States and Provinces on or before that date~~ July 1, 2002. Any water so returned shall meet all applicable water quality standards on the receiving stream.

*Gov.'s Premier Council of G.L. Governors*

*from other than an existing source.*

*Approved by the  
Ind. go*

*The GGLG shall make the reports available to the public upon written request.*

By May 1, 1993, the Town of Lowell shall <sup>implement</sup> ~~submit~~ a plan, ~~developed by~~ ~~the state~~ ~~for approval~~

3. The State of Indiana will continue to work with the Town of Lowell in developing additional voluntary and regulatory conservation measures as allowed by State law and will ~~provide yearly~~ reports to the Council of Great Lakes Governors on the progress of these efforts.

4. No further water diversion requests of any size shall be approved pursuant to the Great Lakes Charter or the Water Resources Development Act of 1986 until the following conditions are met:

(Each...)

a. The governors and premiers, <sup>by consensus, adopt</sup> approve a specific process for the submission of diversion requests. This process must detail the form and content of material necessary for consideration to occur, and must outline a schedule for completion of the review;

(Each...)

b. The governors and premiers, <sup>by consensus,</sup> adopt specific criteria which must be satisfied for diversions to receive approval;

c. The governors and premiers develop specific guidelines for assessing the cumulative impact of diversions.

~~The process (a), criteria (b), and guidelines (c) shall be made available for public review and comment. This waiver on consideration may be lifted only by the declaration of an official public health emergency by a governor or premier.~~

The governors and premiers will reconstitute the Water Resources Management Committee established by the Charter to develop the above terms. <sup>basinwide conservation and use plan by July 1, 1994. The plan shall be implemented by July 1, 2002</sup> The WRMCM shall prepare a

Recognizing that a failure to move speedily on the development and adoption of the above terms will be as injurious to regional consensus as a breakdown in the Charter process, a commitment is made to complete the development of all three products within one year.

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A final report shall be submitted to the governors by May 1993.



After the discussions of the concerns of state, provincial and private organizations, I believe a diversion subject to these conditions represents the best way to compromise and solve Lowell's water supply problem.

I have been motivated throughout this process by a single fact that I would appreciate your taking into account: the 6,000 residents of Lowell face a very real and current risk to their health from a contaminated water supply. The diversion of this insignificant amount of water will solve that problem without in any way harming the Great Lakes.

I would very much appreciate your supporting the Lowell diversion proposal.

With best personal wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Bayh". The signature is fluid and cursive, with a large loop at the end.

Evan Bayh

EB/tlb