

TRIBAL & FIRST NATIONS GREAT LAKES
WATER
ACCORD.

NOVEMBER 23, 2004

Tribal and First Nations Great Lakes Water Accord

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Our ancestors have inhabited the Great Lakes Basin since time immemorial, long before the current political boundaries were drawn. Our spiritual and cultural connections to our Mother Earth are manifest by our willingness to embrace the responsibility of protecting and preserving the land and Waters.

Traditional teachings and modern science combine to strengthen our historical understanding that Water is the life-blood of our Mother Earth.

Indigenous women continue their role as protectors of the Water. Ceremonial teachings are reminders of our heritage, they are practices of our current peoples, and they are treasured gifts that we hand to our children.

When considering matters of great importance we are taught to think beyond the current generation. We also are taught that each of us is someone's seventh generation. We must continually ask ourselves what we are leaving for a future seventh generation.

We understand that the whole earth is an interconnected ecosystem. The health of any one part affects the health and well being of the whole. It is our spiritual and cultural responsibility to protect our local lands and Waters in order to help protect the whole of Mother Earth.

Tribes and First Nations have observed with growing interest that the Great Lakes Basin governments of the United States and Canada have begun to share our concerns about the preservation of the quality and quantity of the Great Lakes Waters.

The eight States and two Provinces of the Great Lakes Basin entered into the 1985 Great Lakes Charter, Annex 2001, and have drafted an Interstate Compact and International Agreement to implement the provisions of Annex 2001. These agreements, however, make no provisions for including Tribes and First Nations as governments with rights and responsibilities regarding Great Lakes Waters. These agreements also assert that only the States and Provinces have governmental responsibility within the Great Lakes Basin.

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Through International treaties and court actions, however, Tribes and First Nations continue to exercise cultural and spiritual rights of self-determination and property rights within traditional territories for our peoples and nations. Tribal and First Nation governments, like all governments, have the duty to protect the interests and future rights of our peoples. Since we have recognized rights and we are not political subdivisions of the States or Provinces, the assertion that the States and Provinces own and have the sole responsibility to protect the Waters is flawed.

Thus, the efforts of the States and Provinces to protect the Waters of the Great Lakes Basin are flawed because these efforts do not include the direct participation of the governments of Tribes and First Nations. This fundamental flaw endangers the interests of all of the inhabitants of the Great Lakes Basin and, ultimately, because of the interconnectedness of the worldwide ecosystem, endangers the interests of the entire earth.

It is thus our right, our responsibility and our duty to insist that no plan to protect and preserve the Great Lakes Waters moves forward without the equal highest-level participation of Tribal and First Nation governments with the governments of the United States and Canada. Merely consulting with Tribes and First Nations is not adequate, full participation must be achieved.

By this accord signed on November 23, 2004, at Sault Ste. Marie, Michigan, the Tribes and First Nations of the Great Lakes Basin do hereby demand that our rights and sovereignty be respected, that any governmental effort to protect and preserve the Waters of the Great Lakes Basin include full participation by Tribes and First Nations, and we also hereby pledge that we share the interests and concerns about the future of the Great Lakes Waters, further pledging to work together with each other and with the other governments in the Great Lakes Basin to secure a healthy future for the Great Lakes.

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AAMJIWNAANG

By Darren Henry, Councilor

ASSOCIATION OF IROQUOIS AND ALLIED NATIONS

By Chief Chris McCormack

AUDECK OMNI KANING

By Peter Nahwegahbow

BATCHEWANA FIRST NATION

By Chief Vernon Syrette

BEAUSOLEIL FIRST NATION

By Rod Monague, Councilor

BIIJITWAABIK ZAAING ANISHINAABEK

By Chief Mike Esquega

CHIEFS OF ONTARIO

By Regional Chief Charles Fox

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION

By Geewadin Elliott

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DELAWARE (MORAVIAN) NATION

By Denise Stonefish

FIRST NATION OF CREES QUEBEC

By Daisy Costas

FOND DU LAC

By Eugene Reynolds

GARDEN RIVER FIRST NATION

By Chief Lyle Sayers

GRAND TRAVERSE BAY BAND OF OTTAWA AND CHIPPEWA INDIANS

By Robert Kewaygoshkum, Chairperson

HURON POTAWATOMI, INC.

By Laura Spurr, Chairperson

KEWEENAW BAY INDIAN COMMUNITY

By William E. Emery, President

LITTLE RIVER BAND OF OTTAWA INDIANS

By Lee Sprague, Ogemaw

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LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

By Frank Ettawageshik, Chairman

MAGNETAWAN FIRST NATION

By Chief Wilmer Noganosh

MATAWA FIRST NATION

By Noah Oshag, First Nation Delegate

M'CHIGEENG FIRST NATION

By Chief Glen Hare

MISSISSAUGA FIRST NATION

By Chief Bryan LaForm

MOHAWKS OF BAY OF QUINTE

By Chief R. Donald Maracle

MOHAWKS OF AKWENSASNE

By Chief A. Francis Boots

NISHNAWBE ASKI NATION

By Deputy Grand Chief Dan Kooses

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ONEIDA NATION OF THE THAMES

By Chief Randall Phillips

POKAGON BAND OF POTAWATOMI INDIANS

By Dan Rapp, Tribal Secretary

SAGAMOK ANISHNAWBEK

By Chief Angus Toulouse

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

By Chief Audrey Falcon

SAUGEEN FIRST NATION

By Chief Vernon Roote

SAULT STE MARIE TRIBE OF CHIPPEWA INDIANS

By Aaron Payment, Chairperson

SOKAOGAN CHIPPEWA

By Tina Van Zile, Tribal Delegate

STOCKBRIDGE MUNSEE

Robert Chicks, Chairperson

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THESSALON FIRST NATION

Chief James Wabigwan

UNION OF ONTARIO INDIANS

By Grand Council Chief John Beaucage

WALPOLE ISLAND FIRST NATION

By David White, First Nation Delegate

WASAUKSING FIRST NATION

Chief Joel King

WHITEFISH RIVER FIRST NATION

Esther Osche, First Nation Delegate

WIKIWEMIKONG FIRST NATION

By Ron Manitowabi, Councilor

ZHIIBAHAASING FIRST NATION

Chief Irene Kells

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CHIEFS OF ONTARIO

**Special Chiefs Assembly
November 9-11, 2004
Thunder Bay, Ontario**

GREAT LAKES WATER QUALITY AND QUANTITY

**RESOLUTION 04/60
Page 1 of 2**

WHEREAS Indigenous People have inhabited the Great Lakes Basin since time immemorial, long before the current Canadian and American political boundaries were drawn;

MOVED BY:

Chief Dr. Dean Jacobs,
Bkejwanong Territory

WHEREAS traditional teachings and modern science combine to strengthen our historical understanding that Water is the life-blood of our Mother Earth;

SECONDED BY:

Chief Patrick Madahbee,
Aundeck-Omni-Kaning

WHEREAS Indigenous women continue their role as protectors of the water;

WHEREAS the whole Earth is an interconnected ecosystem and the health of any one part affects the health and well being of the whole;

CONSENSUS

WHEREAS it is the spiritual and cultural responsibility of First Nations to protect our traditional lands and waters in order to protect the whole Mother Earth;

Certified Copy of a Resolution adopted on
November 9, 2004.

WHEREAS the Great Lakes Water Charter is a regime that manages the Great Lakes basin ecosystem, and has been signed by two provinces and eight (8) U.S governors, and has been endorsed by both Canada and the United States;



Charles D. Fox, Ontario Regional Chief

WHEREAS the Charter Annex signed in 2001 is a reaffirmation of the Great Lakes Water Charter;

Resolution 04/60
Page 2 of 2

WHEREAS First Nations in Canada, and Native American Tribes in the United States, have not been adequately consulted on the Great Lakes Water Charter which, in essence, governs the export and diversion of Great Lakes water;

WHEREAS the International Joint Committee (IJC) established between Canada and the United States, does not include First Nations parties;

THEREFORE BE IT RESOLVED that we, the Chiefs in Assembly, oppose the export and diversion of water in any quantity for any reason, and we hereby put the Government of Canada, Province of Ontario and other signatories to the Great Lakes Water Charter on notice of our united opposition to using water as a commodity;

FURTHER BE IT RESOLVED that we demand that the Province of Ontario and other signatories of the Great Lakes Water Charter include First Nations in any decisions and policy making regarding the water quality of the Great Lakes;

FURTHER BE IT RESOLVED that we demand a full and open consultation process, including resources to do so, from the Province of Ontario with regard to the Great Lakes Water Charter Annex, including face-to-face meetings with our leadership and broad-based community consultations;

FURTHER BE IT RESOLVED that the 134 First Nations in Ontario have never surrendered rights to the Great Lakes and, as owners, must be included as full participants in the Great Lakes Water Charter process, and must be given full participation on the IJC;

FURTHER BE IT RESOVLED that we reserve the right to protect Aboriginal, Treaty, and inherent rights at all relevant national and international forums;

FINALLY BE IT RESOLVED that we direct the Chiefs in Ontario office to facilitate a coordinated approach among First Nations in Ontario to address Great Lakes Water quality and quantity issues.

SECOND MEETING
JANUARY 27 2005
GREAT LAKES CHARTER
ANNEX ADVISORY PANEL

Great Lakes Charter Annex Advisory Panel Meeting

Thursday January 27, 2005
Travelodge Hotel Toronto Airport
10:00 am – 3:30 pm

- 10:00 – 10:15** **Welcome & Introductions** (Karen Wianecki/Rob Messervey)
- Meeting Purpose
 - Today's Objectives
- 10:15 – 11:00** **Status Update, Next Steps of GLCA Initiative**
(Rob Messervey/Kevin Wilson)
1. Update of Action items from Dec 15th meeting (Water Accord, Source Protection, Permit to Take Water, sharing of response to First Nations)
 2. Comments that have come in since December 15th meeting
Federal position, Environmental groups, U.S. State Department
 3. Basin First Nations meeting and Agenda
 4. Upcoming Events (Munk Centre, Joyce Foundation, Gordon Water Grantees)
 5. Next Steps – March Working Group Meeting, Mid summer finalized agreements
- 11:00 – 11:30** **Summary of Chicago meeting** (Kevin Wilson)
Options continuum, what we went with and what discussions were focused around
- 11:30 – 12:00** **Facilitated Discussion of Key Issues and Options from January Working Group Meeting**
(Rob Messervey/Paula Thompson/Karen Wianecki)
- **Diversions**
- 12:00 – 12:30** **Lunch**
- 12:30 – 3:30** **Continued Facilitated Discussion of Key Issues and Options from January Working Group Meeting**
(Rob Messervey/Paula Thompson/Karen Wianecki)
- **Intra Basin Diversions**
 - **Consumptive Uses**
 - **Water Conservation**
 - **Groundwater Boundary**
 - **Other Issues**
- 3:30** **Future Meetings and Wrap-Up** (Kevin Wilson)

PRINCIPLES OF ENVIRONMENTAL LAW AND THE GREAT LAKES ANNEX

Prepared by Sierra Legal Defence Fund – R. Wright
February 9, 2005

Precautionary Principle

“The precautionary principle requires that ‘where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used a reason for postponing measures to prevent environmental degradation.’”¹

The onus of proving that an activity, substance, or project is not harmful to the Great Lakes ecosystem would assist in meeting the objectives of the precautionary principle. In order to guard against irreparable damage caused by inadequate scientific knowledge, water withdrawal projects shall not pose any risk of permanent or irreversible change to the biological, physical, and chemical characteristics of the hydrologic system that could impair its ecological function.

The precautionary principle expresses the principle of environmental sanctity in the absence of scientific, or legal knowledge of environmental adverse effects or risk of harm: conserve the resource. The principle embodies a presumption of environmental risk. “Everyone is aware that individually and collectively, we are responsible for preserving the natural environment”²

Principle of Intergenerational Equity

The principle of intergenerational equity is “that each generation has an obligation to future generations to pass on the natural and cultural resources of the planet in no worse condition than received and to provide reasonable access to the legacy for the present generation.”³

Intergenerational equity is a value concept that focuses on the rights of future generations. It is a belief that is implicit in ecological sustainability. Intergenerational equity is a notion that views the human community as a partnership among all generations. Each generation has the right to inherit the same diversity in natural and cultural resources enjoyed by previous generations and to equitable access to the use and benefits of these resources. At the same time, the present generation is a custodian of the planet for future generations, obliged to conserve this legacy so that future generations may also enjoy these same rights. In this way, intergenerational equity extends the scope of social justice into the future.

The intergenerational equity principle is an emerging principle of environmental law both internationally and in Canada. The principle of intergenerational equity is found in international

¹ D. Boyd, *Unnatural Law*: (Toronto: UBC Press, 2003) at 234.

² *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at 1075.

³ E.B. Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University, 1989) at 37-38.

declarations relating to the environment and sustainable development, and also appears in Canadian case law and statutes.⁴

The Canadian case of *Imperial Oil v. Quebec (Minister of the Environment)*⁵ examined the theory of "intergenerational solidarity"⁶ found in a Quebec environmental statute. The Supreme Court discussed "the collective desire to protect [the environment]...in the interests of people...today...[and a] debt to humanity and the world of tomorrow."⁷

The Public Trust

A public trust creates a right of action by the beneficiary (the public) against the trustee (the government or government agency) for mismanagement of the public resource in held in trust. For example, if all water use and alteration decisions must be subject to challenge by citizens, this might be accommodated through the concept of the public trust. Furthermore, the Council of Great Lakes Governors (the Council) refers to itself as "trustees" of the Great Lakes Basin.⁸

The public trust has a stronger footing in the States within the USA that have created statutory public trusts, including Michigan.⁹ Canadian courts have not specifically used the "trust" nomenclature within statutes like the Ontario *Parks Act*¹⁰ but, have recently given approval of a *parens patriae* concept.¹¹ A limitation of the public trust is that there is difficulty in having rights of actions by individuals against private actors or other individuals; it must be against the government trustee.

⁴ See United Nations World Commission on Environment and Development (the Brundtland Commission), *Our Common Future* (New York: Oxford University Press, 1987) ("*Our Common Future*") at p. 330; Redgwell, *Intergenerational Trusts and Environmental Protection* (Manchester: Manchester University Press, 1999), at pp.120-23, 126-27;

Jerry V. DeMarco, *Law for Future Generations: The Theory of Intergenerational Equity in Canadian Environmental Law* J.E.L.P. 15(1) 2004 1 (Forthcoming) at pp.3-19, 21-36.

⁵ [2003] 2 S.C.R. 624 ["Imperial Oil"].

⁶ *Imperial Oil*, *supra* note 9, at para 19.

⁷ *Ibid.*

⁸ The Great Lakes Charter, Principles for the Management of Great Lakes Water Resources, "Findings" state: As trustees of the Basin's natural resources, the Great Lakes States and Provinces have a shared duty to protect, conserve, and manage the renewable but finite waters of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come."

⁹ The seminal article on the public trust is written by the drafter of the Michigan statute incorporating the public trust, see: J. Saxe, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention?", (1970) 68 Mich. L. Rev. 471.

¹⁰ *Green v. The Queen in Right of Ontario*, [1973] 2 O.R. 396.

¹¹ *British Columbia v. Canadian Forest Products Ltd.*, [2004] 2 S.C.R. 74 at para. 67.

Public Environmental Rights

Public rights are those vested in the public generally; rights that any member of the public may enjoy. In the context of environmental rights, this includes but is not limited to, rights to clean air, clean water, and a safe environment. The concept of public environmental rights is also closely connected to the environmental law principles of intergenerational equity and the principle that the Crown as *parens patriae* owes a trust-like duty to the public to ensure that such public rights are protected.¹²

The principle that there are public environmental rights is a traditional notion that dates back to the time of Roman Law. It is also a principle that is emerging in the context of contemporary environmental law, both at the international level and in Canada.¹³

¹² M. Faieta et al. *Environmental Harm: Civil Actions and Compensation*. (Toronto: Butterworths, 1996), at p. 46; Interveners' Book of Authorities, Tab 18.

Canfor, supra, at para. 81; Interveners' Book of Authorities, Tab 4.

Imperial Oil, supra, Appellant's Authorities, Tab 6, at paras. 34, 38, 39, pp. 648-651.

Canadian Pacific, supra, at p. 1076; Interveners' Book of Authorities, Tab 8.

¹³ *Our Common Future, supra*, at p.330;

Canfor, supra, at para. 74

Great Lakes Charter Annex
Second Meeting of the Annex Advisory Panel

Thursday, January 27th, 2005
Travelodge Hotel, Toronto Airport
10:00 – 4:15 pm

Proceedings From the Second Meeting

R. Messervey welcomed all to the second meeting of the Annex Advisory Panel and outlined the objectives for the day. The meeting was designed with a four-fold purpose in mind:

- (i) To provide Panel Members with an update on the GLCA negotiations and related initiatives;
- (ii) To respond to and follow up on matters raised at the Inaugural AAP meeting;
- (iii) To hear from Panel Members regarding key issues being considered by the Great Lakes jurisdictions and to obtain specific thoughts, issues and perspectives in connection with these key issues; and
- (iv) To allow for open dialogue on issues of interest to Advisory Panel Members directly.

The Advisory Panel Members were asked to introduce themselves and to identify their 'marks of success' for the meeting. It was agreed that the meeting would be successful if participants were able to:

- secure advice, information and knowledge;
- learn more about the options being considered;
- affect the negotiations such that an Agreement emerges that protects the Great Lakes;
- share information and be able to bring information back to their respective constituents;
- develop a common understanding and a basis to move forward from a negotiation perspective;
- observe, hear perspectives and listen to others;
- receive information updates with respect to First Nation interests
- receive updates on parallel provincial water management initiatives, including source water protection;
- further their own objectives and protect their interests;
- influence a no diversion policy;
- contribute to the development of improved tools for the citizens of Ontario with respect to water management and an overall conservation agenda;
- develop a better appreciation for the negotiation process and a better understanding of how Ontario is perceived at the negotiation table.

In summary, Panel Members were looking for an update on the status of negotiations resulting from the recent meeting in Chicago. They wanted to offer support to 'other voices'

around the table, focus on the positive impacts the AAP can have collectively on the negotiation process and on the Agreements, and to identify opportunities to find common ground with the U.S. Great Lakes jurisdictions on basin-wide issues.

In keeping with commitments identified in the Inaugural Meeting, R. Messervey provided an update of several initiatives. Rob advised that a copy of the First Nation Water Accord had been distributed to Panel Members previously. Rob noted a request by First Nations Panel Members to share the Ministry's response to questions raised by First Nations. Rob advised that the formal response to those questions was in the process of being finalized.

ACTION: MNR TO PROVIDE ADVISORY PANEL MEMBERS WITH A COPY OF THE RESPONSE TO FIRST NATION QUESTIONS, SUBJECT TO APPROVAL OF THE CORRESPONDENTS.

1. Status Update of the GLCA Process & Related Initiatives

a) Source Water Protection – An Update

R. Messervey provided Panel Members with an update on the Source Water Protection initiative of Government. Rob indicated that the Government had targeted early 2005 as the time horizon for introducing comprehensive source water protection legislation. Regulatory and Technical Guidelines are being prepared, and work in this area is continuing while efforts are being made to develop the legislation. Other work is continuing on source water protection, including:

- Funding details – 2005/06
- Northern/Central Ontario governance
- Farm water protection planning
- Work with First Nations and Federal Government
- Alternative Dispute Resolution
- Science work recommended by the Technical Experts Committee

Rob indicated that MOE are conducting a series of roundtables (by invitation only) to seek input from stakeholders and First Nations.

Considerable discussion occurred around the importance of recognizing the linkages between the GLCA process and source water protection. Several panel members indicated that while mapping is being done for watershed planning, there is no effort to integrate the GLCA into that process. Others raised questions concerning the work of the Source Water Protection Implementing Committee, and whether discussions that are occurring at that table will find their way to the GLCA discussions. Concern was expressed that source protection plans were not required for the Great Lakes.

Recognizing the important linkages between the GLCA and Ontario's source water protection initiative, Rob indicated that the GLCA Agreements establish a minimum environmental standard to be achieved. Under that umbrella, each jurisdiction can then develop specific initiatives designed to meet or exceed that standard. Ontario's source water protection efforts are complementary to Ontario's efforts to protect basin waters under the GLCA.

b) Permit to Take Water – An Update

R. Messervey provided Panel Members with an update on the Permit to Take Water process. On December 14, 2004, MOE announced changes to the regulation governing the permit to take water program by posting a final version of the Water Taking and Transfer Regulation. The new Regulation, effective January 1, 2005 replaces Regulation 285. MOE have also released the proposed changes to the Permit to Take Water Manual. The Manual was posted on the EBR and a 45-day comment period has been provided – the posting period closes tomorrow – January 28. In addition, administrative fees for water taking permits were approved on December 23 and took effect January 1. These fees support the assessment of permit applications.

Representatives from MOE provided additional information to Panel Members concerning the Permit to Take Water initiative. Panel Members were informed that this process contains more information with respect to cumulative impacts and that there is a specific time horizon for implementation. A full water-use monitoring and reporting process will be in place and efforts will be staged to allow the process to unfold by 2008. Some monitoring will commence in July.

c) Federal Government Comments

R. Messervey provided an update for Panel Members on a summary of the comments made by the Federal Government with respect to the GLCA Agreements. The Federal Government is encouraged by the process to protect the Great Lakes and promotes protection consistent with Canada's prohibition of bulk water removal under the International Boundary Waters Treaty Act effective December 2002. RM indicated that the Federal Government position reiterates the obligations under the Boundary Waters Treaty, Great Lakes Water Quality Agreement and notes that these are unaffected by these proposed agreements but has suggested that references to the Boundary Waters Treaty and the International Joint Commission need to be included in the final Agreements. In keeping with this, the Federal Government position recognizes the crucial ongoing role of the IJC and that the inclusion of groundwater, reporting requirements, sharing accurate and comparable data, cumulative effects assessment, water programs and a procedures manual are of critical importance to the sustainable management of the Great Lakes.

In summary, the January 11, 2005 comments from the Federal Government suggest that stronger agreements and greater precision are needed to afford protection and reduce legal challenges. In particular, the Federal Government have called for strengthened conservation, raised concerns about resource improvement, the Chicago diversion and climate change.

d) U.S. State Department Comments

R. Messervey indicated that comments from the U.S. State Department suggest that the Interstate Compact could be read to supersede federal laws. While the State Department does not believe this was the intent of the Great Lakes States, it nevertheless calls for the language to be clarified in both the final Agreement and in the Compact.

e) ENGO Comments Since Last Meeting

Since the last AAP meeting, comments have been received from several Environmental Non-Government Organizations. Comments focused on the need for the negotiations to be made more accessible to the public by:

- posting on the Council of Great Lakes Governors (CGLG) website, an appropriately edited version of the public comment summary handed out to the Advisory Committee at the November meeting;
- settle on and announce (by press release), a tentative plan for completion of negotiations, including further opportunities for public comment;
- post the results of meetings more quickly as appropriate on the CGLG website.

On January 25, in response to these comments, the Council of Great Lakes Governors posted a summary of the public comments, confirmed that a calendar will be shared with the public once details have been finalized, and made a commitment to further public consultation and timely posting of the meeting summaries.

f) Other Great Lakes Events

Panel Members took the opportunity to provide one another with general information about upcoming events of interest.

- Adele Hurley advised Members that the Chicago-Kent College of Law and the Munk Centre for International Studies will be hosting a workshop called “Legal Diversions or Legal Solutions: The Draft Annex 2001 Agreements and the Future of the Great Lakes Basin”. All are encouraged to participate and register as soon as possible.
- Brenda Lucas advised the Joyce Foundation meeting of ENGOs will take place on February 22 and 23. She also informed Panel Members that the Gordon Water Grantees Symposium has been cancelled and integrated with the Joyce Foundation’s meetings on February 22 and 23.
- The Michigan Farm Bureau has proposed meeting of the Agricultural Partnership for Great Lakes Basin Agriculture to coincide with Agriculture & the Environment conference March 10 & 11.
- Mary Muter also advised that the Baird Report was released on Monday for those who may be interested in obtaining a copy and reviewing the Report (from the Georgian Bay Association Website) and the concerns related to erosion and the associated impacts on the Great Lakes.

g) Next Steps

R. Messervey advised Panel Members of the following meeting schedule:

Jan. 31 & Feb. 1:	Basin wide Tribes & First Nations Meeting
Late February:	Proposed Ontario First Nations meeting (tentative)
Feb/March:	Ontario AAP Meeting
March 8-10 & June:	Proposed Working Group Meetings
Before summer:	Proposed Public Consultation on Next Version of the Agreements
Summer 2005:	Proposed Completion

h) Basin Wide Tribes & First Nations Meeting

R. Messervey indicated that the Basin-Wide Tribes and First Nations Meeting would include opening ceremonies followed by an overview of the meeting goal and objectives. A presentation would follow on State and Provincial Great Lakes Water Management, along with a review of the Draft Annex Implementing Agreements. Questions, comments and a discussion of next steps were scheduled to follow.

ACTION: MINISTRY TO KEEP AAP MEMBERS ADVISED OF THE OUTCOME OF THE BASIN WIDE TRIBES AND FIRST NATIONS MEETING.

2. Summary of the January Chicago Meeting

K. Wilson shared his confidence that an agreement remains possible; though its final form cannot be predicted. Ontario continues to drive for a “no diversions” agreement.

A discussion on a range of issues followed Kevin’s update, focused on straddling communities and dispute resolution/enforcement.

a) Straddling Communities

Panel members asked if the inclusion of straddling communities as in-basin users is consistent with sound science. As presented it was felt that it was not. Ontario has asked that boundary communities be mapped, as well as the undertaking of a review of current municipal corporate boundaries and identified the need to address the possibility of annexations.

b) Dispute Resolution

It was questioned what venue would provide the most favourable judgments on Great Lakes issues if they were to come before the courts or any other administrative tribunal, such as the International Joint Commission. One question compared the International Joint Commission and US District Courts. Another panel member pointed out that using the IJC for dispute resolution may not prove strong enough, but we do not know because its dispute resolution powers have never been used.

One suggestion to remedy this would be to use something similar to NAFTA’s Investment Chapter Place of Arbitration Article (1130), with possible wording as follows: “At the commencement of any dispute within this agreement the parties [meaning the states and

provinces, but not including private interests] may determine a court for final dispute arbitration. The court may be anywhere in Canada or the United States and need not have a geographical link to the dispute.”

An MOE lawyer in attendance reminded the Panel that dispute resolution outside the courts does have a good track record on environmental matters, because it is focused on making the agreements and the parties work together.

3. Key Issues

R. Messervey indicated that the last meeting in Chicago provided an opportunity for Working Group members to discuss a number of key issues, including:

- Overarching Principles
- Diversions
- Intra-Basin Diversions
- Chicago Diversion
- Consumptive Uses
- Conservation
- Resource Improvement
- Defining the Groundwater Divide
- Other Issues
 - Cumulative Impacts
 - Averaging Periods
 - Role of the Federal Government & the IJC
 - Thresholds, Regional Review Process

K. Wiannecki led the Panel Members through a facilitated discussion of the key issues and indicated that the purpose of the discussions were to identify whether the alternatives being considered were appropriate; whether other options (not presently on the table) should be presented by Ontario for the consideration of other jurisdictions and in particular, whether or not there were any ‘deal breakers’ with respect to the alternatives being considered at this time. With that framework in mind, considerable discussion unfolded with respect to each issue. The salient points of discussion are highlighted below:

1. Overarching Principles:

R. Messervey indicated that in presenting the Ontario position in Chicago, the Ontario negotiating team asserted the need for critical considerations up front, in the Objectives and Preamble. Rob indicated that there was general willingness among the Great Lakes jurisdictions and there is movement to include additional and stronger language in the Preamble and in the objective statements. There is also recognition of the need to include a reference to a Precautionary Approach (see note below for reference to Precautionary Principle); some reference to the long term objectives of restoration and a clear reference to the relationship between the agreements and the Boundary Waters Treaty.

Great Lakes Charter Annex Advisory Panel Meeting

Wednesday March 2, 2005
Kenora/Nipigon/Nipissing Rooms
MacDonald Block, 900 Bay Street
1:00 pm – 5:00 pm

AGENDA

- 1:00 – 1:15** **Welcome & Introductions**
(Karen Wianecki/Rob Messervey)
- Meeting Purpose
 - Today's Objectives and Marks of Success
- 1:15 – 1:45** **Update on Negotiations and Annex Events**
1. Update on Basin Tribes/First Nations Meeting (Rob Messervey)
 2. Update of Wingspread ENGO Event (David de Launay, Sarah Miller, Robert Wright)
 3. Update on Chicago Kent Law – Munk Centre Event (Adele Hurley if available)
 4. Update of Working Group Conference calls since last Panel meeting (Rob Messervey)
 5. Other Updates
- 1:45 – 2:15** **Diversions: Status Report on Current Negotiations and Ontario's Positioning**
(Kevin Wilson/ David de Launay)
- 2:15 – 4:45** **Diversion Options**
- What the options are for Ontario
 - Discussion around each of the presented options
- 4:45 – 5:00** **Next Steps of GLCA Initiative and Wrap Up**
(Rob Messervey)
- Working Group Conference Calls
 - March 8-10 Working Group Meeting in Chicago
 - Next Annex Panel Meeting: April 7

**Great Lakes Charter Annex
Fourth Meeting of the Annex Advisory Panel**

Tuesday March 29, 2005
Airport Travelodge, Toronto, Ontario
10:00am – 2:00pm

Proceedings from the Fourth Meeting

Introductions and Recent Events

Rob Messervey reviewed the proceedings of the March 2 meeting, noting the status of action items. The Council of Great Lakes Governor's slides presented by David de Launay at Wingspread were circulated with the proceedings of the March 2 meeting along with the Wingspread proceedings and the Sierra Clubs' (Canada and US) Consensus Position of the Great Lakes Charter Annex. Elizabeth May (Sierra Club of Canada) encouraged members of the panel to circulate the Sierra Club consensus position widely and noted that position will be the subject of a media launch in the US.

Michael D'Andrea of the City of Toronto provided copies of the press release that followed the March 11 meeting of the Canadian Great Lakes and St. Lawrence Rivers Mayors.¹ Michael also noted the International Great Lakes and St. Lawrence River Mayors are planning to meet again in Quebec City, May 25-27, 2005. Mayor Miller will be on a panel discussing Water Diversions and Withdrawals, Thursday May 26, which may be of interest to the Advisory Panel and/or the negotiating team. A press conference has been scheduled following this session.

Mary Muter noted the Georgian Bay Association and Georgian Bay Waterkeepers are preparing a consensus position which they will put forward for endorsement by the Waterkeeper Alliance and its head, Robert Kennedy Jr. Mary will provide the paper for us to distribute once it has been finalized.

Immediately following the March 2 meeting, members of Ontario's negotiating team participated in a Working Group conference call (March 3) preceding the Working Group's meeting in Chicago, March 8-10. A number of follow-up calls have occurred, leading to a Working Group call on April 1 in which the Working Group is hoping to arrive at consensus to move forward to jurisdictional review. Jurisdictional review provides an opportunity for the negotiating teams to return to their respective governments for direction on moving forward. If consent is given to move ahead, the process will enter into a 60-day public consultation period.

¹ See Appendix A

Update following the March Chicago Meeting

David de Launay provided an overview of progress made at the Working Group meeting held March 8-10 in Chicago. He advised that although the province has been under pressure to move away from the “no diversions” approach we stuck to the concept of no diversions with some exceptions and moved the Working Group to a consensus on that position.

Rob Messervey and Paula Thompson provided a review of the status of discussions and negotiations on key outstanding issues. The issues addressed included: overarching principles, diversions, exceptions to a prohibition, the Chicago Diversion, consumptive uses, conservation, resource improvement, the groundwater divide, cumulative impacts, averaging period and the compact vote.

APPENDIX A

News Release

March 11, 2005

Canadian Great Lakes and St. Lawrence River mayors chart a course for the care of the world's largest freshwater system

At a meeting on March 11, 2005 in Toronto, mayors and heads of council from the Canadian Great Lakes and St. Lawrence River region agreed on the following principles:

- The mayors and heads of council commit to continue to work together to protect, restore and enhance the unique ecosystem of the Great Lakes and the St. Lawrence River.

- Our work will focus on issues with environmental and economic implications for municipalities including: water quality, waste water and storm water treatment, beach closures, algae blooms, water diversion, invasive species, shoreline restoration, water levels and waterfront redevelopment. Our vision has two main aspects: First, to enable people to safely drink the water, swim at the beaches, and eat the fish of the Great Lakes and the St. Lawrence River. Second to foster sustainable development of tourism, shipping and other water-based economic activity.

- We recognize that local governments are leaders and delivery agents who have a responsibility to work in partnership with federal, provincial, and state governments to restore and protect the Great Lakes and St. Lawrence River. We agree to use a variety of strategies to this end including:

Leadership and Action: Because municipal governments are closest to water quality issues and solutions, mayors must lead the way in designing and implementing Great Lakes and the St. Lawrence River initiatives.

Education: Mayors are committed to educating the public, other elected officials, the business community, and others on the challenges and opportunities of maintaining the Great Lakes and the St. Lawrence River ecosystem.

Co-operation: The mayors will encourage other local, regional, and national governments, conservation authorities and first nations groups, as well as business, agricultural and environmental organizations to work in partnership on Great Lakes and St. Lawrence River initiatives.

Best Practices: Mayors will build on existing regional and binational networks to share best practices and policies for Great Lakes and the St. Lawrence River preservation and remediation.

- We mayors and heads of council support merging the International Association of Great Lakes and St. Lawrence Mayors and the Great Lakes Cities Initiative into a single binational organization. A single organization will expedite the implementation of environmental measures and the promotion of sustainable economic development and tourism on the Great Lakes and the St. Lawrence River more effectively. It will also

streamline the process for municipal governments to work in partnership with other Great Lakes and the St. Lawrence River stakeholders.

- We mayors and heads of council propose the establishment of Canadian offices of the binational Great Lakes and the St. Lawrence River Cities Secretariat in Toronto and Québec City to support the work of the mayors and complement the American office in Chicago.
- We acknowledge the federal government's commitment to the Great Lakes programs in the federal budget, and we urge them to build on this commitment and extend it to the St. Lawrence River. We propose that the federal and provincial governments include mayors directly with their own seat at the table in the design and implementation of policies concerning the Great Lakes and the St. Lawrence River.
- We express strong concern about the introduction of a blending by-pass policy under consideration by the U.S. EPA, which would allow blending untreated sewage with treated sewage and releasing it into the sensitive ecological system of the Great Lakes, St. Lawrence and connecting waterways. This type of policy would contravene the focus of both the International Association of Great Lakes and St. Lawrence Mayors and the Great Lakes Cities Initiative. Our goal is to collaboratively work toward increasing ecological integrity, health and economic stability of our water resources.
- We further express our serious concern about the water resources of the Great Lakes and St. Lawrence River basin and have particular concerns with respect to water diversions and withdrawals and require a seat at the table where decisions on Annex 2001 are being made.

- 30 -

Media contact: Patchen Barss, Office of Mayor David Miller, 416-338-7134

Content-Class: urn:content-classes:message

Subject: Agenda: This afternoon's Annex Advisory Panel Teleconference

Date: Wed, 4 May 2005 10:19:17 -0400

Thread-Topic: Agenda: This afternoon's Annex Advisory Panel Teleconference

Thread-Index: AcVQI4nqmJkTujPNQnarA9w8JU0UswAjhpUw

Priority: Urgent

Importance: high

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To participate, please dial (416) 212-0400, followed by passcode 1278#

Outside of Toronto please dial 1-866-355-2663, passcode 1278#

Great Lakes Charter Annex

Advisory Panel Teleconference

Monday, 4, 2005 3:00 - 5:00 p.m.

AGENDA

1. Welcome - Rob Messervey
2. Roll Call
3. Update of Annex Activities
 - a. United Indian Nations of the Great Lakes Meeting
 - b. Federal and IJC meetings
 - c. Working Group Conference Calls
 - d. Status of Negotiations
 - e. Next Steps
4. Discussion on views and opinions on how we best optimize the 60

day comment period

5. Next Meeting of Advisory Panel

6. Adjournment

**Great Lakes Charter Annex
Fifth Meeting of the Annex Advisory Panel**

Wednesday May 4, 2005
Teleconference Call
3:00pm – 4:45pm

Proceedings from the Fifth Meeting

Rob Messervey welcomed all to the fifth meeting of the Annex Advisory Panel and outlined the objectives and purpose of the meeting, specifically:

- (i) To provide Panel Members with an update on the status of the GLCA meetings and negotiations;
- (ii) To provide an outline of next steps in the negotiation process;
- (iii) To provide preliminary thoughts on the Public Information Sessions and obtain advice and guidance from Panel Members;
- (iv) To determine where we go from here.

1. Status Update of the GLCA Meetings

a) Federal Government

Members of the Ontario Team met with senior staff from Foreign Affairs Canada and Environment Canada in Ottawa on April 26, 2005. The Province of Quebec participated by telecon. Attendees from the Ministry of Natural Resources included Kevin Wilson, Bill Carr, Rob Messervey, Leith Hunter, Paula Thompson and Emily Chatten. The meeting consisted of an update on the status of negotiations, a discussion of outstanding issues and next steps. There was a positive response from the 10–15 Federal department members in attendance and they look forward to receiving the draft agreements for a more detailed review.

b) International Joint Commission (IJC)

The same Ontario Government representatives also met with the IJC in Ottawa on April 26, 2005 and provided an update on the status of negotiations. There was a positive response to Ontario's presentation which highlighted the strengthening of the agreements.

c) United Indian Nations of the Great Lakes

The United Indian Nations of the Great Lakes meeting was held in Niagara Falls on April 11th and 12th. Kevin Wilson, Jennifer Tuck and Rob Messervey attended on behalf of the Ontario government. Approximately 130 members of the Basin Tribes and First Nations Leaders were in attendance. About half of the members were from Ontario. Sue Chiblow of the Chiefs of Ontario office commented that many communities are still not attending due to a lack of resources. She also confirmed that they were only beginning to prepare Terms of Reference for this process. Presentations were made by the Council of Great Lakes Governors (David Naftzger) and Ontario Government (Rob Messervey).

At this session, the United Indian Nations of the Great Lakes defined a process to further develop Indigenous management of the Great Lakes, rejected commodification, diversions and export of water. First Nations are developing their own terms of reference for a parallel process for negotiations and the details of this process are currently being defined.

d) Working Group Meetings

The working group continues ongoing dialogue surrounding final changes to the documents. Working Group teleconference April 1, 2005 led to sub-group meetings in Toronto April 5-8, 2005. There have been numerous teleconferences since April 13. The negotiating team is hopeful that consensus will soon be reached, triggering jurisdictional review and the public information period.

e) Other Meetings

The Great Lake Cities Mayors have a meeting in Quebec on May 25 – 27, 2005. Michael D'Andrea advised that it would be beneficial to brief Mayor Miller prior to this meeting.

ACTION: MNR TO BRIEF MAYOR MILLER PRIOR TO THE GREAT LAKE CITIES MAYORS MEETING

2. Status of Negotiations

We are proceeding towards jurisdictional review. The working group continues to deliberate language to tighten and clarify a number of provisions.

3. Outline of Next Steps

- 1) Agreement goes to Jurisdictional review for 30 days. Submission goes to the Cabinet within that time frame.
- 2) Water Management Working Group call is scheduled for June; before proceeding to the Public Information Period.
- 3) Briefings of Advisory Group, Resource Group and Observers to the Council of Great Lakes Governors, Congressional reps and Tribes/First Nations.
- 4) AAP Session
- 5) Public Information Period may start as early as late June if consensus is reached on key issues. Public Review will be for 60 days.
- 6) Following the Public Information Period, a 45 day Jurisdictional review is currently proposed.
- 7) Signing of Agreement and Compact anticipated mid-November if everything stays on track.

4. Public Information Period

Rob asked for advice from the AAP members regarding how to make optimum use of the 60 day Public Information Period, recognizing some of the challenges (e.g. 60 days and summer timeframe for launch). We need to ensure the public are well informed of the

public information sessions that will be held. It was suggested that Minister David Ramsay again proceed with a formal launch with a press conference and briefings. Rob Taylor suggested it would be helpful to have willing members of the AAP at the launch to comment. The event also needs to be covered by a wide variety of press. Suggestions from AAP members included TVO's Studio 2, CBC Newsworld, CBC, PBS and local media.

AAP members highlighted the importance of ensuring they are well informed prior to the public information sessions. AAP members require information as soon as possible as they cannot fully support and provide their opinion of the agreements until they review the details.

There is a need for an AAP meeting just prior to the public sessions and it would be helpful if funding could be available for AAP members to attend. We should also be mindful of the dates scheduled for IJC meetings in early June.

ACTION: MNR TO ARRANGE AAP MEETING JUST PRIOR TO PUBLIC INFORMATION PERIOD LAUNCH TO BRIEF AAP MEMBERS

3. Comments and Advice from Panel Members

Why rush to public information period? - Other jurisdictions are not concerned about the summer timing and some jurisdictions need to keep working towards the November deadline as elections process will be happening in the U.S. early 2006

Exceptions must be clearly defined - and it would also be beneficial to have "Real Case" scenarios. For example; London, Ontario today and how London may be impacted if requiring new municipal water supplies in the future by the intra-basin provisions.

Positioning of Agreements - It is important that the launch is presented as supported by both the Federal and Ontario governments. Instead of an MNR announcement it may be more effective to present it as a multi-ministry position and possibly have the Minister announce. It is also important to have IJC and the Federal Government agree on positioning and develop their messages together.

Clarify in agreement that straddling counties do not apply to Ontario and Quebec (if this is the case).

ACTION: MNR TO WORK ON CLARIFICATION OF LANGUAGE REGARDING STRADDLING COUNTIES AS IT PERTAINS TO ONTARIO, AND WILL APPROACH QUEBEC REGARDING PREFERRED LANGUAGE FOR THEIR NEEDS

As part of the launch, message should be sent to all the individuals that provided comments during the first public consultation - so that they are aware of the timing of

the public meetings and EBR posting. MNR is planning a mailout to these individuals as well as First Nations and stakeholders.

Wording for Goundwater - MNR and the AAP need to work together on wording.

NEXT STEPS

A face to face meeting will be scheduled for prior to the launch of the Public Information Period. A telecon briefing may also be scheduled beforehand.

R. Messervey thanked all in attendance for participating in the discussions. The Government remains committed to engaging its partners in this process as the GLCA discussions move forward. Meeting Adjourned 4:45 pm.

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"Dorff, Joanna (MNR)" <joanna.dorff@mnr.gov.on.ca>,
"Cowen, Michelle (MNR)" <michelle.cowen@mnr.gov.on.ca>

Good afternoon,

The Ontario Annex Work Team is pleased to advise that the most recent draft agreements were released for review by the 10 Great Lake jurisdictions on May 20, 2005. The 30 day jurisdictional review period will therefore conclude June 20 and the earliest date for release to the public will be June 27th provided that all jurisdictions agree to its release.

Given your continued support and commitment to guide the negotiation of the agreements, we would like to tentatively book a meeting of the Annex Advisory Panel Friday June 24 from 10-2:30 at MacDonald Block (Huron Room, 2nd Floor), 900 Bay Street, downtown Toronto. At this time, our intent is to discuss the content of the agreements in detail.

Please keep in mind that the meeting date and public release date are all subject to change based on the jurisdictional review outcome.

We would like to apologize for not yet having sent out meeting minutes for the March 29 meeting and May 4 conference call. As you can appreciate it has been quite hectic with the finalization of the agreements and we are not anticipating things to slow down now that we are preparing for release. We are working to get the notes out to you and we appreciate your patience.

Please confirm your attendance for this meeting date no later than June 15 through email or by phone at (705) 755-1219.

Thank you,

Danielle

Danielle DuMoulin
Surface Water Policy and Program Officer

Water Resources Section
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content-class: urn:content-classes:message

Subject: RE: Great Lakes Charter Annex Update

Date: Mon, 13 Jun 2005 13:02:42 -0400

Thread-Topic: Great Lakes Charter Annex Update

Thread-Index: AcVmCQVExDPWaulVSG+RORjUKHdcZwKMD/+Q

Priority: Urgent

Importance: high

From: "Dumoulin, Danielle (MNR)" <danielle.dumoulin@mnr.gov.on.ca>

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"Cowen, Michelle (MNR)" <michelle.cowen@mnr.gov.on.ca>

Hi there,

Just a reminder to those who have not yet confirmed your attendance for this meeting to please do so by Wednesday June 15th.

Thank you,

Danielle

755-1219

ORIGINAL MESSAGE:

Good afternoon,

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Revised Draft Annex 2001 Implementing Agreements
2005 Public Meeting Schedule

State or Province	Tentative Meeting Information, Websites, Comment Addresses and Press Releases where available	
Illinois	Plans To Be Announced	
	Press Release, Website, e-mail not available	
Indiana	Plans To Be Announced	
	Press Release, Website, e-mail not available	
Michigan	August 2, 7:00 p.m. EDT	Sault Ste. Marie Chippewa County Courthouse Circuit Court Room Second Floor 19 Court Street
	August 8, 1:00 p.m. EDT	Grand Haven Loutit District Library 407 Columbus Avenue
	August 11, 6:30 p.m. EDT	Port Huron Public Meeting Room 100 McMorran Boulevard
	August 12, 1:00 p.m. EDT	Detroit Cadillac Place 1 st Floor Conference Room 3058 W. Grand Boulevard
	August 23, 1:30 p.m. EDT	PUBLIC HEARING Lansing Michigan Library and Historical Centre Lake Ontario Conference Room 702 W. Kalamazoo Street
	Press Release: http://www.michigan.gov/printerFriendly/0,1687,7-135-3313_3677_3704-121083--,00.html Website: http://www.michigan.gov/deq/0,1607,7-135--121629--,00.html e-mail address: deq-annex-2001@michigan.gov	
Minnesota	Plans To Be Announced	
	Press Release, Website, e-mail not available	
New York	August 2, 6:30 p.m. – 9:00 p.m.	Amherst , Erie County Centre for Tomorrow State University of New York at Buffalo North Campus Amherst
	August 3, 6:30 p.m. – 9:00 p.m.	Waterloo , Seneca County Seneca County Administration Building, Board of Supervisors Meeting Room 1 DiProni Drive Waterloo
	August 4, 6:30 p.m. – 9:00 p.m.	Watertown , St. Lawrence County Dulles State Office Building

Revised Draft Annex 2001 Implementing Agreements
2005 Public Meeting Schedule

		First Floor Conference Room Watertown
	August 8, 6:30 – 9:00 p.m.	Plattsburgh , Clinton County City Hall, Council Chambers 41 City Hall Place Plattsburgh
	Press Release: Website: http://www.dec.state.ny.us/website/greatlakes/draftannex.html E-mail: glakes@gw.dec.state.ny.us	
Ohio	Plans To Be Announced	
	Press Release, Website, e-mail not available	
	Press Release: http://www.dnr.state.oh.us/water/planing/greatlksgov/ohio_news_release.htm Website: www.dnr.state.oh.us/water/planing/greatlksgov/ E-mail: annexcomments@dnr.state.oh.us	
Ontario	July 5, 7:00 p.m. – 9:00 p.m.	Windsor Cleary International Centre 201 Riverside Drive West
	July 5, 7:00 p.m. – 9:00 p.m.	St. Catherine's Quality Hotel Parkway Convention Centre 327 Ontario Street
	July 6, 7:00 p.m. – 9:00 p.m.	London Best Western Lamplighter Inn and Conference Centre 591 Wellington Drive East
	July 7, 7:00 p.m. – 9:00 p.m.	Kitchener Delta Kitchener 105 King Street East
	July 7, 7:00 p.m. – 9:00 p.m.	Kingston Four Points Sheraton 285 King Street East
	July 11, 7:00 – 9:00 p.m.	Thunder Bay Travelodge Hotel Airline 698 West Arthur Street
	July 14, 7:00p.m. – 9:00 p.m.	Toronto Metro Hall 55 John Street
	Press Release: http://www.mnr.gov.on.ca/mnr/csb/news/2005/jun30nr_05.html Website: http://www.mnr.gov.on.ca/mnr/water/greatlakes/index.html E-mail: greatlakesannex@mnr.gov.on.ca	
Pennsylvania	Plans To Be Announced	
	Press Release, Website, e-mail not available	
Quebec	July 26, 1:30 p.m. – 5:30 p.m. and 7:00 p.m. – 9:00 p.m.	Montreal Hotel Delta Montreal

Revised Draft Annex 2001 Implementing Agreements
2005 Public Meeting Schedule

		475 avenue President-Kennedy 1225 Salle Opus
	July 28, 1:30 p.m. to 5:30 p.m. and 7:00 p.m. – 9:00 p.m.	Quebec City Hotel Loews Le Concorde 1225, Cour-du-General-de-Montcalm Salon Borduas
	Press Release: http://www.mddep.gouv.qc.ca/eau/grandslacs-en/2005/index.htm Website: http://www.mddep.gouv.qc.ca/eau/grandslacs-en/2005/index.htm E-mail: consultationgrandslacs@mddep.gouv.qc.ca	
Wisconsin	Meeting Dates and Locations To Be Announced	
	Press Release: Not available Website: http://dnr.wi.gov/org/water/greatlakes/annex2001/ E-mail: annex2001@cglg.org	

Sept 27, 2005

Memorandum to: Members
Great Lakes Charter Annex Advisory Panel

Subject: Annex Advisory Panel – Seventh Meeting

On behalf of the Ontario Annex Working Group, I would again like to take this opportunity to thank you for attending the seventh meeting by teleconference of the Great Lakes Charter Annex Advisory Panel on Sept 8, 2005. Proceedings from this meeting are attached.

Throughout the summer, Ontario held 11 public information sessions and 6 First Nations sessions. Information sessions were also held with the Industrial Sector, Municipal Sector, including AMO, the Agricultural sector and the Georgian Bay Association. Input you provided during these meetings as well as during our AAP meetings held to date has been greatly appreciated.

As you know, the 60 day public review period ended on August 29, 2005 and Ontario has now returned to the negotiating table to reach a consensus regarding the agreements.

As always, please keep in mind that our meetings as an Advisory Panel are not the only opportunity for you to share your thoughts with us. If you have any additional perspectives to share, I encourage you to make those known to us. Any comments may be directed to Rob Messervey at rob.messervey@mnr.gov.on.ca.

Please also continue to keep us advised of any upcoming reports or events that would be of interest to the Panel Members. Any information in this regard may be directed to Paula Thompson at the Ministry of Natural Resources. Paula may be reached at (705) 755-1218 or via email at paula.thompson@mnr.gov.on.ca.

Thank you once again for your continuing commitment to the AAP Panel and your valued opinions and advice. The next AAP meeting will take place on Friday September 30th, 2005 from 10am to 1pm at the Travelodge Hotel Toronto Airport, 925 Dixon Rd.

I look forward to speaking with you at our next meeting.

Regards,

R. Messervey
Manager, Water Resources Section
Ministry of Natural Resources

Great Lakes Charter Annex Seventh Meeting of the Annex Advisory Panel

Thursday September 8, 2005
Conference Call
2:30pm – 3:45pm

Proceedings from the Seventh Meeting

Rob Messervey welcomed all to the seventh meeting of the Annex Advisory Panel (a teleconference) and outlined the objectives and purpose of the meeting, specifically:

- (i) To provide Panel Members with a summary of the meetings held over the 60 day public review period.
- (ii) To provide a general overview of the Ontario comments received to date
- (iii) To get perspectives from AAP members regarding the Ontario comments received to date

The meeting began with the attendance review for the teleconference call. Rob Messervey then provided an update of meetings that have taken place during the 60 day public review period.

1. Summary of Meetings Held over the 60 Day Public Review Period

Public Meetings

There were eleven public meetings held throughout the province. Locations included: Windsor, St. Catharines, London, Kitchener, Kingston, Thunder Bay, Sault Ste. Marie, Toronto, Niagara Falls, Sarnia, and a second meeting in Windsor.

First Nations Meetings

There were 6 First Nations meetings scheduled for London, Kingston, Thunder Bay, Sault Ste. Marie, Niagara Falls, Sarnia. Meetings were held in London, Kingston, Thunder Bay and Sault Ste. Marie.

Sector Meetings

Sector meetings were held with Industry, Agriculture, Municipal/AMO representatives and the Georgian Bay Association.

Other Meetings

- R. Messervey met with Conservation Ontario on August 29, 2005
- MNR participated in a teleconference with the Federal Departments of Foreign Affairs and Environment Canada on August 29, 2005.

- There have been various Working Group subcommittees following the end of the 60 day public comment period.
- Jim Bruce noted that there will be a soil monitoring meeting in which the GLCA agreement and compact will be discussed.
- Mary Muter noted that the GBA attended a Lake Superior Control Board meeting in July, as well as an IJC public information session regarding the Upper Great Lakes study.

2. Summary of Comments from the Public Information Sessions

R. Messervey thanked all of the AAP members that had an opportunity to attend the public and sector meetings.

R. Messervey provided a summary of the comments received during the public information period:

Chicago Diversion:

Cited as a major weakness, undermining the integrity of the agreement. Exception of the Chicago Diversion from agreements and standard is a serious challenge for the future of the Great Lakes// The Chicago Diversion must be subject to the agreements and standard AND/OR The State of Illinois must be required to fully respect the agreement and standard in any future application to have the decree amended/alterd.

Compact:

Why doesn't Ontario get a compact vote? Canadians are outnumbered; placed in a subservient position, this is unfair. The Compact threatens Canadian sovereignty.

Conservation:

Conservation is a major strength in the agreement, but it needs to be tightened; it requires a multi-year work plan (including timetables and standards); and implementation should begin as soon as a work plan is available.

Consultation Process

Were not well enough publicized; summer timing was very bad; were not nearly long enough; not enough meetings// Appreciative the creation of the Annex Advisory Panel, which has served as a useful body for stakeholders; has shown the government is willing to work through a transparent process// Thank you for a helpful presentation and helpful answers to questions// Submitted comments last year, this year's draft shows that public consultation works

Consumptive Use/Return Flow:

Major concern is that water bottling is considered a consumptive use, not a diversion, which is seen as a major loophole and a significant weakness in the agreements. Other

questions/comments pertained to the length of the averaging period, municipal uses and consumptive use co-efficients.

Cumulative Impacts:

Good that it is included, but clear process is required: for cumulative impact review; how will cumulative impacts be measured? How will results be made available for the public (transparency)?

Definitions:

Requested terms for definition include: "public water supply purposes," reasonable (as in reasonable use or reasonable water supply alternative), return flow

Enforcement:

What are the enforcement mechanisms/provisions in the agreements? What are the consequences for abuse?

Entry into Force:

The length of time before implementation is required are unnecessary and unacceptable, timeline must be shortened; suggestions range from 18 months to 5 years.

Exceptions:

Straddling counties exception, based on political boundaries is arbitrary and not based on science, therefore it is unacceptable in this agreement; should only be allowed if proven that the community is drawing groundwater from the Great Lakes Basin// hydrogeological boundary must be used. Suggestion given to grandfather a number of "needy" communities.

Intra-basin transfers:

Restrictions a concern for Ontario municipalities, however, ENGOs insist on banning intra-basin transfers due to potential cumulative impacts.

Role of the Federal Governments and the IJC:

This is federal jurisdiction, where is the federal government?// The federal government must be involved in these negotiations.

The Annex encroaches on Canadian sovereignty.

Without stronger involvement in these agreements the IJC will become irrelevant (re: dispute resolution).

Judicial Review:

Questions of clarification

Management Programs, Information Sharing, etc.

Dealing with information collection, a database repository, and an investment in science.

Is groundwater included in the agreement?

Comment to an investment in groundwater and other basin hydrogeological science (especially pertaining to the Basin boundary).

What is the 1%?/Explain 1%.

Ag and industry stakeholders are concerned that information not be available to the public; information collection should not cause a financial burden (information should be gathered from existing sources, i.e. PTTW records, etc.); information requirements not should result in red tape that delays agricultural or industrial projects

Other Comments

levels and flows, trade (NAFTA and commerce clause), Devils Lake
Also includes notes on improvement between drafts; recognition of hardwork undertaken during the last year; notes on the manual; requests for immediate ratification and implementation

Preamble and Principles:

Numerous requests for the Public Trust doctrine to be returned the Agreement and Compact preambles.
Many are pleased to see the precautionary principle included, recognition of uncertainties of climate change on the Great Lakes

Prohibition:

Ban on diversions considered a major strength in the agreements and a vast improvement of last year's drafts

Regional Body:

Many procedural questions
Some concern that this body could prove to be another level of bureaucracy
Concern that the Canadian provinces are out numbered by the US states

Regional Review:

Averaging period (ENGOs – too long, ag/industry – not long enough) and trigger level concerns (too high on intrabasin transfers; suggestions for 50,000L/day)
Proponent should not have to pay to provide technical information, since it is generally already held by MOE, OMAFRA and MNR

Standard:

Questions and concerns around implementation from ag/industry/CAs
Questions about water quality requirements (esp. for return flow)

Tribes and First Nations:

First Nations have been ignored in this process; First Nations should be at the table; there should be a clear commitment to the role of Basin First Nations

3. AAP Feedback on the GLCA Comments Received to Date

Jim Bruce asked how many comments would go to the negotiation table. R. Messervey explained that there is a working group session next week and negotiations will commence once again. There are challenges that other jurisdictions are facing such as restrictions on intra-basin transfers and the level of regulation on consumptive use.

K. Wilson indicated that we will have limited room for improvements and a couple of jurisdictions may actually want to retrench.

AAP member asked if the outstanding issues from all jurisdictions were now known. Kevin explained that we do not have feedback from all the parties at this time and Ontario will have to be strong at the negotiation table when all of the jurisdictions sit down to talk in Skokie, Illinois (Sept 20-23, 2005).

K. Wilson explained that Ontario will have to forcefully defend this draft. The deal we thought we had may no longer be on the table. MNR will bring back to the AAP panel the deal that may be available to get further opinions and perspectives on how we should further proceed.

AAP member asked if the media reports from the various jurisdictions could be shared with the AAP panel.

ACTION: MNR TO SHARE MEDIA UPTAKE AT THE NEXT AAP MEETING ON SEPTEMBER 30, 2005

AAP member asked if Ontario is content with the current intra-basin transfer language or is this a deal-breaker? R. Messervey indicated that we are satisfied with what is currently in the agreements.

AAP member asked if MNR thought that the positioning of the agreements in the US may have resulted in low turnout at their public consultation meetings. R. Messervey explained that some jurisdictions had a lot of other issues going out to the public at the same time and some jurisdictions were surprised they did not get a better turnout.

AAP member asked if Ontario is satisfied with the agreements in their current form. K. Wilson explained that, no, we would like improvements, but this will be a challenge as the current deal may no longer be on the table. Ontario is currently looking for leveraging points e.g. Katrina.

Ralph Pentland asked if we have assurances that the agreements will not be weakened when they go to Congress and if the compact does change, is Ontario still bound to the agreement? R. Messervey indicated that this could be an issue, and if the compact changes, then Ontario would have to renegotiate or terminate the agreement.

ACTION: MNR to report back on the comments and discussion at the Sept. 20-23 meeting in Skokie, Illinois.

Wrap-up

R. Messervey thanked all in attendance for their questions, comments and input. The Government remains committed to continuing open dialogue with its partners as Ontario returns to the negotiating table.

Meeting Adjourned 3:45 pm.

Great Lakes Charter Annex Advisory Panel Meeting

**Travelodge Toronto Airport
925 Dixon Road
Friday September 30, 2005
10:00 am – 1:00 pm**

AGENDA

- **Welcome & Meeting Objectives**
(Rob Messervey/Karen Wianecki)
- **Minutes and Action Items from September 8th Conference Call** (Rob Messervey)
- **Update on Activities from Panel Members**
- **Report Back on Skokie, Illinois meeting**
 - **Advisory Committee meeting- Perspectives from Ontario members** (Sarah Miller, Betty Semeniuk)
 - **Working Group meeting – General update on negotiations** (Kevin Wilson)
- **Overview of potential changes to Agreements and key outstanding issues coming out of the Skokie meeting**
(Rob Messervey/Paula Thompson)
- **Discussion about Agreement, outstanding issues and potential Ontario Position for October meeting**
- **Next Steps**
- **Adjourn**

Publication	Headline	Date	Reporter
Illinois			
Belleville News-Democrat	Water diversions mostly prohibited under revised Great Lakes plan	30/06/05	John Flesher/AP
Chicago Sun-Times	Attempts to dip into Lake Michigan water supply hit bottom	25/08/05	AP
Chicago Tribune	Plan aims to tighten spigot to Great Lakes	01/07/05	John Flesher/AP
Chicago Tribune	Protecting the Great Lakes	10/07/05	Editorial
Illinois Issues	Great debate: Leaders from states and provinces in the Great Lakes region are	July/August 20	Pat Guinane
KWOC TV6	Water diversions mostly prohibited under revised Great Lakes plan		
The Star	More dry times ahead? Conservation, restrictions in the Southland could be he	31/07/05	Patrick Ferrell
Indiana			
South Bend Tribune	Endless' Great Lakes need states' protection	23/08/05	Editorial
Michigan			
Cadillac News	Evart Council to submit opinion on water policies	19/07/05	N/A
Cadillac News	Water debate builds steam	06/08/05	Sally Barber
Cheboygan Daily Tribune	Future of lakes topic of meeting	15/07/05	Erica Kolaski
The Daily Oakland Press	Proposed Water Legacy Act goes a bit off the deep end	10/07/05	N/A
Detroit Free Press	Summary Box: Council revises diversion policy in Great Lakes plan	30/06/05	N/A
Detroit Free Press	Environment--Pact to protect Great Lakes up for public input	01/07/05	N/A
Detroit Free Press	Great Lakes	10/07/05	N/A
Detroit News	Plan tightens spigot on Great Lakes: Diversions would mostly be prohibited in a	07/07/05	John Flesher/AP
Detroit News	Thirsty States may covet Great Lakes water: By 2020, water could be the hottes	14/08/05	Deb Price
Grand Rapids Press	Residents sound off about protecting Great Lakes water	09/08/05	John Tunison
Lansing City Pulse	The Great Lakes' summer of love...and fear	20/07/05	Lawrence Cosentino
Mackinac Center for Public Po	Revised Great Lakes agreement should be rejected	01/08/05	Russ J. Harding
Michigan Land Use Institute	Whose water is it, anyway? Critics say new Great Lakes proposal retreats on p	05/08/05	Andy Guy
The Mining Journal	Great Lakes protection plan revised	05/07/05	AP
MLive.Com	Column: Great Lakes states circle the wagons on fresh water	10/07/04	Peter Luke
MLive.Com	Keep Great Lakes water in the Great Lakes	25/07/05	Editorial
MLive.Com	Proposed water rules draw fire	24/08/05	Peter Luke
Muskegon Chronicle	Forum: Put bigger teeth in lakes diversion rules	09/08/05	Chad Lerch
Traverse City Record-Eagle	Great Lakes plan prohibits most diversions: Public comment helped reshape it	01/07/05	John Flesher/AP
WWMT3	New Great Lakes plan prohibits most water diversions	01/07/05	AP
WZZM13	Water diversions mostly prohibited under revised Great Lakes plan	30/06/05	AP
Minnesota			
Business North	Meeting Thursday to talk about two plans to save Lake Superior	26/07/05	N/A
Duluth News Tribune	Great Lakes Governors unveil tighter water plan	01/07/05	John Myers
Duluth News Tribune	New water-use plan gets Duluth hearing	17/08/05	John Myers

Pioneer Press	Plan would restrict water diversions: States and Provinces hashing out details	01/07/05	John Flesher/AP
WCCO TV	New Great Lakes plan prohibits most diversions	30/06/05	John Myers
New York			
The Citizen	Plan announced to protect the Great Lakes	01/07/05	N/A
New York Times	Growth stirs a battle to draw more water from the Great Lakes	12/08/05	Felicity Barringer
WWTI Watertown	Pataki announces revisions to proposed Great Lakes water management agree	30/06/05	N/A
Ohio			
Akron Beacon Journal	Great Lakes will keep more water: Revised rules ban most diversions, will requ	01/07/05	Bob Downing
Lorain Morning Journal	Great Lakes water protection planning moves ahead steadily	07/07/05	N/A
News-Herald	Great Lakes focus of U.S. and Canada	05/07/05	Jeffrey L. Frischkern
Toledo Blade	Council revises policy on Great Lakes diversion: Guidelines still aim to exert re	01/07/05	Tom Henry
Toledo Blade	Water rights prove complex global topic: Some find pact doesn't simplify issue	05/07/05	Tom Henry
Toledo Blade	Great Lakes water accord input sought	17/08/05	N/A
Ontario			
Globe and Mail	Water deal limits Canada's rights, critics say	30/06/05	Canadian Press
Globe and Mail	Great Lakes plan calls for near-ban on diversions	30/06/05	Allison Dunfield
Globe and Mail	Provinces loosen tap on Great Lakes water diversion	01/07/05	Cassandra Szklarski
London Free Press	Lakes proposal imposes limits	30/06/05	Canadian Press
London Free Press	Critics rap Lakes plan	01/07/05	Peter Geigen-Miller
LTV News.Com	Tony Martin to Feds: "Protect Our Lakes!"	11/08/05	LTV News Staff
Ottawa Citizen	Water deal limits sovereignty: lawyer	30/06/05	Broadcast News
Soo Today	Virtual' ban proposed on Great Lakes water diversions	30/06/05	Tyler Simpson
St. Catharines Standard	U.S. agenda is pushing Great Lakes water deal	09/07/05	Editorial
Thunder Bay Chronicle-Journal	Water diversions hot topic: Lakes agreement loopholes to be plugged	12/07/05	Stephanie MacLellan
Toronto Star	Diversion ban watered down to meet U.S. needs	30/06/05	Canadian Press
Toronto Star	Great Lakes plan imposes stricter limits on diversion	01/07/05	Kerry Gillespie
Toronto Star	The Great Lakes Loophole: section of deal to protect the Lakes should be reme	25/08/05	Tony Clarke
Pennsylvania			
Erie Times-News	Western states: keep hands off	21/08/05	N/A
NEPA News	Water diversions mostly prohibited under revised Great Lakes plan	30/06/05	John Flesher/AP
NEPA News	Summary Box: Council revises diversion policy in Great Lakes plan	30/06/05	AP
Quebec			
Le Devoir	Entent pour proteger le bassin des Grands Lacs	02/07/05	Louis-Gilles Francoeur
Le Devoir	A quand le bassin laurentien?	02/07/05	Louis-Gilles Francoeur
Le Journal de Montreal	Les limites au detournement d'eau des Grands Lacs minent les droits du Cana	30/06/05	Presse Canadiene
La Presse	L'eau des Grands Lacs	30/06/05	N/A
Presse Canadienne	Entente de principe avec sept Etats des Grands Lacs	28/06/05	Presse Canadiene

Le Soleil	Les grands enjeux du fleuve Saint-Laurent Derivations: Une eau convoitee par	21/05/05	Pierre Asselin
Le Soleil	Au chevet de l'or bleu	29/06/05	Jean-Simon Gagne
Wisconsin			
Ashland Daily Press	Group looks to protect Great Lakes	27/06/05	Rick Olivo
Ashland Daily Press	Rules worth having	30/06/05	Editorial
Janesville Gazette	Water diversions mostly prohibited under revised Great Lakes plan	01/07/05	John Flesher/AP
Milwaukee Journal-Sentinel	Editorial: Work together on water	07/07/05	Editorial
Milwaukee Journal-Sentinel	Water use trailing population growth. Numbers help Great Lakes case, Waukesha	07/08/05	Darryl Enriquez
Milwaukee Journal-Sentinel	Editorial: Setting an example for region	08/08/05	N/A
Milwaukee Journal-Sentinel	Water issues build steam: meeting will address use of Great Lakes	21/08/05	Lee Bergquist
Milwaukee Journal-Sentinel	Water hearing draws hundreds: Waukesha utility wants ground, surface water	23/08/05	Darryl Enriquez
Milwaukee Journal-Sentinel	Editorial: Beware the water precedent	24/08/05	Editorial
OnMilwaukee.Com	Opinion: Once-wet Waukesha now thirsting for water	12/07/05	Dennis Shook
Waukesha Freeman	All wet: Conservationists dispute Waukesha's water needs	8/23/2005	Dennis Shook
Wisconsin Radio Network	Saving the Great Lakes	09/08/05	Jackie Johnson
Wires/News Services			
Broadcast News	Water deal limits sovereignty: lawyer	30/06/05	N/A
Canadian Press	Canadian protections over Great Lakes watered down by U.S. pressures: Onta	01/07/05	Cassandra Szklarski
Canadian Press	Provinces caved on water, official says	01/07/05	N/A
Canadian Press	Critics: Lakes diversion imposes limits	29/06/05	Canadian Press
Canadian Press	Provinces loosen tap on Great Lakes water diversion	01/07/05	Cassandra Szklarski
Environment News Service	Ontario First Nations seek seats at Great Lakes water table	18/07/03	N/A
Others			
Grand Forks Herald (ND)	Summary Box: Council revises diversion policy in Great Lakes plan	30/06/05	AP
Great Lakes Radio Consortium	Second Annex 2001 draft released	04/07/05	Christina Shockley
National Post	Critics: Lakes diversion imposes limits	29/06/05	Canadian Press
Newsday	Water diversions mostly prohibited under revised Great Lakes plan	30/06/05	John Flesher--AP
Monsters and Critics.Com (UK)	Revised Great Lakes plan released	01/07/05	UPI
Public Power	New Rules for Great Lakes water use	January-Febru	Ann McCabe

US Government Comments

Straddling Counties / Communities Exception

- Indiana – Straddling Counties/Communities managed by Originating Party and NOT undergo regional review
- Michigan – do not agree with Straddling Communities or Straddling Counties, problematic loophole
- Wisconsin – same Standard of Review and Decision used for straddling communities should be used for straddling counties

Intra-basin transfer

- Michigan – state is disproportionately affected by these stricter requirements as it has four of five Great Lakes Watersheds within its borders
- Michigan supportive of not using non-Great Lakes waters in return flows

Groundwater

- Wisconsin – Groundwater divide is part of Great Lakes Basin. Recognizing this in agreements will close loophole that would allow unlimited new or increased withdrawals and diversions of Great Lakes groundwater.
- Michigan - Science should be used to determine surface and groundwater relationship before standards put in effect

Prohibition

- Michigan – supportive of prohibition

Chicago Diversion

- Illinois – Supreme Court Decree must continue.
- Michigan – not in favour of exemption from compact
- Michigan – should be a review of the impacts of CD every 5 years based on science

Conservation

- Michigan – a clear common resource conservation standard is required.
- Michigan – supportive, but with reservations
- Wisconsin – conservation is not adequately addressed or prioritized
- Michigan / Illinois – agreements need to consider the economics of a water system. The less water sold (from public water system) the higher the water rates must be to maintain the public water system.
- Wisconsin – requirements unclear and appear difficult to implement

Consumptive Use / Water Bottling

- Michigan – language providing for diversion in bottles up to 20 litres must be removed. Must have language that strictly prohibits diversions in any shape or form

- Michigan – grandfathering clause needed to exempt existing water bottling operations from new requirements

Management Programs / Information Sharing

- Indiana - feels that in order to gain complete record of balance of water into and out of basin, term “Add water” should be added to the registering and reporting withdrawals section. (They have private groundwater wells outside the basin that provide potable water and the water from these multi sources is treated and discharged into the basin)
- Indiana - Exemptions to add “through a natural event or process”.
- Michigan – need for scientific knowledge
- Wisconsin – inappropriate to require unanimous approval for diversions greater than 5 million gallons per day. May result in political decisions, not based on technical merits of their proposal.

Preamble and Principles

- Michigan – must return to public trust language and supportive of precautionary principles

Tribes and First Nations

- Michigan - Tribes must be included in consultation process when it affects their land and their comments must be included in the final decision-making process.

Standard

- Waukesha, Wisconsin – return flow requirement could devastate major wetland
- Wisconsin – return flow requirements too vague
- Wisconsin - 90 day average standard not appropriate for municipal purposes. Annual average is more appropriate
- Michigan – 30 day averaging period better; no ecological justification to treat agriculture different than any other sector
- Michigan – potential for different ave periods for different water use sectors
- Michigan – support the removal of the “improvement” requirement in the common environmental standard
- Michigan – must return to public trust language
- New York – 120 averaging period for agriculture

Regional Review

- Indiana wishes to have proposals go to regional review for exceptions for more than 5 million gallons per day or greater ave in any 90 day period.
- Indiana wishes to have proposals for new/increased consumptive use to go to R.R. at 15 million gallons per day or greater in any 90 day period
- Indiana wishes to have regional reviews only for diversion and consumptive uses to levels “significant” to the health of the basin.

- Wisconsin – states should regulate water withdrawals without being required to meet regional decision-making standards. Should be limited to withdrawals that have regional impact.
- Wisconsin / Michigan – baseline for increasing withdrawals should be based on utility's design capacity or its largest water system component
- Michigan – review and approvals of proposed withdrawals must be closer tied to scientific knowledge
- Michigan – potential financial burden to prove “no adverse impacts”
- New York – exempt agricultural operations from Basin-wide consumptive water use regulations and reporting requirements
- Ohio – opposed to increased regulatory restrictions on water usage

Definitions

- Michigan – need to define “**public water supply**”, “**consumptive use coefficients**”. **Capacity** definition is not consistent with Safe Drinking Water Act.

Entry Into Force

- Wisconsin – timelines need to be put in place
- Michigan – 10 year phase in for regulation of withdrawals too long. Three to five years is feasible.

Cumulative Impacts

- Indiana wishes to remove the “at the request of one or more parties” regarding cumulative impact studies
- Wisconsin – assessments should be conducted at the request of 3 or more parties (not just one) as one party could request on annual basis for political reasons

Enforcement

- Michigan - Compact should be enforceable in federal courts as well as state courts to facilitate consistent and uniform interpretation throughout the basin

Other

- Michigan – those framing these documents must give adequate and close attention to any and all issues of legal liability which could fall to states and municipalities under these documents
- Michigan – proposed agreements have potential to inhibit the ability to attract new industry. Makes little sense to allow other States and Provinces to control their water use needs and eliminate their competitive advantage

US Agriculture Comments

Conservation

- Jurisdictions* do not want agriculture to be held to an improvement standard that exceeds conservation measures and efficient use
- Comment from Illinois that conservation practices should be voluntary

Consumptive Use / Water Bottling

- Agreement between Jurisdictions/Ont that the co-efficient needs to be researched.
- Agreement by Jurisdictions*/Ont that agreements should state consumptive use does not include water used by plants

Management Programs / Information Sharing

- Jurisdictions* want more flexibility to implement non-regulatory approaches to water management. They do not agree with water permitting whereas Ont wants a consistent management program throughout basin
- Jurisdictions*/Ont agree that gathered info should not be made public

Preamble and Principles

- Agreement between Jurisdictions/Ont that precautionary approach be based on science

Standard

- Jurisdictions*/Ont agree that 120 day period better reflects seasonality of agricultural water use

Regional Review

- Jurisdictions*/Ont agree there is a lack of knowledge regarding agricultural water use
- Jurisdictions* want the threshold level for regional review of consumptive water usage to remain at 5 million gallons per day

Definitions

- Jurisdictions* feel term “**withdrawal**” should only include man-made, inorganic mechanisms
- Illinois comment that term “**common distribution system**” should be retained when defining a water withdrawal
- Jurisdictions* like term “**generally accepted**” in reference to water consumed
- Ohio - **Consumptive use** to be clearly defined

Cumulative Impacts

- Jurisdictions*/Ont agree that jurisdictions should be responsible for providing data, not individual users

Other

- Michigan is opposed to diversions of water from the Great Lakes Basin
- Michigan wants burdensome regulation to be compensated from public funds
- Michigan – a state’s water uses can be treated differently – as demonstrated by the Chicago diversion
- Jurisdictions* note that some personal properties straddle basin divides – this is unintended “diversion” but must be addressed in agreements

Jurisdictions includes all states except Wisconsin*

US Citizen Comments

Straddling Counties Exception

- Agreement from Michigan and Wisconsin that a hydrologic boundary should be used. Michigan comments that loopholes allowing communities just outside Great Lakes watershed to obtain water must be closed.

Prohibition

- Agreement with ban on diversions from Wisconsin as well as other umbrella groups.

Conservation

- Agreement with conservation as a major strength from Wisconsin and other umbrella groups

Consumptive Use / Water bottling

- Agreement from Michigan that bottled water considered a diversion

Management Programs / Information Sharing

- Agreement from Wisconsin to include public participation. Umbrella group wants to ensure dollars available to public for fees.

Preamble and Principles

- Umbrella group agree with public trust

Standard

- Michigan comments that agreements must confirm water is owned by public.
- Umbrella also agrees to returning to public trust language

Regional Review

- Michigan comments that there is a need for public review of proposals

Entry Into Force

- Agreement from Wisconsin and umbrella groups that timelines need to be shortened

Enforcement

- Umbrella groups note need for strong enforcement

Other

- Water withdrawals must improve condition of the Great Lakes – Wisconsin and umbrella
- Can not have special interest groups getting “free rides” or special conditions. Likewise, cannot give major users unfair advantages – umbrella

US Tribes / First Nations Comments

Straddling Counties Exception

- Agreement from Wisconsin, Minnesota and Michigan that hydro geological boundary should be used. Michigan also indicates a clear definition is required and there should be a 95% return flow

Intra-basin Transfer

- Michigan, Wisconsin and Minnesota state that when interbasin transfer crosses state boundaries, both states should be responsible for approving the transfer.

Prohibition

- Agreement on ban on diversions from Wisconsin

Conservation

- Michigan, Wisconsin and Minnesota agree this is major strength

Preamble and Principles

- Michigan, Wisconsin and Minnesota agree agreements must return to public trust language

Tribes and First Nations

- Michigan, Wisconsin and Minnesota indicate that there needs to be clear language pertaining to tribal subsistence, economic and cultural needs of native peoples.

Regional Review

- Michigan states it should be based on science

Definitions

- Michigan, Wisconsin and Minnesota would like clarification of “Economically Feasible”

Entry into Force

- Too long – Michigan

Enforcement

- What are the mechanisms for enforcement? – Michigan

US Industry Comments

The Corporations and Association Comments compiled from across the jurisdictions included 36 business and industrial comments (letters), none were from Ontario or Quebec. The Advisory Committee comments included another five comments (letters). The vast majority came from Michigan (12) while another 13 letters represented umbrella groups (ex. Alliance of Automobile Manufacturers, International Bottled Water Association, American Public Power Association, etc.). There are 8 from Indiana, 3 each from Ohio and Wisconsin, 1 each from Minnesota and New York and none from Pennsylvania.

A number of trends are noted across the comments. The greatest concern expressed was regarding the **Regional Body, which is perceived as an unnecessary, bureaucratic body** (22 comments: 11 from umbrella groups, 6 from Michigan groups, 4 from Indiana groups and 1 each from Pennsylvania and Wisconsin). This is followed by demands that **all current uses be grandfathered** (18 comments: 5 from umbrella groups, 4 each from Indiana and Michigan groups, 3 from Ohio groups and 1 from a New York group). Grandfathering is tied for second place with the concern that **the scope of the current Annex agreements goes beyond the scope and does not conform with the original intent of the Annex** (18 comments: 5 from umbrella groups, 4 each from Michigan and Indiana, 3 from Ohio and 2 from Wisconsin). A close third is the open statement by many groups that **they agree with the original intent of the Annex; to ban diversions out of the Great Lakes Basin** (17 comments: 8 from Michigan groups, 4 from umbrella groups, 2 from Wisconsin groups and 1 each from New York, Ohio and Indiana groups).

Conservation was the topic of a number of different comments. The **water conservation programs, as outlined in the current agreements were described as a burden and far too onerous** by 14 (14 comments: 6 from umbrella groups, 3 comments from Indiana groups, 2 each from Ohio and Michigan and 1 from Wisconsin). As in Ontario a number of **industrial commenters were concerned that government officials define the conservation standards across various industrial sectors** (10 comments: 5 from umbrella groups, 2 from Indiana groups and 1 each from groups in the states of Ohio, Michigan and Wisconsin). 2 comments expressed the desire to see **credit given from conservation projects already taken by individual industrial facilities**. 5 comments suggest that **conservation programs should be voluntary** (4 from Michigan groups and 1 from an umbrella group).

While the use of precaution in the preamble and the strong standard are popular amongst our stakeholders they were not well regarded by industrial commenters in the US. Thirteen (13) commenters **referred to the Annex and associated environmental standard as prescriptive** (4 comments from Michigan groups, 3 from umbrella groups, 2 each from Ohio and Indiana and 1 each from Wisconsin and New York). In addition, the **standard** was considered by a number of commenters as being **impossible to meet**; and **setting tests far beyond those already used under the Riparian** system of the US portion of the Great Lakes region (5 comments: 3 from umbrella groups and at least one

each from Michigan and Wisconsin). Twelve (12) industrial commenters **demand the deletion of the use of the term and concept of precaution from the preamble as well as the rest of the agreement** (5 comments from umbrella groups, 4 from Michigan groups, 2 from Indiana and 1 from New York).

The **process of Regional Review raised concerns** of lengthening the permitting process; having a review scope that is too broad and having a threshold that is too low (13 comments: 4 from industry umbrella groups, 3 each from Ohio and Michigan groups, 2 from Indiana groups and 1 from a Wisconsin group). The **Consumptive Use threshold**, at 100 000g/day was also considered by industrial commenters to be **far too low** (12 comments: 6 comments from Michigan groups, 3 from umbrella groups and 1 each from Wisconsin, Ohio and New York). Further concerns were raised about the **potential cost of application which was considered onerous and time-consuming** by a number of commenters (9 comments: 5 from Michigan, 1 comment each from Wisconsin, Ohio, New York and an umbrella group).

Other comments raised by Industrial commenters include the perception that the **Annex will create road blocks to economic development** in the Great Lakes region (10 comments: 5 from umbrella groups, 3 from Michigan groups, and 1 each from Wisconsin, Indiana and New York groups). Others wrote that the **Annex will lead to a loss of state sovereignty and will undermine the authority of the states** (8 comments: 4 from Michigan commenters, 3 from umbrella groups and 1 from a Wisconsin Group). Though 6 commenters stated that they **support the management of the Great Lakes from within the Basin** rather than by the US federal government (2 comments each from Umbrella groups and Ohio groups; and one each from Indiana and Wisconsin).

A lesser number of comments look to implications of the Annex in declining business opportunities in the Great Lakes region, by accusing the **Annex of not guaranteeing water for industrial use** (6 comments: 3 from umbrella groups, 2 from Michigan groups and 1 from a Wisconsin group). Seven (7) comments claim that a **primary objective of the Annex should be to provide water for industrial use** (3 comments from umbrella groups, 2 from Michigan groups and 1 each from Ohio and Wisconsin groups). Another set of comments (4) claim that the **Annex will penalize industrial growth through its cumulative impact provisions** (2 umbrella groups, and 1 each from New York and Michigan). Demands for the **elimination of the citizen enforcement provisions** were made by commenters in Wisconsin (2) and Michigan (3).

Miscellaneous comments included those asking for a **definition of consumptive use; for clarity on the role of ground water; clearing up of inconsistencies in the standard, lengthening of the averaging period** (90 days too short); and **maintenance of the Riparian framework to manage water takings**.

In Ontario, very few of our industrial stakeholders commented and their comments are tame in comparison; the only concerns showing agreement where that the Regional Body will become another level of bureaucracy and that industry specialists should define conservation best practices rather than government officials.

US ENGO Comments

There were no ENGO comments from Pennsylvania, one from Illinois, and two to three each from Ohio and Indiana; the majority of ENGO comments came from Michigan, Wisconsin and Minnesota and a large number came from groups with coverage across the basin (Waterkeeper Alliance, Sierra Club, etc), for a total of 31 commenting ENGOs. Another 4 commented through the Council's Advisory Committee which also included the ENGO submission which consolidated the comments of another 18 ENGOs across the basin.

The majority of ENGO comments pertained to **the Straddling Communities exception (either remove entirely or include only if the community uses basin groundwater); the need to strengthen the conservation requirements and have them begin immediately; concern that bottled water is considered a diversion** (Article 207(9) was widely referred to across the submissions as the "Bottled Water Exemption"). Michigan, Wisconsin, Minnesota and the Basin-Wide Groups provided a greater proportion of the comments, but a few were contributed by New York and Ohio groups. A similar distribution is seen on both tightening conservation and the bottled water comments, with one Indiana group supporting the others on bottled water.

A substantial number of comments were made by groups expressing their **pleasure with the diversions ban**: Michigan (9), Wisconsin, (7), Minnesota (2), New York (2), Umbrella groups (3), and Indiana (1).

While there were comments **commending the inclusion of the precautionary principle and climate change in the preamble, the exclusion of public trust as a preamble principle attracted a lot of attention**, especially in Michigan (7 comments), Wisconsin (5), Umbrella groups (5), Indiana (2), Minnesota (2), and New York (1).

The **need for a strong environmental standard to guide decision-making identifiable by a 30-day averaging period** mentioned by 5 Umbrella groups; by four groups each in the states of New York and Michigan, by 3 groups in Minnesota, 2 in Wisconsin and 1 in Indiana.

Concerns for improvements to science, commitments to management programs and an interest in seeing "resource improvement" returned were of particular interest to the basin-wide Umbrella groups with 10 commenting on science and management programs and 6 requesting the return of resource improvement. Comments regarding science improvements and management program commitments also brought comments from Minnesota (3), Michigan (2), New York (2), and Indiana (1). There was a slightly wider distribution on resource improvement: 2 each from Wisconsin, New York and Michigan, and 1 each from Ohio, Indiana and Illinois.

A variety of concerns were expressed with regard to Regional Review including concerns that **the threshold for projects to be considered for Regional Review is too high and that there needs to be flexibility (and maybe an opportunity for bump-ups) for**

projects that currently would not require Regional Review, as well as an interest in seeing **ample opportunity for public involvement** in the regional process: basin wide groups (5), Michigan groups (4) and 3 each from New York and Minnesota.

Further into the agreements “Entry into Force” and “Enforcement” were seen as major concerns. Five groups in Michigan, 4 in Wisconsin and 4 Umbrella groups, along with two groups from Minnesota and one from New York wrote that the **longest timeline that should be considered for entry into force should be 5 years** (not 10, as it states currently). The majority of the groups commenting on enforcement were requested **strengthening to the citizen enforcement provisions**: 6 groups from Michigan, 4 each from umbrella groups, and Wisconsin, 2 from Wisconsin and 1 from New York.

A wide variety of comments from other areas of the agreements were noted, including that **the Chicago Diversion be subject to the agreements** (3 umbrella groups, 2 Minnesota groups and 1 group each from Michigan, Indiana and Wisconsin). There were requests that **intra-basin diversions either require return flow (to the local watershed) or be banned** (4 umbrella groups, 3 New York groups, and 1 each from Ohio and Minnesota). There were also requests that **diversion permits be granted for a maximum period of 10 years** (3 umbrella groups, and 1 each from Minnesota, Michigan, Ohio and New York).

Of particular interest, will be the comments from the **Waukesha County Environmental Action League (WEAL)**. WEAL commends the Council of Great Lakes Governors for strengthening protections of the Great Lakes and strenuously opposes any effort to divert water from the Great Lakes outside of the Basin (as defined by the Annex/Charter). WEAL reminds the council that Waukesha County lies just outside of the Great Lakes Basin divide. They note they are acutely aware of the potential problems of increased shallow aquifer pumping to meet their county’s water needs and promote conservation and resource protection, as Waukesha is “water-rich” without Lake Michigan.

Great Lakes Charter Annex Public Consultation Summary of Public Comments – Ontario Summer 2005

Consultation Process

- 11 Public Meetings
- Aboriginal Community Meetings
- Sector Meetings – Agricultural, Municipal, Industrial, Recreation
- 110 written comments

1. Diversions

- Ban on diversions considered the major strength in the agreements and a vast improvement of last year's drafts and the status quo
- Focus of public concern is on the exceptions:
 - Many call of NO exceptions
 - Straddling counties exception viewed by many as unacceptable – political, arbitrary and not based on science; some suggestions:
 - should only be allowed if proven that the community is drawing groundwater that flows to the Great Lakes Basin;
 - only grandfather a number of “needy” communities;
 - only allow the exception for 5 years.
 - Chicago Diversion seen as the other major weakness of the agreements, undermining the integrity of the agreement and a serious challenge for the future of the Great Lakes. While some now recognize the need to grandfather the current diversion they call for any proposed increases to be subject to the agreements and/or for the State of Illinois to fully respect the agreement and standard in any future application to have the decree amended.
 - Some conflicting comments on intra-basin transfers - restrictions are a concern for some Ontario municipalities, however, the public and ENGOs call for more consistent treatment of out of basin and intra-basin diversions (e.g. a ban intra-basin transfers OR require return flow back to source watershed for all OR set a lower threshold for return flow requirements and regional review)
 - Many concerned that water bottling is considered a consumptive use, not a diversion – seen as a major loophole in the agreements.

2. Consultation Process

- Consultation not well enough publicized, summer timing was bad, consultation was not long enough and there were not enough meetings (appreciation for additional meetings)
- Appreciation for Ontario's response to 2004 public comments
- Appreciation for creation of Ontario's Annex Advisory Panel

3. Role of the Federal Governments and the IJC, Sovereignty

- Some recognize changes in the agreements to recognize the Boundary Waters Treaty and the role of the federal governments and IJC
- Others continue to see this issue as federal jurisdiction and are concerned that the authority of the IJC (dispute resolution) will be undermined.
- The Compact threatens Canadian sovereignty.

4. Conservation:

- Conservation seen as a major strength in the agreement, but many called for further strengthening (e.g. multi-year work plan with targets, standards)
- Implementation of conservation programs should begin sooner (immediately, within 2-3 years)

5. Consumptive Use, Decision-Making Standard

- Specific questions, comments pertained to:
 - *Averaging period* (agriculture seeking 120 days or growing period; ENGOs seeking 30 days)
 - *Consumptive use coefficients* (e.g. need for strengthened science, appreciation for uniqueness of agriculture)
 - *10 year phase-in for management*, regulation too long
 - *Trigger level for management*, regulation too high – should be the same as Ontario (50,000 litres per day)
 - Specific concerns, questions regarding implementation of the standard (agriculture, industry, Conservation Authorities)
 - Concerns, questions about water quality requirements (esp. for return flow)

6. Management Programs, Information & Science

- Call for stronger commitment to information and science – should happen immediately after signing
- Need investment in groundwater and other basin hydrogeological science (especially pertaining to the Basin boundary).
- Good that cumulative impact assessment is included, but clear process is required for cumulative impact review; how will cumulative impacts be measured? How will results be made available for the public (transparency).
- Ag and industry stakeholders are concerned that proprietary information not be available to the public; information collection should not cause a financial burden (information should be gathered from existing sources); information requirements should not result in red tape that delays projects

7. Preamble and Principles

- Public very pleased to see the precautionary principle included, recognition of uncertainties of climate change on the Great Lakes
- Requests for the Public Trust doctrine to be returned agreements

8. Tribes and First Nations

- First Nations ignored in process, should be at the table, should be full consultation;
- There should be a clear commitment to the role of Basin First Nations in decision-making

9. Regional Review, Regional Body

- Concern that the Canadian provinces are out numbered by the US states, placed in a subservient position
- Averaging period (agriculture seeking 120 days or growing period; ENGOs seeking 30 days)
- Trigger level concerns (too high for intrabasin transfers)

- Proponent should not have to pay to provide technical information, since it is generally already held by Ontario government ministries (agriculture)
- Procedural questions about the Regional Body – e.g. some concern that this body could prove to be another level of bureaucracy
- Some concerns about the expertise and impartiality of decision-makers – suggestions for identifying technical advisors with required expertise (e.g. agriculture)

10. Other comments

Entry into force

- The length of time before implementation is required are unnecessary and unacceptable, timeline must be shortened, e.g.
 - Phase-in for management, regulation – 3 - 5 years;
 - Conservation programs immediately – up to 2-3 years;
 - Concerns about what happens between signing and new provisions coming into force

Enforcement

- Seek clarification of enforcement provisions (what are consequences of abuse?), judicial review, opportunity for public to seek judicial review.

Definitions

- Requests for clarification of terminology, e.g.: “public water supply purposes,” reasonable (as in reasonable use or reasonable water supply alternative), return flow, “measurable impacts”

**Great Lakes Charter Annex
Eighth Meeting of the Annex Advisory Panel**

Friday September 30th, 2005
Travelodge – Toronto Airport
10:00 am – 2:00 pm

Proceedings from the Eighth Meeting

Rob Messervey welcomed all to the eighth meeting of the Annex Advisory Panel and outlined the objectives and purpose of the meeting, specifically:

- (i) To provide an opportunity for dialogue;
- (ii) To update Advisory Panel Members on the current status of the negotiations;
- (iii) To offer an opportunity for Panel members to share their insights, observations and perspectives with respect to Ontario's negotiating position.

The meeting began with introductions from all in attendance. Rob Messervey then provided an update of work that has been done since the last AAP meeting.

1. Update Items

- (i) Results of the 60-Day Public Consultation Process

Rob provided a framework for the 60-day review period and indicated that in addition to the 11 information sessions that were held across Ontario and over and above the numerous written submissions and verbal comments that were received, an additional six meetings with First Nation communities were held as well as a number of sectoral meetings with Industry, Conservation Ontario and the Environmental Commissioner of Ontario.

Ministry staff has prepared several comment summaries that have been distributed to the Panel Members, including Ontario comment summaries by sector and comments received by the U.S. jurisdictions. Communication Services Branch staff within the Ministry have been preparing a detailed roll up of media commentary, in particular U.S. media coverage relating to the draft Agreement. Rob also distributed a copy of the comments provided by the Federal Government who remain largely supportive of the position Ontario has taken respecting the negotiations.

A letter was also prepared by the U.S. State Department and Panel Members requested that this letter similarly be posted on the MNR website. The Ontario team made a commitment to follow up and either post the letter on MNR's website, or determine if it is already posted on the Council of Great Lakes Governors website.

ACTION: MNR TO FOLLOW UP RE: STATE DEPARTMENT LETTER

ii) Recent Meeting in Skokie, Illinois – Panel Member Perspectives

Several panel members were asked to provide their perspectives from the meeting recently held in Skokie, Illinois. Both Betty Semeniuk (Ontario Federation of Agriculture) and Sarah Miller (Canadian Environmental Law Association) were in attendance. Betty suggested there was good dialogue around the need to include a strong science, research and data collection component in the Agreement. In addition, Betty reported there was a good deal of discussion focusing on the Conservation Plan component. On the issue of diversions, it was apparent that Ontario has taken a hard line with respect to diversions and agriculture supports no diversions from the Great Lakes on the diversions issue. The issue of decision making within the Basin was referred to a number of times and there was some move to recognize the importance of and need for jurisdictional flexibility. Sarah Miller indicated that there is a CD Rom available for download from the Council of Great Lakes Governors' website that contains a compendium of comments received during the review period. From Sarah's perspective, it was very clear that powerful sectors in the U.S. have done a great deal of lobbying in the last few months to impart their perspectives on those involved. There appeared to be consistent messaging coming from large sectoral groups in the U.S. and while it was hoped that a number of issues could have been addressed, many of the fundamental issues remained a focus of concern. As a result, Sarah expressed her concern that we could end up with a document that is weaker than the last draft and further, that some critical elements of the Annex Agreement may be at risk of being threatened.

2. Current Status of Negotiations

Kevin Wilson presented an overview of the status of the negotiations, outlining the critical issues discussed and the matters that remain outstanding. Kevin indicated that major concerns respecting the Draft Agreements had been expressed by Industry and he put the negotiations in the context of other factors that are weighing heavily on the GLCA negotiation process, not the least of which is the financial impact felt by Hurricane Katrina and the Great Lakes Restoration Initiative that has been underway for the last 12-14 months. Failure to conclude an agreement under the Charter Annex may have significant repercussions vis-à-vis investments in Great Lakes restoration.

Kevin indicated that Ontario would continue to participate in on-going dialogue with the other jurisdictions. The purpose of today's meeting is to obtain feedback from the panel members regarding the critical deal makers and deal breakers – the push and pull factors – and to determine whether any deal is better than the status quo.

Given the current status of the negotiations, the sway of external factors and the backdrop of a mounting U.S. Federal deficit, there are both increased opportunities for the Charter Annex negotiations, as well as increased risks.

Kevin suggested that it would be helpful for all Panel members to offer their perspectives and insights and advise the Ontario team of any additional factors that may influence the current negotiation process.

The following captures the key issues that were raised during the recent Working Group meeting and the comments and perspectives offered by GLCA Advisory Panel members.

Overarching Principles:

The 2005 draft included additional language in the preamble relating to the need for a precautionary approach in recognition of the cumulative effects of climate change, the need to maintain the integrity of the basin ecosystem, the importance of inter-generational equity and the commitment and involvement of First Nations and Tribes to protect basin waters. Comments received during the public input process presented a strong support base for a precautionary approach and recognition of the climate change agenda but concern that the public trust component has been lost. As a result of the recent meeting, some states expressed concern with the uncertainties of a precautionary approach. The Public Trust component has been returned to the Compact and the principles of a precautionary approach have been maintained.

Comments From Panel Members:

General support from Panel Members that the overarching principles reflect the points of discussion raised in early meetings.

In-Basin Consumptive Use:

Perhaps the most radical shift in perspective coming out of the Skokie meeting relates to the management of in-basin uses. Several U.S. jurisdictions suggested significant concerns with the existing draft provisions. For the most part, there was general agreement that the standard is acceptable but there are concerns with respect to the existing threshold and the current trigger of 100,000 GPD. Several U.S. jurisdictions are not prepared to live with a threshold but have indicated in a preliminary way that they could consider some estimates based on a sectoral approach. Several options relating to retaining the standard, eliminating the threshold or allowing individual States to design their own standard were being considered. This remains under discussion.

Comments from Panel Members:

Some panel members felt they do not want to see agriculture put at a distinct disadvantage. In-basin use needs to be flexible. Some felt that if consensus was not reached and industries were regulated on a jurisdictional basis, this could have direct consequences for the local businessman.

Diversions:

The 2005 draft identified a ban on diversions with limited exceptions (ballast, short-term fire fighting/humanitarian grounds, straddling communities, straddling counties and intra-basin transfers). Comments received during the public input process provided strong support for the ban and the need to seek further restrictions in particular with respect to straddling counties. At the September meeting, issues were raised regarding the ban and

the list of exceptions and concerns were expressed that the list of restrictions needs to be more substantive.

Straddling Counties:

The issue of straddling counties provided a key focus for discussion. The issue of potential population growth and demand for water use in the Basin was noted as a critical issue for Ontario and it was expressed that the list of exceptions needs to be more significantly restricted than is presently the case. Several options were considered in relation to the straddling counties issue, including:

1. Add a cumulative, basin-wide volume-based cap.
2. Add a sunset provision (5, 10, 20 years).
3. Grandfather a defined list of communities and remove the straddling county exception.
4. Restrict to communities currently using groundwater hydrologically connected to basin waters.
5. Add an exemption for short term emergency response in exchange for removal of exception or one of the above options.

For some jurisdictions, the option of a sunset clause (e.g. in addition to the current straddling county criteria there would be a specified time horizon within which a community could bring a proposal forward – 5, 10, 20 years) began to address their concerns around population growth and development. For the Ontario team, this was identified as a critical issue and it was left that Ontario would pursue additional discussions with individual jurisdictions. This issue remains under discussion.

Comments from Panel Members:

Some comments were raised regarding whether or not the cap would be a net cap and how it would be apportioned and addressed logistically. At this time, the logistics associated with any cumulative cap component have not been defined – there are alternatives that could consider a percentage based on population in the Basin or a percentage based on land mass within the Basin. Panel members were asked to consider the options and to identify any additional restrictions from their perspective or any insights they have regarding the options under consideration.

Some Panel members felt that Option 4 was the only palatable option. Some concern that a cap alone would be unacceptable and that this would need to be packaged with other components. Other Panel Members suggested combining Option 2 and Option 4 – include a sunset clause with a hydrological connection (therefore, Option 4 but with a sunset clause).

Some Panel Members questioned how a cap could be measured if the right science is not in place. Most placed critical emphasis on the science component and felt this was the foundation piece underlying the Agreement.

On the issue of the cap, it needs to be linked either to population or land base – need to link the cap to something tangible.

With respect to the option of grandfathering, the parameters and principles need better definition.

Illinois Diversion:

Under the 2005 draft, Illinois withdrawals of Basin water remain under Supreme Court decree and the State is prohibited from seeking additional Basin water under the Agreements (e.g. exceptions). If a Party seeks to amend the Decree, formal input from Ontario and Quebec is required. All other provisions of the Agreements apply to the State of Illinois, including conservation and information management, water management programs.) Comments received during the public input process focused on the Illinois diversion as a significant concern and risk associated with the Agreements. Concerns were expressed that the language in the current Agreement is awkward and not markedly different from the Supreme Court Decree, the provisions remain unchanged. The issue of the Illinois diversion was raised as a deal breaker for Illinois but was not discussed fully, given the amount of discussion devoted to straddling counties and in-basin uses.

Comments from Panel Members:

Some Panel Members questioned whether the current decree is stronger or weaker than the revised Agreement. A suggestion was made to look at strengthening the standing provisions.

Return Flow, Replacement Water

The 2005 Draft provides for no exemptions from the return flow requirement, no replacement water from outside the Basin, flexibility in the location of return flow for smaller intra-basin transfers and a requirement that return flow must meet water quality standards along with some flexibility regarding connecting channels and the recognition that Lake Huron and Lake Michigan are one hydrologic unit. Comments received during the public input process focused on the importance of seeking return flow close to the point of withdrawal, the need to allow some flexibility for smaller intra-basin transfers as well as a request by some water users seeking flexibility. At the meeting in Illinois, there was some pressure to seek flexibility on return flow (e.g. straddling communities). The return flow requirement was maintained but some flexibility for 'co-mingled water was discussed (e.g. public water supply systems with multiple water sources, including water from outside the basin). The wastewater discussions focused on the need for flexibility regarding the approach to return flow. If there is a co-mingling of groundwater and surface water, concerns were expressed that jurisdictions would have to repair/upgrade infrastructure to prevent any seepage – largely to guard against biota concerns and invasive species. During the September meeting, language was put forward calling on the need for treatment, but there were no specifics regarding the methodology for addressing invasive species. There was some pressure to revisit the return flow provisions but the discussion focused on co-mingling specifically.

Bulk Transfers, Bottled Water

The 2005 Draft Agreement provides for transfers out of the Basin in containers 20+ litres to be treated as a diversion, with transfers in smaller containers treated as a consumptive use. Some comments received during the public input process called for the treatment of bottled water as a diversion, regardless of the size of the container. At the meeting in September, there was some interest in treating all bottled water as a consumptive use, regardless of the container size and while a range of perspectives were discussed, the provisions currently remained unchanged.

Comments from Panel Members:

It was noted that the current proviso reflects existing Ontario law. Bottled water is defined world-wide as a food product. Some panel members suggested that by singling out one food product, you are singling out all food products. Some members questioned the origins of the 20 litre baseline. Some pointed out that Industry is not exporting bottled water as a result of the increase in transportation costs. It was noted further that local bottlers are not shipping water outside of Ontario, Quebec or B.C.. It was suggested by Health Canada that food products (in general or specific) not be singled out and further that bottled water be regulated as any other consumptive use. Sierra Club representatives noted that in the U.S., bottled water is identified as one of the top three issues and it was suggested that a consistent approach be taken with respect to 'fluids.' It was suggested with respect to bottled water that:

- bottled water be treated as a consumptive use;
- treat 20+ litre as a diversion;
- recognize that the industry is consumer-driven.

While these points were noted by the Ontario team, it was specifically suggested to the Panel Members that this would not likely be used as a key brokering point by the team as there are other more fundamental issues of concern that remain under discussion.

Regional Oversight:

The 2005 Draft Agreement calls for the replacement of regional oversight on diversions with a virtual ban and calls for a regional review for larger consumptive uses, intra-basin transfers, straddling communities and ALL communities in straddling counties. The 2005 draft also calls for a Compact vote for diversions and a Compact review only for consumptive use. During the public input process, some concerns were expressed in relation to the inequity of the review process. At the September meeting, regional review was replaced with Prior Notice and Consultation for consumptive uses greater than 5 mgd. The Compact review for consumptive use was removed but Regional Review was maintained for all diversion exceptions. In addition, a Regional review of water management programs every 5 years was added which provides for a strengthened commitment to come together for regional review of water management programs.

Comments from Panel Members:

Panel members spent some time discussing the Charter and issues of sovereignty. It was noted however that the focus should not be on "the number" – but the fact that there is a

number referenced in the Agreement. There was also some discussion around the ongoing need for a Procedures Manual to provide guidance and direction relating to implementation. The Ontario team spoke about the support among Working Group members for a Procedures Manual but indicated there are some issues relating to the status of that Procedures Manual and whether or not it is actually attached to the Agreement or not.

Concerns were expressed by the agricultural representatives that flexibility be provided for agriculture and that the 5+mgd not be lowered.

If the Regional Review process is changed, Ontario and Quebec need to be 'in the room', particularly for large in-basin uses. With respect to the five year regional review, there is some fact-finding that needs to come out of the review. Panel Members were pleased with the commitment to obtain scientific data but feel the mechanisms (the how to's) need to be identified now.

Withdrawals, Consumptive Uses

The 2005 Draft includes regulation based on an environmental standard of 100,000+ gallons, a Regional Review for 5+ mgd (19 mld) and a Compact Review (no vote) for U.S. proposals. During the public input process, environmental NGOs saw the regulation as a major advancement. Comments from the agriculture sector in particular sought recognition of the unique character of agricultural uses (e.g. defining consumptive use, averaging period). At the September meeting, no state-provincial flexibility in managing, regulating withdrawals based on the standard and no threshold for regulation was defined. The Regional review process relating to consumptive uses 5+ mgd was replaced with a Prior Notice and Consultation process but the 10-year phase-in was proposed to be removed and a Regional review of water management programs every 5 years was added.

Comments from Panel Members:

Concerns were expressed by agricultural representatives that the averaging period be retained in recognition of agricultural uses. Agricultural uses need to be recognized as seasonal uses. Members of the Ontario team clarified that the Agreement provides for jurisdictional flexibility.

Conservation

The 2005 Draft Agreement provides for a standard that includes conservation measures and calls for Conservation Programs by states and provinces in 5 years. Comments received during the public input process demonstrated strong support for conservation although some indicated an interest in further strengthening the conservation component. The agriculture sector in particular requested recognition of water efficiency and BMPs. At the September meeting, the water efficiency language was discussed and agreement was reached to include, but not replace the existing conservation commitments. In addition, there was no clear understanding of how jurisdictions will build their conservation programs. Current provisions leave considerable leverage to the individual jurisdictions with respect to implementation. In addition, it was noted that there are some

differences between the language in the Compact and the Agreement – this needs to be remedied.

Comments from Panel Members:

Need to ensure that all jurisdictions have a Conservation Plan in place.

Other Issues

The September meeting in Illinois provided an opportunity to discuss a number of other issues, including:

- Information & Science
- Standard
- Groundwater
- Cumulative Impacts
- Tribes, First Nations
- IJC & Role of the Federal Government
- Enforcement

With respect to Information & Science, the 2005 Agreement contains a requirement relating to Annual Reporting, submission to a regional database and a general commitment to science. At the September meeting there was an agreement to strengthen the science provisions.

With respect to the Standard, the 2005 Agreement speaks to conservation, return flow, reasonable quantities with no significant impacts and compliance with existing laws. At the September meeting, there was discussion of a potential change to co-mingled water although in-basin application remains unclear.

With respect to Groundwater, the 2005 Agreement calls for the surface water divide to be used to define the groundwater divide and makes a commitment to science. At the September meeting, the language relating to groundwater was clarified but the intent of the draft Agreement was maintained.

With respect to Cumulative Impacts, the 2005 Agreement calls for periodic cumulative impact assessment and a review of the exception provisions. At the September meeting, and as noted above, the exceptions were reviewed and challenged but remain unchanged at this time.

With respect to the role of Tribes and First Nations, the 2005 Agreement contains a reference that suggests the Agreement will not interfere with First Nations rights and provides further for First Nation consultation as part of the Regional Review process. At the September meeting, it was noted that better ways of facilitating more meaningful participation and engagement of Tribes and First Nations is required. Several options are being considered including one that might grant observer status to First Nations on the Regional Body. It was pointed out that more meaningful engagement of First Nations in the Annex process is intended to foster improved relations between government and First Nations and not as a means to replace any constitutional obligations and commitments

Ontario may have to First Nation communities. At this time, options to promote more active participation are being pursued.

The 2005 Agreement explicitly recognizes the role of the IJC and the authority of the Federal Government under the Boundary Waters Treaty. The current provisions remain unchanged.

With respect to enforcement, the 2005 Agreement includes a provision for judicial review of decisions. The current provisions remain unchanged.

Comments from Panel Members:

Panel Members overwhelmingly supported the goal of strengthened science and information provisions – most felt the science component was the foundation piece underlying the Agreement. Some felt that if the emphasis is on science, this is the key to acquiring better data relating to cumulative impacts and the like. Some felt that science should be supported by Government.

Outstanding Issues

As a result of the meeting held in Skokie, there were a number of outstanding issues that remain:

1. In-Basin Management, Regulation: Uncertainties remain regarding how the standard will be applied, the lack of thresholds and the Prior Notice & Consultation provisions. There was agreement to consider a commitment to a regional body role in defining applicability.
2. Replacement Water versus 'Co-Mingled' Water: Issues concerning public water supply systems with multiple water sources, including water from outside the basin remains an issue of concern to be resolved.
3. Straddling counties Exception: This issue (and the options being considered) remain under discussion.

In addition, it was noted that there is work that is being done in parallel. In the U.S., Industry is working with some of the environmental groups to build a different model. There has been no involvement by Canadian environmental groups and the overriding concern is that the alternative model may move further down the road in terms of major concessions. The alternative model is being developed and it is anticipated that this will be forthcoming soon. Ministry staff made a commitment to keep Panel Members apprised of any progress and in return, all members of the Advisory Panel were asked to share any information that they may receive.

Common Concerns/Points Raised By Panel Members:

1. Public participation under the final Agreement has been 'lost in the shuffle.' There is a need to afford stakeholders and the Ontario public with an opportunity to review the Agreements if they have been substantially changed as a result of

- the negotiation process. Overwhelming concern expressed by Panel Members if there is no additional opportunity to review the Agreement.
2. The previous 2005 Agreement that was consulted on was the *minimum* acceptable to the stakeholders.
 3. Very concerned with the direction the negotiations are going in but no deal is not in the cards. Any changes to the Agreement need to be rationalized against the intent and purpose of the GLCA – that being to ensure the integrity of the waters of the Great Lakes Basin. A responsible performance-based management approach must be supported by and committed to by all jurisdictions.
 4. Overwhelming support for a science-based approach. Most felt the science component was the foundation piece but there was some question about how the cap can be measured if the right science isn't there. Suggestion that this work should tie in with the IJC Upper Lakes Levels Study.
 5. With respect to the standard, some standards need to be maintained in the Agreement. Uncertainty regarding the standard is a negative but flexibility with respect to the standard is positive. The onus needs to be on the users – have a standard but place the onus of responsibility with the users. Ontario is leading the pack here and some benchmarks/standards are needed to ensure other jurisdictions will adhere to and address these.
 6. On the issue of no agreement versus a changed agreement. Look at the Agreement from the perspective of how it could be interpreted. Ensure there is balanced protection for those using the resource responsibly with those who may not necessarily operate in the public interest. View this as a starting point and include wording to reflect that this is a work in progress. Use this as a framework from which to build and strengthen the provisions of the Agreement, as science data and information become more readily available.

Next Steps

An Ontario First Nations Technical Meeting is scheduled for October 7th and a meeting of the Working Group will be held in Chicago October 11th-14th.

R. Messervey thanked all in attendance for their comments and input. The Ontario team remains firmly committed to continuing the process of engaging the Advisory Panel members as the process moves toward the final phase of negotiation. As required, additional meetings of the Advisory Panel will be held to provide members with an update on the status of the negotiations. In addition, a further meeting of the Panel may be necessary once the jurisdictional review process concludes.

Meeting Adjourned 2:00 pm.



United States Department of State

Washington, D.C. 20520

www.state.gov

November 3, 2004

David Naftzger
Senior Program Manager
35 East Wacker Drive, Suite 1850
Chicago, IL 60601

Dear Mr. Naftzger,

Following up the October 15, 2004 email exchange between my office and yourself, I would like to submit the Department of State's formal comment on the draft proposal to implement Annex 2001. As stated in previous correspondence, the Department of State has a concern that when an interstate compact gains the consent of Congress, it becomes federal law. Thus, the Compact could arguably be read to supersede other federal laws, such as the Boundary Waters Treaty. That is, someone who is granted a relevant diversion by the Great Lakes States might attempt to argue that there is no need to go through the IJC because the Compact trumps the Treaty.

The Department of State believes that this isn't the purpose of the Compact, and the Compact should make that clear. In order to do that, the Compact should add a new section 10.4, which would clarify the interaction between the Compact and other law, as well as more detailed language in Article 6.1 Repealer. Suggested language might be:

10.4 Consistency With Other Law.

Nothing in this Compact is intended to be inconsistent with other federal or international law, nor shall this Compact affect the rights and obligations of the United States deriving from other international agreements to which the United States is a party, or international law. In particular, nothing in this Compact is intended to be inconsistent with the 1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between Canada and the United States (the "Treaty"). To the extent that any provisions herein are found to be inconsistent with that Treaty or other

federal or international law, the treaty or law shall supersede the affected provision. In addition, the requirements herein relating to new and increased diversions, withdrawals, and consumptive uses shall be in addition to those requirements found in the Treaty.

Article 6.1. Repealer.

All *State or Commonwealth* acts or parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Please do not hesitate to contact my office if we can be of further assistance to you.

Sincerely,



Terry A. Breese
Director
Office of Canadian Affairs

"de Launay, David (MNR)" <david.delaunay@mnr.gov.on.ca>,
"West, Betty Anne (MNR)" <bettyanne.west@mnr.gov.on.ca>,
"Muschett, Judy (MNR)" <judy.muschett@mnr.gov.on.ca>,
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"Wyver, Patricia (MNR)" <patricia.wyver@mnr.gov.on.ca>,
"Ouellette, Jackie (MNR)" <jackie.ouellette@mnr.gov.on.ca>,
<Karen.wianecki@sympatico.ca>

Good afternoon,

Please note that Friday October 28th's meeting will be held at St. Michael's College, Charbonnel Lounge, 81 St. Mary St. downtown Toronto. The meeting will take place from 10:00 am to 4:00 pm. We have extended the length of this meeting due to the critical timing and nature of our discussions, but we may not require the entire time allocated.

Please confirm your attendance by Tuesday October 25th.

A map is attached for your convenience. Some parking is available on St. Mary St. but there is a larger lot on St. Joseph street one block south

Attached you will also find the Agenda as well as the notes from our September 30th meeting. You will note that an action items was for MNR to provide copies of the US State Department letter issued following the 2004 release of the drafts. A copy of this letter is also attached.

Looking forward to seeing you,

Danielle

Danielle DuMoulin
Surface Water Policy and Program Officer

Water Resources Section
Ministry of Natural Resources
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**Great Lakes Charter Annex
Advisory Panel 9th Meeting
Charbonnel Lounge, St. Michael's College
81 St. Mary Street, Toronto
Friday October 28, 2005
10:00 am to 4:00 pm**

AGENDA

- **Welcome & Meeting Objectives**
(Rob Messervey/Karen Wianecki)
- **Minutes and Action Items from September 30th Meeting**
(Rob Messervey)
- **Report Back on Working Group meeting Skokie, Illinois**
(Kevin Wilson)
- **Overview of changes to Agreements**
(Rob Messervey/Paula Thompson)
- **Discussion and Input from Advisory Panel Members**
- **Next Steps**
(Rob Messervey)
- **Adjourn**

Great Lakes Charter Annex Advisory Panel

October 28, 2005

Ninth Meeting

St. Michael's College, University of Toronto

Rob Messervey (Manager, Water Resources Section, Ontario Ministry of Natural Resources) – Welcome

Rob welcomed members of the AAP to the Ninth meeting of the Panel and emphasized this as a critical session. Following introductions the agenda provided an opportunity for the Ontario team to report back on the recent meeting of the Working Group, provides an overview of the key provisions, seeks input from members and ends with a discussion on timing and next steps.

There was one action item set out in the minutes from the Eighth Meeting of the Panel. It was requested that the letter from the State Department (US) be distributed and it went out with the comprehensive set of minutes from the Eighth meeting. Since the last meeting our dialogues with Foreign Affairs Canada and Environment Canada, as well as the International Joint Commission have continued. A meeting with the provincial development facilitator was held. A First Nations meeting was held on October 7 and explored methods of enhancing First Nations engagement.

Karen Wianecki (Facilitator, Great Lakes Charter Annex Advisory Panel) – Objectives

Karen outlined the meeting would provide an opportunity for Panel member to share their views as well as to receive a status update and learn about salient changes to the Agreements. Karen explained the Ontario Team would be looking for input from members, as well as feelings on the options available, in particular answers to the question: “WHAT IS YOUR ADVICE TO GOVERNMENT?”

Kevin Wilson (Assistant Deputy Ministry, Natural Resources Management Division, Ontario Ministry of Natural Resources) – Highlights from Skokie IL

Some of Kevin's remarks are outlined as follows:

- We arrived to our October Working Group meeting facing a new challenge on the US side. The National Wildlife Federation and the Council of Great Lakes Industries worked collaboratively trying to find a balance between their interests to bring to the Working Group on issues proving problematic on the US side. The National Wildlife Federation is afraid to see the whole thing lost, but they did not solicit Canadian input. The document is highly problematic, and amongst other suggestions included:
 - calls for a decrease in the regulation of in-basin use; as well as watering down of key principles, especially precaution

- products and diversions to be subject to much different interpretation than in the current draft of the agreement
- The proposal continued to water down the management of consumptive use
- Quebec and a number of the states joined Ontario in having concerns about the proposal; but we did give them a fair hearing.
- There is concern surrounding the ability to have the agreements pass through the state legislatures. In order to entertain the weakening of in-basin controls strengthening in other areas must be considered.
- The negotiations are at the end point; we are within one to two days of a final agreement and Ontario is entering into the Cabinet process.
- The US states are aligned for a signing target date of early December, along with the US Restoration Program underway. There are also political considerations, with 7 of the 8 states facing gubernatorial elections during the upcoming election cycle.
- We have continued to make efforts to slow the process and to allow time for input and public debate, but those efforts have been foreclosed. This leaves us with only a few options. We could sign the agreements, or we could opt for the status quo at which point the states may decide to proceed without us. So we have to ask ourselves if this agreement offers us more than the status quo, and maybe more importantly, what agreement/Compact will the US states come to without Ontario.

Key Articles Presented and Discussed

Paula Thompson, Rob Messervey

Rob and Paula present by PowerPoint the actual current draft language in the Agreement, under the following key articles. Discussion occurred on each article.

Article 103 – Definitions: Adaptive Management (new)

Article 200 – Prohibition

Article 201 – Exception

Article 203 – Standard

Article 205 – Prior Notice and Comment

Article 206 - Trigger

Article 207 – Applicability

Article 208 – Exemption

Article 209 – Cumulative Impacts

Article 300 – Water Management Program Review

Article 301 – Information

Article 302 – Science

Article 304 – Water Conservation and Efficiency Program

Article 400 – Role of the Regional Body

Article 401 – Organization and Procedures of the Regional Body

Article 504 – Tribes and First Nations

Discussion – Facilitated by Karen Wianecki
WHAT IS YOUR ADVICE TO GOVERNMENT?

The range of positions expressed during the discussion were quite wide. The comments are represented below without singling out any particular panel member.

Discussion around the threshold showed that while ENGOs would have liked to have seen the trigger threshold lower. The agricultural community supports the agreement if it can accommodate seasonal use.

Some groups explained they would be unable to provide a position without consultation with colleagues.

While some panel members found the decreased focus on in-basin use sends a disappointing message to the public and people outside the basin it was also acknowledged that without agreeing now we could see the Great Lakes States “go it alone” with a weaker interstate compact, for the sake of an agreement. This exercise would have been a missed opportunity and one that might not be available again for a long period into the future (ie an opportunity that sees the states and provinces given the responsibility to manage the Great Lakes on a regional basis); a missed opportunity we may regret. It is unlikely that an agreement banning diversions could ever be attained during a future negotiation. Some pointed out that even if the agreement is not exactly as we would like to see currently we will be allowed an opportunity to revise the agreements following the five-year review and cumulative impact assessments.

Some members remain concerned not only with the lower threshold but also with the straddling counties’ exception. A few suggested the agreement in its current form should not be signed.

Thank you and Next Steps – Rob Messervey

Rob acknowledged the amount of time members took to work through the issues. Rob invited Panel members to submit any further comments directly to him by November 10. He advised that the draft agreements will be going to Cabinet Committee and Cabinet during the Jurisdictional Review period. The Jurisdictional Review period will end in December and a signing event has been tentatively scheduled for mid-December.

Rob also acknowledged that the APP has been integral to Ontario in setting and testing its negotiating position on key policy and language issues and that as we move forward, potentially to implementation he sees a continuing and vital role for the AAP to play in helping Ontario set new legislation, policy and processes in place.

Sarah Miller

From: Dumoulin, Danielle (MNR) [danielle.dumoulin@ontario.ca]
Sent: January 22, 2007 4:58 PM
To: Sarah Miller
Subject: RE: Minutes etc. Water Panel
Attachments: AAP-NinthMeetingMinutes.doc; AAP tenth MEETING MINUTES.Nov2105.doc

Hi Sarah,

The only other meeting I have on record is Nov 21st. I've attached the notes from it and the meeting of Oct 28th. Please note that the Nov 21st notes were not circulated due to their timing and last minute negotiations, and the attached are an internal draft only. Any other calls and or meetings above these were not formal meetings and notes were not provided.

I'll get back to you about attendance tomorrow.

Danielle

From: Sarah Miller [mailto:MillerS@lao.on.ca]
Sent: Monday, January 22, 2007 11:02 AM
To: Dumoulin, Danielle (MNR); Messervey, Rob (MNR); Thompson, Paula (MNR)
Cc: anne@cela.ca; John Jackson
Subject: Minutes etc. Water Panel

Dear Danielle

I am not sure that you are the right person to contact but I want to check and make sure that I have all of the Minutes and related documents of the Water Panel between its beginning and the signing of the Agreements in December 2005 so Anne can review them prior to conducting the interviews. Here is what I have. Can you determine if I am missing anything?

October 22, 2004 Stakeholder dialogue

Dec 21, 2004 Annex Advisory Panel –Inaugural Meeting December 21, 2004

January 27, 2005 AAP Mtg.

March 2, 2005 Mtg.

May 4, 2005 Phone meeting

June 24, 2005 Briefing call

July 2005 Public Hearings: 5th Windsor and St. Catherine, July 6th London, July 7th Kitchener and Kingston, July 11 Thunder Bay and 14th Toronto

September 8, 2005 Phone meeting

September 30, 2005

October 28, 2005 I DO NOT HAVE THE MINUTES OF THIS MEETING. It could be my failure to file.

Here's where things get blurry. There were many (join if you can) last minute calls as negotiations got down to the wire. Were records kept of these calls?

Another document I would find it useful to have is the presentation given on the research on

22/01/2007

the US Southwest.

I left you a message as I would like to go through the membership list to get a sense of who participated continuously. While I can determine this for the ENGOs I am not as confident about the other sectors.

Also I am aware that you held special one on one dialogue with individuals as needed. How will we address this in our report?

Sarah Miller

Co-ordinator and Water Policy Researcher

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or our Resource Library web site ~ www.ecolawinfo.org

Great Lakes Charter Annex Tenth Meeting of the Annex Advisory Panel

Monday, November 21st, 2005
St. Michael's College – Carr Building
10:00 am – 4:00 pm

Proceedings from the Tenth Meeting

Rob Messervey welcomed all to the tenth meeting of the Annex Advisory Panel and outlined the objectives and purpose of the meeting, specifically:

1. To provide an overview of the key provisions in the Agreements that have been:
 - Maintained;
 - Strengthened; and
 - Changed to secure consensus to allow the Agreements to proceed to the 30-day jurisdictional review.
2. To walk through the Agreement Article by Article to highlight the nature of the changes and to contrast the Agreements with the status quo.
3. To provide an opportunity for Panel members to comment on the changes and, at the end of the meeting to formally state their support for, or objection to the Agreements, as presented; and
4. To discuss next steps.

In reviewing the key changes and in formulating their respective positions regarding the Agreements, participants were asked to keep the following key considerations in mind:

- How do the Agreements compare with the status quo?
- Do the Agreements provide for future strengthening?
- Do the Agreements provide a voice for Ontario, First Nations, stakeholders and citizens?
- What are the risks of not being part of the Agreement?

The meeting began with introductions from all in attendance. Rob Messervey then reviewed the Minutes from the ninth meeting of the Advisory Panel. Kevin Wilson provided attendees with an understanding of the rationale for the changes and the process relating to the final negotiations and the lead up to the 30-day jurisdictional review. Kevin indicated that through the jurisdictional review process, each jurisdiction is required to confirm whether or not they are prepared to sign the Agreement. Such notification is to be provided by December 8th. If there is consensus, all ten jurisdictions would move to sign the Charter Annex Agreements by mid-December of this year.

Both Kevin and Rob confirmed the extensive effort that had been put forward by all jurisdictions to find a balance that could potentially be supported by all involved. Kevin suggested that while there may be opportunity for small non-substantive changes to be made to the Agreement while the 30-day jurisdictional review is occurring, there is virtually no opportunity to make substantial changes to the fundamental principles of the Agreements. As such, the Advisory Panel members were made aware of the fact that that this is it. Panel Members needs to make a decision whether or not they recommend the Government support the Agreements. It was noted that the Ontario Team must have this information by the end of this week in order to properly prepare the associated Cabinet material and brief the Minister of Natural Resources and his colleagues accurately regarding the level of support for the Agreements. In this regard, Kevin suggested that AAP Members need to advise Government staff whether they are prepared to accept the Agreements on balance or whether they feel the Agreements are not sufficient and should be rejected, recognizing the associated risks of operating on the basis of the status quo. Kevin also suggested that a rejection of the Agreements needs to be tempered with an understanding that if there is no signing, the U.S. could conceivably proceed with a Compact on its own.

Copies of the Agreements were distributed to Panel members on the understanding that all in attendance respected the highly confidential nature of the Agreements and that these not be circulated beyond those in attendance at the meeting.

Some questions were raised by Panel members regarding whether members of the Ontario Team support the Agreements personally. Kevin Wilson responded by indicating that all members of the Ontario Team should feel free to respond on their own but that from his view, this is the best we are going to get. Ontario worked very hard to ensure that key elements of concern were maintained in the Agreement and while we did not achieve everything we were looking for, that on balance, we did get enough to be able to present these to the Panel members for input and advice to Government. Kevin also confirmed his commitment to the Advisory Panel members and the importance that he and other members of the Ontario Team placed on the extremely valuable advice from the AAP members. Kevin indicated his Team wanted to provide AAP members with the considered opportunity to see the Agreements for the first time in this forum.

Paula Thompson and Rob Messervey outlined in detail, the changes made to the Charter Annex Agreements. They took attendees through the key provisions in the Agreement that had been maintained and identified those provisions that had been strengthened.

Paula and Rob then spent some time reviewing the Agreement on an Article by Article basis, focusing on the alterations that were made to the document and in particular, highlighting the scope of the changes to the Agreement since the last AAP meeting. Rob confirmed that some elements of the Agreement had migrated to the Compact to reflect a consistent message in both the Compact and the Agreement (e.g. Regional Review, commitment to science, bulk transfer and the recognition of Lakes Huron and Michigan as one hydrological unit). Mary Muter requested a copy of the wording changes that had been made to the Compact – Rob Messervey to provide.

ACTION: R. MESSERVEY TO FORWARD THE REVISED COMPACT TO AAP MEMBERS.

2. Summary of AAP Member Positions/Comments

Prior to articulating their respective positions, several matters were raised that related to general points of comment and/or clarification. These are captured below.

Both the OWA and OPG expressed some concern that the term ‘product’, as defined in Article 103 – General Definitions - could refer to electricity. Some clarification is needed as this is a definition that has been added since the October 24th version. Additional concerns with the definition of product were expressed in relation to the reference to “agricultural process”. It was suggested by Scott Duff and Madeline Mills that the definition should be revised to replace the word “process” with the word “processing” as there is an interest in monitoring the processing and not the process itself.

Adele Hurley requested that a copy of the County map (available on the Council of Great Lakes Governors website) be forwarded to each AAP member. While Adele had to leave at 1:10 pm, the commitment was made to distribute an electronic copy of the map to all members as per this request.

ACTION: R. MESSERVEY TO FORWARD A COPY OF THE COUNTY MAP TO ALL AAP MEMBERS.

Sierra Club of Canada:

Christine Elwell indicated the Sierra Club of Canada was generally very supportive of the Agreements as presented. On balance, the Agreements represent a significant improvement over the status quo. Sierra Club of Canada are of the view that hydrology should be a requirement and at this time, have some remaining concerns relating to the removal of the precautionary approach, political counties, the issue of bottled water as well as some questions concerning implementation. On the whole however, Sierra Club of Canada supports the Agreements as a starting point and an opportunity to work collaboratively with other jurisdictions. Sierra Club of Canada recommends support.

Georgian Bay Association:

Mary Muter expressed some concern with respect to the apparently close alliance with U.S. counterparts and the WFI and indicated her deep concern with the connection. Mary suggested the Agreements as presented demonstrate strengths in a number of areas but that she remains concerned with respect to the straddling counties component and the overriding concern that the groundwater divide is not well understood. In her view, more work with respect to groundwater is required and suggests that the Agreements be put on hold until groundwater is better understood. She cited concern with Article 209 of the Agreement that refers to a 10-year time horizon and indicated she would be in support if this time horizon could be changed to 2 years. Mary suggested pushing for stronger provisions. She also suggested the word “cycles” be deleted from Article 209 Sub-section 4 (c).

Conservation Council of Ontario

In articulating the perspective of the CCO, Chris Winter suggested the issues respecting the Agreements hinge on implementation. He noted that there were some areas of the Agreement that were open to interpretation and further that details would emerge at the implementation stage with respect to setting objectives, best management practices and the establishment of rigorous baseline levels (ensuring there is no political jargon). Chris suggested the Agreements focus on advancing conservation initiatives and provide an opportunity for Ontario to lead by example. Given the scope and focus of the Agreements, Chris supports a 'full steam ahead' approach to conservation and indicated support for the Agreements as presented.

Ontario Waterpower Association:

Paul Norris, on behalf of the OWA, indicated that AAP Members need to look at the Agreements in aggregate and what opportunities they provide for collaboration and partnership. In his view, the Agreements offer an opportunity for all jurisdictions to tackle issues collectively. Paul pointed out that the Agreements establish a foundation for moving forward collaboratively and that there is more in this Agreement that speaks to partnership and collaboration. He recommended supporting the Agreements.

Lake Ontario Waterkeeper:

Tania Monteiro on behalf of the Lake Ontario Waterkeeper cited concerns with specific components of the Agreement – namely, Article 203, 205, 206 and the Straddling Counties components. In her view, groundwater should be a condition not a consideration and further, some of the language in the cited Articles was problematic (e.g. Article 203 – references to 'safe yield', 'restoration', 'reasonable' and item 5(c) were particularly concerning; Article 205 offers diminished inter-jurisdictional consultation; Article 206 has been altered dramatically from what went out for public comment in the summer and she has procedural concerns with this and with the fact that further public consultation is not being provided.) Lake Ontario Waterkeepers, on the basis of the above, recommends not supporting the Agreements as presented.

City of Toronto:

Michael D'Andrea expressed some concern with the Agreements but indicated that most of his concerns relate to implementation and not with the Agreements directly. He put forward his concern that jurisdictions on both sides of the border need to adhere to the same level of scrutiny and enforcement and expressed an overriding need for consistency. He indicated that the tighter time lines in the Agreement were a positive step but had some concerns from a straddling communities perspective. Michael expressed the need for a Municipal Body to be responsible for developing an implementation strategy associated with the Charter Annex Agreements and that with these needs identified, he recommends supporting the Agreements.

Ontario Fruit & Vegetable Growers Association:

Madeline Mills, on behalf of the Ontario Fruit and Vegetables Growers Association expressed concern with the reference in Article to 'process' and indicated that this word

should be changed to 'processing.' She expressed concern that agricultural producers do not want to be called upon to enter into a complex accounting framework to consider the amount of water used in producing various agricultural products (e.g. the amount of water that is contained in a tomato, for example). Madeline indicated the need for unilateral enforcement and suggested the Agreements are better than the status quo but that we need to recognize that there is an opportunity to improve and build on the Agreements.

Niagara-on-the-Lake Irrigation Advisory Committee

Austin Kirby spoke on behalf the agricultural interests. She expressed some reservation with the Agreements but indicated she would like to be in a position to support them and that there are several areas where clarification is required. Austin indicated she needs to better understand the recommendation for technical studies and how this will be implemented. P. Thompson and A. Kirby to speak further this week. Austin expressed real concern that the cost of technical studies not end up being paid for by the agricultural producer as these costs could be astronomical and could conceivably have far-reaching financial implications for agriculture generally and for the long term viability of Ontario's agricultural sector as a whole. In addition, she cited concern that the Agreements do not reflect the fact that agriculture is seasonal in nature or that water returned to the system through farming is credited appropriately (e.g. need to credit any residual between what is actually used in production and what is returned to the system).

Canadian Environmental Law Association:

Sarah Miller expressed concern that our water taking and permitting system is already seasonally sensitive and that the balancing of water for permit taking with the need to ensure environmental conservation will continue to offer challenges into the future. Sarah expressed support for the Agreements noting that they provide an opportunity for collaboration, partnership and improvement. She indicated the application of environmental standards to proposals represents a huge and positive step forward. Sarah indicated that the status quo offers little protection – there is already a Chapter 11 challenge in Texas and further that WRDA offers too many challenges in and of itself. The Agreements in her view, are better than the status quo and recommends support. Sarah also made the observation that this may be the only opportunity we have to finalize an Agreement that is supported by all ten jurisdictions – particularly when one considers emergent migration patterns across the continental U.S. and the shifting balance of political power south of the border. For these reasons, she recommends supporting the Agreements.

Canadian Federation of University Women – Ontario Council

Carolyn Day, on behalf of the Ontario Council, Canadian Federation of University Women cited the overriding need for a secure funding base to move the Agreements forward to implementation. She focused on the five year review provisions as extremely positive and felt the Agreements as presented, provide the basis to move forward collectively. The Agreements in her view, offer a framework for partnership but there is a need for secure financial resources from government to ensure that the principles in the Agreement move forward. Carolyn articulated her support for the Agreements.

Ontario Power Generation

Bob Yap on behalf of OPG offered his support for the Agreements. Given the nature of the business that OPG is in, his organization supports any efforts aimed at preventing diversions of water and reduced lake levels in the Great Lakes. The Agreements offer an opportunity for collaborative action and partnership. Bob indicated he will recommend to his senior management at OPG that the Agreements be supported.

Conservation Ontario:

Larry Field, on behalf of Conservation Ontario noted that while some changes were made to the October 24th version that many of the AAP members saw, in his view, no changes were made to the substantive components of the Agreement. Based on the fact that fundamental principles and perspectives have been maintained, the Agreements offer an opportunity for future action. Larry recommended supporting the Agreements as presented.

Canadian Water Resources Association:

Ed Gazendam spoke on behalf of the CWRA. Ed noted that many of the wording changes as requested by Panel Members have been reflected in the Agreements. He noted further that this is a science-based Agreement that allow for further science-based research to be completed on a cooperative and collaborative basis around the Basin. Ed noted the Agreements are far, far better than the status quo and indicated his support for the Agreements as presented.

Rob Messervey thanked all in attendance for taking the time to attend the meeting and how valuable the AAP Members input has proven. Kevin similarly supported the comments made by Rob Messervey and expressed his thanks for the participation of the Panel Members. In Kevin's words, the AAP provided substantive assistance and guidance to the Ontario Team and enabled a much stronger Agreement to emerge. Kevin suggested that this process of engagement had proven particularly beneficial and would like to see this written up as a Case Study to demonstrate a different way of doing business. AAP Members were similarly very supportive of the process and very appreciative of the opportunity to become engaged. Both Sarah Miller and Paul Norris offered to assist Kevin in writing the AAP process as a Case Study.

Kevin indicated the Ontario Team would review all comments offered today and sift through the suggested changes to determine what revisions may be possible within the 30 day jurisdictional review process. Kevin also indicated that the Ontario Team would be in touch with the Advisory Panel members on or just shortly after the December 8th date.

Kevin requested formal comments be sent to him or to the Minister of Natural Resources directly by this Friday, November 25th at 4 pm. Rob Messervey indicated the Ontario Team are looking for a formal response from all Panel Members.

N.B.

All AAP members were asked to forward their formal comments to Kevin by Friday, November 25th at 4:00 pm, either by email or by fax, as noted below:

Email address: kevin.j.wilson@mnr.gov.on.ca
Fax Number: (416) 314-1994

Meeting Adjourned 3:50 pm.

DRAFT