

**SUB-COMMITTEE QUESTIONS AND ISSUES FOR DISCUSSION  
OCTOBER 29, 2003  
DRAFT-FOR DISCUSSION PURPOSES ONLY**

**INTERNATIONAL/INTER-PROVINCIAL AGREEMENT(S) SUB-COMMITTEE  
QUESTIONS AND ISSUES FOR DISCUSSION**

1. When should the agreement come into effect? When all jurisdictions have the appropriate regulatory system in place? Could sections of the agreement come into force before others or shall the whole agreement come into force on a specified date?

**The intent of the Agreement should as much as possible effect the jurisdictions as soon as it is signed. Since the trigger level of a proposal is the determining factor for review of a withdrawal, it will not be that difficult to determine if a proposal should be subject to regional review. This could have an important deterrent effect even if some jurisdictions will not yet have enforcement powers. The signing of the agreement will be seen by the public as a statement of good faith and therefore they will be looking to it to have immediate impacts.**

**A transition process will be needed so that the intent of the Agreement can be carried out immediately even though all jurisdictions have not implemented regulations. This will insure that there are not a number of applications that escape scrutiny intended by the Agreement.**

**If the jurisdiction of origin has not yet put the regulatory regime in place or does not have the staff to undertake a review, the Regional Body should carry out the technical review and receive public comment and or hold a hearing on the proposal in order to have the evidence and background to inform the decision reached in their declaration of finding. Data collection should commence at once in jurisdictions where it is available (see response to 7b).**

**The description of the mandate of both the Regional Body and the Compact Council in the agreement should state that where possible the deliberations of both bodies on withdrawals should be concurrent. This would ensure that all parties are exposed to the same technical background, information, discussion and interventions. This makes it clear that the intent is to try to achieve consensus among all jurisdictions in an equitable way.**

2. How the implementation of the agreement is to be monitored and the process to be followed to allow jurisdictions to comment on each other's programs (e.g. direct jurisdiction-to-jurisdiction communications or

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communications via a Secretariat?). Should the agreement itself deal with such a process?

**A process should be put in place that is at least as inclusive as the prior notice and consultations provisions of the Great Lakes Charter and that captures the intent of those provisions. All jurisdictions should receive all documentation in regard to proposals even if they do not wish to directly comment. Comments on a proposal should be directed to the jurisdiction that is the site of the withdrawal. A secretariat would be helpful to ensure this occurs. The creation of the secretariat and the provisions of notification and for the review and interim review procedures where the regulations are not in place should be within the agreement. These procedures should address the cost of the additional work required for the regional body to carry out the technical review. The jurisdiction on whose behalf a review needs to be carried out should be charged the costs of these services.**

3. The full scope of the Regional Body has not been determined.

Consequently, its logistical organization, the frequency of its meetings, and other administrative matters are still open to discussion.

**Public accountability and transparency of decision-making should be addressed in the mandate of the Regional Body. Will the meetings of the Regional Body be open to the public? Will minutes of all their meetings be public? Will the Regional Body have provision to conduct their own public hearings? If so what will the nature of those hearings be? Will there be formal rules of evidence? Will intervenors and applicants be allowed to be represented by lawyers? Will the Regional Body have the powers to conduct the technical review of a proposal if a jurisdiction is unable or unwilling to? Will those hearings be held in the area most impacted by the withdrawal proposal? How and when will the Great Lakes decision-support system be implemented? The agreement should have some reference to it and consider a means to apply regional expertise. Early on there was discussion of creating a panel of Great Lakes experts that could assist in the decision-making process.**

4. Potential funding mechanisms for the Regional Body, ensuring that the fee structure is equitable in nature.

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**There should be provision for all ten jurisdictions to share the cost of the routine work of the Regional Body administration, setup and on-going mandate. The costs of data collection and tracking of cumulative impacts should be equitably distributed among the ten jurisdictions. If the Regional Body carries out the technical review on behalf of a jurisdiction or other wise incurs exceptional costs then that jurisdiction should pay those costs.**

5. Should strictly defined timeframes be included in the agreement (recognizing that an originating jurisdiction will have to fulfill its domestic requirements) or should there be a general recognition that a balance must be ensured between the requirements for the originating jurisdiction's decisions on water withdrawal to be made in a timely way and the need for comment by members of the Regional Body and the public?

**Some jurisdictions already have procedures, provision for public notification and intervention and review timetables for withdrawals that apply to all water bodies within their jurisdictions. Because the regional body will likely rely on the outcome and technical review of the withdrawal done by the jurisdiction then it will be important to recognize this rather than disrupt already existing processes. To build on local findings, the regional review will have to follow the jurisdictional review. While there has been discussion of having these two reviews be simultaneous, it may not be practical.**

6. Procedures to be followed for modifications to the agreement, to the standard and to the implementation manual.

**Modifications to the agreement standard and implementation must have unanimous consent by ALL jurisdictions. This should be reflected in the compact agreement as well. Procedures for notification of modifications, consideration timetables and voting on proposed changes should be specified in the agreement.**

7. Provisions on:

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- The application of the standard within each state or province -  
i.e. for proposals below the Regional threshold;

**The agreement should require the jurisdictions to report all withdrawals above 50,000 litres annually to the Regional Body database by sector. Data should also be submitted each year for all proposals under the threshold so that we can begin to get a sense of cumulative impacts. Within the language of the agreement jurisdictions should be encouraged to extend the improvement, conservation provisions and return flow provisions to all water withdrawals.**

- Process or responsibility of the Regional Body for periodic cumulative impact evaluation

**Collection of this data should commence as soon as the agreement is signed and be calculated annually by sector. The data set should show when jurisdictions are unable to contribute data and why i.e. they have not implemented the standard. Early efforts to start to cumulate data where possible is important to fulfilling the intent of the agreement.**

- Process related to review of state/provincial programs; and,  
**The Regional Body should evaluate and issue an annual public report on each jurisdiction's progress on implementation on the anniversary of the signing of the agreement. These reports should also go to each jurisdiction's legislature. This task should be included in the description of the mandate of the Regional Body in the Agreement**

- Gathering and sharing of water use information, collection and application of scientific information, conservation programs - as committed to in the Annex and the Standard.

**The gathering of information and data is best handled on a Regional level. Once again, the costs should be shared equally among the ten jurisdictions. The efforts should be carried out by a bi-national team and be submitted to the Regional Body. Perhaps this work could be done in partnership with two research or academic agencies, one in each country.**