



# Protecting and Restoring Our Great Lakes

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Hello, I'm David Naftzger, Executive Director of the Council of Great Lakes Governors. I want to thank you for the opportunity to update you regarding the draft Annex implementing agreements.

I know this audience has been following the issue very closely, so I won't get into all the history of how this process came to be. Rather, I'd like to focus our discussion on some of the key issues that are under review as well as some of the options for addressing those issues.

As you are aware, draft agreements were issued last summer, followed by a 90-day formal comment period. Though that formal comment period has ended, the Council has been continuing to accept public comments.

More than 30 public meetings were held throughout the region. More than 10,000 comments were received from people of all walks of life that have a genuine interest in the Great Lakes. The outpouring of comments is an indicator of our intense efforts to reach the public about what we are doing. It also demonstrates how vital the Great Lakes are to our everyday lives.

It is very clear from the discussions the Working Group members are having that public comment is having a large impact on the draft agreements. The agreements are being reshaped to reflect the comments received.

## **Great Lakes Governors and Premiers**

### Members

- Ohio-Bob Taft (R)---Co-Chair
- Wisconsin-Jim Doyle (D)-Co-Chair
- Illinois-Rod Blagojevich (D)
- Indiana-Mitch Daniels (R)
- Michigan- Jennifer Granholm (D)
- Minnesota-Tim Pawlenty (R)
- New York-George Pataki (R)
- Pennsylvania-Ed Rendell (D)

### Associate Members

- Premier Dalton McGuinty (L-Ontario)
- Premier Jean Charest (L-Quebec)

First, I'd like to tell you a little about the Council of Great Lakes Governors, which has been facilitating the development of the draft Annex Implementing Agreements.

The Council has been in existence for more than 2 decades now. It was established in 1983 as a non-partisan partnership of Governors from each of the eight Great Lakes states. In recent years, the Canadian Premiers of Ontario and Quebec have partnered with the Council to advance the environmental health and high performance economy of the entire Great Lakes region.

## **Mission**

The Council has one simple mission: *To encourage and facilitate environmentally responsible economic growth.*

- Great Lakes Priorities Initiative
- Great Lakes Water Management Initiative
- Aquatic Invasive Species Task Force
- Shared Trade Office Initiative
- Great Lakes of North America (Tourism Initiative)
- Great Lakes Biomass State and Regional Partnership

Our mission is to encourage and to facilitate environmentally responsible economic growth. We believe sound environmental policy makes good economic sense.

The Great Lakes Water Management Initiative to develop the draft Annex Implementing Agreements is one of many projects we have underway, and is the focus of today's discussion.



Because the Great Lakes Basin is so important, the Governors and Premiers made the historic decision to come together and take the necessary steps to protect it now and for the future. This undertaking relates directly to the first of the Governors' nine protection and restoration priorities outlined in their October 1, 2003 letter to the United States Congress.

Following the signing of the Annex in 2001, the Govs/Premiers asked a Working Group made up of staff from each State and Province to develop agreements to implement the Annex. The Govs/Premiers knew how important it was to come up with a practical way to implement the Annex. They also knew how difficult that would be. With this in mind, they gave the Working Group until the summer of 2004 to develop the draft agreements.

## Annex Implementation

- All 10 States and Provinces have been working together to develop agreements to implement the Annex
- Advisory Committee, technical experts and federal government representatives have been participating
- Dialogue has been ongoing with Tribes and First Nations



The Govs/Premiers directed the Working Group to work with an Advisory Committee made up of experts from business, industry, farming & environmental groups, among others. This would help ensure the stakeholder interests that depend on the GL Basin were involved in the process. The committee includes over 20 organizations that have assisted the Govs/ Premiers' designees over the past 3 years in developing the draft implementing agreements. Governmental & non-governmental resource experts and a group of observers including Federal representatives, the U.S. State Department, Foreign Affairs Canada, the IJC and others have also been involved.

Additionally, the individual States/Provinces have engaged in dialogue with the Tribes & First Nations. A regional meeting with Tribes and First Nations was held on February 1 of this year and served as a continuation of that dialogue.

### Key Issues Discussed by Working Group

- Diversions
- Intra-basin diversions
- In-Basin Consumptive uses
- Conservation
- Resource improvement
- Defining the ground water divide



As I stated at the outset, I won't go into details of the draft Agreements that were released last summer because the draft implementing documents remain a work in progress and are continuing to evolve. Changes are being considered due to reflect the numerous public comments we received after their release last July.

I would like us to focus on the future of the agreements, and the options that are under consideration as we look to improve and finalize the draft Annex implementing agreements for the Governors and Premiers consideration.

Therefore, in the next few slides, I am going to be highlighting some of the key issues that were raised during the public comment period, as well as some of the options that are under consideration by the Working Group as it revises the draft Annex Implementing Agreements.

## Key Issues Discussed by Working Group

- Historical diversions
- Federal, IJC role
- Averaging periods
- Cumulative impacts
- Notice, thresholds, regional review process
- Enforcement



As this slide and the previous slide demonstrate, almost all of the key issues of the draft agreements are being carefully re-examined by the Working Group.



<b>Diversions</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Regulation based on common standard (e.g. return flow, improvement, conservation, no significant impacts)</li> <li>•Regional review 1+ MGD (unanimous Compact vote - U.S. projects)</li> <li>•Exemptions and exceptions (e.g. ballast, straddling communities)</li> </ul>	<ul style="list-style-type: none"> <li>•Prohibition with limited exceptions (e.g. ballast, straddling communities – manage as consumptive use)</li> <li>•Partial prohibition &amp; no net loss</li> <li>•Moratorium for X years with scientific study &amp; negotiation of new standard</li> <li>•No net loss(95%-IJC; 100%)</li> </ul>

The first issue that I will discuss is diversions. On the left side of this slide is a summary of what was in the draft agreements that were released for public comment. That is, diversion proposals would be reviewed using the Standard, there would be a few exemptions and exceptions, and diversions over 1MGD in the States would have to be approved by all the Governors as being consistent with that Standard before going forward.

As you can see, the possible alternative approaches are many and varied. The alternatives listed on this slide, and the slides that follow, are not intended to be an exhaustive list. Rather, they are meant to give you a general idea of what is under consideration.

<b>Intra-Basin Diversions</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Regulation based on common standard</li> <li>•Regional review 1+ MGD (unanimous Compact vote - U.S. projects)</li> <li>•Some flexibility in defining intra-basin diversions e.g. straddling communities, connecting channels</li> </ul>	<ul style="list-style-type: none"> <li>•Prohibition with limited exceptions</li> <li>•Partial prohibition &amp; no net loss</li> <li>•Moratorium for X years with scientific study &amp; negotiation of new standard</li> <li>•No net loss(95%-IJC; 100%)</li> <li>•Management as consumptive use</li> </ul>

Another issue under consideration is intra-basin diversions. An intra-basin diversion, for example, would be when we are talking about moving water from one Great Lake watershed to another Great Lake watershed. For example, this could include moving water from the Lake Huron watershed to the Lake Erie watershed, or moving water from the Lake Superior watershed to the Lake Michigan watershed. In the draft agreements that were released for public comment, they were treated like out-of basin diversions. As you can see, however, the Working Group continues to discuss various options for addressing this issue.

<b>In-Basin Consumptive Uses</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Regulation based on common standard</li> <li>•Regional review 5+ MGD (Super-majority Compact vote - U.S. projects)</li> </ul>	<ul style="list-style-type: none"> <li>•Regional review for large consumptive uses</li> <li>•Prior Notice and Consultation - regional review <u>if</u> requested</li> <li>•PNC - regional review hybrid</li> <li>•PNC only</li> <li>•State/Provincial regulation only - regional review of jurisdictional programs only</li> </ul>

In-Basin Consumptive Uses are another issue still under discussion. In the draft that was released for public comment, large consumptive use proposals would have formal Declarations of Findings issued by a Regional Body. This would then move to the Compact Council where a super-majority vote to approve such a proposal would be required. Alternatives under discussion include something similar to the prior notice and consultation procedure that is used under the Great Lakes Charter of 1985. Another option under discussion would be to not have regional review for any large consumptive use proposals, and only have a regional review of the jurisdiction's program.

<b>Conservation</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Conservation ‘plan’ for proposals that trigger regional review</li> <li>•Conservation ‘measures’ for other proposed withdrawals</li> <li>•No reasonable alternative, including conservation of existing water supplies</li> <li>•Jurisdictional conservation programs - subject to annual reporting, regional review</li> </ul>	<ul style="list-style-type: none"> <li>•Stricter requirements, ie. Best available technology, emphasis on saving water vs. cost</li> <li>•Less specificity, more flexibility at jurisdictional level - proposals consistent with jurisdictional plan</li> </ul>

Many public comments received by the Council focused on the issue of conservation. A number of these called for greater detail and the options under consideration reflect those comments.

<b>Resource Improvement</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Resource improvement project required for <u>all</u> diversions and for consumptive uses that trigger regional review</li> <li>•Preference for hydrologic improvements</li> </ul>	<ul style="list-style-type: none"> <li>•Broader basin-wide commitment to restoration</li> <li>•Link to water conservation</li> <li>•Scale to cost of project</li> <li>•Make voluntary</li> <li>•Defer - to allow for further research</li> <li>•Remove from standard</li> </ul>

A large number of comments related to the improvement requirement. Many called for the retention of improvement in the final standard. Many others raised concerns about whether such a requirement could be practically implemented and whether it would have the unintended effect of commodifying water.

<b>Defining Ground Water Divide</b>	
<b>Draft Agreements</b>	<b>Possible Alternatives</b>
<ul style="list-style-type: none"> <li>•Ground water &amp; surface water divides defined as coterminous initially</li> <li>•To be updated as scientific understanding of ground water flows improves</li> </ul>	<ul style="list-style-type: none"> <li>•Ground water &amp; surface water divides defined as coterminous permanently</li> <li>•Commitment to modify divides after X years</li> <li>•Commitment to study, revisit issue every X years</li> </ul>

We are assuming that for the purposes of our agreements that the ground water and surface water divides are the same. We know they are not the same, but for now, we don't have a good scientific understanding of where the groundwater divide actually is, and how the groundwater may flow. There are several alternatives as you see here regarding whether that definition should be open to change in the future -- and if it is open to future change -- how that process will occur.



As I indicated at the beginning of my presentation, there has been a tremendous amount of interest in the draft agreements and the Governors' and Premiers' efforts to protect the Great Lakes. Two regional public meetings (Chicago & Toronto) were held in addition to over 30 public meetings held in the States and Provinces. Over 10,000 public comments were received as the result of this process.

The Working Group is continuing the process of reviewing public comments, and hopes to present revised documents to the public later this spring. We anticipate inviting 60 days of public comment at that time.

After the second public review (of the revised agreements), the Working Group will again consider changes to the agreements before submitting them to the Governors and Premiers. Our goal is to have final documents ready for the Governors and Premiers to review, and ultimately to sign, this summer.

Once signed, implementation will include the adoption of the interstate compact that requires approval by the legislatures in each of the 8 Great Lakes States and consent by Congress; and the adoption of legislation and/or regulation as appropriate in Ontario and Quebec.

Admittedly, our timetable is ambitious. We have a great challenge before us. We must continue to work together and to make some very hard decisions based on public comments reflecting a very wide diversity of opinion.

A tremendous investment of time and effort has gone into this process so far—by the Governors and Premiers, their representatives, and all of the people who are participating. We want to get the strongest and best agreements possible. In short, we want to get it right.

We are committed to the task at hand. And, we remain confident that working together we can reach an agreement that assures the sustainability of the Great Lakes. Providing a means for better protection of the Great Lakes is a goal we all share and continue to work toward.

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More information about the Council, the Annex and the draft Annex Implementing Agreements is available on the Council's Web site at [www.cglg.org](http://www.cglg.org).