

GREAT LAKES SUSTAINABLE WATERS WATCH # 6
Great Lakes United, Week of January 26, 2001

GOVERNORS SEEK COMMENT ON "ANNEX 2001" WATERS PROTECTION PLAN

- Effort to prevent Great Lakes water abuse, export, and diversion
- Good first step, problems need fixing
- No agreement yet with Ontario, Québec
- Hearings needed in Minnesota, Wisconsin, Illinois, Ontario, and Québec

The governors of the Great Lakes states have reached general agreement on changing basin water law so that water use proposals are judged by their effects on the environment. The hope in the "Annex 2001" document is to improve the region's ability to reject environmentally harmful proposals to use Great Lakes water whether inside or outside the Great Lakes basin.

Once Annex 2001 is finalized, sometime this spring, the states and provinces will start negotiating a detailed agreement based on its principles. Find the text of the proposed Annex 2001, fact sheets, analysis, and state hearing dates at www.glu.org.

All the states are accepting comment, some are holding hearings. See below for details and please get involved.

Great Lakes environmental groups have praised the general principles of Annex 2001, but warn that some of its provisions, particularly an exemption for certain "small" uses under 1 million gallons per day, undermine the environmental protection purpose of the plan. The cumulative impacts of the putatively small proposals on local water levels or the Great Lakes basin environment could be dramatic. Furthermore, the exemption would hamper the annex's ability to serve as a defense against bulk water export and diversion proposals. International trade agreements and U.S. commerce law may limit the ability of regional governments to prevent export and diversion projects, unless the efforts to do so are non-discriminatory. *Strict* environmental protection-the exemption makes Annex 2001's environmental protections less strict-may be an acceptable basis for preventing export and diversion proposals.

Current state and provincial water use laws prevent harm only to other human users of water, with little consideration for the effects of water use projects on plant or animal life. The annex would change all that:

"The aforementioned agreements will include a standard that no State or Province will allow a new or increased withdrawal . . . unless the applicant for the withdrawal establishes that its proposal, together with the applicant's existing use:

- A. Includes implementation of all reasonable and appropriate water conservation measures; and
- B. Does not, individually or cumulatively, together with current basin-wide water uses, cause significant adverse impact to the quantity or quality of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- C. Results in an improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- D. Complies with all applicable laws."

The combination of points B and C-the word "and" between them is key-is rare in environmental law. Wetlands protection and some other environmental laws sometimes require improvements to make up for permitted damage. But Annex 2001 in theory would require *both* no significant damage *and* improvement in order to obtain a water use permit. This combination has the potential to truly protect the Great Lakes basin ecosystem.

The definition of "improvement" in Annex 2001 is substantially better than in previous drafts. The new annex makes it harder to use planned improvements to make up for harm caused by a water use proposal, strengthening the crucial part of point B that forbids "significant" harm by a water use proposal. The annex now also assures that improvements are focused on the water system rather than laudable but unrelated efforts like urban tree planting. Finally, the annex forbids the use of improvement projects mandated in point C from satisfying the basic water conservation requirements of point A. Improvement projects designed to conserve water would have to go *beyond* the requirements of point A.

Other positive provisions of Annex 2001 include making the new system binding on the signers and including the public in future water-related decisions. Both elements are essential for an agreement based on Annex 2001 to actually protect the region.

Although it is a long step in the right direction, Annex 2001 must be greatly modified to successfully prevent abuse of the basin water system and prevent damaging export and diversion projects:

- 1) Include Canada. The views of Ontario and Québec must be part of the final Annex 2001. The possibility that the states will proceed on their own is extremely dangerous to the region. The basin's waters absolutely must be managed as a whole if the region's protective legal structures are to withstand the scrutiny of international trade court in coming decades. See www.glu.org for a look at Ontario's statement criticizing the current draft of the annex.