



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

January 5, 2005

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Manager, Water Resources Section
Lands and Waters Branch
Paula Thompson, Senior Policy Advisor
MNR Water Resources Section, Lands and Waters Branch
300 Water Street,
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Dear Rob and Paula,

Re: Continuing Negotiations on the Great Lakes Annex

The Canadian Environmental Law Association would like to use this opportunity to offer support to Ontario negotiators as you return to the table for the next crucial meeting which will likely shape key elements of the final Annex agreements. In our role as an Advisory Committee member since 2002 we have several concerns at this time that we would like to reiterate and clarify.

First we would like to thank you for your response to the Ontario and First Nation concerns raised in the public comment period. The establishment of a Annex Advisory Panel to the Ontario Annex Group is crucial for us to find a way forward while educating key sectors on the vicissitude, implications and complexities of the agreements. However, we are concerned about how the Council of Great Lakes Governors and the Provinces will be weighting the strong response from the public during the comment period.

As you know from the substantive submissions that CELA has made over four years independently and with other environmental Engos, we feel that an ecosystem solution is essential to the management of the waters of the Great Lakes. We are concerned that we have had no direct response from the negotiators in the form of revised drafts to comments that we have already submitted. In this climate there seems to be a great deal of speculation about what has already been won or lost.

At this time we would like to stress that we are still committed to our submissions and feel that they **all** contribute to strengthening the current drafts. We hope that the next stage of the negotiations will not eliminate key components essential to future protection of the waters of the Great Lakes. From a strategic point of view we feel that the public has expressed a need to see

the agreements strengthened not weakened at this time. We note that there is a lot of speculation about what is expedient and will pass various State legislatures. This expediency will need to be weighted carefully with the stigma of those same States being unable to support the original intent of the Annex undertakings.

While we need to be realistic about the degree of intervention we have in day to day water management of individual States and Provinces, Ontario and Quebec do need to be at the table for discussions of all future large and harmful withdrawals from the basin. We feel the public response to the Annex strongly supports this particularly in Canada. It is clear that the Federal Government will be comparing the final agreements to the recommendations of the International Joint Commission (IJC) 2000 report.

As you know other interests in the US are proposing compromise positions which radically alter the original intent and scope of the Annex undertaking and the expectations of the IJC and the public. The Canadian Environmental Law Association does not support the joint proposal submitted by Noah Hall of the National Wildlife Federation and Jon Allan of Consumers Energy. Their alternative would result in unilateral (US only) review of withdrawals with large consumptive use components. These withdrawals have as much potential to result in harm as diversions out of the basin. Furthermore their proposal contributes to a culture of two solitudes in the Great Lakes Basin that has not and would not in the future promote joint commitment to advancing the long overdue Basin Water Resources Management Program in the Implementation section of the 1985 Great Lakes Charter. We were shocked to hear some people entertain the option that there could be a US Compact without a regional Agreement at the last meeting between the negotiators and the Advisory Committee.

The public made it clear that conservation had to be a priority of the Great Lakes Annex and indicated they would be willing participants in programmes that would reduce the regions profligate use of water compared to the rest of the world. The Hall/Allan alternative would weaken the aspects of the current draft Decision Making Standards Procedures Manual that mandates regional review of individual jurisdiction's water management and conservation programs. CELA believes that it will take this kind of scrutiny and review to move the region from water wasters to the conservation that is essential to the "no net loss" bottom line that Ontario is requiring of the agreements.

The Hall Allen proposal also increases the discriminatory treatment of in-basin and out of basin users, something legal advice has stressed should be avoided. The greater the difference between individual jurisdiction implementation, the more the sincerity of the Annex undertaking will be questioned. Ontario has gone further than most other jurisdictions in demonstrating that controlling and regulating water use over 50,000 litres is possible and will lead to more understanding, better data and ecosystem protection. We need regional commitment to manage the whole region's water use at this scale. This will never occur over time if the States and Provinces do not have a framework that continuously evaluates their water use together around the same table.

As critics of the lack of progress on the Great Lakes Charter undertakings since 1985, CELA fears that this may be our last chance for another several decades to put a conservation ethic into

practice in the Great Lakes. Millions of dollars have been spent on this negotiation over the past four years. We hope they will not go to waste. We wish you luck in Chicago.

Yours truly,
Canadian Environmental Law Association

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