



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

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***Submission to the Parties on the renegotiation of the Great Lakes
Water Quality Agreement***

Thank you for a final opportunity to make submissions to the Parties on a revised Great Lakes Water Quality Agreement (GLWQA).

Background

The Canadian Environmental Law Association (CELA) has a long history of involvement in the Agreement spanning four decades. CELA staff contributions include:

- writing about the history of the GLWQA,
- participating in Remedial Action Plans (RAPs) and Lakewide Management Plans (LAMPS),
- consulting on the Canada Ontario Agreement that sets out shared obligations to implement the Agreement, and
- writing many reports on the toxic discharges and emerging chemicals in the Great Lakes St Lawrence River ecosystem.

As a member of the Stakeholder Advisory Panel (SAP) to the Canadian Negotiators, CELA has been afforded a privileged opportunity to comment directly to the Canadian negotiators on issues under consideration for the content and framework for the new Agreement. The Canadian negotiators have acknowledged that the SAP has assisted them to shape their positions. It has been a concern that US stakeholders did not have parallel opportunities. In the negotiations leading up to the 1987 Agreement advisory groups on both sides of the border helped frame some of the new language for that Agreement. We were surprised that the negotiators of this Agreement did not have access to records of the previous inclusionary approach used for the 1987 renegotiation.

Because negotiations are not yet complete and the final language will not be shared until the Agreement is signed, many of our concerns about the specifics of the new Agreement are based on limited information and educated assumptions. We will outline our concerns and recommendations based on the binational public forum presentation in Toronto on September

8, 2011 and the binational webinar on September 13, 2011.

http://binational.net/glwqa/2011webinar/PublicForumGLWQA_082011_en.pdf

Where possible we will refer to the relevant slide number set out in those power point presentations.

Great Expectations for the Great Lakes

CELA staff participated in several of the working groups that reviewed the Agreement in 2006. That review of the Agreement pointed out many things that we expect to be remedied in the next draft Agreement.

1. Governance, transparency and accountability need to be strengthened while rebuilding and including a new public constituency and champions for the Great Lakes. Improved governance is urgently needed to support the obligations in the GLWQA and to address more effectively the new threats to the Great Lakes St. Lawrence River Basin in a coordinated binational manner.

2. The Agreement has to evolve beyond a statement of intention by clearly setting out priorities for protection, restoration, and prevention. These priorities need to be set out in clear programs with measurable actionable targets that can be assigned to implementers and funded adequately. Timetables must also be assigned to actions so that they will be quickly implemented. There should be no room for interpretation of intent of the Agreement. New Agreement obligations and definitions need to be thorough and precise.

3. Since the last Agreement in 1987 we have lost our scientific grasp of the state of the Great Lakes. The accumulation of new stresses, added to chronic stresses are confounding our understanding of new complex interactions in the ecosystem. This is borne out in the difficulties of understanding the decline of the state of Lake Erie, the shallowest Lake. This calls for strategic rather than hap-hazard science to understand priorities for action to heal the fragile Great Lakes ecosystem. Governments need to fund and revitalize science in order to provide the facts necessary to inform their laws and policies.

4. These negotiations have suffered from the lack of a third party analysis of what was achieved or not accomplished in the last Agreement. Additionally, we need an understanding of and reflection on what has been accomplished outside the Agreement in efforts like the US restoration programs. This work should be integrated into the Agreement framework. This lack of this analysis puts negotiators at risk of discarding good and necessary aspects of the last Agreement and ignoring issues and activities that may emerge to shape the future quality of the Great Lakes.

Next steps

The Great Lakes needs consistency, constancy and vision. The new Agreement should provide this foundation and not simply be circumscribed by the narrow priorities of the governments of the day.

Recommendation

CELA recommends that the Agreement be reviewed regularly and provisions should also be made for new additions, even in the form of new annexes if necessary.

Despite the fact that we have been considering the fate of the GLWQA for well over six years, the information we have reviewed to date makes it clear that the new Agreement will require additional substantial committee work which will take years before actions addressing present threats will be in place. The coming years will be needed to define specific protections and implementation actions. This work will be delegated to the new Executive Committee and other subcommittees. It is not clear if all of these crucial tasks will have deadlines necessary for the Agreement to be a living document.

Recommendation

CELA recommends that all tasks should have clear timetables included in the body of the Agreement consistently for each Annex and action.

Transition planning is necessary

What will happen in the interim? Will there be a transition plan identifying what is in force during the years of transition from one Agreement to the completion of the details to be supplied for the next Agreement by the issue subcommittees? This is especially crucial to Canadians who will need to draft and budget for a new Canada Ontario Agreement (COA) in early 2012. The scope of COA in the past has largely been determined by the specifics of the GLWQA.

Recommendation

CELA recommends that a transition plan accompany the release of the new Agreement.

We understand that the new Agreement may **not** have specific objectives but may simply eventually develop lists of chemical substances and chemicals of emerging concern. It is misleading to characterize these lists as outdated when it has been acknowledged by both governments and stakeholders that actions on these lists has not occurred uniformly or consistently.

It is particularly critical that the list of specific objectives in Annex 1 in the current Agreement and the hazardous polluting substances in Appendix 1 and the Potential Hazardous Polluting Substances in Appendix 2 be retained until a new comprehensive comparable list is developed. Protocol for this should be explicit in the new Agreement.

CELA recommends that the new Agreement include an explicit framework for the development of new lists with criteria for consideration of key toxicity properties such as persistence, bioaccumulation, carcinogenicity, mutagenicity, reproductive and developmental toxicity, endocrine disruption and neuro-developmental toxicity.

Specific Concerns

WHAT IS BEING RETAINED?, SLIDES 14~15

The presentation made to the Binational Forums confirmed that the purpose, geographic scope of the Agreement, restoration of ecosystem health in the Areas of Concern and commitment to the Lakewide Management Process and Plans are being retained. We have not yet however seen a list of what is being dropped from the 1987 Agreement.

Recommendation

We request that negotiators undertake and provide the public with a gap analysis of what aspects of the 1987 Agreement are no longer to be included in the new Agreement. If some of those omissions are intended to be amalgamated into new Annexes or sections, please ensure this is explicitly stated in the Agreement and integrated into its recommended actions.

WHAT IS BEING STREAMLINED?, SLIDE 16

Purpose and general objectives of the Agreement

Recommendation

Where there may be new things added to the purpose or general objectives of the new Agreement such as commitments to a preventative approach and protection of human health and ecosystem health these should be referenced in **all** of the Articles and Annexes to ensure they are evenly applied and considered in all implementation.

The geographic scope of the Agreement

During this review, the Parties have heard that an agreement to protect the whole ecosystem of the Great Lakes in the 21st century needs to protect all of the components that we have come to recognise are part of that ecosystem - the tributaries and groundwater that along with the surface waters make up the Great Lakes St. Lawrence watershed. All of these components need the protections and restoration afforded by the Agreement. Severing the

tributaries and groundwater from the surface water actions will lead to impractical and duplicative actions or gaps in actions, exclusions of natural partners who should share implementation and their costs and a common vision for protection and restoration. First Nations, Tribes and Metis will have difficulty accepting this fragmentation and most of the public find it counter intuitive.

Recommendation

CELA recommends that the negotiators reconsider a definition of the scope of the Agreement that reflects our 21st century understanding of the full extent of the natural ecosystem.

Remedial Action Plans – Retained and Streamlined or Obscured?

Twenty-four years have been dedicated to drafting all phases of the Remedial Action Plans and beginning their implementation. These plans were not uniformly successful in large Areas of Concern with complex problems that demand costly solutions. Municipalities were surprised to find they are expected to share the costs. There are many lessons to be learned from that experience.

Contaminated sediments continue to be responsible for the impaired uses in **all** Areas of Concern but with exceptions there are not the funds to implement their full clean-up. However the Annex 7 covering Dredging in the 1987 Agreement to deal with this pervasive problem of sediment contamination will be dropped. It is unclear if there will be commitment in the new Agreement to continue to address this issue in depth.

Instead we are asked to accept the streamlined definition of *Area of Concern in Recovery*. In Canada this moniker has come to mean a 'do nothing' approach and 'we will wait to see if over time less contaminated deposits of sediments might overtop the contaminated ones'. Are we redefining the problem to bury the problem in this definition?

Additionally the new Agreement will allow the delisting of individual impaired uses. Presumably this is because local governments had to carry the stigma of the label of being Areas of Concern (AoC) without having the necessary tools and resources to fully participate in clean-up and remediation. While good news about accomplishments is important, confronting the remaining impairments is necessary to balance and address the way forward to fully remediate and restore these AoCs.

The new Agreement purports to undertake a parallel exercise with regard to the RAPs but with a lake specific and undefined nearshore focus. The chronic problems addressed by the RAPs such as contaminated sediments are likely

to be ubiquitous in the nearshore and around shorelines of each Great Lake. There will certainly be scepticism about embarking on a new exercise that could result in the same barriers to implementation.

Recommendations

CELA recommends that the shortcomings of the RAPs be analyzed and the new Agreement set out a new process and framework for the lake-scale approach that builds on lessons learned from the RAP process.

CELA also recommends that the issue of contaminated sediments continue to be assigned prescriptively in the Agreement to both the RAPs and the new Lake scale focused programs and in other Annexes as appropriate.

CELA recommends that municipalities be enabled as true partners in the nearshore focus because successful implementation will primarily fall to them and the nearshore is largely outside the Federal domain. Special Agreements or covenants should be considered to assure that local governments receive the resources to implement the recommendations that flow to them from this federal Agreement and from the Canada Ontario Agreement.

CELA recommends that there be a clear definition of the “nearshore” in the new Agreement to enable common understanding and better planning for solutions to problems in these areas.

WHAT IS BEING IMPROVED/ENHANCED?, Slides 17~22 Governance and the Binational Management Framework Reorganizing for Inclusion

It is still unclear how replacing the Binational Executive Committee (BEC) with a Great Lakes Executive Committee (GLEC) will result in enhancements. The primary challenge for the BEC continues to be that it has been made up of senior government employees who may be in the conflicted position that requires them to make recommendations for changes to their government employers. These Government employers prescribe the limitations of their commitments to the Great Lakes in their Federal budgets and staffing.

During this renegotiation it has been painfully clear that commitment and ability to implement the GLWQA have been seriously challenged by the elimination of 700 jobs in Environment Canada, many of them water and climate change scientists and policy positions. At the Canadian Binational Public Forum, the concerned public were dismayed to have their worst fears confirmed - that this Agreement which will chart the course for the next several decades will only go so far as the Government priorities of the day. The elephant in the room during these negotiations has been the widening

gap between the US Restoration funds committed to the Great Lakes and Canadian spending, which has been flat-lined for about a decade.

The new Agreement envisions Annex specific subcommittees that might be more inclusive of other stakeholders, the Provinces, States, municipalities, First Nations, Tribes and Metis and other agency experts. These subcommittees will largely be tasked with the substantive tasks of defining how to make the general Agreement operational in tangible programs. The subcommittees will report to the new GLEC. However the GLEC could still be limited by the chronic political constraints and conflicts that its predecessor BEC has had.

It remains unclear if the public will be included on these subcommittees. As well, there is promise for a periodic more inclusive Great Lakes Summit. New explicit language is promised on roles of government and stakeholders with commitments to communicate written into the Agreement.

Recommendation

CELA recommends that members of the public be invited to participate on all Agreement subcommittees and enabled as observers to the GLEC.

CELA supports the inclusion of First Nations, Tribes, Metis and municipalities as well as Provinces and States on the GLEC.

Transparency and Accountability, Slide 22

The most tangible accountability commitment is that the GLEC will produce a comprehensive Progress Report of the Parties every 3 years. It is however unclear if the Agreement will set out whom that report will go to and what type of review will take place. Governance since the 1987 Agreement has weakened because that Agreement allowed the Parties to report to each other primarily in the biennial State of the Great Lakes Conferences with narrower focuses. This has replaced comprehensive reporting protocol prior to that when the International Joint Commission (IJC) prepared biennial reports that identified and evaluated progress of the Parties. The Parties then responded to the IJC which provided the public, as well as the Parties, with the ability to monitor progress on achieving obligations of the Agreement.

The old Agreement was not transparent even to those who had the responsibility of implementing it because the language was so general that it was often unclear what actions were to follow.

Recommendations

CELA recommends that the Agreement mandate that reports be made to Parliament in Canada and Congress in the US so that elected politicians in

both countries understand their obligations to protect the Great Lakes. The public should also be given the opportunity to comment on these reports. The Agreement should also urge the Parties to adopt their recommendations into domestic laws, standards, regulations and programs and analyse gaps where this has not occurred.

CELA recommends these reports produced every 3 years should also be scrutinized by the IJC.

CELA supports the retention of specific program objectives in the Agreement wherever possible. Certainly over the last several decades we have enough understanding to allow this. While we support the development of new and renewed ecosystem indicators, actions on known solutions should not wait. We oppose delays on actions or starting all over again to redefine known solutions to chronic problems.

CELA recommends that the Agreement should contain specific objectives to protect the most pristine areas of the ecosystem from degradation. The cleanest of the Great Lakes, Lake Superior, must continue to be a zero discharge demonstration area in the new Agreement.

Clarifying the Role of the IJC, Slide 21

Other governance enhancement and improvement is promised in strengthening and clarifying the roles of the International Joint Commission in the new Agreement. This will include charging the IJC with raising public awareness and participation and engaging the public on Great Lakes issues.

Because this inclusion of the public is primarily addressed here, we are concerned that accountability to the public is to be primarily delegated to the IJC rather than shared with the Parties. The IJC will review the effectiveness and operational success of the Agreement after three Progress Reports, once every nine years. They will continue to provide advice on current and emerging issues.

Once again the effectiveness of the IJC is dependent on their autonomy, ability to respond quickly, their expertise and how well they are financed by the Parties. Commissioners appointed by the Parties may not be familiar with the Great Lakes. Since the 1987 Agreement their work was done by formal references from the Parties which take years to implement and report back on. The IJC Great Lakes Regional office should be a repository of information and expertise. These mandates have suffered from a lack of resources.

Recommendations

CELA recommends that the role of the IJC be enhanced by increasing their capacity to initiate timely actions on crises and new issues, maintain resident scientific expertise in the Regional office and retain a Science Advisory Board and Water Quality Board or equivalents.

CELA recommends that there be formal language in the Agreement mandating the IJC to include the public. This could be achieved in part with a public advisory body within the IJC and inclusion of public experts on IJC committees. The form that this inclusion and enhanced public participation takes will be central to its success.

The Annexes in the new Agreement

The Annex on Chemical Substances, Slide 23

Our primary concern with this annex is what is excluded from it that was part of the specific objectives of the previous Agreement. Currently this Annex has been titled “Annex on Chemical Substances”. Limiting this Annex to chemicals excludes important parameters that must be controlled and kept in balance in the offshore as well as the nearshore environments to achieve ecological and human health protection.

The new Agreement still must include specific objectives for total dissolved solids, radiological, complex effluents, oil and petrochemicals from non-shipping sources, asbestos, temperature, dissolved oxygen, suspended solids and microbiological pathogens essential to protecting human and ecosystem health.

Additionally, air toxics, a major pathway of pollution and degradation to the quality of the Great Lakes should not be ignored in this Agreement. New objectives will be needed for new stressors like drugs, pharmaceuticals and sources of endocrine disrupting hormone loadings. Based on recent reports by the IJC and other monitoring programs, these substances should no longer be considered new or emerging. They require immediate attention.

As noted earlier in this submission, it is critical that expanding or reviewing the list of substances to be addressed by the GLWQA, needs to be informed with an explicit framework for evaluating or screening potential candidates using a health based focus on persistence, bioaccumulation, carcinogenicity, mutagenicity, reproductive and developmental toxicity, endocrine disruption and neuro-developmental toxicity.

Recommendations

CELA recommends that this proposed Annex be changed to **Hazardous Chemical, Physical and Other Substances** to achieve protections from the full range of threats to the ecosystem and human health.

CELA recommends that water quantity as it impacts water quality must be acknowledged in the Agreement as a stressor on a system that still relies on dilution to achieve ecosystem health.

CELA recommends that virtual elimination and zero discharge should be the primary doctrines guiding practices in this Annex.

CELA recommends that a new process for developing the new or enhanced list of substances will be recommended in the body of the Agreement. It will be crucial to define the protocol for development of this list in the Agreement and assign aggressive timetables to this task.

CELA recommends that provisions be explicitly made in the new Agreement to retain the protections of the old Agreement in the interim transition period. This should include a gap analysis to determine that all protections afforded in the 1978 Agreement are included in the new Agreement.

It is important that this Agreement reflect the best available regulatory legal and industrial tools in use globally to reduce, eliminate and manage harmful substances. Green chemistry, alternatives assessment, mandatory substitution, and pollution prevention planning are now being enshrined in laws and policies.

CELA recommends that these principles should inform new directions in the future of the Great Lakes and be explicitly referenced and encouraged in this Agreement.

CELA welcomes suggestions that this Agreement will also acknowledge hazardous substances incorporated into products manufactured within or exported into the region as sources of exposure in the region.

CELA recommends that the Agreement not only reference human health protection in its goals but specifically mandate the study of pathways (including air deposition) and levels of exposures and body burdens of residents explicitly in this Annex.

CELA became aware during this Agreement negotiation that while there is provision for oil and petrochemical spills, there is not yet a binational emergency response plan for chemical or hazardous spills in the Great Lakes St. Lawrence River ecosystem. The new mandate should require such a plan be put in place within a year.

CELA recommends that the Agreement include a commitment for a binational report on the pollution loadings to the Great Lakes St. Lawrence River Basin using federal government pollution databases.

Annex on Nutrients, Slide 24

The failure to address the most chronic problem of nutrient loadings, a focus of the GLWQA since 1972, has led to an acceleration of the problem into toxic loadings of cyanobacteria that threaten aquatic ecosystem and human health and also confounds our understanding of complex systemic inter-reactions with other stressors. We have enough information to quantify these loadings and identify their sources. Action on this Annex should not be delayed or dwindle over time.

Recommendations

CELA recommends that attention should not be limited to phosphorous and should include other nutrients.

CELA recommends that sector specific targets and best practices to meet those loadings should be specified with short timelines. Provision should be made in this Annex to ban products contributing to these loadings.

CELA recommends that this problem demands a thorough **watershed approach** for polluters upstream to appreciate how their loadings and on-land practices impact the health of the Great Lakes. Only identifying tributary mouths as point sources will not result in the actions that should be shared and financed by upstream partners to resolve these problems.

CELA recommends that there be specific recommendations in this Annex on the urgency to act to prevent and ameliorate climate change temperature increases that accelerate the impacts of nutrients.

Annex on Groundwater, Slide 25

This Annex, as briefly described, still does not reflect a 21st century understanding of groundwater and the Great Lakes surface water. During the review of this Annex the Groundwater working group included many of the foremost groundwater scientists in the Basin. There was widespread agreement passed on in their recommendations that groundwater, while sometimes a source of pollution to the basin, should be reflected in the Agreement as a major component of the ecosystem. Although the full extent of the groundwater part of the Basin has not been fully mapped, they were comfortable in saying it was likely as extensive as the surface waters of Lake Michigan. Additionally the headwaters of many of the tributaries that contribute to the flows of the Great Lakes are in turn fed by groundwater.

While it is widely recognized that others have authority for groundwater protection, it is important to include it in the new Agreement so there can be dialogue and cooperation among responsible agencies for groundwater protection, which in turn will result in benefits for surface water protection.

Recommendations

CELA recommends that the new Agreement acknowledge and define groundwater to be an essential asset and part of the Great Lakes ecosystem that falls under the full force of all aspects of the full Agreement.

CELA recommends that this expanded definition to allow better cooperation with governments and agencies and sectors with a role in groundwater health and restoration.

CELA recommends groundwater mapping, recharge and quality be a focus of science to improve our understanding of interactions with Great Lakes tributaries and surface waters.

CELA recommends that this Annex acknowledge and enable studies of the impacts of climate change on groundwater.

Annex on Ship Source Discharges Slide 26

The new Agreement consolidates all ship source pollution into one Annex. It is our understanding that many of the recommendations in this annex may be borrowed from international laws and covenants that cover shipping and oil and petrochemical transportation. However, we are unaware that language from other international agreements (i.e.: Rotterdam and Stockholm Conventions) are similarly integrated into other Annexes. This could lead to a perception that this Annex has more rigour and specificity and even more importance than other Annexes.

Recommendations

CELA recommends that there been a consistent way to include and cite relevant international obligations in all of the Annexes to which they apply so that it is clear where there are multiple layers of obligations. It should be made clear when whole clauses are borrowed from those Agreements and placed into Annex and Agreement language.

CELA is aware that there is no emergency plan in place for a spill of chemical or a hazardous material in the Great Lakes. The new Agreement should prioritize that a coordinated plan between the Parties as well as domestic plans for Canadian and US Great Lakes waters be in place within a year.

CELA recommends that there be clauses in this Annex to address climate change impacts on shipping as it affects water quality. Specifically, there are frequent calls for dredging of shipping channels, harbours when Great Lakes Water levels drop. Guidance is needed on the control and disposal of contaminated dredge materials, if not here, somewhere in the Agreement.

Annex on Science, Slide 27

If science is to be the cornerstone of the Agreement, then a new **strategic** science plan for all Agreement obligations will be necessary to further our understanding of the ecosystem, and identify gaps and priorities. We have repeatedly heard the term “best available science” used to describe or circumscribe descriptions of the new Agreement. Hunting and gathering the work underway in the Basin is a poor substitute for strategic science. Each Annex should have its own science plan and these should each contribute to an overall coordinated plan for Great Lakes priorities.

Since the last Agreement, science has dwindled, particularly government funded science in the interest of the Great Lakes. While science is taking place in many of our academic institutions, serious efforts are needed to collect these studies, ensure they continue and plan to determine how new knowledge can influence and be integrated into prevention, restoration and protection programs, policies and laws in the Basin.

As this Agreement is being negotiated 700 Environment positions in Canada are being cut. Many of these positions are water and climate change scientists and this is creating great scepticism and despair about our ability to deliver our obligations in the new Agreement that promises to be science-based.

The statement that an adaptive management framework is the cornerstone of this Annex concerns us. A proactive preventative science plan should have priority over a reactive one. Adaptive management is much debated and could result not only in flexibility but in unintended delays and consequences.

Recommendations

CELA recommends that a **strategic** science agenda be developed for each Annex within two years of the Agreement. These agendas should consider study of the implications of climate change for each Annex.

CELA recommends that the IJC Science Advisory Board be designated and resourced by the Agreement.

CELA recommends that a publically accessible Great Lakes website be created that has plain language descriptions of the science underway throughout the

system and in each Lake that share outcomes. This will help the Governments and other stakeholders establish priorities and gaps in understanding.

CELA recommends that a science agenda for the Great Lakes include information on aquatic, wildlife and human body burdens of hazardous substances found in the waters and work to refine our understanding of the primary pathways of exposures so we can act to limit them.

WHAT IS BEING ADDED?

New Annex on Aquatic Invasive Species, Slide 28

The quality of the Great Lakes continues to be rapidly impacted by the growing number of new aquatic invasive species (AIS) over the last two decades. Many of these introductions could have been prevented, reduced and stopped from spreading between Lakes had there been the will to act immediately. Consensus and international cooperation are crucial to curtailing new invasions. Biodiversity, restoration and whole ecosystems as well as economies are at risk from collapse caused by AIS. A precautionary approach is prescribed because we are now familiar with the risks posed by AIS.

Recommendations

CELA recommends **zero** new introductions of invasive species as the preferred prevention based approach.

CELA recommends that this Annex include prevention of the introduction of invasive species from transport and land sources into the Basin.

CELA recommends that the Agreement set strong timetables for action and rapid response that are based on acting on precaution to avoid risks.

CELA recommends that this Annex not be limited to aquatic invasive species but also extended to terrestrial invasive species which have serious impacts on nearshore wetlands, spawning grounds and habitats. This means that the Annex should be renamed **Invasive Species**.

CELA recommends that the science agenda for this Annex integrate how invasive species interact with nutrients, contaminant mobility and impacts on aquatic food chains, fisheries, power generation, industry and the provision of safe drinking water. An economic analysis of the cumulative and potential costs of AIS to the system would demonstrate that long-term large cost savings can be the gained from immediate preventative action.

New Annex on Climate Change Impacts, Slide 29

This Annex is weakened by the overall reluctance to act and assign responsibility for the climate change impacts our scientists know are already impacting all aspects of ecosystem integrity and resilience in the Great Lakes. We would urge the negotiators to review these impacts by reading the series of exceptional webinars underway by Ohio State University <http://changingclimate.osu.edu/webinars/> to appreciate the breath of challenges that this Annex should address in order to prepare for the next two decades in the Great Lakes.

Where there are still opportunities to prevent the deepening of climate change impacts to our region we should act to prevent them. Regrettably this Annex denies the growing crisis by recommending a slow vague approach to study, communicate and coordinate and does not even include suggestions widely made to act on adaptation. The challenges are so vast and could overwhelm any one entity. This is one issue that will demand action by all levels of governments, public and private sectors. The Agreement that avoids this will fail in each of its objectives since they all will be impacted by climate impacts.

Recommendations

CELA recommends that this Annex address prevention as well as adaptation.

CELA recommends that negotiators familiarize themselves with the current state of understanding and assumptions of the impacts of climate change and expand this annex accordingly to ensure that climate change is infused prescriptively into all other sections of the Agreement and its' Annexes.

New Annex on Habitats and Species, Slide 30

This Annex benefits from having a tangible measurable goal of net habit gain. However, it does not have strong recommendations regarding species' gains such as additional biodiversity and restoration of species at risk. Most likely this is because the United States is one of the few countries yet to sign the International Biodiversity Convention. Regardless of that, biodiversity is a common term, part of the vernacular and well understood. Any 21st century Agreement dealing with species should use modern terms. This is a clear case where one government's reluctance should not constrain the other Party's efforts.

Recommendations

CELA recommends that the widely accepted and understood concept of biodiversity be included in this Annex. Language can clarify that the International Biodiversity Convention does not yet apply to this Annex.

CELA recommends that climate change impacts on habitat and species be identified for binational strategies and actions.

New Notification Component, Slide 31

This new Annex sets out intent to set up a notification system between the Parties for activities and facilities that could have impacts on water quality. These impacts could be significant for the future landscape and health of the Great Lakes and its residents. These impacts include many of the high impact energy and resource development activities including storage and transfer of nuclear waste or radioactive material, nuclear facilities and power plants, mining and related activities, oil and gas pipelines, drilling and refineries, hazardous waste facilities and aquaculture operations.

This Annex seems to be a catch-all for activities which are no longer addressed in depth by the Agreement but still have great potential to harm the Great Lakes. CELA and many other groups are currently active in interventions, courts and tribunals considering proposals on the building and expansion of nuclear operations as well as impacts of transportation of nuclear materials in the Great Lakes. Mining threats and waste disposal threats to the Great Lakes are of great concern to the public. Aquaculture impacts fisheries.

Recommendations

CELA questions whether mere notification about these activities and facilities is adequate. While we applaud the need of the Parties to know about these activities, we request further articulation of how the Great Lakes could be protected from their impacts in the Agreement.

CELA recommends that this notification mechanism give the public and the IJC the right to know about these actions and facilities at the same time their governments are informed.

Concluding Remarks

Since 2005 CELA has been actively considering the potential renegotiation of the Great Lakes Water Quality Agreement based on the shortcomings of the old Agreement, the emergence of new stressors in the Great Lakes and their impacts on compounding problems in the system. The one constant is that there are always unanticipated surprises in the Great Lakes and new challenges which were not anticipated.

This new Agreement has to provide the tools that allow our governments and stakeholders to react swiftly to these surprises.

Concluding Recommendation

CELA recommends that the Agreement include provisions to create new Annexes as the need arises when the Agreement in force is not adequate to do so.

CELA is also endorsing the submission made by Great Lakes United and endorsed by many other groups around the Basin. We have worked collectively for decades and recently on this negotiation with these groups to forge our shared hopes and visions for a dynamic strengthened new GLWQA.

Yours truly,
Canadian Environmental Law Association



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