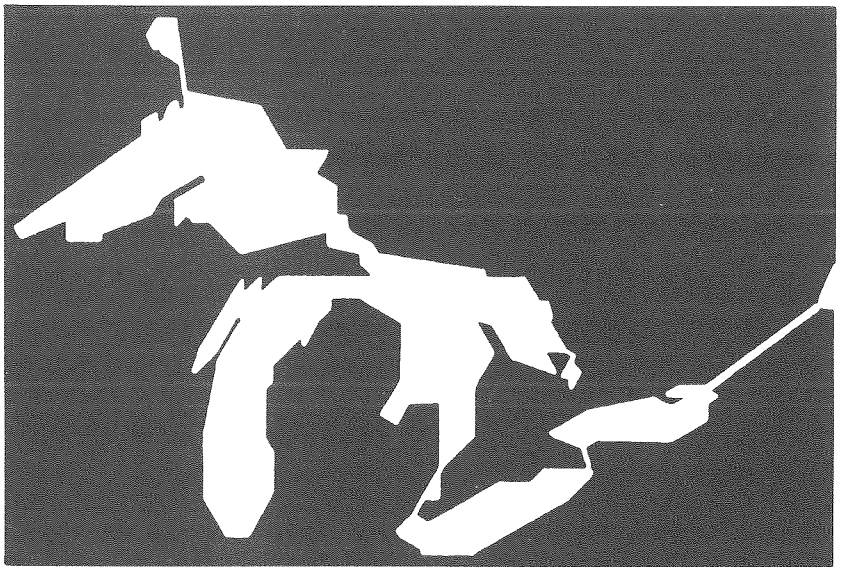
A Year After the Charter

The Threat of Water Diversions and The Implementation of The Great Lakes Charter



GREAT LAKES UNITED

February 10, 1986

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Dear Governors and Premiers of the Great Lakes Basin:

A year ago today, a monumental accord was reached between the eight Great Lakes states and two Canadian provinces with the specific goal of preventing future water diversion into or out of the Great Lakes Basin. The Great Lakes Charter Document is a credit to all of you and brings hope for continued regional cooperation on Great Lakes issues.

Today, our challenge is to incorporate the goals and objectives of the Great Lakes Charter in present day institutional arrangements. We hope your office will recognize the concerns raised in this report and insure that the implementation plans of the Charter are as positive as the document itself.

Great Lakes United stands ready to work with your staff and agencies to incorporate the goals and objectives of the Great Lakes Charter.

Sincerely,

Robert A. Boice

Robert A. Boice
President
Great Lakes United

TABLE OF CONTENTS

Message to Great Lakes Governors and Premiers	i
Introduction	1
Potential Impacts of Great Lakes Water Diversion	2
Jurisdictional Implementation of the Great Lakes Charter	3 - 15
Recommendation for Action	16 - 18
References	19
Great Lakes United Board of Directors	20 - 21

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Introduction

The water resources of the Great Lakes Basin are being eyed by arid regions of the United States and Canada. In the past few years, diversion schemes have been discussed to transfer quantities of Great Lakes' water out of the basin for use in other areas of the United States and Canada. In addition, proposals have been made to utilize the Great Lakes as a huge transfer station for moving large quantities of water from James Bay to water deprived areas of North America (Grand Canal).

Currently, there are three major inter-basin diversions and two major intra-basin diversions. The Long Lac and Ogoki Diversion diverts water from the James Bay Basin into Lake Superior at Terrace Bay and Nipigon, Ontario respectively. The Chicago diversion takes water from Lake Michigan to the Illinois River for navigational, domestic and industrial purposes. This diversion has two separate sections, one primarily serving drinking water needs of the Chicago Metropolitan area and the other addressing navigational and industrial concerns. In the Eastern section of the basin, there are two intra-basin transfer waters from Lake Erie to Lake Ontario. Both the Welland Canal and New York State Barge Canal are mainly used for navigation and power generation purposes.

The Great Lakes Charter, signed by the eight Great Lakes State Governors and two Canadian Premiers, in February of 1985 outlined a series of principles and notification procedures to protect the Great Lakes Basin from future diversion schemes. A major principle of the Charter is that "diversions of basin water resources should not be allowed if individually or cumulatively they would have any significant adverse impacts on lake levels, in-basin uses, and the Great Lakes Ecosystem". The question remains whether current actions by Great Lakes states and provinces in implementing the goals of the Charter will prevent future diversions from the basin.

Great Lakes United is opposed to any new water diversions into or out of the Great Lakes Basin for environmental, social and economic reasons. In May of 1985, Great Lakes United viewed the signing of the Great Lakes Charter as only a first step in addressing the complex problems of water diversion. It was further resolved that each jurisdiction called upon to implement the Charter should move forward through:

-- funding and staff assignments,

-- data collection on levels, flows, and consumptive uses of Great Lakes water,

access facilities.

-- Water Intake facilities for public and industrial consumption could be adversely impacted by lower lake levels from diversions.

Economic Concerns

-- Significant lowering of lake levels would reduce hydro-electric power generation in the basin.

-- The lowering of lake levels would adversely impact navigation in certain harbors, bays and shipping channels in the basin. Increased dredging costs and/or decreased shipping loads/size could result.

-- Large scale diversions could seriously impact the Great Lakes potential for economic growth, reducing the available water resources for in-basin consumptive use. The International Joint Commission estimates that consumptive water use need for the basin will significantly increase by the year 2000 and further increase by the year 2035.

Jurisdictional Implementation of the Great Lakes Charter

The following section is a summary of current water use policies, recent actions to implement the Charter, and future plans to incorporate the Charter's goals and objectives.

MINNESOTA

Under its existing statewide water use management program, Minnesota requires permits for water withdrawals in excess of 10,000 gallons per day or one million gallons per year. Water withdrawn and lost "for immediate further use in the area," whether as a result of a diversion or consumptive use, is subject to this permitting legislation. Estimates of water withdrawn in Minnesota are based on annual reports of permit holders.

Diversions of water from the state for use in other states or regions of the U.S. or Canada are discouraged under the "Appropriation and Use of Waters" statute. Authorization of such a diversion is contingent on approval by the state legislature and on a determination by the commissioner of the Department of Natural Resources that the water remaining in the state after the proposed diversion has been initiated is adequate to meet the state's water resource needs during the specified life of the project.

of these standards to cover all the waters of the state, that is, the water resources of the Upper Mississippi River Basin as well as the Great Lakes Basin.

It will require registration of all new or expanded withdrawals in excess of one million gallons per day in any 30-day period. A proposal for a withdrawal that would result in a new or additional diversion or consumptive use of water averaging more than 2 million gallons per day in any 30-day period would be required to meet special standards of a permitting system in addition to the normal requirements under existing registration programs.

Under the legislation, a proposed major withdrawal of water must be determined to be consistent with protection of the environment and ecosystem of the originating watershed, with the protection of the state's public health, safety and welfare, with the state's plans for future water use, and with reasonable conservation practices. The legislation provides for hearing process, civil penalties for violations, permit application fees, periodic review by the DNR of permits, and modification or revocation of permits at a subsequent date if necessary to ensure continued compliance with water resource plans and applicable laws.

Should the proposed withdrawal result in a diversion from the Great Lakes Basin, the DNR criteria used in granting permits would include determinations that the state or province to which the water is diverted has developed and is implementing a plan for management and conservation of its own water resources and that further development of its water resources is impracticable or would have substantial adverse economic, social or environmental impacts. Additionally, the DNR would have to determine whether the proposed withdrawal would impair the Basin's ability to meet its own water needs or adversely effect lake levels, water use or the ecosystem of the Basin.

The legislation authorizes the DNR to participate with other Great Lakes states and provinces in the development of a regional data base, the formulation of a long-term plan for development, conservation and management of Great lakes Basin waters, and the development of a regional consultation procedure. The DNR is required under the bill to prepare a long-term water quantity resources plan for Wisconsin before August 1, 1988. The department would also be required to develop a regional consultation process with other Upper Mississippi River Basin states regarding major diversions and consumptive uses of water from that basin.

The proposed legislation includes language authorizing the Department of Transportation's Division of Water Resources to cooperate and enter into agreements with other states and the Canadian provinces of Quebec and Ontario concerning regulation of new diversions and consumptive uses.

ILLINOIS

Commentary

There are two important factors to recognize in the Illinois statute, aside from earlier concerns regarding the use of a permit system. First, it states that a party must obtain a permit from the Department of Transportation before it can divert water from Lake Michigan. However, the notification process to other states and provinces is not initiated unless the diversion transports water for use outside the boundaries of the state of Illinois. Therefore, under the State of Illinois statute, a diversion can take place outside of the Great Lakes Basin without triggering the Charter Notification Process.

Secondly, the responsible agency for coordination and implementation of the Charter is the Department of Transportation. Their regulatory role is not traditionally based on environmental, health and public welfare concerns.

INDIANA

Indiana's General Assembly has responded to concerns surrounding water diversion and water resource management with two statutes that address these issues. The first of these, the Water Resource Management Act of 1983 (I.C. 13-2-6.1), is administered by the Natural Resources Commission. The Act establishes the foundation upon which future water resources management decisions can be based.

The Act does not include provisions for a permitting system, nor does it attempt to regulate existing or future utilization of that state's water resources. It does recognize that future legislative initiatives should be founded upon a solid technical appraisal of the available water supply. The programs now being implemented are geared toward the development of a comprehensive water resource program, according to Indiana's Division of Water Assistant Chief, Thomas M. Bruns.

The Division of Water of the Indiana Department of Natural Resources is charged with implementing the Act. Under Section 7 of the Water Resource Management Act, facilities having a capacity to withdraw water equal to or in excess of 100,000 gallons per day must

Senate Bill 45 pertains to Michigan's membership on the Great Lakes Commission. The bill stipulates that the governor or governor's designee, attorney general or attorney general's designee, appointees of the Senate majority leader and House speaker, and a gubernatorial appointment drawn from a group or organization interested in or affected by the Great Lakes shall represent Michigan on the Great Lakes Commission. At present, the state is represented by the directors of the state Commerce and Natural Resources Departments and by the secretary of the Water Resources Commission. The new commissioner would be required to seek amendments to the Great Lakes Basin Compact authorizing the party states to limit diversions of Great Lakes waters.

MICHIGAN

Commentary

While Michigan is clearly the leader in advocating the goals and objectives of the Great Lakes Charter, there is still debate over instituting an allocation permitting system which could lead to "justifiable" diversions. This regulatory system could be similar to the current implementation plans in Wisconsin. Governmental discussions of these concerns are scheduled for later in 1986.

OHIO

Ohio's water diversion legislation, SB 360, was enacted July 13, 1984 to establish a water diversion permitting program. Under the Act, persons wishing to divert more than 100,000 gallons per day from the Lake Erie or Ohio River drainage basins must obtain a permit from the Ohio Department of Natural Resources. Permit applicants must provide information on the quantity of water to be diverted, the purpose of the diversion, and the life of the project for which the water is to be diverted. Criteria used in granting a permit include determining whether some or all of the diverted water will be needed for use within the Basin, and whether the proposed diversion will endanger public health, safety or welfare. Permit holders are required to file annual reports to the ODNR director, and the director may suspend or revoke permits if permit conditions are not met or if the continued withdrawal is determined to be harmful. Public hearings are held at the director's discretion.

The state of Ohio is currently in the process of promulgating its permitting rules called for under the Act. These will be presented July 25 for public hearings and subsequent review by Ohio's Joint Committee on Agency Rule Review, the Legislature Services Commission and the Secretary of State.

The Commonwealth is currently working on new water management legislation that follows the basic outline of H.B. 1483, a bill which was introduced to the Pennsylvania General Assembly in 1981 but was never enacted. That bill included a provision for registration of all existing and new ground-and surface-water withdrawals in excess of 10,000 gallons per day in any 30-day period. It further required that users maintain records of water use and file periodic reports on actual withdrawals. The statute provided for protection of confidential information where records provided to the state under the regulatory program would disclose production methods, sales information or unique processes, or reveal trade secrets. The bill would have required permits for withdrawals exceeding 10,000 gallons per day in designated protected areas. The proposed bill provided for delineation of protected areas of watersheds or hydrogeologic units where Pennsylvania's Environmental Quality Board found that demands on water resources exceeded yield, created a water shortage, had a substantial adverse impact on water quality or conflicted with state water resources plans. Issuance of withdrawal permits under H.B. 1483 was premised on criteria which included a determination by the Department of Environmental Resources that the water withdrawal would constitute a reasonable and beneficial use consistent with state water resource plans; incorporate reasonable conservation practices; and be consistent with the public interest.

With respect to intergovernmental cooperation and coordination, the Department of Environmental Resources was instructed under H.B. 1483 to work with appropriate state and interstate agencies to assure efficient planning and management of water resources.

The proposed legislation currently being drafted is scheduled to be submitted to the state's legislature early in 1986.

PENNSYLVANIA

Commentary

Pennsylvania is currently under going negotiations by different agencies to work out their legislative proposal to deal with all of the state's water resources. As a governmental official commented to our office, the Great Lakes is only a small portion of their overall water concerns. Debate is now revolving around the level of centralized verses decentralized authority and the correct mixture of planning and management to be instituted in their water policy.

Pennsylvania is active in the Water Resources Committee created by the Charter, and feels their data collection system is currently more advanced than other Great Lakes states. The permitting scenario

3. No permit shall be necessary for the taking of a volume of ballast water necessary for normal vessel activity, but this exemption shall not apply to the exchange of ballast water.

4. The department shall not issue permits for the transport of water by vessel which will conflict or be inconsistent with the provisions of any interstate compact, commission or charter relating to the allocation of water resources to which New York is signatory.

Under the proposed legislation, permits would be required for water transport in excess of 10,000 gallons/day whether the use is for drinking water, or industrial or commercial use. Persons and public corporations authorized to transport 1 million gallons or less would pay a $100 annual fee. Those authorized to transport a larger amount would pay $1,000 per million gallons of water taken. Section four incorporates the goals and objectives of the Great Lakes Charter.

NEW YORK

Commentary

New York State will be looking to establish a more comprehensive legislative proposal regarding diversion in the fall of 1986 after the data collection program of the Water Resources Management Committee releases its findings. There currently exists debate over the use of a permit system to prevent diversions.

The New York State legislature in dealing with the tanker situation stated that this program would not conflict with the goals and objectives of the Great Lakes Charter. This provision was added after concerns regarding the implications of the tanker permitting system for water withdrawals was raised.

A word of caution for New York is needed for two reasons. One, the tanker legislation sets a regulatory precedent to deal with water withdrawals. Secondly, the concept of diversion to New York is legislatively defined as water transferred out of the state, not out of the basin. This could be due to the water supply problems in the heavily populated downstate region. On the positive side, Governor Cuomo has reaffirmed his commitment to the Charter and his opposition to diversions out of the basin during his 1986 State of the State Message.

ONTARIO AND QUEBEC

Canadian governments have traditionally opposed the large-scale export of water from Canada, particularly proposals to divert water from the Great Lakes Basin. This position has been maintained despite

of compensation must be addressed.

The Province of Quebec has taken the position that it would be very reluctant to establish any permanent diversion from within the province. As a signatory party to the Great Lakes Charter, it also opposes any new, unilateral or "temporary" diversions of water from the Great Lakes without full consultation and concurrence among the signatory parties. Lowered lake levels and small outflows into the St. Lawrence River would have adverse consequences on the province's environment and economy.

Quebec has a more open policy toward the concept of exporting water in small amounts through dedicated water tankers. Four guiding principles have been established for consideration in reviewing such proposals:

1. the water resources of the province of Quebec are, first and foremost, for the people of Quebec;

2. the exportation of water shall in no way cause or create any hindrance to any other user(s) of the resource;

3. the exportation of water shall not damage or prejudice in any way the natural ecology of the province; and

4. the province shall apply a levy to any waters exported. (Quebec Min. of Environment, Personal communication, 1985)

COMMENTARY

Great Lakes United received formal communication from both provinces in late 1985 reaffirming their governmental commitment to the goals and objectives of the Great Lakes Charter. In addition, both Quebec and Ontario have allocated resources to play an active role in the Water Resources Management Committee of the Charter.

Great Lakes United believes that we haven't even started the legal battle against diversions, but already are abandoning our legal case.

Therefore, instead of establishing a permit system which could be utilized to justify water diversions, we should be instituting a program to build a Public Health and Welfare case for the Great Lakes. The following seven-point management program is offered as a means to implement the goals and objectives of the Great Lakes Charter.

1. Each state and province should formally incorporate a water registration system for all users of Great Lakes waters. This mandatory registration system should include amounts of water returned to the Great Lakes system and in what quality. In addition, this system should not be used to legitimize existing diversion. We should not accept this registration system as a basis for "grand-fathering" all existing diversions and consumptive uses.

2. Establish present consumptive use needs in the basin based on the registration data and develop projected future consumptive use needs under a variety of economic growth scenarios. This must be coordinated with the establishment of a data base that understand the quantity and quality of water available to the Great Lakes Basin.

3. Detailed analysis of the environmental, social and economic impacts of water diversion, and incorporate those findings into a Public Health and Welfare case. Economic impacts could only be incorporated as they relate to the health and welfare of the citizenry, to avoid economic protectionism as in the El Paso case.

4. Advocate water conservation/improvement programs within and outside the Great Lakes Basin.

5. Develop state and provincial prohibitive diversion legislation based on the Public Health and Welfare ~~case~~ need.

6. Great Lakes jurisdiction would defend the legislative ban on diversion of Great Lakes water out of the basin in courts based on the Public Health and Welfare case. If the legal case was lost, Great Lakes jurisdictions could then incorporate a permitting system for water withdrawals.

7. Great Lakes jurisdictions would work with national and international leaders to develop and implement anti-diversion legislation and agreements.

In addition to this approach, Great Lakes United advocates a basin-wide stand against the funding of studies and/or projects that involve any interbasin transfer of water out of the Great Lakes Basin. In order to solidify that position, one must determine how serious or

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In addition, assorted legal papers, legislative proposals, current laws and regulations were utilized in the development of this report. Assistance received from the Center For The Great Lakes, Chicago, Illinois.

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