

**GREAT LAKES ANNEX 2001 STRATEGY MEETING
WINGSPREAD
FEBRUARY 22-23, 2005**



**DRAFT PROCEEDINGS
MARCH 12, 2005**

GREAT LAKES ANNEX 2001 STRATEGY MEETING WINGSPREAD

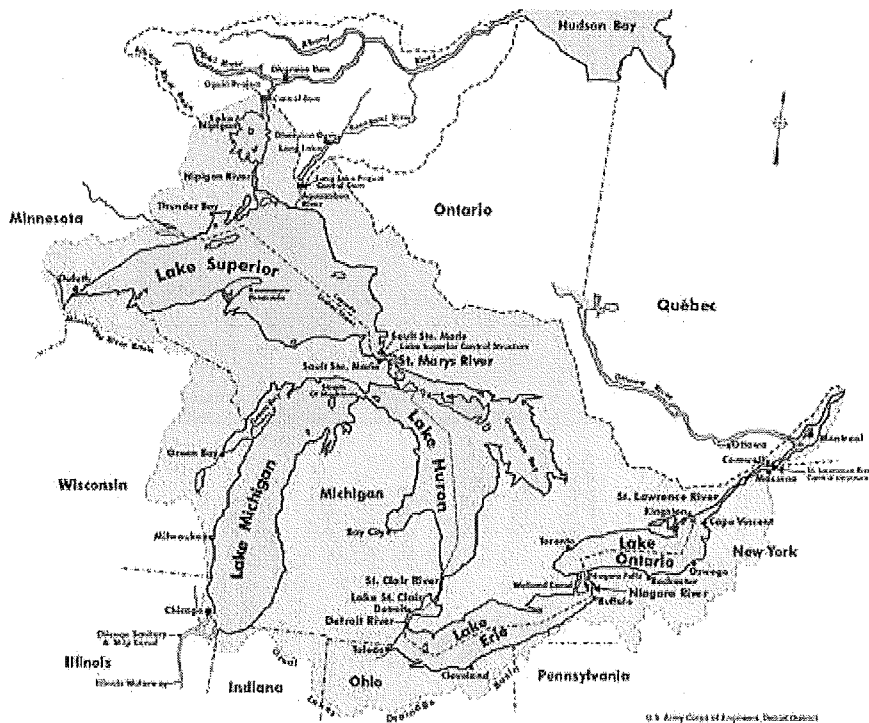
FEBRUARY 22-23, 2005

DRAFT PROCEEDINGS

Background

The Great Lakes/St. Lawrence River Basin is a priceless public natural treasure that is held in trust by two federal, eight state, two provincial, tribal and First Nations, and local governments. The freshwater resources of the Great Lakes Basin¹ support the needs of 42 million people -- fully one tenth of the population of the US and a quarter of the population of Canada. The Basin also support

one of the world's largest concentrations of industry, and nearly 25 percent of total Canadian agricultural production and 7 percent of American agricultural production. The scale of the Great Lakes Basin's water resources is staggering. The lakes contain about 23,000 km³ (5,500 cu. mi.) of surface water, and represent the largest system of freshwater surface water on earth, containing roughly 18 percent of the world supply. The Basin also contains an additional 4,168 km³ (1000 cu. mi.) of groundwater, roughly equal to the amount of water contained in Lake Michigan. But vast as they are, the Great Lakes are not



finite, and need protection from human activities that have reduced the ecological integrity and the water quality and quantity of the Basin. There has been some significant progress in restoring and improving the health of the ecosystem of the Great Lakes Basin. However, the water and water-dependant natural resources of the Basin remain at risk of serious damage from pollution, toxic substances, invasive species, other environmental disruptions and unsustainable water resource management practices which may

¹ Throughout this document, "Great Lakes Basin" includes *the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec. The basin includes the geographic areas surrounding each body of water in which water drains toward the Great Lakes or the St. Lawrence River.*

individually and cumulatively adversely alter the hydrology of the Great Lakes ecosystem.

The *Boundary Waters Treaty*, signed in 1909, continues to be the fundamental instrument by which the Great Lakes are managed cooperatively by the governments of the United States and Canada. The *Great Lakes Water Quality Agreement*, first signed in 1972 and renewed in 1978, affirms the commitment of each country to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin ecosystem and details a number of objectives and guidelines to achieve these goals. In 1985 the premiers of Ontario and Quebec and the governors of the eight Great Lakes states signed the *Great Lakes Charter*. The Charter is a good-faith (non-binding) agreement that aims to protect and conserve the waters of the Great Lakes Basin. It was developed in response to shared concerns about threats to Great Lakes waters from proposals to divert large quantities of water out of the basin, and was intended to help avoid future conflicts and shortages. The Charter commits the parties to five principles: integrity of the Great Lakes Basin; cooperation among jurisdictions; protection of the water resources of the Great lakes; prior notice and consultation; and, cooperative programs and practices.

Renewed concerns in the 1990s about proposals to export water in bulk led to the development of a supplementary agreement to the Great Lakes Charter known as the Great Lakes Charter Annex. Signed in 2001 by the same 10 parties (two provinces and eight states), the annex reinforced the principles of the Great Lakes Charter. The parties committed themselves to working out more binding protections within three years, including the development of an environmental standard on which to base decisions on water use. The objectives of Annex 2001 are to develop an “enhanced water management system that is simple, durable, efficient, retains and respects authority within the Basin, and [that] protects, conserves, restores and improves the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.”²

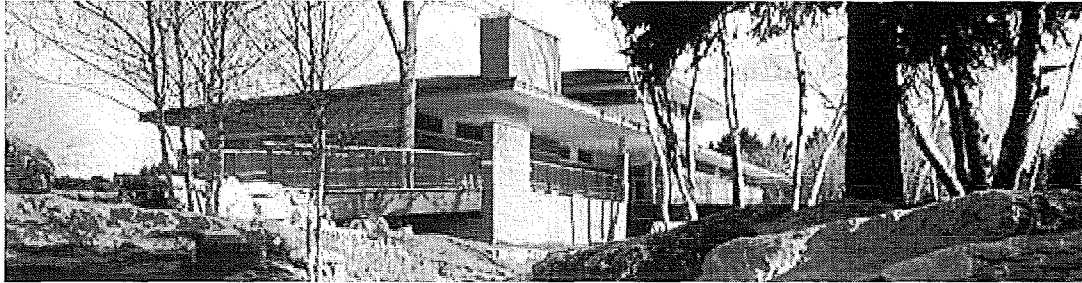
Since 2001, the Great Lakes Basin States and Provinces have been working together to develop agreements to implement Annex 2001, with the effort being coordinated by the Council of Great Lakes Governors (CGLG). After three years of intense development, consultation and negotiation, the CGLG released Draft Annex agreements in July, 2004 for a 90-day comment period. This triggered a huge response as over 10,000 public comments were received on the Draft Annex³ during the review period. Many of the comments reflected a concern that the Draft Annex Agreements did not provide a sufficient level of protection for the waters of the Basin. Significantly, analysis of the submissions received indicated that some environmental and public policy groups in Canada and the United States had differing perspectives on some key issues, including whether out-of-Basin diversions should be allowed.

On February 22-23, 2005, the Joyce Foundation, the Walter and Duncan Gordon Foundation, the C.S. Mott Foundation and the Johnson Foundation sponsored a workshop to bring together selected knowledgeable individuals from Canada and the United States

² The Great Lakes Charter Annex: A Supplementary Agreement to the Great Lakes Charter, June 18, 2001.

³ “Annex” refers to the two implementing agreements, i.e., the Great Lakes Basin Sustainable Water Resources Agreement, and the Great Lakes Basin Water Resources Compact”.

who significantly influence policy direction and decision making on matters relating to the Great Lakes Charter Annex. The aim of the workshop was to provide individuals with public advocacy perspectives with the opportunity to share ideas and develop common ground in addressing the impacts of water withdrawals to the Great Lakes ecosystems. Representatives of Tribal and First Nations governments were invited to participate in the meeting but were unfortunately unable to attend. The Workshop structure was designed to ensure frank, constructive, informative dialogue in an informal setting – the Johnson Foundation conference facilities at Wingspread (Racine, Wisconsin).



These Proceedings provide a record of the themes, major discussion points and outcomes of the meeting. They are intended to capture the discussions (without attribution), identify areas of consensus, and articulate differing perspectives on specific issues, including the rationale for each of those perspectives.

Format of the Meeting

The format and structure of the meeting was developed through a consultative process involving a Workshop Organizing Team composed of five participants and an independent facilitator. The Team agreed that the workshop should focus on reaching common agreement on fundamental principles that could be collectively supported by participants in addressing the Annex Agreements. It was assumed that all participants would have a good understanding of the risks to human health and the Great Lakes Basin ecosystem of unsustainable water resource management. The workshop would therefore not concentrate on environmental conditions or impacts, but would instead focus on what is needed if the Annex is to preserve the quality and quantity of the water in the Great Lakes Basin.

The Workshop Organizing Team developed the following draft Objectives for the meeting:

- To agree on an overriding objective in addressing the Annex Agreements;
- To agree on key foundational principles that need to be incorporated in the Annex Agreements to meet the overriding objective(s);

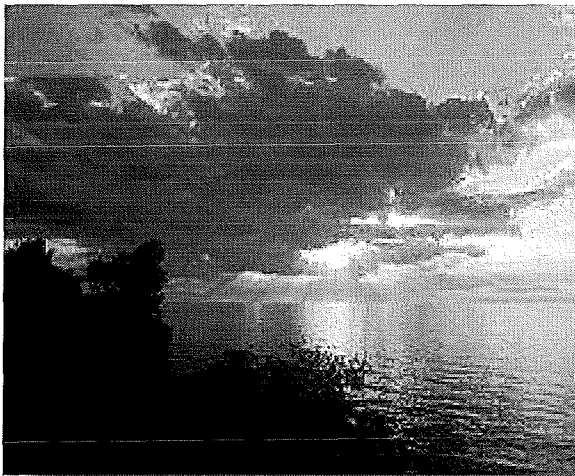
- To agree on a process for better communications, transparency, coordination and cooperation in moving forward on Annex issues after the Workshop, while recognizing the legitimacy of differing strategies to reach the overall objective(s);
- To identify immediate and mid-term next steps to continue the dialogue; and
- To share background information and perspectives, including ecological and legal perspectives on issues relating to the Annex (primarily through an annotated Bibliography).

The draft Agenda for the Workshop was circulated to all invited participants for comment and was then finalized. It is included as Appendix A. The list of participants is provided in Appendix B (organizing team members are identified with an asterisk). The bibliography prepared for the workshop is attached as Appendix C.

Overview

What was Accomplished

Through structured discussion and debate, participants were able to better understand the rationale behind the various points of view expressed around the table. Through the workshop process and the good will and hard work of those at the table, significant progress was made in understanding differing perspectives, narrowing points of difference, identifying areas of consensus and meeting the goals of the Workshop.



By the end of the workshop, participants were able to reach general agreement on the Objectives for an effective Annex and a number of Components that they determined are essential to ensure that it meets those Objectives. In some cases, participants identified components that require more refinement or further detail and a process for providing that further refinement. For example, there was general agreement on the objectives for Improvement/Restoration, but insufficient time for the group to

discuss the preferred mechanism to realize these objectives. Participants also noted that the list of Components discussed at the Workshop (and reported in this document) is not exhaustive. Given the limitations of time, participants focused their efforts on the aspects of the Annex that require sharing of views, achieving general agreement, and the identification of a common path forward.

As an early output of the Workshop, a Statement of Common Agreement was developed in draft, reviewed by participants, amended to address comments received, finalized and

then forwarded to the Annex 2001 Water Management Working Group. The Statement of Common Agreement is included in Appendix D, along with its covering letter.

The meeting participants also reached general agreement on a number of process matters dealing with next steps and communication. These are reported below.

Key Themes

A number of themes arose during the workshop, as follows:

- While the Annex is important in its own right, many participants argued that it is also important to use it as a step towards improving the management of the waters of the Great Lakes Basin, particularly with respect to the state and provincial management programs.
- Whatever the perspectives on the Draft Annex Agreements, there was the general feeling that the Annex is a vitally important initiative, one that will have a great impact on the Basin.
- Participants welcomed the message from the Council of Great Lakes Governors that they were considering tougher measures in the Revised Annex Agreements.
- Participants agreed that there is a need for strong measures to protect the waters and ecology of the Great Lakes Basin and a need for improved management of the resource.
- Participants generally agreed that a multi-lateral approach is essential in terms of protecting the waters and ecology of the Basin.
- Although the Annex is operating at a regional scale, many participants identified the vital need to address and protect against impacts of water takings at the local level.

What was Said

1) Objectives of the Annex

Participants were divided into small groups to discuss their objectives for the Annex (i.e., to address the question “Where to we want to be?”). After the small groups reported back, discussion continued in plenary. Key points made included the following:

- There is a need for the Annex to explicitly support (and not undermine) the existing policy and regulatory framework that governs management of the

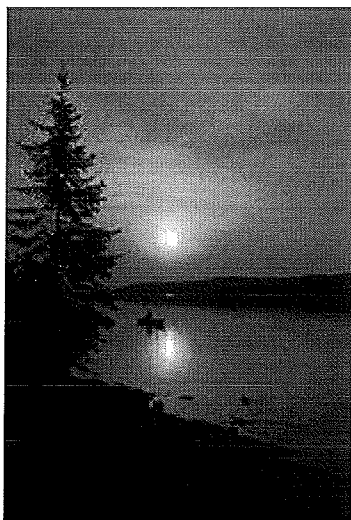
Great Lakes. Specifically, the Annex needs to support the *Great Lakes Water Quality Agreement* and the *Boundary Waters Treaty*.

- The overall objective for the Annex must include the notions of preserving the ecological integrity, improving the protection, and enhancing the restoration of the Great Lakes Basin.
- The objective needs to reflect the notion that there are 8 states, 2 provinces, Tribal and First nations governments and thousands of local governments and non-governmental organizations involved in the management of the Basin's water resources.

After discussion, the group generally agreed on the Objectives articulated below.

OBJECTIVES FOR THE ANNEX

The Annex should create a multi-lateral framework that supports the *Great Lakes Water Quality Agreement* and the *Boundary Waters Treaty* and that aims to preserve the ecological integrity, improve the level of protection, and enhance the restoration of the Great Lakes Basin (including the St. Lawrence River).



2) Components of the Annex

After defining the objectives for the Annex, participants were asked to identify the elements or components that are necessary to meet those objectives. The participants identified the following components as being necessary. It was acknowledged that some of these components need more refinement or further detail and a process for providing that further refinement. As noted above, the list of components is not exhaustive due to the time constraints on the workshop. The Workshop participants generally agreed to the following:

Keeping Water in the Basin

The Annex should support the principle of keeping water in the Great Lakes.

Keeping Water in the Public Trust

The waters of the Great Lakes Basin (including tributaries, connecting channels and groundwater) should remain in the public trust.

Restoring Integrity

The Annex should include provisions to restore the ecological integrity of the Great Lakes Basin.

Promoting Sustainability Principles

The Annex should include and reflect/operationalize the Precautionary Principle, the Principle of Intergenerational Equity, and the Principle of Public Trust.

Long-Term Management Strategy

The Annex should mandate the development of the Long-Term Basin Management Strategy as outlined in the Great Lakes Charter of 1985.

Involvement of Tribes/First Nations

The Annex should require the States and Provinces to forge complementary agreements with Tribes and First Nations.

Local Watershed Partners

The Annex should recognize the role of local watershed partners.

Regional Review

The Annex should require periodic regional review of state and provincial water management programs.

Implementation Timeframe

The Annex should be implemented within 5 years.

Definitions

The definitions used in the Annex need to reflect all withdrawals, including those for navigation, hydroelectric power and channels.

Lake Huron and Lake Michigan

The Annex should recognize and treat Lake Huron and Lake Michigan as one hydrologic body.

Consumptive Uses

The Annex should attempt to minimize consumptive uses of Great Lakes water. For example, the allowances for consumptive use should use coefficients based on Best Available Practices.

Note: Participants agreed that this component needed additional refinement.

Conservation Standards

The Conservation Standards in the Annex should:

- include aggressive targets;

- be technology-based;
- be mandatory;
- include land-based standards (e.g., to limit urban sprawl); and
- be applied to all users.

Decision-Making Process

The decision-making process for the Annex should be:

- transparent;
- enforceable
- provide sufficient opportunities for public input;
- include provisions for stakeholder suits;
- include provisions for a “correctness” judicial review standard;
- place the burden of proof on the proponent; and
- include a publicly accessible data and information system that allows decision-makers to understand the individual and cumulative impacts of existing water use and new proposals to withdraw water.

Diversions

The Workshop participants generally agreed on the following statements regarding diversions.

- the Annex should prohibit the diversion of water out of the Great Lakes Basin.
- the Annex should ensure that any withdrawals, takings or transfers of Great Lakes water by any means must not adversely impact the ecological integrity of any part of the Great Lakes. Specifically, all withdrawals, takings or transfers must:
 - meet the standards for consumptive use as defined in Appendix 1, Section II of the Decision Making Standard to the Great Lakes Basin Sustainable Water Resources Agreement and section 8.3 of the Great Lakes Basin Water Resources Compact;
 - meet strong conservation targets and timelines;
 - completely prohibit the transfer of any invasive species in return flow;
 - meet all other water quality standards for return flow;
 - meet the GLWQA requirements for return flow; and
 - comply with the *Boundary Waters Treaty* and the public trust.

The Annex should recognize that straddling communities are not strictly subject to the prohibition on diversions. However, all water uses, takings or transfers of Great Lakes water by any means by straddling communities must meet all of the above standards. The exceptions referenced in Section 10.2 of the Draft Compact (ballast water and short-term public humanitarian use) are not subject to any of the above requirements.

Note: In reviewing the Draft of this document, two issues were raised regarding diversions. One is the issue of diversions from one Great Lake to another (inter-basin diversions). The other is the concept that return flow should be as close as practical to the source of the original water taking. These issues were raised at the Wingspread

Meeting as being important but were not formally discussed given time constraints. Additional discussion may be required if it is determined that it would be advantageous to have general agreement on these important issues.

Commentary on Diversions

There was considerable discussion of the issue. A four-person task group was assigned to develop a consensus position, which they were able to do. Highlights of the discussion leading up to the general agreement noted above include:

- Those who supported treating in-basin withdrawals the same as out-of-basin transfers did so because:
 - ecologically and hydrologically there is no difference between the impacts of in-basin withdrawals and out-of basin transfers;
 - it provides a “level playing field” that protects against trade challenges;
 - it allows tough standards to be developed for in-basin uses;
 - in-basin withdrawals can also have a severe impact, especially on local watercourses;
 - it would provide additional impetus for conservation;
 - a requirement for return flow would protect against demands from distant areas; and
 - a requirement for “no diversions” might not be accepted by the Annex negotiators or might be successfully challenged in court.

- Those who supported treating in-basin withdrawals differently than out-of-basin transfers did so because:
 - to allow diversions is a “slippery slope” that could potentially lead to demands for Great Lakes water from areas such as the U.S. southwest;
 - it is necessary to protect sovereign rights;
 - there is no “extra” water to divert, and climate change will exacerbate the situation;
 - allowing diversions under even the strictest of standards is a lower level of protection for the Lakes than that which currently exists; and
 - in-basin conservation can be achieved through mandatory and enforceable conservation standards.



Improvement/Restoration

The Workshop participants generally agreed on the following statements regarding improvement/restoration:

- The Annex should recognize that those who benefit from the use of a shared resource have an obligation to leave it better than they found it. The Annex should support the principle of ecological restoration, including “resource improvement” as it is defined in WRDA.
- The Annex should require that all water uses, takings or transfers of Great Lakes water by any means include an associated restoration action. The value of such measures should not be taken as financial compensation for allowing specific uses that would lead to an indirect commodification of water and the conferring of rights. The process to approve restoration/resource improvement actions should be meaningful (e.g., be open, transparent, include the public)

Note: Participants agreed that more discussion was needed on this point.

Commentary on Improvement/Restoration

This was the most challenging issue that was dealt with at the workshop. A four-person task group was assigned to develop a consensus position, which they were able to do in part (above). Time precluded further discussion on the issue. Key observations included:

- All participants were in favour of the notion of environmental improvement or restoration, although there were divergent views on the best mechanism(s) for achieving it.
- There was no concurrence about nomenclature, with some participants favouring “environmental or resource improvement” and others favouring “environmental restoration”. Comments made included:
 - “restoration” is useful because it communicates the notion that there is already a problem that needs to be remedied; and
 - “restoration” is problematic because there is no agreed-upon end goal (i.e., restore to what?).
- Those who supported the “Resource Improvement Standard” contained in the Draft Annex Agreements did so because:
 - it indicates the trend we should be following (i.e., to improve the ecological state of the Great Lakes Basin);
 - it is a way of raising money for restoration;
 - users of a public trust resource have a responsibility to leave it in a better state than they found it;
 - it is a tool for ensuring that environmental improvement takes place; and
 - it is a way of advancing environmental law.
- Those who did not support the “Resource Improvement Standard” contained in the Draft Annex Agreements did so because:
 - it is unclear what the standard would actually mean;

- it would allow proponents to trade off one compartment of the environment for another (e.g., to reduce stream flow but improve riparian plantings);
 - the potential commodification of water arising from financial compensation for water takings or the use of the standard as an evaluative tool; and
 - there are other methods of raising money for restoration such as a surcharge on fees for water use or a fee for permitting.
- Some participants suggested that a requirement for improvement/restoration should not be a decision standard (i.e., it should applied after the decision to approve a new withdrawal has been made). Others supported its use as a standard, but stressed that it should be used only after the other standards have been applied.

Additional ideas and suggestions that were brought forward for Improvement/Restoration included:

- improvements/restoration should be in the same geographic area as the water taking;
- local agencies should be involved in improvement/restoration efforts; and
- it is important to ensure that one compartment of the environment is not being traded off for another (e.g., augmented stream flow for deforestation)

3) NEXT STEPS, COMMUNICATION AND COOPERATION



Participants at the meeting generally agreed to the following:

Providing Immediate Input to Water Management Working Group

- The recorder and the facilitator will prepare the draft Preliminary Output from the meeting as quickly as possible. This will be circulated to participants for review to ensure that the outputs agreed to at the Workshop have been fairly and fully captured. The recorder and the facilitator will revise the draft as necessary and recirculate to participants.
- The Workshop Organizing Team will draft a letter of transmittal for the Preliminary Output on behalf of all participants, and will forward the Preliminary Output to the Water Management Working Group on behalf of all participants. This will be done in advance of the next Governor's Meeting, which is to be held on March 9, 2005.

Proceedings from the Workshop

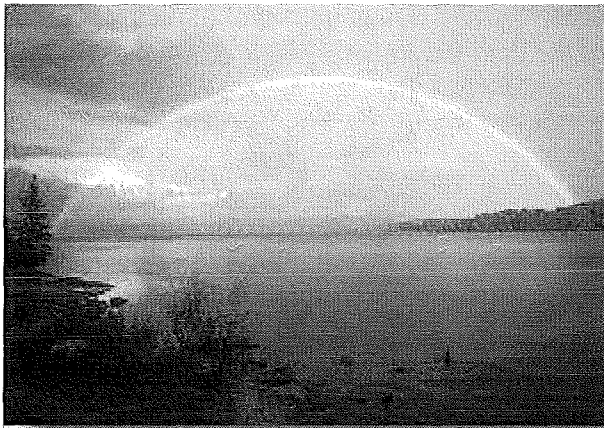
- The revised Preliminary Output will be inserted into the Proceedings of the Wingspread Meeting.
- Draft Workshop Proceedings will be forwarded to participants by March 11, 2005. Participants will have 10 working days to comment. The recorder and the facilitator will revise the draft as necessary and recirculate to participants as Final Workshop Proceedings.

Communication Among Participants

- It was agreed that consistency in messaging among participants is very important, but participants recognize that each group will likely need to tailor their messages to meet their own needs, target audiences, etc.
- Molly Flanagan, James Clift and Derek Stack will develop some plain language messaging on the outputs from the Wingspread Meeting. Derek will distribute it to the participants for comment.
- Participants agreed to share and communicate their initiatives to each other in a timely manner. This includes, where and when appropriate and expedient, sharing views, and soliciting advice on substantive positions and providing a "heads-up" on impending press/media releases. The operative principle is to ensure that participants are not "taken by surprise" by public positions of other participants. It was also acknowledged that participants should be sensitive to, and fully appreciative of the implications of language used in media and campaign initiatives.

- During the next public review period (i.e., as soon as practical after the release of the revised Agreements for public comment, anticipated in April/May 2005), the participants agreed to conference, perhaps by telephone, to develop a coordinated response to the Revised Draft Agreements.

5) Adjourning the Workshop



The facilitator closed the session with a roundtable for “concluding thoughts” from all participants. There was a very strong sense that workshop objectives had been achieved and, in some respects, even exceeded. Perhaps the most important outcome was the opportunity provided by the Workshop for participants to confirm the commonality of their resolve that cuts across borders and regions in protecting the binational treasure that is the Great Lakes Basin.

Appendix A

Workshop Agenda

Tuesday, February 22, 2005

12:00 noon	Lunch	Guest House
2:00 pm	Joint Session with Foundation Members Update on Negotiations of the Annex Agreement David de Launay, Ontario Ministry of Natural Resources	Wingspread
3:00 pm	Break/Foundation representatives depart	The House
3:30 pm	Roundtable Discussion High Level Overview of Perspectives on the Annex Agreements	The House
5:00 pm	Roundtable Discussion Objectives and Key Principles That Annex Must Embrace	The House
6:00 pm	Adjournment	The House

Wednesday, February 23, 2005

8:30 am	Roundtable Discussion Agreement on Overriding Objectives of the Annex	The House
12:00 noon	Lunch	Wingspread
1:00 pm	Roundtable Discussion Agreement on Overriding Objectives of the Annex (cont.) Processes for Better Communications	The House
4:00 pm	Meeting Adjourns	The House

Appendix B

Meeting Participants

Name (* is an Organizing team Member)	Affiliation
Lauren Brown	Waterkeeper Alliance
James Bruce*	Soil and Water Conservation Society
James Clift	Michigan Environmental Council
Wilfred Cwikel	Tip of the Mitt Watershed Council
Cameron Davis*	Lake Michigan Federation
David de Launay (observer)	Ontario Ministry of Natural Resources
Michele DePhilip	The Nature Conservancy
Sara Ehrhardt	Council of Canadians
Rick Findlay	Pollution Probe
Molly Flanagan	Ohio Environmental Council
Emily Green	Sierra Club
Noah Hall*	National Wildlife Federation
David Higby	Environmental Advocates of New York
Marc Hudon	L'Union québécoise pour la conservation de la nature
Sarah Miller*	Canadian Environmental Law Association
Mary Muter	Georgian Bay Association
Ralph Pentland	Ralbet Enterprises Inc.
Rick Smith	Environmental Defence Canada
Derek Stack	Great Lakes United
Terry Swier	Michigan Citizens for Water Conservation
Robert Wright	Sierra Legal Defence Fund
Steve Branca	Johnson Foundation Staff
Elizabeth Shephard	Wingspread Fellow
Joanna Kidd (recorder)	Kidd Consulting
Hajo Versteeg (facilitator)*	Environmental Law and Policy Advisor

Additional Participants
Joint Session, 2:00 – 3:00 pm February 22, 2005

Name	Affiliation
Julie Metty Bennett	Great Lakes Fishery Trust
Lois DeBacker	Charles Stewart Mott Foundation
Rebecca Fedewa	Charles Stewart Mott Foundation
Jon Jensen	George Gund Foundation
Brenda Lucas	Walter and Duncan Gordon Foundation
Dick Mark	Key States Program
Terri McCarthy	Wege Foundation
Jane Moore	Greater Milwaukee Foundation
Margaret O'Dell	The Joyce Foundation
Samuel Passmore	Charles Stewart Mott Foundation
Pamela Porter	The Brico Fund and Beldon Fund
David Rankin	Great Lakes Protection Fund
Anne Summers	The Brico Fund
Russell Van Herik	Great Lakes Protection Fund
Mark Van Putten	Conservation Strategy
JoAnn Weishan	Argosy Foundation
Antha Williams	Beldon Fund

Appendix C

ANNOTATED BIBLIOGRAPHY:

Wingspread Meeting
22-23 February, 2005

This Bibliography is a non-prioritized list of source materials that participants to the Great Lakes Annex Agreements Workshop identified as useful background materials.

[Note: Almost all of the Workshop Funders' websites and all of the organizational sites listed with the names of the individuals attending the Workshop have extensive and very useful information on various aspects of the Great Lakes Charter Annex, and of course detail the views of the organizations on this topic. They are most informative. State, Provincial, and American and Canadian federal sites also have excellent information. A Google search is also most informative. The following list identifies specific references flagged by Workshop participants.]

Water News, Dec. 2004, Publication of Canadian Water Resources Association
www.cwra.org A summary of opinions expressed by reviewers of the draft Great Lakes Annex Agreements, funded by Gordon Foundation and others.

Schindler, D.W., 2001. The cumulative effect of climate warming and other human stresses on Canadian freshwater in the new millennium. *Can. J. of Fisheries and Aquatic Sciences*, 58: 1-12. A general review of impacts of climate change on lake levels and ecosystems.

Bruce, J.P. et al., 2003. Climate Change Impacts on Boundary and Transboundary Water Management. Climate Change Action Fund, Natural Resources Canada at:
www.adaptation.nrcan.gc.ca An assessment of recent (30 year) trends in flows (including Niagara River) as affected by climate trends driven almost exclusively by greenhouse gases, and projections into future and management implications.

Great Lakes Water Quality Board, International Joint Commission, August 2003:
Climate Change and Water Quality in the Great Lakes Basin. www.ijc.org Results of a workshop on this by the IJC, with many references to basic literature.

The Great Lakes Water Quality Agreement: An Evolving Instrument for Ecosystem Management - Study of GLWQA (1978 version) and its role in sustainable development for preserving water quality and the basin ecosystem by US National Academy of Sciences and Royal Society of Canada, 1985 and led by co-Chairs Orie L. Loucks, Halcomb Research Inst., Indianapolis and Henry Regier, University of Toronto. National Academy Press, Washington.

The Canadian House of Commons Standing Committee on Environment and Sustainable Development's report on the Great Lakes Charter Annex Implementing Agreements (Nov 2004) can be found at:

<http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=95359>

The Ontario government press release of 15 November, 2004: “Level of protection in draft Great Lakes Charter Annex Agreements not high enough: *Changes Needed Before Ontario Will Sign*”:

http://www.mnr.gov.on.ca/mnr/csb/news/2004/nov15nr_04.html

The Tribes and First Nations Great Lakes Water Accord

<http://www.anishinabek.ca/uoi/wateraccord.htm>

The report on the IJC 2000 reference Protection of the Waters of the Great Lakes. Their chapter discussing trade is key. <http://www.ijc.org/php/publications/html/finalreport.html>

CELA/ GLU 1997 report: *The Fate of the Great Lakes: Sustaining or Draining the Sweetwater Seas?* chronicles the failures of the Great Lakes Charter and diversions proposals since 1985. <http://www.glu.org/english/information/publications/fate-report/pdfs/swtfrpt.pdf>

Water Resources Management Decision Support System for the Great Lakes -St Lawrence River Basin. A consolidation of what we know and the available science and data. <http://www.glc.org/wateruse/wrmdss/>

The last submission of twelve Great Lakes Environmental Groups to the Council of Great Lakes Governors on the Great Lakes Annex.

<http://www.cela.ca/publications/cardfile.shtml?x=1825>

The *Boundary Waters Treaty Act of 1909* is located at: <http://laws.justice.gc.ca/en/I-17/77063.html#rid-77154>

The Annex 2001 Agreement is located at:

<http://www.cglg.org/projects/water/Annex2001.pdf>

The January 2005 Canadian Federal Government opinion plus the Ontario Government perspectives on the Annex Agreements are linked through the Gordon Foundation website. This site also includes other useful references and commentaries. :

<http://www.gordonfn.org/water-IN.cfm?id=72>

The Council of Great Lakes Governors website has extensive information:

<http://www.cglg.org/projects/water/index.asp>

On behalf of all participants at the Wingspread Workshop (listed in the attached Common Agreement)

**PRELIMINARY OUTPUT FROM THE
GREAT LAKES ANNEX 2001 STRATEGY MEETING
HELD AT WINGSPREAD, FEBRUARY 22-23, 2005**

REVISED MARCH 7, 2005

Note: This document has been prepared as an early output from the Workshop Proceedings of the Great Lakes Annex 2001 Strategy Meeting held at Wingspread, February 22-23, 2005. It was circulated to participants in Draft form to ensure its accuracy and has been revised to reflect the comments received. The document will become part of the complete Draft Proceedings of the Wingspread Meeting.

AREAS OF GENERAL AGREEMENT

Participants reached general agreement on their Objectives for Annex 2001 (the Annex) and a number of Components that they determined are essential to ensure that the Annex meets the Objectives. In some cases, participants identified components that require more refinement or further detail and a process for providing that further refinement. For example, there was general agreement on the objectives for Improvement/Restoration, but insufficient time for the group to discuss the preferred mechanism to realize these objectives. Participants also noted that the list of Components discussed at the Workshop (and reported in this document) is not exhaustive. Given limited time, participants focused their efforts on the aspects of the Annex that require sharing of views, gaining of general agreement, and the identification of a common path forward.

The meeting participants also reached general agreement on a number of process matters dealing with next steps and communication, and these are reported below.

1) OBJECTIVES FOR ANNEX⁴

the Annex should create a multi-lateral framework that supports the Great Lakes Water Quality Agreement and the Boundary Waters Treaty and which aims to preserve the

⁴ "Annex 2001" refers to the implementing agreements, i.e., the Great Lakes Basin Sustainable Water Resources Agreement and the Great Lakes Basin Water Resources Compact".

ecological integrity, improve the level of protection and enhance the restoration of the Great Lakes Basin (including the St. Lawrence River)⁵.

2) COMPONENTS OF ANNEX

Keeping Water in the Basin

Annex should support the principle of keeping water in the Great Lakes.

Keeping Water in the Public Trust

The waters of the Great Lakes Basin (including tributaries, connecting channels and groundwater) should remain in the public trust.

Restoring Integrity

the Annex should include provisions to restore the ecological integrity of the Great Lakes Basin.

Principles

the Annex should include and reflect/operationalize the Precautionary Principle, the Principle of Intergenerational Equity, and the Principle of Public Trust.

Long-Term Management Strategy

the Annex should mandate the development of the Long-Term Basin Management Strategy as outlined in the Great Lakes Charter.

Involvement of Tribes/First Nations

the Annex should require the States and Provinces to forge complementary agreements with Tribes and First Nations.

Local Watershed Partners

the Annex should recognize the role of local watershed partners.

Regional Review

the Annex should require periodic regional review of state and provincial water management programs.

Implementation Timeframe

the Annex should be implemented within 5 years.

Definitions

The definitions used in the Annex need to reflect all withdrawals, including those for navigation, hydroelectric power and channels.

⁵ Throughout this document, "Great Lakes Basin" includes the Great Lakes and the St. Lawrence River.

Lake Huron and Lake Michigan

The Annex should recognize and treat Lake Huron and Lake Michigan as one hydrologic body.

Consumptive Uses

The Annex should attempt to minimize consumptive uses of Great Lakes water. For example, the allowances for consumptive use should use coefficients based on Best Available Practices.

Note: Participants agreed that this component needed additional refinement.

Conservation Standards

The Conservation Standards in the Annex should:

- include aggressive targets;
- be technology-based;
- be mandatory;
- include land-based standards (e.g., to limit urban sprawl); and
- be applied to all users.

Decision-Making Process

The decision-making process for the Annex should be:

- transparent;
- enforceable
- provide sufficient opportunities for public input;
- include provisions for stakeholder suits;
- include provisions for a “correctness” judicial review standard;
- place the burden of proof on the proponent; and
- include a publicly accessible data and information system that allows decision-makers to understand the individual and cumulative impacts of existing water use and new proposals to withdraw water.

Diversions

The Annex should prohibit the diversion of water out of the Great Lakes Basin.

The Annex should ensure that any withdrawals, takings or transfer of Great Lakes water by any means must not adversely impact the ecological integrity of any part of the Great Lakes. Specifically, all withdrawals, takings or transfers must:

- meet the standards for consumptive use as defined in Appendix 1, Section II of the Decision Making Standard to the Great Lakes Basin Sustainable Water Resources Agreement and section 8.3 of the Great Lakes Basin Water Resources Compact;
- meet strong conservation targets and timelines;
- completely prohibit the transfer of any invasive species in return flow;
- meet all other water quality standards for return flow;
- meet the GLWQA requirements for return flow; and
- comply with the Boundary Waters Treaty and the public trust.

The Annex should recognize that straddling communities are not strictly subject to the prohibition on diversions. However, all water use, takings or transfers of Great Lakes water by any means by straddling communities must meet all of the above standards. The exceptions referenced in Section 10.2 of the Draft Compact (ballast water and short-term public humanitarian use) are not subject to any of the above requirements.

Note: In reviewing the Draft of this document, two issues were raised regarding diversions. One is the issue of diversions from one Great Lake to another (inter-basin diversions). The other is the concept that return flow should be as close as practical to the source of the original water taking. These issues were raised at the Wingspread Meeting as being important but were not formally discussed. Additional discussion may be required if it is determined that it would be advantageous to have general agreement on these important issues.

Improvement/Restoration

The Annex should recognize that those who benefit from the use of a shared resource have an obligation to leave it better than they found it. The Annex should support the principle of ecological restoration, including “resource improvement” as it is defined in WRDA.

The Annex should require that all water use, takings or transfers of Great Lakes water by any means include an associated restoration action. The value of such measures should not be taken as financial compensation for allowing specific uses that would lead to an indirect commodification of water and the conferring of rights. The process to approve restoration/resource improvement actions should be meaningful (i.e., be open, transparent, include the public, etc.)

Note: Participants agreed that more discussion was needed on this point.

**This common agreement is supported by all of the Participants at the
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