

Water Export and the Great Lakes St. Lawrence River Basin:
The evolution of two Agreements

*The Great Lakes – St. Lawrence River Basin Sustainable Water
Resources Agreement*

and

The Great Lakes – St. Lawrence Water Resources Compact

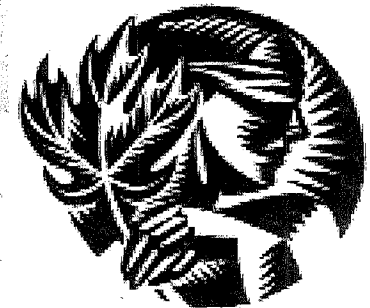
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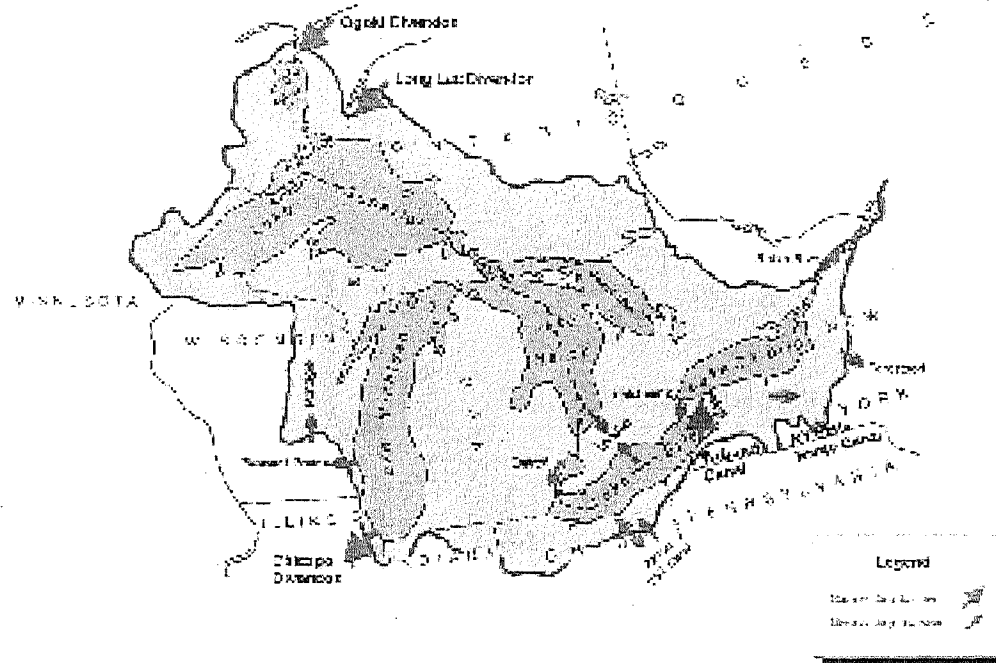


OVERVIEW

- ♦ History leading up to the Agreements
- ♦ The negotiations
- ♦ The outcome
- ♦ Influential forces that shaped the Agreements
- ♦ What the future might bring

History Leading up to the Agreements – the public interest perspective

- ◇ The Boundary Waters Treaty of 1909
- ◇ Engineering the Great Lakes for shipping, power production and forestry through diversions into the Great Lakes
- ◇ The Chicago Diversion Supreme Court Decrees
- ◇ The Great Lakes Charter of 1985: a gentleman's agreement
- ◇ IJC References on Levels and Flows
- ◇ Diversions out of the Great Lakes
- ◇ The Fate of the Great Lakes Report (CELA and Great Lakes United)
- ◇ The NOVA Proposal 1998 (CELA and Great Lakes United intervene)
- ◇ The IJC Reference



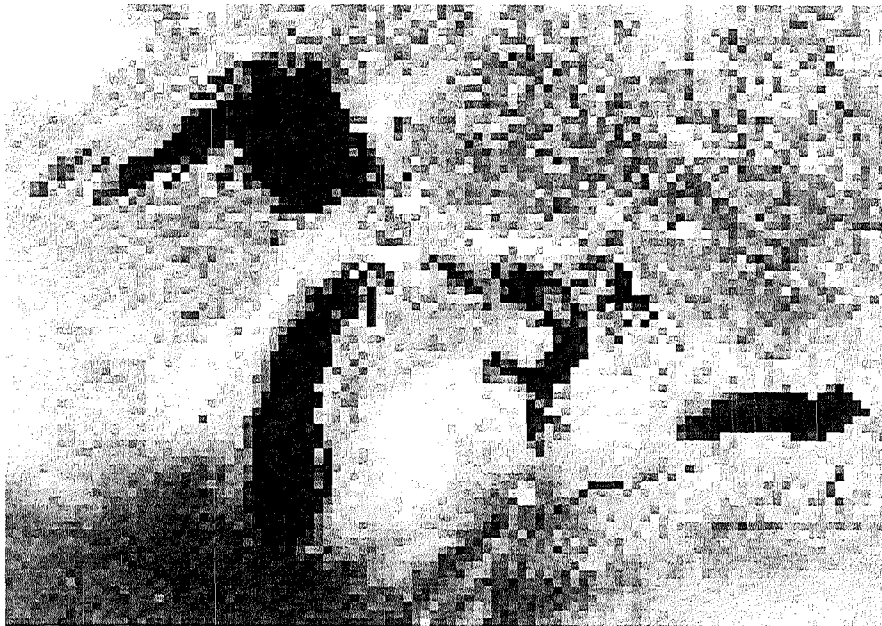
Existing Diversions in the Great Lakes Basin	Operational Date (original project)	Average Annual Flow	
		(cms)	(cfs)
1. Interbasin			
Long Lake (into Lake Superior basin)	1939	45	1,590
Ogoki (into Lake Superior basin)	1943	113	3,990
Chicago (out of Lake Michigan basin)	(1848)1900	91	3,200
Forestport (out of Lake Ontario basin)	1825	1.4	50
Portage Canal (into Lake Michigan basin)	1860	1	40
Ohio & Erie Canal (into Lake Erie basin)	1847	0.3	12
Pleasant Prairie (out of Lake Michigan basin)	1990	0.1	5
Akron (out of and into Lake Erie basin)	1998	0.01	0.5
2. Intrabasin			
Welland Canal	(1829)1932	260	9,200
NY State Barge Canal (Erie Canal)	(1825)1918	20	700
Detroit	1975	4	145
London	1967	3	110
Raisin River	1968	0.7	25
Haldimand	1997	0.1	2

Some relevant Great Lakes Facts

- ◇ 1/4 of all Canadians rely on the Great Lakes for their drinking water. This has made the Great Lakes more of a national issue.
- ◇ Ontario uses more of that water than the other nine Great Lakes jurisdictions – 35.1/5 according to 1998 data.
- ◇ Only 1% of the waters of the Great Lakes is renewable. The other 99% is a gift from the glacial age. If we use more than 1%, we are permanently drawing down the Great Lakes.



Some relevant Great Lakes facts, con't...



- ◇ The resiliency of the ecosystem and all life dependent on the waters of the Great Lakes depends on the cycles of high and low water levels that occur about every 17 years. The Great Lakes ecosystem is struggling to recover from pollution, invasive and man-made alterations to the system. However, very little is understood about the impacts of extreme high and low water levels

Table 3-3
Summary Characterization of Water Use Permitting, Registration and Reporting Programs

Jurisdiction	Characteristic	Permitting Category							
		Public Supply	Self-Supply	Self-Supply	Self-Supply	Self-Supply	Self-Supply	Self-Supply	Other
Canada	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
USA	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ohio	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	Permitting	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
	Water Source	Surface	Surface	Surface	Surface	Surface	Surface	Surface	Surface
	Threshold	50	50	50	50	50	50	50	50
	Capacity Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Data Source	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

KEY TO TABLE 3-3 CHARACTERISTICS

Permit/Reg: Does the jurisdiction have a water use permitting or registration program? If neither, the box for the category is marked "None" for no program or "N/A" for no existing uses and the next four categories are left blank.

Water Source: What water sources (i.e., groundwater, surface water, all) are included in the program?

Threshold: What is the use threshold for inclusion in the program?

Capacity/Use: Does the threshold apply to facility capacity, actual use, or allowable use? If the threshold applies to all uses, "All" is repeated.

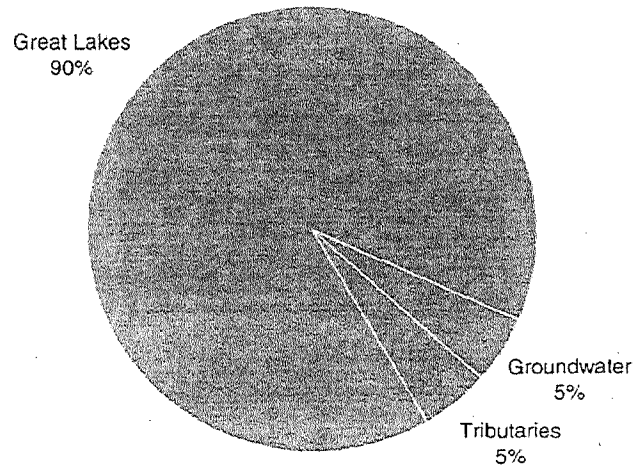
Reg'd Reporting: Is water use reporting required under the permit or registration program?

Data Source: What is the source of water use data for the 1988 Great Lakes Regional Water Use Data Base?

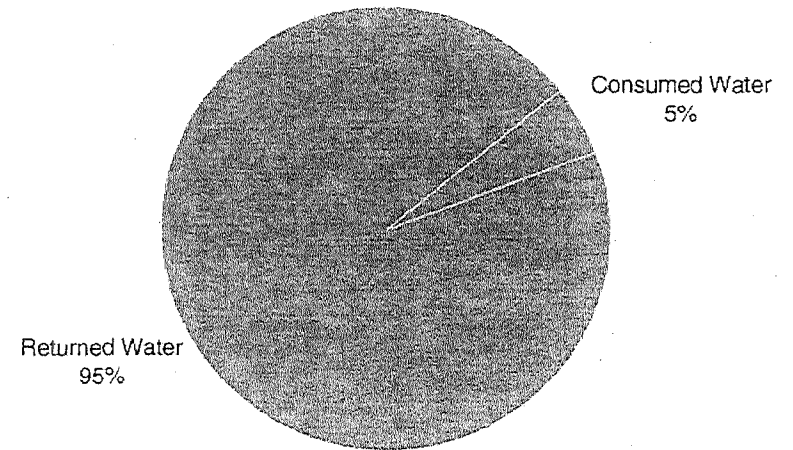
NOTES

1. The hydropower category of Minnesota's water use permitting program only covers facilities that divert water out of the river channel. Currently, all Minnesota hydroelectric water uses in the Great Lakes watershed are in the river channel.
2. Permits for the self-supply domestic category do not include individual residential use.
3. Wisconsin has an approval process for many water uses that goes beyond registration, but not a complete permitting process.

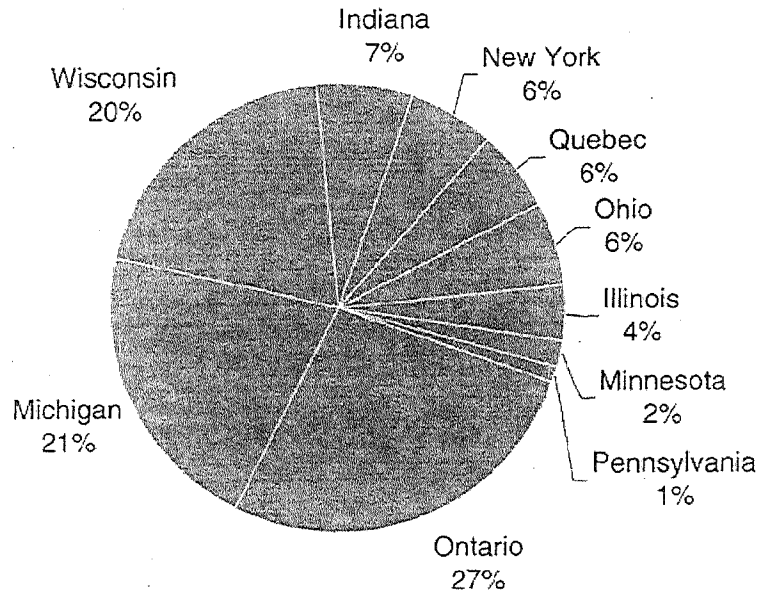
A. Sources of Water Withdrawals in the Great Lakes Basin



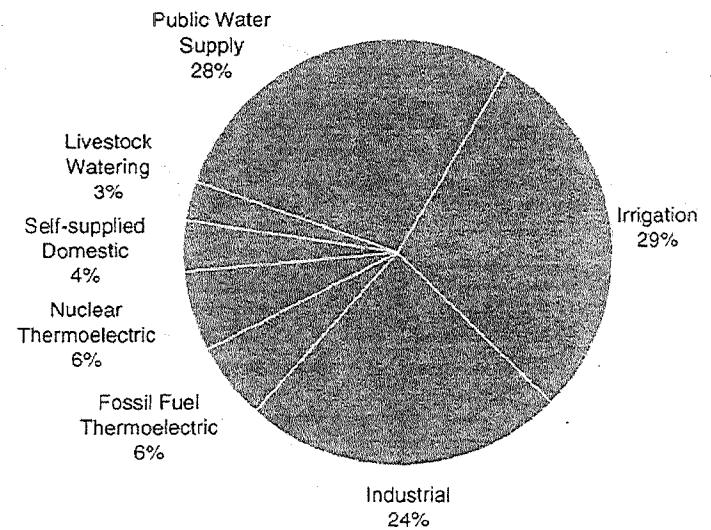
B. Consumed Versus Returned Water in the Great Lakes Basin

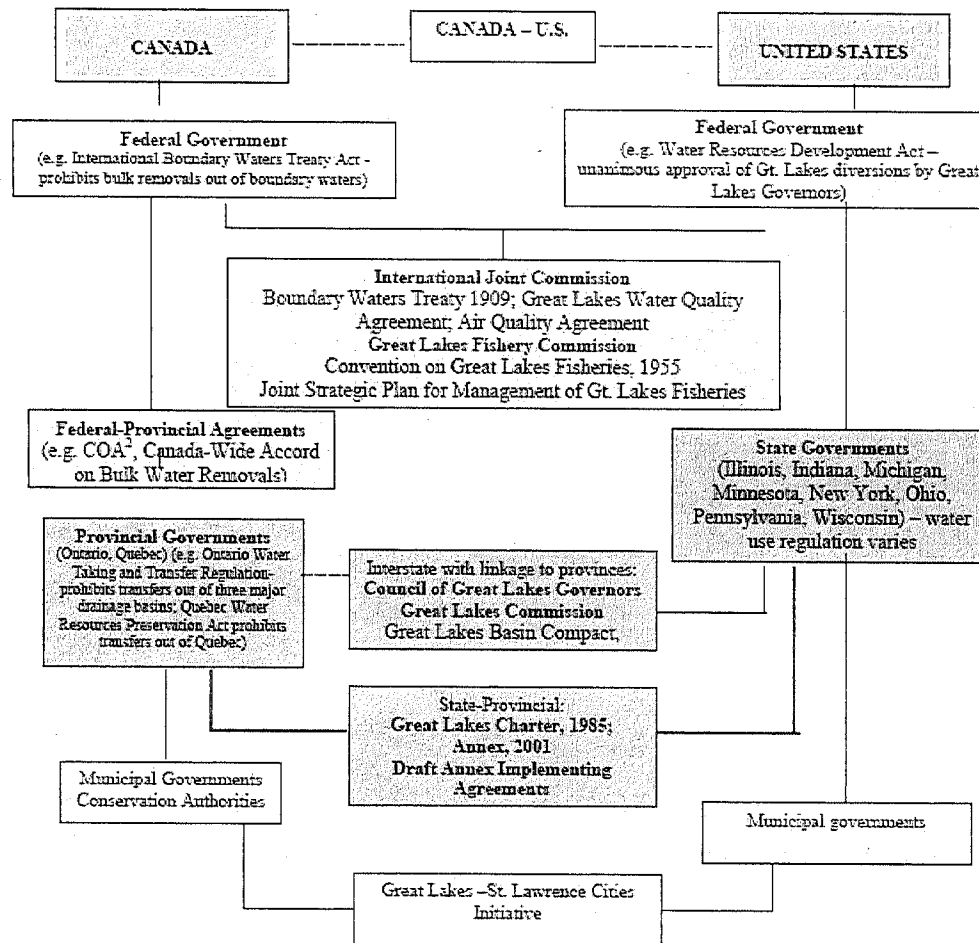


C. Consumptive Uses of Water by Jurisdiction in the Great Lakes Basin



D. Types of Consumptive Use in the Great Lakes Basin



GREAT LAKES PROTECTION SHARED¹

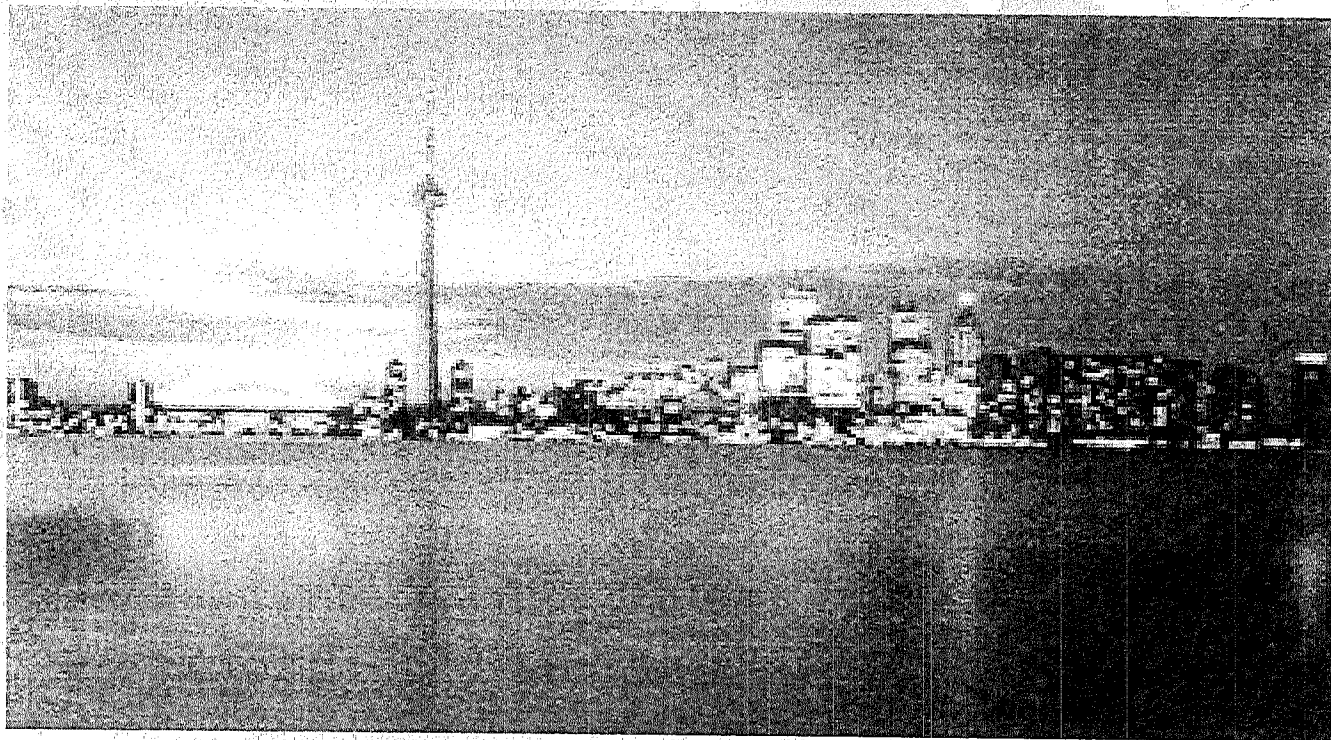
¹ Adapted from "Pathways to Sustainability: Assessing our Progress" National Round Table on the Environment and the Economy, 1995

² Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem

The Mission as set out in the Great Lakes Charter Annex, endorsed in 2001 by the Governors of the Great Lakes States and the Premiers of Quebec and Ontario was:

- ♦ To develop a set of binding agreements among the Great Lakes States and Provinces to be completed within three years
- ♦ To establish a set of principles for a new standard for reviewing proposed withdrawals of Great Lakes water
- ♦ To commit to involve the public in developing the agreements and the standards

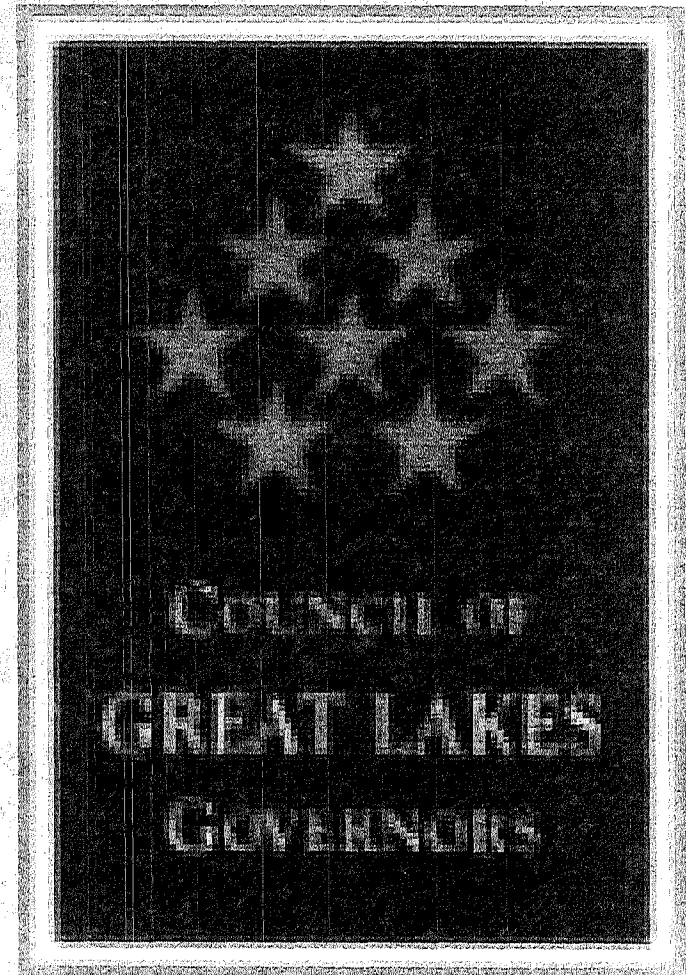
- ♦ Include the Premiers of Ontario and Quebec formally in the consulting on proposed diversions of water from the United States
- ♦ To strengthen regional water management system



The Negotiations: 2002 – 2005

The Players

Representatives of each of the 10 jurisdictions were selected to participate in negotiations convened by the Council of Great Lakes Governors. These negotiators met as required behind closed doors.



Additionally, key leaders were invited to represent the interests of their sector on an Advisory Committee to the negotiators. They had periodic meetings with the negotiators. The objectives of these meetings were to get reactions to issues put before them. Others, such as the IJC and representatives of the federal governments, were invited to be observers in the meetings.

CELA was the sole environmental representative from Ontario invited. There was one Quebec conservationist and several U.S. environmentalists. We all banded together, formed principles to use to apply to the negotiation, made extensive joint submissions throughout and tried, though constrained by confidentiality undertakings to involve and prepare others to become involved as Agreement drafts were released.

The environmentalists and some governments advocated for inclusion of First Nations and Tribes from the beginning. The Council of Great Lakes Governors, until late in the process, never acted upon these requests. While some jurisdictions like Ontario, held their own meetings with Ontario Bands throughout the process, they were never included in the Advisory process.

After the first draft was released and elicited a strong negative reaction from the public, Ontario negotiators from the Ministry of Natural Resources established their own 50 member Advisory Panel and directly took advice back from that Panel to the negotiating table.

The Negotiations 2002 – 2005

The Issues

- ♦ Extending the ban on diversions already in place in Canada and in both Provinces to the U.S.
- ♦ The control of in-basin consumptive water use (uses that permanently remove and do not return water back to the Basin)
- ♦ The degree of control on intra-basin diversions
- ♦ The inclusion of climate change provisions

The Negotiations 2002 – 2005

The Issues, con't...

- ♦ The inclusion of the precautionary principle
- ♦ How to include groundwater withdrawals within the regime
- ♦ Giving conservation requirements teeth
- ♦ How to remain flexible to reflect improved scientific understanding
- ♦ Providing for public enforcement and arbitration

The Negotiations 2002 – 2005

The Issues, con't...



- ♦ Requirement to track cumulative impacts
- ♦ Including an improvement standard
- ♦ How to deal with future increases to the historic Chicago Diversion

The Negotiations 2002 – 2005

The Issues, con't...

- ♦ How to deal with straddling communities
- ♦ How to deal with straddling Counties
- ♦ What withdrawal levels should trigger Annex requirements

The Negotiations 2002 – 2005

The Process

- ♦ After 2 years of negotiations, the first Drafts of the agreements were released in the summer of 2004 for 90 days consultations and hearings. Huge opposition to those drafts came from Canadians

The Negotiations 2002 – 2005

The Process, con't...

- ♦ After a further year of hard negotiations, a second Draft was released for a 60-day public review in the summer of 2005... WITHOUT HAVING THE CONSENT OF ALL THE PARTIES
- ♦ There was considerable pressure to conclude the negotiations by early November 2005 when most States were ramping up for election campaigns in November 2006

The Negotiations 2002 – 2005

The Process, con't...

- ♦ Between September 2005 and the signing of these Agreements on December 13, 2006, fundamental issues were still under negotiation. A very effective lobby by the Council of Great Lakes Industries and communities outside the Great Lakes resulted in some retreat from positions long negotiated and compromised.

The Outcome

For the first time in the Great Lakes we have ecologically-based standards to apply to decisions on large withdrawals and consumptive uses.



The Outcome, con't...

- ♦ These standards require that:
 - All water taken be returned to the same watershed
 - There will be no significant individual or cumulative adverse impacts to the water and water dependent natural resources of the Basin
 - Conservation measures will be used

The Outcome, con't...

- All applicable laws and treaties will remain in force
- The proposed use must be reasonable. That is: efficient, balance economic and social development with environmental protection, weight the supply potential of the source water quality and quantity, the degree and duration of any adverse impact, avoidance or mitigation of those impacts and restoration of hydrologic conditions and functions of the source watershed

Other Provisions:

- ♦ Prior Notice and Comment are required for all proposals for consumptive uses over 19 million litres/day or greater
- ♦ Consensus-based regional review of proposed diversion exceptions is required. This puts Ontario and Quebec in the room for the first time to participate in these decisions. These exceptions include Straddling Communities, Straddling Counties, and some Intra-basin diversions. Additional strict standards and criteria must be met for these exceptions

Counties of the Great Lakes Basin



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Counties of the Great Lakes Basin



Other Provisions, con't...

- ♦ Ontario and Quebec input will be sought for any increases to the Chicago Diversion in the future. However, all withdrawals in Illinois have been exempted from the decision-making framework of this agreement as they are administered by the Supreme Court Decree cap of 3200 cubic feet per second
- ♦ Additionally, each jurisdiction must develop and implement water conservation and water use efficiency programs within 2 years and submit annual reports on these programs
- ♦ Collect water-use data to a central repository and report every 5 years on water management programs

- ♦ Collectively, all 10 jurisdictions have to create a Regional Body with representation from each State and Province. This body will develop an overall strategy to:
 - Improve scientific understanding
 - Conduct cumulative impacts analysis
 - Maintain the water use database
 - Create a regional dispute resolution process
 - Review proposals for exemptions, water management and conservation reports
 - Seek judicial review, and
 - Dialogue with and seek input directly from First Nations and Tribes

Influential forces that shaped the Agreements

- ♦ Geopolitical forces in North America and within the Great Lakes Basin
- ♦ Current existing legal protections in Canada, the U.S. and bi-nationally
- ♦ Concerns about globalization and international trade agreements
- ♦ Concerns about the impacts of climate change in the Great Lakes

Influential forces that shaped the Agreements, con't

- ◊ Water pressures outside the Great Lakes
 - The Devils Lake Decision
- ◊ Near neighbours to the Great Lakes
- ◊ Public response to Agreement drafts
- ◊ Powerful and influential lobbyists
- ◊ Inclusiveness of negotiators
- ◊ In Ontario, regard for and integration of the Agreements with the complete new water management and protection regimes that have flowed from the Walkerton tragedy

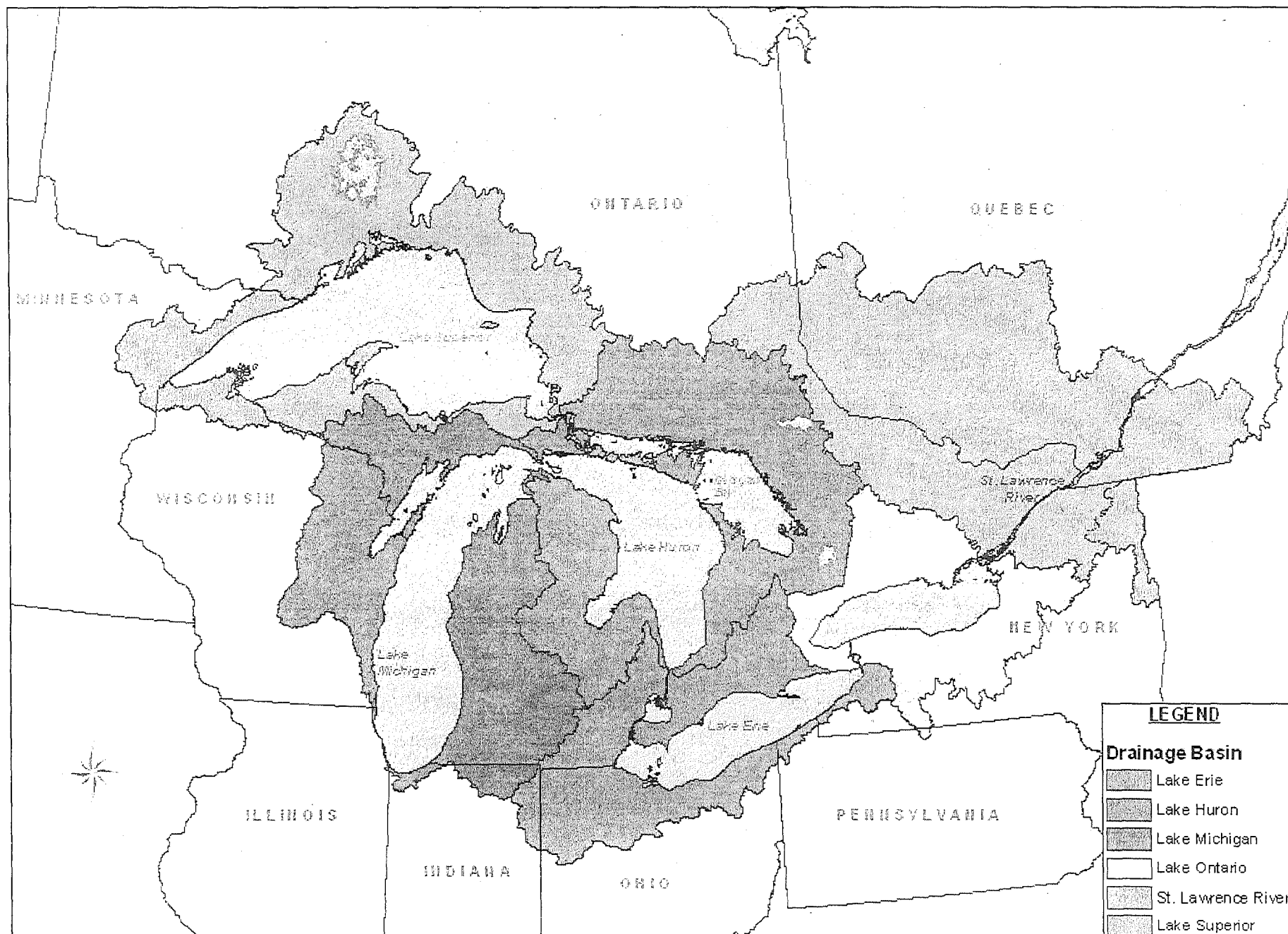
What might the future bring?

- ♦ These agreements have to be passed into law in 8 State legislatures
- ♦ They need to pass the U.S. Congress
- ♦ In Ontario, they need to be put into regulations amending the sections in the Ontario Water Resources Act dealing with Permits to Take Water
- ♦ In Quebec they will need to be integrated with new water legislation under development

- ♦ Will these agreements be implemented in time to apply to pressures building in the Basin from areas in straddling counties and straddling communities such as Waukesha, Wisconsin who has already made it known they will be asking for Great Lakes Water soon.
- ♦ Will trade agreements change to make it easier for water to become tradable in the marketplace, as many entrepreneurs would like?
- ♦ Will Great Lakes states with much more permissive water allocation systems tighten up these systems over time?
- ♦ Will better understanding of groundwater connections to the Great Lakes lead to revised Basin boundaries in these Agreements?
- ♦ Will the growing water crisis in the US southwest lead to federal intervention forcing our region to share water? This concern has kept Ontario negotiators at the table.

The Ministry of Natural Resources conducted their own geo-political research that showed that:

- ♦ The trend of population shifts from the Great Lakes Region to the fast growing U.S. southwest will continue
- ♦ Proportional representation (based on population) will give the southwest more clout in Congress
- ♦ As political influence grows in the area, water shortages will increase because the main aquifer feeding the southwest continues to be depleted.
- ♦ This makes it very important to ensure that these Agreements are passed and implemented as soon as possible.



Great Lakes Basin

0 35 70 140 210 280 Kilometers



This map is for illustrative purposes only. Do not rely on it as a precise indicator of water locations.
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