

**Submission from the Government of Canada
to the
Council of Great Lakes Governors
on the Proposed
Great Lakes Basin Sustainable Water Resources Agreement and
Great Lakes Basin Water Resources Compact
January 7, 2005**

International Obligations

1. The Great Lakes and St Lawrence River are of national importance to Canadians and, as a result, the Government of Canada is committed to protecting the Great Lakes / St. Lawrence ecosystem for the long term. As a Party to the *Boundary Waters Treaty* of 1909 and therefore responsible, together with the United States, for the rights and obligations contained in the Treaty, Canada considers the Treaty to be fundamental to managing and protecting the shared waters of the Great Lakes.

2. Obligations under the *Boundary Waters Treaty* (BWT) and *Great Lakes Water Quality Agreement* (GLWQA) are unaffected by the proposed agreements. Any project that affects the natural level or flow of boundary waters will require an independent approval by the International Joint Commission (IJC), or a special agreement by the governments of Canada and the United States, as specified in the Treaty. The Parties have also agreed to not pollute waters on the other side of the boundary and to restore and maintain the chemical, physical and biological integrity of the Great Lakes / St Lawrence Basin Ecosystem. Canada notes the references to the BWT and the IJC in the preamble to the proposed agreements, however, in the light of the obligations under the Treaty and the purpose of the GLWQA, specific references in the main text, including appendices, should be included in the final agreements.

Canadian Prohibition on Out-of-Basin Diversions

3. Canada's amendments to its *International Boundary Waters Treaty Act* and regulations, which prohibit bulk removal of boundary waters out of their water basins, principally from the Great Lakes / St. Lawrence Basin in Canada, came into effect on December 2002. The prohibition is a non-discriminatory environmental measure of general application aimed at preserving the integrity of ecosystems and communities within water basins that depend on a sustainable supply of water. All provinces and territories have adopted similar measures, based on scientific principles, sustainable management and the precautionary approach. These provide effective means of minimizing the spread of pollutants, invasive alien species and pathogens – all matters of concern for the Great Lakes.

4. Canada encourages the Council of Great Lakes Governors to afford the same level of protection and certainty in its proposed Great Lakes Basin Sustainable Water Resources Agreement and associated interstate compact on these shared resources. International trade obligations do not prevent Canada and the United States from taking measures to protect water resources and preserve the integrity of the Great Lakes / St. Lawrence basin ecosystem. The

Government of Canada is concerned that by allowing out-of-Basin diversions, the proposed agreements may lead to removals out of the Basin, that would be a permanent loss of water.

Advice of the International Joint Commission

5. Canada recognizes the critical and ongoing role of the International Joint Commission (IJC), established by the *Boundary Waters Treaty* (1909). This important binational organization has provided essential advice and guidance to governments in Canada and the United States on a wide range of matters pertaining to boundary and transboundary waters, including issues of water quality and quantity. In particular, the Commission's February 2000 report, *Protection of the Waters of the Great Lakes* and the recent August 2004 review, provide comprehensive advice to governments on many of these important issues, including water uses, cumulative effects, climate change, groundwater, conservation and legal and policy considerations.

Specific Comments

6. Canada appreciates the efforts of the eight Great Lakes states, Quebec and Ontario to develop new standards for regional review, management and regulation of water in the Great Lakes / St. Lawrence Basin. In particular, the conservation goals to promote the efficient use and minimize water withdrawals are welcomed and should include specific targets and time frames, based on sound science. The inclusion in the proposed agreement of groundwater, reporting requirements, sharing of accurate and comparable data, cumulative effects assessment, water programs and the procedures manual, will be of critical importance to future Great Lakes water sustainable management. It will be important that all jurisdictions implement these provisions and the appendices in a consistent manner and to give effect to the new standards within the Great Lakes / St. Lawrence Basin.

7. The threshold for regional review of uses within the Basin is based on estimates of consumptive use and not on proposed withdrawals of water. This would mean that only very large withdrawals would be reviewed. In addition, much research needs to be done to strengthen the scientific basis for designated thresholds, consumptive uses and their impacts, including the need for research on consumptive use coefficients for various water uses. The agreements are too permissive, as there is no maximum level for water withdrawals, nor recognition that the protection of tributaries, connecting channels or wetlands of national or binational interest may require specific consideration.

8. Applicants for new or increased withdrawals would be required to submit an improvement plan for the waters or water dependent natural resources. While resource improvement is valuable in itself, as a means of ensuring ecological integrity, given the unique importance of water and its finite supply, a proposed improvement should not be used to offset harm to aquatic or other natural resources. In addition, projects should first receive an environmental assessment where appropriate, which is not specified in the agreements. Regional coordination should facilitate broad-based public participation in all stages of assessment, review and implementation, including with First Nations.

9. It is not apparent to the Canadian government why the proposed agreements allow for any exceptions to the provisions for managing Great Lakes water. Notably, the Chicago diversion - the largest diversion out of the Great Lakes - is not subject to the proposed agreements.

10. The proposed agreements are silent on climate change. In this respect, climate change research and the associated vulnerability of the Great Lakes is critical for making sound choices on the management of the basin's water. Water level decreases of some degree are likely, but the timing of the impact of climate change on the Great Lakes is uncertain. The interaction of human activity and climate variability could have dramatic effects. Therefore, Canada suggests that these agreements should be written within the context that climate change could have important implications for water supply to the Great Lakes / St. Lawrence Basin.

11. Canada appreciates that there was an urgent need to conduct public consultations on the proposed agreements and it is the intent of the Council to resume negotiations, to further refine language and concepts in the agreement. Stronger agreements and greater precision are required to afford the highest possible level of protection for the Great Lakes /St Lawrence Basin, to ensure that the proposed water management regime is consistent with the *Boundary Waters Treaty* and other international obligations and to reduce exposure to potential legal challenges. Once finalized, the agreements must require states and provinces to adopt and implement measures, to ensure compliance.

Conclusion

12. Canada recognizes the important role that members of the Council of Great Lakes Governors, including Quebec and Ontario, play in the protection of the ecological integrity of the Basin and in the promotion of sustainable management. However the Canadian government is concerned that the proposed agreements do not afford a sufficient level of protection to the waters of the Basin and should therefore be strengthened. Canada looks forward to an on-going dialogue with the Council and its members on the development of the implementing agreements. In the future, challenges to environmental protection and sustainable development in the Great Lakes / St. Lawrence Basin are expected to increase, requiring an enduring commitment from all jurisdictions.