

19/08/2003  
ANNEX MUST HAVE  
2004  
8/11/2003

To: the Annex ENGO Group of Twelve  
From: Sarah Miller, CELA

### Revisiting Our Annex Bottom Line

I would like to discuss a variety of concerns I have about the Annex and hope we can set up a call to do this soon.

The Canadians involved in this process are under a lot of pressure as the results of the public consultation here were to strengthen the Annex considerably from the last draft. If we want international action we are going to have to address these concerns. This is an opportunity to use the Canadian opposition and the public response to strengthen the Agreement so it is much more in keeping with our original principles we had going into the negotiations three years ago.

### The Canadian Federal Government

The Federal Standing Committee on Environment and Sustainable Development just held hearings on the Annex and it is clear from their recommendations that anything that falls short of the IJC 2000 recommendations will not be acceptable to the Canadian Government. They have even asked the IJC to revisit their recommendation on no net loss greater than 5 percent (the average loss of all consumptive uses within the Great Lakes Basin). This is because they heard testimony on the cost to hydropower of a 5% loss of flow along the Niagara and St. Lawrence.

### Standing Committee on Environment and Sustainable Development Recommendations

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## LIST OF RECOMMENDATIONS

### Recommendation 1

The Committee therefore recommends that, in its response to the Council of Great Lakes Governors, the Canadian government urge the Governors and the Premiers to base the criteria in the Standard on the Precautionary Principle.

### Recommendation 2

The Committee therefore recommends that, in its response to the Council of Great Lakes Governors, the Canadian government urge the governors and the premiers to include specific language in the Agreements stating clearly that in the final analysis of proposals for water removal, the *Boundary Waters Treaty* will prevail and that the IJC must remain the final arbiter of decisions regarding such proposals.

### Recommendation 3

The Committee therefore recommends in the strongest of terms that, in its response to the Council of Great Lakes Governors, the Canadian government urge the governors and the premiers to revise and strengthen the Agreements. In so doing the Agreements should adopt the language and the intent of the recommendations of the IJC as outlined in their year 2000 report on the Protection of the Waters of the Great Lakes as minimum requirements for the approval of projects to remove water from the Great Lakes Basin, as the IJC has recommended.

### Recommendation 4

The Committee recommends that, until the IJC is satisfied that the Agreements meet their recommendations and that their implementation will not cause harm to the ecological integrity of the Great Lakes Basin, Foreign Affairs Canada adopt the position of placing a moratorium on any new bulk sales or removals of surface water or groundwater from the Great Lakes Basin, and that the Government of Canada recommend this position in its response to the Council of Great Lakes Governors.

### Recommendation 5

The Committee therefore recommends that the Canadian government remove its support for the 5% maximum use threshold which it considers to be too high and urge the IJC to revisit this provision of its year 2000 recommendations.

#### Recommendation 6

The Committee recommends that the Canadian government, with the Department of the Environment as lead agency, carry out an interdepartmental analysis of its scientific capacity in freshwater research as well as federal water policy and that it report back to the Committee the results of this analysis. Subsequent to this, the Committee recommends that, in its efforts to reallocate money between and within departments to priority areas, the government apportion, in a coordinated manner, significantly increased resources to freshwater research.

#### Recommendation 7

The Committee recommends that the Canadian government more fully explore its referral options under the *Boundary Waters Treaty* and that it support the IJC by supplying it with more timely information, better following up on its recommendations, and ensuring that its resources are adequate.

The Departments of Foreign Affairs and Environment are now preparing the official Canadian Federal Government position on the

Annex. This position, that will take the Committee Recommendations into account, is expected shortly.

### **The Province of Ontario**

At the last Annex meeting, in response to public comment, Ontario circulated the following press release stating that the current level of protection in the Annex is not high enough.

[http://www.mnr.gov.on.ca/mnr/csb/news/2004/nov15nr\\_04.html](http://www.mnr.gov.on.ca/mnr/csb/news/2004/nov15nr_04.html)

They want

- a no diversions agreement,
- no net loss as proposed by the IJC, and
- conservation measures significant for the Great Lakes Basin.

Ontario is establishing their own Annex Advisory Group and is likely to invite GLU and CELA to participate. This presents some strategic problems we need to discuss.

### **U.S. Jurisdictions**

While I have never been clear on any of the States actual positions, it seems to me that in the U.S. now the debate is being framed around what will pass through the state legislatures. It is totally unclear if each legislature has a different bottom line. Hall -Allan was forged in this atmosphere of what will fly.

### **Aboriginal Summit**

The meeting held in Sault Ste. Marie, Michigan has resulted in a First Nation coalition on the Annex. Here is the statement they issued.

#### **Indigenous Nations unite for inclusion in Great Lakes decision-making process**

SAULT STE. MARIE, Michigan (November 23, 2004) – Representatives from every Ontario First Nation in the Great Lakes basin, and most of the Native American Indian Tribes in the Great Lakes basin united together in Sault Ste. Marie, not as individual communities – but as one: the Indigenous Nations of the Great Lakes.

In an unprecedented gathering of intertribal leaders – Grand Chiefs, First Nation Chiefs, Tribal Chairpersons, and Ogimaag from both sides of the border signed a Great Lakes Water Accord. This document, signed by the leaders and consecrated by the Sacred Pipe, identifies a number of united principles, values, concerns and demands expressed by Indigenous Leaders.

The meeting and Great Lakes Water Accord were convened in response to the propagation of the Great Lakes Charter, Annex 2001. The Annex, signed between the two provinces, and eight states is an addendum to the Great Lakes Charter which governs the Great Lakes eco-system and resources that are shared within these jurisdictions.

The Indigenous Nations of the Great Lakes have united, and unanimously reject the Great Lakes Charter Annex, the commodification, diversion and export of water, and the lack of inclusion in the intergovernmental process.

"We're bringing all our voices together as one. This Great Lakes Water Accord aims to do that," said Frank Ettawageshik, Tribal Chairman of the Little Traverse Bay Band of Odawa Indians, and co-chair for the International Indigenous Great Lakes Water Resources Meeting. "We understand there is a responsibility to make sure those lakes are there for seven generations."

"We were put here on this earth to look after the lakes," said John Beaucage, Grand Council Chief of the Anishinabek Nation, and co-chair for the meeting. "These governments signed these agreements without consulting us, or without understanding our ties to the land and these waters."

Participants and signatories included the Union of Ontario Indians, representing 42 First Nations; the Association of Iroquois and Allied Indians, representing 8 First Nations; Nishnawbe-Aski Nation, representing 49 First Nations, as well as over 44 individual Tribes from Ontario, New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota.

The meeting, which brought together over 150 individual Tribal representatives, developed a consensus on a wide number of issues, including the need to be an integral part of the decision-making process; and that the Indigenous Nations have never surrendered the water resources and lake beds, and therefore retain ownership of the Great Lakes.

"Simply, we want to be a part of the decision-making process, and recognized as a jurisdictional government on the Great Lakes system that has to be advised and sought for approval," said Grand Council Chief Beaucage. "One thing is clear, there isn't just two provinces and eight states claiming jurisdiction on this matter. In actuality, there are over 70 jurisdictions."

"We should have a seat on the International Joint Commission, and the Great Lakes Board of Governors. We should have equal jurisdictional stake in this important decision-making process," said Tribal Chairman Ettawageshik. "We are not seeking only one seat, but a seat for American Indian Tribes, and a seat for Canadian First Nations. We are governments, not stakeholders."

The leaders have also agreed to come together in the future to discuss the direction of the Great Lakes resources, and other water resource issues.

View the Great Lakes Water Accord at:

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

### **Where does this take us next?**

I think we need to second-guess this mess. Will the ten jurisdictions be willing to risk the loss of faith from the public, First Nations, the IJC and the Federal governments that walking away from the table will bring? How much is it all posturing? What is the risk to them of the do-nothing scenario? Even the biggest critics think the status quo is not adequate.

### **Opportunities**

We now have a public response that says no diversions and much improved conservation and inclusion of the precautionary principle are the top priorities.

We now have the media and politicians focused and sensitized to how the Annex will change to accommodate these expectations.

We have indigenous parties who need to be included and heard who may insist on stronger protections.

I think we need to respond with some new focuses now that we have heard the strong response from the consultation. There has been a conscious effort by the CGLG not to quantify the public response. So we should assume that it is as generalized above and reported at the last meeting. **I think this gives us a new higher ground to stand on and that we can try to reclaim ground lost in the process so far.**

### **Improvement Standard**

#### **Problem**

The slippery slope society feels that the Improvement Standard is putting a For Sale sign in Great Lakes Water. It is hard to argue that that will not be the outcome because we currently have no improvement plan in place that the ten jurisdictions are implementing or willing to support. I think that there is a way to handle this.

#### **Solution**

I think the improvement standard is a good idea whose time has not yet come. To insure that we grow into it, I would like to recommend that the Annex commits governments to the Basin Water Resources Management Program (promised in the 1985 Charter) that sets out long term goals and priorities for water management in the Great Lakes. There should be a deadline of no more than two years to produce this plan which should also include may of the IJC 2000 expectations that are not being addressed in the current draft of the Annex.

#### **Additional benefits**

Climate change programs to prevent further Great Lakes contributions to degradation in the basin,  
A basin-wide hydrological improvement program upon which improvement standards can be based,

Measures to ensure return flow quality and prevention of the introduction of invasive species...etc.

### **For Discussion**

I would like to suggest we strongly reject all unilateral non-regional solutions as being harmful and counter to the ecosystem approach.

We need to come up with ways and language to build the precautionary principle into the Annex.

We need to discuss how to turn the Annex into a no diversion document.

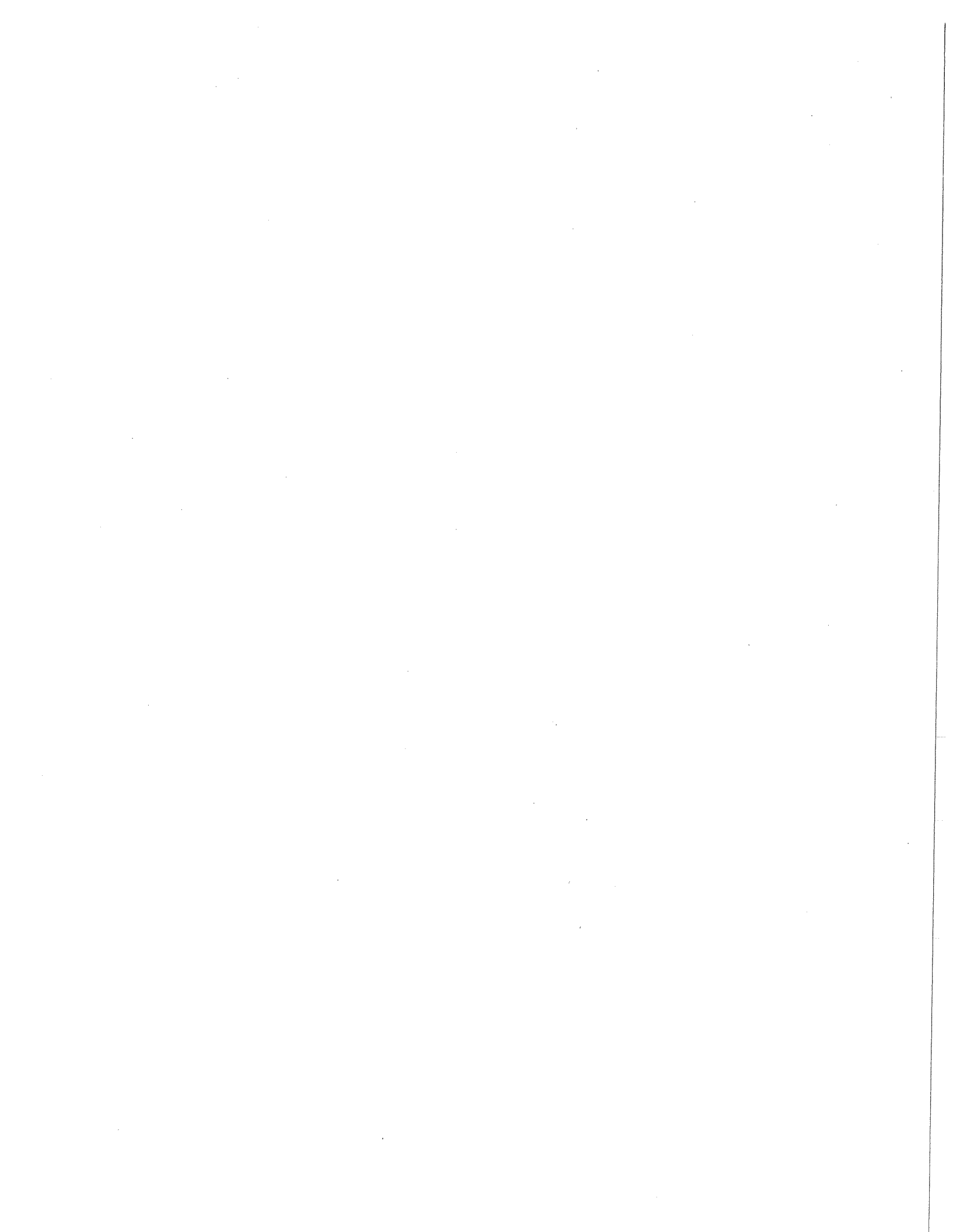
We need to discuss no net loss.

We need to discuss strengthened conservation.

I would like to suggest that we ask for conservation targets and timetables for reducing current use of Great Lake water to be included in the Annex. They can start out general but there needs to be a commitment to have specific sector based standards within two years. This is an expectation of the IJC 2000 report.

I think we must still insist on making all significant losses from the Basin subject to the Annex. This includes consumptive use.

We need to discuss how we work constructively with the indigenous efforts.





## **A Review of the Decision-making Standard and Procedures Manual**

Approach:

Are there parts of the decision-making standard or implementation manual that should be in the Regional Agreement or the Compact to strengthen them?

Are there parts of the manual that should be added to the Compact, Regional review or to the decision-making standard to improve understanding and strengthen implementation?

Are there areas that are confusing, inconsistent or not clear?

Are there areas we do not agree with and want changed?

Assessing alternatives is limited to within the Lake Basin of the proposed withdrawal. Why are we not requiring applicants from outside the basin to assess alternatives closer to home as well as options within the basin. There could well be solutions closer at hand that have been overlooked.

