



**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

April 15, 2002

Brenda Lucas  
Program Manager  
The Walter & Duncan Gordon Foundation  
Program Manager  
11 Church Street Suite 400  
Toronto, Ontario  
M5E 1W1

Dear Brenda,

**Re: Great Lakes Charter Annex Proposal**

Thank you for speaking with me about a potential grant to defray travel costs for the Canadian Environmental Law Association (CELA) involvement in three parallel efforts to further sustainable water policy work in the Great Lakes. Some very important opportunities have arisen over the past few months that have the potential to entrench long overdue water protection in the Great Lakes.

CELA has had a strategic focus on water resource law reform for the last five years. We have included a short summary of this work ( Attachment 1 ). Since last fall CELA has been participating in a Stakeholder Advisory Committee to the Great Lakes Commission on a wide ranging project to provide a decision support framework to the Great Lakes Charter Annex. In February 2002, CELA was invited to be on an Advisory Committee to the Great Lakes Governors and Premiers on the implementation of their proposed Great Lakes Annex. Parallel with these efforts we have also been working steadily with other ENGOS around the basin to co-ordinate our input into these two efforts. Unfortunately, none of the invitations to participate in these efforts came with budgets to help defray the travel, communication and accommodation costs of our involvement.

As the result of concerns about bulk water withdrawals of water from the Great Lakes, the Great Lakes Governors and Premiers committed, last summer that they would be entrenching Great Lakes protections in a binding agreement, Annex 2001 (Attachment 2), between Great Lakes jurisdictions over the next three years. However, since most of the US governors are up for re-election in November 2002 their Annex 2001 time table has suddenly been advanced to early fall 2002. CELA has been invited by the Council of Great Lakes Governors to be the only Ontario environmental non-governmental environmental group to serve on an Advisory Committee to the Governors Great Lakes Water Management Initiative. This is exciting for many reasons. It gives us access at the diplomatic level at the international negotiating table, and allows us to assist in

putting forth the first resource improvement based standard anywhere in North America. This standard could well start a new precedent and methodology for weighting the environmental impacts of many different projects. As the CELA representative, I already attended the first negotiation meeting in Washington D.C. March 14 -15,2002. Over the next six months they are predicting at least three further meetings, in Quebec City, Chicago and perhaps again in Washington. Post September 11, 2001 there have been funding freezes and governments will not pay participant expenses.

I have enclosed my letter of invitation and their work plan for your information (Attachment 3). The Ontario government and Quebec are also at the table and taking very strong positions that I feel it is important to support. I have not gone to them to support our involvement because I feel it is important for us to be independent.

As well, I have been participating in another key part of this work on a Stakeholder Advisory Committee to scientists and experts on a Water Resources Decision Support System working to support the Governors and Premiers Annex 2001 working groups. This work headed by the Great Lakes Commission involves highly technical investigations into models, literature reviews, expert workshops and scenario building exercises that would be relevant to the framing of the resource improvement standard resulting from Annex 2001. I have already attended three of their meetings in Michigan. This work will intensify in order to provide the Governors and Premiers process tangible foundations for building their standard. This will likely mean several more meetings in Michigan in the next few months. No CELA expenses have been covered for this work (Attachment 4).

In 2001, in anticipation of these law reform opportunities, CELA drafted a new *Model Water Law, An Act to Conserve Ontario Waters* (see summary Attachment 5). This project has given us many substantive suggestions to put on the table in these forums an advantage over some of the other expert and government participants. Our work could be seen to already have many elements of a resource improvement standard. Other US environmental groups are borrowing from our work in their campaigns to have their state governments improve their water protection regimes. Parallel with the efforts of the political and technical Committees above, the public will be asked as early as June of 2002 to respond to draft language for the Annex and the resource improvement standard. Great Lakes Jurisdictions have committed to hold public hearings or consultations with the public over the summer. There will be a big demand for CELA to rally public input and to provide resource materials to help others with the highly technical and precedent setting aspects of this work. Already CELA has been invited to a meeting in Chicago to lead a discussion on these issues at the Annual General Meeting of Great Lakes United, the biggest citizen coalition in the region in June of 2002.

With the prohibitive costs of air travel and accommodation and with the telescoped timelines for these important negotiations, CELA will have trouble participating without a budget dedicated to travel expenses over the next six months. This is why we are turning to you on an emergency basis. We often do not know until several weeks in

advance when the next meetings will occur because of the dynamic nature of the political processes driving these efforts. I have tried to estimate what the costs will be in the attached budget.

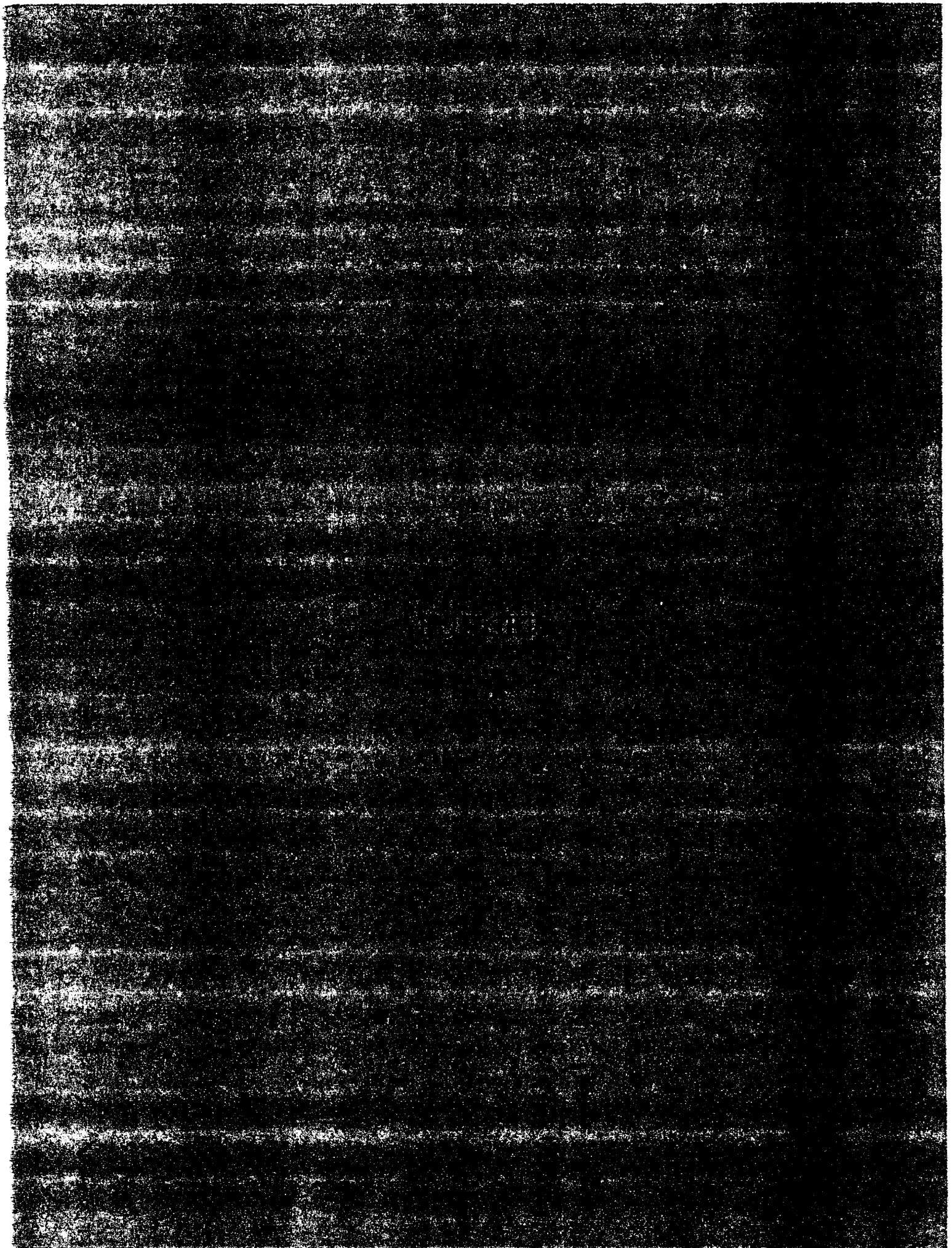
I really appreciate any consideration you can give to funding part of the full budget I have attached, particularly, as it is coming to you unsolicited. I would also welcome any suggestions you might have for other funding sources.

Yours truly,  
Canadian Environmental Law Association

A handwritten signature in cursive script that reads "Sarah Miller".

Sarah Miller  
Co-ordinator

Original proposal with attachments mailed



## Canadian Environmental Law Association

### Draft Travel Budget for Travel Associated with Negotiations of Annex 2001 to the Great Lakes Charter

<b>Airfare round trip from Toronto</b>	
Chicago - two round trips	3,200.00 GLG, GLU
Quebec City - one round trip	1,300.00 GLG
Washington DC - two round trips	2,790.00 GLG
Detroit, Michigan - two round trips	<u>2,312.00 GLC</u>
<b>Subtotal airfares</b>	<b>\$ 9,602.00</b>
(based on mid-week two day travel regular fares quoted by Air Canada March 18, 2002)	

#### Ground Travel

Travel to and from downtown Toronto to Pearson via Hotel Airport bus	
7 trips x \$24.50	245.00
Equivalent Travel from destination Airport to meeting	
7 trips x \$35.00	<u>350.00</u>
<b>Subtotal Ground Travel</b>	<b>\$595.00</b>

#### Subtotal Ground Transport

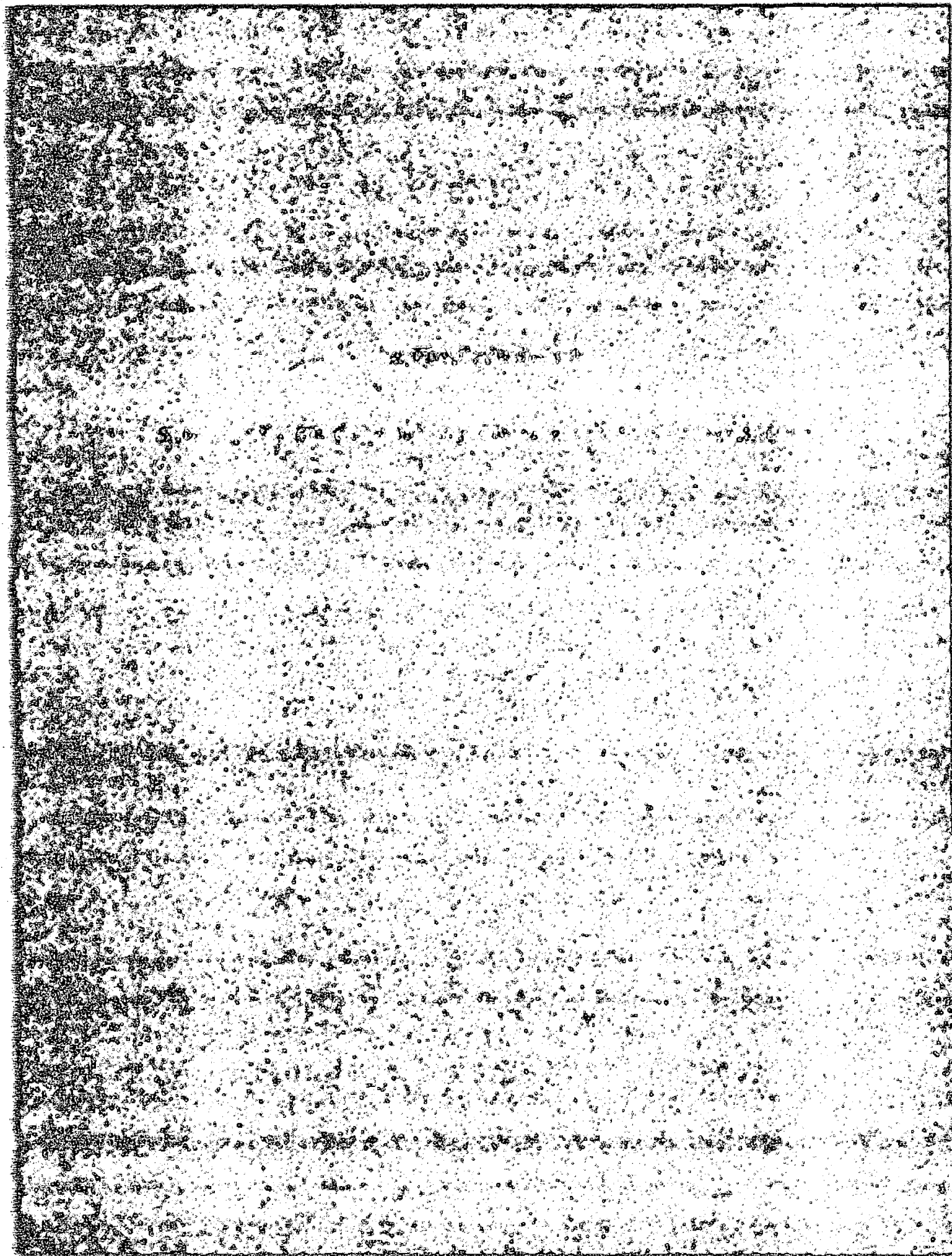
<b>Hotel accommodation</b>	
\$90.00 Canadian 1 nights	90.00
\$90.00 US, \$ 145.00 Cdn. 10 nights	<u>1,450.00</u>
<b>Subtotal Accommodation</b>	<b>\$2,540.00</b>

#### Miscellaneous

To allow for one further trip not yet scheduled	
	<u>\$1,500.00</u>
<b>TOTAL REQUEST</b>	<b>\$14,237.00</b>

#### Abbreviations:

GLG- Great Lakes Governors and Premiers meetings,  
 GLC-Great Lakes Commission meeting,  
 GLU Great Lakes United meeting





**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

**The Canadian Environmental Law Association**

**Background and Issue Work**

The Canadian Environmental Law Association (CELA) is a public interest legal aid clinic. CELA's mandate includes both legal representation of clients with environmental problems, public education and law reform. The organization has been involved in many aspects of water quality, quantity, and sustainability focused on the Great Lakes for the past 30 years.

In the mid -1980s, staff was active in campaigns to strengthen the Great Lakes Charter and its implementation. This has involved working closely in coalitions with the public and First Nations, and in efforts of provincial, state and federal governments in Canada and the US to entrench protection of the waters and the ecosystems of the Great Lakes, St. Lawrence River systems. CELA has made submissions opposing all large water withdrawal proposals made over the past two decades in the Basin and participated in the International Joint Commission (IJC) references on water levels and withdrawals.

CELA, Great Lakes United and the Institute for Agriculture and Trade Policy prepared a discussion paper in 1993, *NAFTA and the Great Lakes: a Preliminary Survey of Environmental Implications*. This report explored concerns about the implications of trade agreement language on future water management. In 1997, CELA and Great Lakes United authored another report, *The Fate of the Great Lakes: Sustaining or Draining the Sweetwater Seas?*. This report surveyed the challenges and future stresses to the security of the water supplies of the Great Lakes ecosystem.

In 1998, the Canadian Environmental Law Association received standing in the Environmental Appeal Hearing on the permit issued to the NOVA Group of Sault Ste, Marie Ontario to export water in bulk carriers from Lake Superior to the orient.

In 2000, CELA responded to a growing number of calls from Ontarians concerned about depletion of their ground water supplies by commercial interests and the cumulative impacts of the Provinces liberal water-taking permitting regime. The need to reform this system, promote more watershed-based management and decision-making while addressing the lack of funds for water data gathering and research became a priority. Consequently, CELA launched a law reform campaign with a new Model Water Law, *An Act to Conserve Ontario Waters*. This Act could serve as a precedent for standard setting for other Great Lakes jurisdictions involved in the Annex 2001 deliberations.

In 2001, CELA represented the Concerned Walkerton Citizens in a sweeping public inquiry into the tragic deaths and illness in a rural Ontario town from contamination from cattle of their drinking water from e-coli 0-157. It is expected that Part 2 of this Inquiry, which exhaustively examined the Province's water protection regime, will result in recommendations for broad policy reforms to water management when released this spring.

As well, CELA worked with a number of Great Lakes groups to develop a consensus submission on the proposed Annex 2001 to the Great Lakes Charter proposed by the states and provinces.

CELA is also involved with Water Watch coalitions concerned about increased control of public water services by private water companies.

CELA also has programs in children's health, pollution prevention, and trade and the environment.

ALFA ROMEO

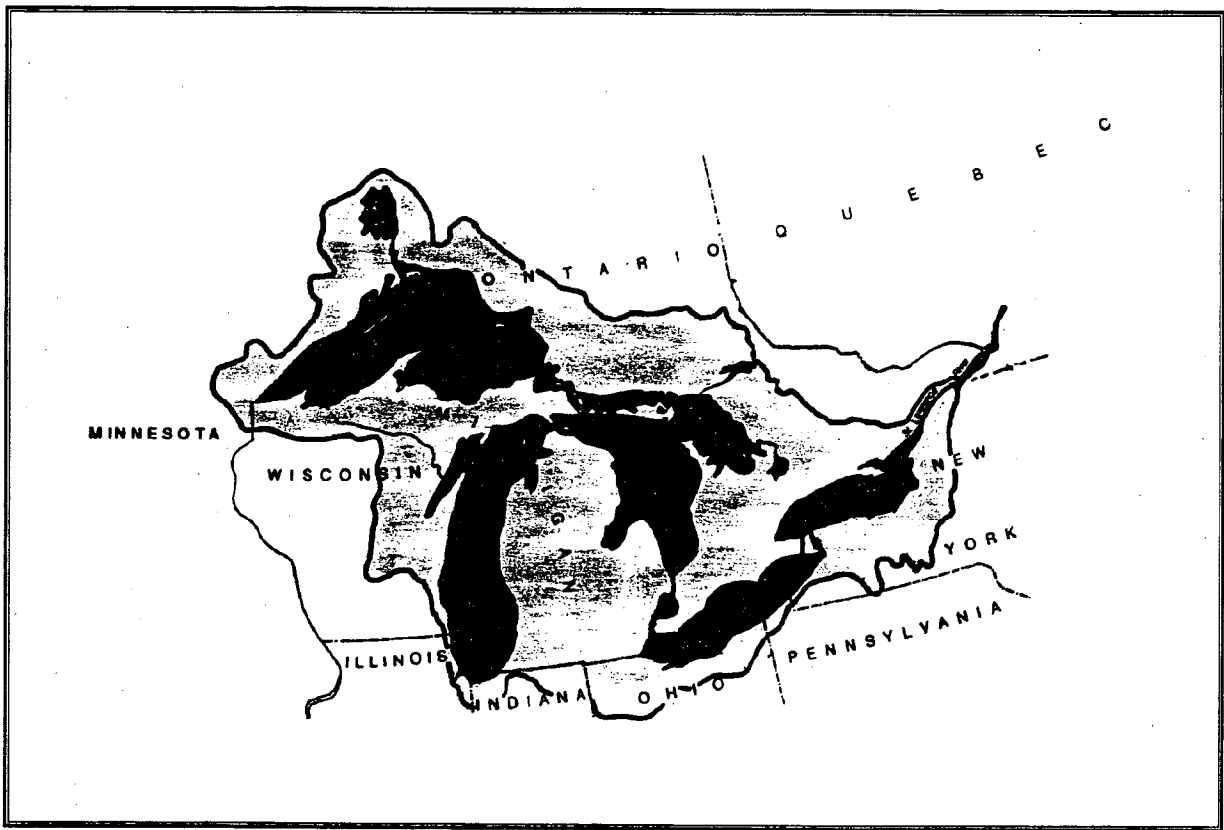
1900-1901



# The Great Lakes Charter Annex

## A Supplementary Agreement to The Great Lakes Charter

June 18, 2001



# Annexe à la Charte des Grands Lacs

## Entente additionnelle à la Charte des Grands Lacs

18 Juin 2001

# THE GREAT LAKES CHARTER ANNEX

## A SUPPLEMENTARY AGREEMENT TO THE GREAT LAKES CHARTER

June 18, 2001

### FINDINGS

The Great Lakes are a bi-national public treasure and are held in trust by the Great Lakes States and Provinces. For the last sixteen years, the Great Lakes Governors and Premiers have followed a set of principles to guide them in developing, maintaining, and strengthening the regional management regime for the Great Lakes ecosystem. Protecting, conserving, restoring, and improving the Great Lakes is the foundation for the legal standard upon which decisions concerning water resource management should be based.

There has been significant progress in restoring and improving the health of the ecosystem of the Great Lakes Basin. However, the Waters and Water-Dependent Natural Resources of the Basin remain at risk of damage from pollution, environmental disruptions, and unsustainable water resource management practices which may individually and cumulatively alter the hydrology of the Great Lakes ecosystem.

### PURPOSE

In agreeing to this Annex, the Great Lakes Governors and Premiers reaffirm their commitment to the five broad principles set forth in the Great Lakes Charter, and further reaffirm that the provisions of the Charter will continue in full force and effect. The Governors and Premiers commit to further implementing the principles of the Charter by developing an enhanced water management system that is simple, durable, efficient, retains and respects authority within the Basin, and, most importantly, protects, conserves, restores, and improves the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.

State and Provincial authorities should be permanent, enforceable, and consistent with their respective applicable state, provincial, federal, and international laws and treaties. To that end, and in order to adequately protect the water resources of the Great Lakes and the Great Lakes ecosystem, the Governors and Premiers commit to develop and implement a new common, resource-based conservation standard and apply it to new water withdrawal proposals from the Waters of the Great Lakes Basin. The standard will also address proposed increases to existing water withdrawals and existing water withdrawal capacity from the Waters of the Great Lakes Basin.

## **DIRECTIVES**

The Governors and Premiers put forward the following DIRECTIVES to further the principles of the Charter.

### **DIRECTIVE #1**

#### ***Develop a new set of binding agreement(s).***

The Governors and Premiers agree to immediately prepare a Basin-wide binding agreement(s), such as an interstate compact and such other agreements, protocols or other arrangements between the States and Provinces as may be necessary to create the binding agreement(s) within three years of the effective date of the Annex. The purpose of the agreement(s) will be to further the Governors' and Premiers' objective to protect, conserve, restore, improve, and manage use of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin. The agreement(s) will retain authority over the management of the Waters of the Great Lakes Basin and enhance and build upon the existing structure and collective management efforts of the various governmental organizations within the Great Lakes Basin.

### **DIRECTIVE #2**

#### ***Develop a broad-based public participation program.***

The Governors and Premiers commit to continue a process that ensures ongoing public input in the preparation and implementation of the binding agreement(s) called for in this Annex. Included in this process will be periodic progress reports to the public.

### **DIRECTIVE #3**

#### ***Establish a new decision making standard.***

The new set of binding agreement(s) will establish a decision making standard that the States and Provinces will utilize to review new proposals to withdraw water from the Great Lakes Basin as well as proposals to increase existing water withdrawals or existing water withdrawal capacity.

The new standard shall be based upon the following principles:

- Preventing or minimizing Basin water loss through return flow and implementation of environmentally sound and economically feasible water conservation measures; and
- No significant adverse individual or cumulative impacts to the quantity or quality of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- An Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- Compliance with the applicable state, provincial, federal, and international laws and treaties.

### **DIRECTIVE #4**

#### ***Project review under the Water Resources Development Act of 1986, §1109, 42 U.S.C. §1962d-20 (1986) (amended 2000).***

Pending finalization of the agreement(s) as outlined in Directive #1, the Governors of the Great Lakes States will notify and consult with the Premiers of Ontario and Quebec on all proposals subject to the U.S. Water Resources Development Act of 1986, §1109, 42 U.S.C. §1962d-20 (1986) (amended 2000) (WRDA), utilizing the prior notice and consultation process established in the Charter. In doing so, the Governors and

Premiers recognize that the Canadian Provinces are not subject to, or bound by, the WRDA, nor are the Governors statutorily bound by comments from the Premiers on projects subject to the WRDA.

#### **DIRECTIVE #5**

*Develop a decision support system that ensures the best available information.*

The Governors and Premiers call for the design of an information gathering system to be developed by the States and Provinces, with support from appropriate federal government agencies, to implement the Charter, this Annex, and any new agreement(s). This design will include an assessment of available information and existing systems, a complete update of data on existing water uses, an identification of needs, provisions for a better understanding of the role of groundwater, and a plan to implement the ongoing support system.

#### **DIRECTIVE #6**

*Further commitments.*

The Governors and Premiers of the Great Lakes States and Provinces further commit to coordinate the implementation and monitoring of the Charter and this Annex; seek and implement, where necessary, legislation establishing programs to manage and regulate new or increased withdrawals of Waters of the Great Lakes Basin; conduct a planning process for protecting, conserving, restoring, and improving the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and identify and implement effective mechanisms for decision making and dispute resolution. The Governors and Premiers also commit to develop guidelines regarding the implementation of mutually agreed upon measures to promote the efficient use and conservation of the Waters of the Great Lakes Basin within their jurisdictions and develop a mechanism by which individual and cumulative impacts of water withdrawals will be assessed. Further, the Governors and Premiers commit to improve the sources and applications of scientific information regarding the Waters of the Great Lakes Basin and the impacts of the withdrawals from various locations and water sources on the ecosystem, and better understand the role of groundwater in the Great Lakes Basin by coordinating their data gathering and analysis efforts. Finally, the Governors and Premiers commit to develop in the new binding agreement(s) the water withdrawal rates at which regional evaluations are conducted and criteria to assist in further defining acceptable measures of Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.

#### **FINAL PROVISIONS**

This Annex shall come into force on the day that all signatures are executed. The Parties have signed the present agreement in duplicate, in English and French, both texts being equally authentic.

#### **DEFINITIONS**

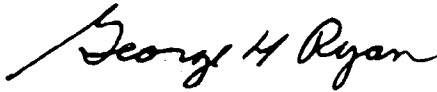
**Waters of the Great Lakes Basin** (also termed in the Great Lakes Charter as "Water Resources of the Great Lakes Basin") means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.

**Water-Dependent Natural Resources** means the interacting components of land, water, and living organisms affected by the Waters of the Great Lakes Basin.

**Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin** means additional beneficial, restorative effects to the physical, chemical, and biological integrity of the Waters

and Water-Dependent Natural Resources of the Basin, resulting from associated conservation measures, enhancement or restoration measures which include, but are not limited to, such practices as mitigating adverse effects of existing water withdrawals, restoring environmentally sensitive areas or implementing conservation measures in areas or facilities that are not part of the specific proposal undertaken by or on behalf of the withdrawer.

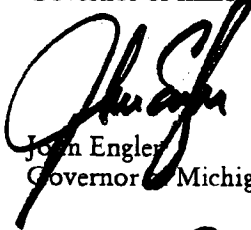
*Signed and entered into the 18<sup>th</sup> day of June 2001.*



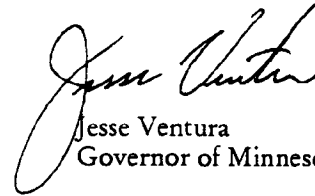
George H. Ryan  
Governor of Illinois



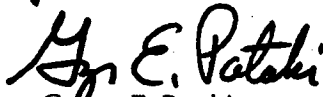
Frank O'Bannon  
Governor of Indiana



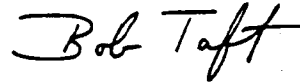
John Engler  
Governor of Michigan



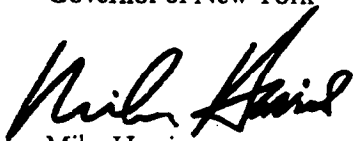
Jesse Ventura  
Governor of Minnesota




George E. Pataki  
Governor of New York



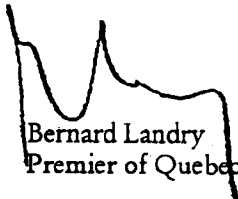
Bob Taft  
Governor of Ohio



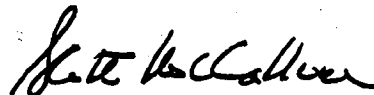
Mike Harris  
Premier of Ontario



Tom Ridge  
Governor of Pennsylvania



Bernard Landry  
Premier of Quebec



Scott McCallum  
Governor of Wisconsin

# COUNCIL OF GREAT LAKES GOVERNORS

## PRESS RELEASE

October 15, 1999

Contact: Maggie Grant  
Jeff Edstrom  
312-407-0177

### **GREAT LAKES GOVERNORS REAFFIRM THEIR COMMITMENT TO THE PROTECTION OF THE GREAT LAKES WATERS AT THE SEVENTEENTH ANNUAL COUNCIL OF THE GREAT LAKES GOVERNORS LEADERSHIP SUMMIT**

(CLEVELAND, OHIO) The Great Lakes Governors today issued a statement at their seventeenth Annual Leadership Summit outlining a set of principles that they have and will continue to use to guide them in developing, maintaining and strengthening their collective management of the Great Lakes ecosystem. They also pledged to develop a new agreement to more closely plan, manage and make decisions regarding the protection of the Great Lakes, develop a new common standard against which water projects will be reviewed, and secure funding to develop a better base of Great Lakes water use data.

"The management of the Great Lakes brought us together 17 years ago and continues to be the primary focus of our work at the Council of Great Lakes Governors. The waters and water-dependent resources of the Great Lakes Basin are precious public resources shared and held in trust by the Great Lakes states and provinces," said Governor Tom Ridge of Pennsylvania and Chairman of the Council of Great Lakes Governors. "As trustees of one-fifth of the world's fresh water, we the Great Lakes Governors, in cooperation with Ontario Premier Mike Harris and Quebec Premier Lucien Bouchard, have a shared duty to protect, conserve and manage the Great Lakes water and ecosystem."

For nearly fifteen years, the eight Great Lakes Governors and Premiers have effectively protected the Great Lakes waters by exercising their collective authority to manage the Great Lakes and its ecosystem. Due to the growth and success of the region, the Governors are now faced with a heightened demand placed on Great Lakes water.

"Though infrequent, requests for diversions have the potential to dramatically impact the Great Lakes ecosystem. Our water will only become more valuable so we should develop standards now to guide future decisions so these resources continue to thrive," said Ohio Governor Bob Taft. "Our states have managed the Great Lakes well and that stewardship shows. Only our continued effort and vigilance will protect that legacy for the next generation."

The Governors direct authority over the Great Lakes waters is through the Great Lakes Charter of 1985 and the U.S. Water Resources Development Act of 1986 (WRDA). Under the Charter, the Governors notify and consult with each other and the Premiers of Ontario and Quebec on proposals for diversions and consumptive uses of waters within their Great Lakes Basin. Under the WRDA, no bulk export or diversions of Great Lakes waters from the basin can take place without the unanimous approval of all of the Great Lakes Governors.

"Over the last fifteen years, the Great Lakes Governors have abided by a set of principles when managing the waters of the Great Lakes. We live here, we work here and we are best equipped to effectively protect and defend this precious public resource. I will continue to exercise my authority along with my fellow Great Lakes Governors to address any attempts to export Great Lakes water," said Governor John Engler of Michigan. "Any review or change in that authority must lead to strengthening the abilities of those who govern the resource on a day-to-day basis."

The Council of Great Lakes Governors is a non-profit, non-partisan partnership of Governors of the Great Lakes states—Illinois (George H. Ryan), Indiana (Frank O'Bannon), Michigan (John Engler), Minnesota (Jesse Ventura), New York (George E. Pataki), Ohio (Bob Taft), Pennsylvania (Tom Ridge), and Wisconsin (Tommy G. Thompson). Through the Council, the Governors collectively tackle the environmental and economic challenges facing the citizens of the region.



## A STATEMENT ON PROTECTING THE GREAT LAKES: MANAGING DIVERSIONS AND BULK WATER EXPORTS

October 15, 1999

TOM RIDGE  
CHAIRMAN  
*Governor of Pennsylvania*

JOHN ENGLER  
*Governor of Michigan*

FRANK O'BANNON  
*Governor of Indiana*

GEORGE E. PATAKI  
*Governor of New York*

GEORGE H. RYAN  
*Governor of Illinois*

BOB TAFT  
*Governor of Ohio*

TOMMY G. THOMPSON  
*Governor of Wisconsin*

JESSE VENTURA  
*Governor of Minnesota*

MARGARET M. GRANT  
*Executive Director*

The waters and the water-dependent resources of the Great Lakes Basin are precious public natural resources, shared and held in trust by the Great Lakes States and Provinces. As trustees of the Basin's natural resources, we, the Great Lakes Governors, in cooperation with the Great Lakes Premiers of Ontario and Quebec, have a shared duty to protect, conserve and manage the Great Lakes waters and ecosystem.

We, the Great Lakes Governors, take our authority as stewards of the Great Lakes very seriously and have been vigilant in ensuring the protection of the Great Lakes ecosystem. In exercising our authority, our primary goal is the protection of the integrity of the Great Lakes and the Great Lakes ecosystem.

We have, in cooperation with the Great Lakes Premiers of Ontario and Quebec, effectively exercised our authority under the Great Lakes Charter of 1985, a good faith agreement to collectively manage the Great Lakes and its ecosystem. We have abided by its prior notice and consultation process on proposals for diversions and consumptive uses of Great Lakes water.

In addition, we have effectively exercised our authority under Section 1109 of the U.S. Water Resources Development Act of 1986 (WRDA). New bulk exports or diversions of Great Lakes water from the Great Lakes Basin can not occur in the United States without the unanimous approval of the Great Lakes Governors. There have been three proposals to divert water from the Great Lakes since the passage of the WRDA, none of which was for bulk export. The review of each of these proposals took a minimum of one year in order to assess their potential impact on the ecosystem. Two proposals were approved with conditions that ensure the on-going protection of the Great Lakes, and one proposal was not approved.

There are no proposals to export Great Lakes water at this time nor do we anticipate any being submitted within the next year. Management of the Great Lakes ecosystem confronts us with new and ongoing challenges, including the bulk export of water. We must continually identify ways to secure the protection of the resource. We will review any proposals made to divert or export water from the Great Lakes with the same vigor as we have reviewed past proposals. We, the Great Lakes Governors, have the authority and we will exercise it appropriately to address any attempts to export bulk quantities of Great Lakes waters.

For the last fifteen years, we have followed a set of principles to guide us in developing, maintaining and strengthening the regional management regime for the Great Lakes ecosystem. We strongly believe that any change to the current management regime must be aligned with these principles:

- **It must protect the resource.** Resource protection, restoration, and conservation must be the foundation for the legal standard upon which decisions concerning water withdrawals are based.

35 East Wacker Drive  
Suite 1850  
Chicago, IL 60601

Phone: 312-407-0177  
Fax: 312-407-0038  
Web: [www.cglg.org](http://www.cglg.org)  
e-mail: [cglg@cglg.org](mailto:cglg@cglg.org)

- **It must be durable.** The framework for decisions must be able to endure legal challenges based upon, but not limited to, interstate commerce and international trade. It must be constitutionally sound on a bi-national basis, and the citizens of the Basin must support this framework.
- **It must be simple.** The process for making decisions and resolving disputes should be straightforward, transparent and based on common sense.
- **It must be efficient.** Implementation of the decision making process should engage existing authorities and institutions without necessitating the establishment of new and large bureaucracies. The decision making process should be flexible and responsive to the demands it will confront.
- **It must retain authority in the Basin.** Decision-making must remain vested in those authorities, the Great Lakes Governors and Premiers, who manage the resource on a day-to-day basis.

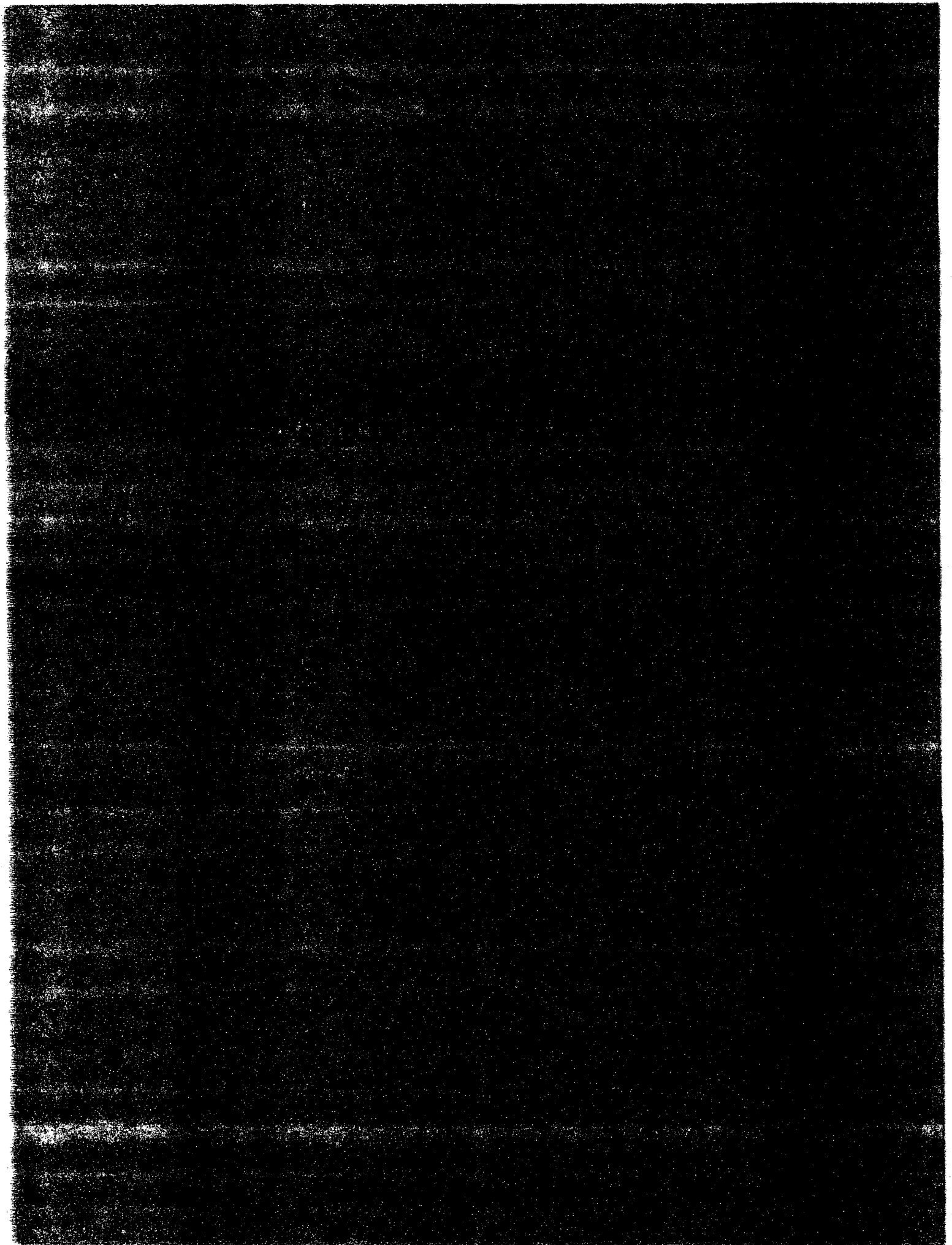
We encourage those who share our concern for the Great Lakes to join with us in abiding by these principles. We will continue to work with Ontario Premier Mike Harris and Quebec Premier Lucien Bouchard, state legislators, the Great Lakes U.S. Congressional delegation and the International Joint Commission to ensure that the authority to protect and manage the waters of the Great Lakes is strong, secure and retained within the Basin.

To assure the continued protection of the Great Lakes, today we pledge to:

- **Develop a new agreement,** based upon the Great Lakes Charter and its principles, which will bind the Great Lakes States and Provinces more closely to collectively plan, manage and make decisions regarding the protection of the waters of the Great Lakes.
- **Develop a new common standard** against which water projects will be reviewed. It will be based upon the standard that we have developed with the Premiers, but have never formally adopted: the protection of the integrity of the Great Lakes ecosystem.
- **Secure funds to develop a better base of Great Lakes water use data.** Without a good base of data, it is difficult to make sound decisions. We applaud the actions of The Great Lakes Protection Fund which has, by unanimous vote of its board at their last meeting in Chicago, agreed that funding the design and development of a water-use information system is the Fund's highest priority for the next year.

We, as stewards of twenty percent of the world's freshwater, will be vigilant in protecting, conserving, preserving and managing the Great Lakes. It is incumbent upon us, the Great Lakes Governors and Premiers, to protect the waters that we all enjoy and are dependent upon.







February 1, 2002

Ms Sarah Miller  
Canadian Environmental Law Association  
517 College Street  
Suite 401  
Toronto, Ontario M6G 4A2  
CANADA

BOB TAFT  
CHAIRMAN  
*Governor of Ohio*

JOHN ENGLER  
*Governor of Michigan*

SCOTT MCCALLUM  
*Governor of Wisconsin*

FRANK O'BANNON  
*Governor of Indiana*

GEORGE E. PATAKI  
*Governor of New York*

GEORGE H. RYAN  
*Governor of Illinois*

MARK S. SCHWEIKER  
*Governor of Pennsylvania*

JESSE VENTURA  
*Governor of Minnesota*

MARGARET M. GRANT  
*Executive Director*

35 East Wacker Drive  
Suite 1850  
Chicago, Illinois 60601

Voice 312-407-0177  
Fax 312-407-0038  
E-mail [cglg@cglg.org](mailto:cglg@cglg.org)  
Website [www.cglg.org](http://www.cglg.org)

Dear Ms Miller:

On June 18, 2001 the Great Lakes Governors and Premiers signed the Great Lakes Charter Annex. The Charter Annex is an amendment to the Great Lakes Charter of 1985, both good-faith agreements signed by all the Great Lakes Governors and Premiers, and is important to the ongoing process to create a stronger regional water management system for the use and enjoyment of future generations.

In the Annex, the Governors and Premiers outline the framework for a set of binding agreement(s) among the Great Lakes States and Provinces and establish a series of principles for a new standard for reviewing proposed withdrawals of Great Lakes water. The Governors and Premiers also call for this work to be completed within three years of the signing of the Annex and for active public participation while developing the agreement(s).

Therefore, on behalf of the Great Lakes Governors and Premiers, I would like to invite you to join the Advisory Committee on the implementation of the Great Lakes Charter Annex. Your expertise and representation on the Committee will provide the members of the Governors' and Premiers' Water Management Working Group with valued insight and consultation during the development of the binding agreement(s).

The Governors and Premiers believe that active stakeholder participation is integral to the successful creation of a sound water management system. Along with direct exchange of ideas and information with the Advisory Committee on an individual basis and during full Working Group/Advisory Committee meetings, project progress will be shared with interested and affected parties through a quarterly Council of Great Lakes Governors newsletter, periodic updates posted on the Council website ([www.cglg.org](http://www.cglg.org)), and periodic email communiqués. The Great Lakes States and Provinces will also develop public participation programs tailored for their respective jurisdictions.

Specifically, the role of the Advisory Committee is to provide advice, counsel, expertise, and input during the development of the binding agreement(s). The Water Management Working Group looks forward to an active exchange of ideas and information with you and the other members

Page Two

of the Advisory Committee, both individually and as a group. As a member of the Advisory Committee, we encourage you to share your expertise during the development of the binding agreement(s) as well as provide sound comments when language is formally put to paper. We also hope that you would report to the members of your organization on the progress of our efforts. I know you would agree that it is incumbent upon us who care about the health and permanence of this precious natural resource to work together to ensure that a sound regional water management system is developed for future generations.

The Advisory Committee will meet with the full Water Management Working Group twice a year during the course of the project and your individual input will be solicited on an ongoing basis once you accept our invitation to join the Committee. Tentatively, we would like to schedule the first formal meeting of the Advisory Committee and the Water Management Working Group for March 15<sup>th</sup> in Washington, DC. This meeting will coincide with the annual Great Lakes Congressional breakfast. At this time we are unable to provide financial compensation for participation or out-of-pocket expenses related to Advisory Committee responsibilities and meeting attendance. Please know that when scheduling meetings we will make every effort to economize.

In order for you to better understand your role as an Advisory Committee member and expedite your infusion into the early stages of the Water Management Working Group's work, enclosed you will find a copy of the Great Lakes Charter Annex, the Great Lakes Charter, and the Great Lakes Water Management Initiative's work plan for this calendar year. We also have included the February 2000 report presented by the International Joint Commission and the 1985 Great Lakes Water Level Facts presented by the Army Corps of Engineers, Detroit District. The work plan provides an overview of participants and responsibilities. A brief description of the professional courtesy that we hope will be extended to all those involved in this initiative, and a timeline of meetings and deliverables are also included. The timeline is ambitious, but with your assistance the objectives can be met. We ask that you familiarize yourself with all these materials so that a common foundation exists for all the members of the Working Group and Advisory Committee.

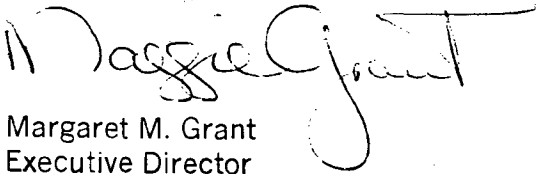
In addition, please know that the Working Group is divided into three Sub-committees: compact structure, inter-provincial/international agreement(s), and decision making standard. They are currently defining the parameters of what the binding agreement(s) should look like and include. A list of preliminary questions to be answered is attached for your information and review. Should you decide to join the Advisory Committee, the full Working Group and Sub-committees welcome your responses to the existing questions and ask that you provide us with your responses and suggestions of other issues that you believe need to be addressed by February 15<sup>th</sup>. We look forward to providing a progress report to the Governors at this year's National Governors Association meeting in Washington, DC at the end of February and your input would be well received. Please know that we see your response to this request as an initial step in the development of sound ideas and options for our work together.

Page Three

In the interest of time and the limited travel budgets of the Great Lakes States and Provinces and Advisory Committee members, the Sub-committees will independently call for your expert advice via conference calls. The full Working Group and/or Management Team look forward to meeting with the entire Advisory Committee several times this year to collectively develop binding water management agreement(s) that will stand the test of future water needs, demands, and protection.

Please know that I will follow up with you personally to answer any questions you may have regarding the implementation of the Annex and/or your involvement on the Advisory Committee. On behalf of Council Chairman Governor Bob Taft of Ohio, I hope you will consider joining the Advisory Committee as an opportunity to have a lasting impact on the creation of sound water management for the Great Lakes.

Sincerely,

A handwritten signature in black ink that reads "Margaret M. Grant". The signature is written in a cursive style with a large, sweeping initial "M".

Margaret M. Grant  
Executive Director

Enclosures

# **Great Lakes Water Management Initiative Annex 2001 Implementation Work Plan & Timeline**

## **INITIATIVE OBJECTIVE**

The Charter Annex is an amendment to the Great Lakes Charter of 1985, a good-faith agreement signed by all the Great Lakes Governors and Premiers on June 18, 2001 in Niagara Falls, New York. The Governors and Premiers agreed to immediately prepare a basin-wide binding agreement(s), such as an interstate compact and such other agreement(s), protocols or other arrangements including a dispute resolution process between the states and provinces as may be necessary to create the binding agreement(s) within three years of the effective date of the Annex, June 18, 2001.

The Governors and Premiers also committed in Niagara Falls to continue a process that ensures ongoing public input in the preparation and implementation of the binding agreement(s) called for in the Annex. Included in this process will be periodic progress reports to the public. To assure public access, understanding, and support for the Governors' and Premiers' water management program, public meetings and consultation will be conducted at the discretion of the Great Lakes States and Provinces. Along with periodic meetings with the Advisory Committee, project progress will be shared with interested and affected parties through a quarterly Council newsletter, regular updates posted on the Council website, and periodic email blast communiqués.

The purpose of the next phase of the initiative is for the Water Management Working Group to develop and make recommendations to the Great Lakes Governors and Premiers on how best to formulate a decision-making standard based upon the Annex principles, binding agreement(s), a process for dispute resolution, and corresponding implementing documents that provide the flexible framework for individual state and provincial water withdrawal statutes, programs, and regulations.

## **ORGANIZATION**

### **Management Team**

The Great Lakes Water Management Initiative enters the next phase of operation under the leadership of Council Chairman Governor Bob Taft of Ohio. The implementation of Annex 2001 will fall under the day-to-day direction of Sam Speck, Director, Ohio Department of Natural Resources; Denny Schornack, Special Advisor to Michigan Governor John Engler for Strategic Initiatives; and Maggie Grant, Executive Director of the Council of Great Lakes Governors. To support the efforts of the Management Team and Working Group, legal counsel and policy research experts will be contracted by the Council of Great Lakes Governors and provide support to the initiative under the direction of the Management Team.

### **Water Management Working Group**

Under Governor Taft's chairmanship of the Council of Great Lakes Governors, Sam Speck will chair the Water Management Working Group. Denny Schornack will serve as co-chair and chair Working Group meetings in Director Speck's absence. The co-chairs will work together with Council staff to design the process for the project and establish meeting agendas.

The Working Group will consist of the Council staff and two members from each state/province as appointed by their respective Governor/Premier. Each Governor/Premier will select one member to represent technical expertise on water management issues and one member to represent policy issues who is able to speak on behalf of his/her respective Governor/Premier. Any state/province may select additional individuals to attend meetings as needed.

The role of the Water Management Working Group is to perform the work necessary to implement Annex 2001 as described in the Initiative Objective.

### **Working Group Sub-committees**

The Working Group will break into Sub-committees to address specific tasks related to the project. Members of the Sub-committees must be members of the Working Group or their designees within respective state/provincial government and not represent outside entities or organizations. The Sub-committees will be chaired by one member of the Working Group. The Sub-committee members may bring outside experts to meetings as deemed necessary.

The three Sub-committees will address the structure of the compact, the decision making standard, and the provincial/international agreement(s). The charge of each Sub-committee is broken into three phases; Phase One – Provide a progress report to the Governors and Premiers on the Sub-committees work to date; Phase Two – Draft the binding agreement(s); Phase Three – Draft the implementing documentation. The Sub-committees, through consultation with the Sub-committee chairmen and Management Team, will have the authority to seek outside policy and legal support in order to better meet their objectives.

It is recommended the Sub-committees set, at a minimum, weekly conference calls through February 14 to complete Phase One of providing the Governors and Premiers at the NGA Winter Meeting in Washington, DC with a report on the direction of the water management initiative and preliminary recommendations of the structure of the binding agreement(s). Sub-committee meetings thereafter will be scheduled at the discretion of the Sub-committee chairmen and membership and will reflect the deadlines for the Working Group. The Council staff will assist in the coordination and facilitation of the Sub-committee meetings as well as in the development and distribution of the work products.

### **Advisory Committee**

The Working Group will receive advice and comment from the Advisory Committee during the course of the project. The role of the Advisory Committee is to advise the Working Group during all phases of the project. Advisory Committee members are encouraged to provide the Working Group, through the Council and Management Team, with information they deem relevant to the implementation of Annex 2001. Sub-committee members are encouraged to contact Advisory Committee members as they deem necessary. In addition to providing input to the Working Group, the Advisory Committee members will provide information to members of their respective organizations. It is anticipated that there will be no financial compensation for participation in or out-of-pocket expenses related to Advisory Committee responsibilities and meeting attendance.

The Advisory Committee will meet with the Water Management Working Group periodically and is expected to meet formally at least twice a year during the course of the project. The membership list and letter of invitation are attached. The timeline of recommended scheduled meetings is listed below.

### **Resource Group**

The Resource Group will be an informal group of governmental and quasi-governmental bodies that have technical expertise regarding Great Lakes issues and will serve as collaborating organizations to the Working Group. The members may include, but are not limited to, the Great Lakes Commission, International Joint Commission, the Great Lakes Congressional Task Force, USGS, Army Corps of Engineers, the US EPA, the NOAA, and Environment Canada.

Members of the Resource Group will also provide their advice independent of the Advisory Committee and, on occasion, independent of each other. There will be no formal formation of the Resource Group and it will not meet on a regular schedule but may be asked to provide specific work products and give periodic status reports to the Water Management Working Group.

### **Legal and Policy Support**

Outside legal counsel and policy research support may be utilized by the Council of Great Lakes Governors on an as-needed basis and for specific sub-projects to advise the Water Management Working Group.

All outside consultants to the project will be engaged upon request of the project's Management Team and via strictly defined work orders. Their work will be overseen by the project's Management Team to ensure that the Governors'/Premiers' objectives are met, the Governors/Premiers and Working Group are receiving value-added information, the Management Team and Working Group are in control of the project directives, and the project remains within budget.

Legal support may include, but is not limited to, assisting in the preparation of necessary legislation at the state and federal levels, and addressing outstanding questions regarding the nature and scope of tribal water rights. Legal support may also provide counsel to ensure that all binding agreement(s) and other relevant documents are defensible, they meet Constitutional requirements, and are in agreement with existing treaties and/or international agreements.

Policy support may include, but not be limited to, research of the current regulatory structures in place in the Great Lakes States and Provinces, scenario building in regards to individual and cumulative impacts, and analysis on the measurement of the impacts of conservation and identification of current conservation technologies that are environmentally sound and economically feasible. The Management Team and Sub-committees will determine when and what specific policy support is needed.

### **Guidelines for Communicating with the Press**

Individuals and organizations involved with this initiative are free to speak individually with the press as a representative of their state/province or organization, but not in reference to the specific work of the Working Group. All press inquiries regarding the overall efforts of the Working Group should be referred to Maggie Grant, Executive Director of the Council. Maggie Grant will work with project co-chairmen Sam Speck and Dennis Schornack to respond appropriately to individual press questions. No drafts or pending products will be released until the full Working Group agrees on the appropriate time to release them. If a document needs to be released to the press or a statement needs to be made on behalf of the Working Group, it will be released by Governor Taft as Chair of the Council of Great Lakes Governors, his designee, or the Council staff.

### **Public Participation**

The Governors and Premiers believe that active stakeholder participation is integral to the successful creation of a sound water management system. To assure active public participation, access, understanding, and support for the Governors' and Premiers' water management program, opportunities will be provided for public meetings and consultation in all the Great Lakes States and Provinces. Along with direct exchange of ideas and information with the Advisory Committee and Resource Group, project progress will be shared with interested and affected parties and stakeholders through a quarterly Council of Great Lakes Governors newsletter, periodic updates posted on the Council website, and periodic email blast communiqués. The Great Lakes States and Provinces will also develop public participation programs tailored for their respective jurisdictions.

### **Deliverables**

The Governors and Premiers agree to prepare a basin-wide binding agreement(s), such as an interstate compact and such other agreements, protocols or other arrangements including a dispute resolution process between the states and



provinces as may be necessary to create the binding agreement(s) within three years of the effective date of the Annex, June 18, 2001. The timeline found below provides a detailed schedule of when work will be completed to meet the Governors' and Premiers' objectives.

The Governors and Premiers commit to continue a process that ensures ongoing public input in the preparation and implementation of the binding agreement(s) called for the Annex. Included in this process will be periodic progress reports to the public.

### **Funding**

It is understood that members of the Water Management Working Group will provide their time and expertise to this initiative and will fund their individual travel related expenses. The member states and provinces will make their best efforts to contribute funds for the administration of the initiative. The Council of Great Lakes Governors is unable to provide financial compensation for participation in or out-of-pocket expenses related to Advisory Committee and Resource Group responsibilities and meeting attendance. Monies being sought through grants will directly fund the legal support, policy research and public input needed to assist the Working Group meet the mandate set forth by the Governors and Premiers in the Great Lakes Charter Annex of 2001. Following the first meetings of the Working Group Sub-committees, a proposed funding budget will be drafted to meet the needs identified at these meetings.

## **TIMELINE AND MEETING OBJECTIVES**

The timeline listed below encompasses the 2002 calendar year. It lists the scheduled meeting dates and deadlines for deliverables. In addition, a full Working Group Meeting (whether in person or via conference call) is scheduled for the third Thursday of every other month. Sub-committee meetings and conference calls will be scheduled at the discretion of the Sub-committee chairmen and membership and will reflect the deadlines for work products. Formal meetings with the full Advisory Committee and either the Management Team or the full Working Group are also listed below. Meetings between the Advisory Committee and the Sub-committee members will be ongoing and informal and occur at the discretion of the Sub-committees and their chairmen.

### **January 17, 2002 (Entire Working Group meeting via conference call)**

- Review and approval of work plan
- Progress reports from Working Group Sub-committees
- Review and approval of Advisory Committee membership and charge

### **February 14, 2002**

- Sub-committees provide Phase One progress reports to the Management Team (to be compiled by the Council staff for review by the full Working Group and prior to submission to the Governors and Premiers)

**February 23-26, 2002** (National Governors Association Winter Meeting –Washington, DC)

- Management Team provides progress report to Governors at the NGA meeting and seeks approval of the work and direction of the Working Group

**March 15, 2002 (Entire Working Group meeting in Washington, DC to coincide with The Great Lakes Breakfast)**

- Meeting to include progress reports from the Working Group Sub-committees
- Formal meeting with full Working Group and Advisory Committee

**May 2002**

Full Working Group and/or Management Team meet with the Advisory Committee and members of the Resource Group to review language of agreement(s). The meetings will be held independent of each other. Dates TBD.

**May 5 or 9, 2002 (Entire Working Group Meeting – Quebec City, Quebec to coincide with GLC semi annual meeting)**

- Review and finalize draft agreement(s) in anticipation of the kick-off of the public comment period
- Finalize strategy for public comment period
- Working Group Sub-committees provide Phase Two progress reports and deliverables

**June 2002 – September 2002**

- Release draft binding agreement(s) for public comment (to last 90 days)
- Individual state and provincial public comment programs

**July 18, 2002 (Entire Working Group Meeting via conference call)**

- Review directives from the Governors'/Premiers' at their annual meeting
- Council staff provides progress report on public comment period
- Progress reports from the Working Group Sub-committees

**September 19, 2002 (Entire Working Group Meeting via conference call)**

- Council staff provides progress report on public comment period
- Progress reports from the Working Group Sub-committees
- Management Team meets with Advisory Committee
- Public comment period ends

**November 21, 2002 (Entire Working Group Meeting in Detroit)**

- Final reports from the Working Group Sub-committees for Phase Three
- Preparation and approval of binding agreement(s) for the Governors and Premiers

\*\*\*The outcomes from the Sub-committees Phase One work will determine how and when the binding agreement(s) will be presented to the state legislatures and federal governments as well as provide guidelines for determining the elements of and timeline for Phase Three deliverables.

ATTACHMENT 2

SUMMARY DECISIONS OF THE NEPA  
CREATING COMMISSION

# Toward A Water Resources Management Decision Support System for the Great Lakes

Presented by:

Michael J. Donahue, Ph.D.

President/CEO

Great Lakes Commission

Presented at:

Working Group/Advisory Committee  
Meeting

March 15, 2002

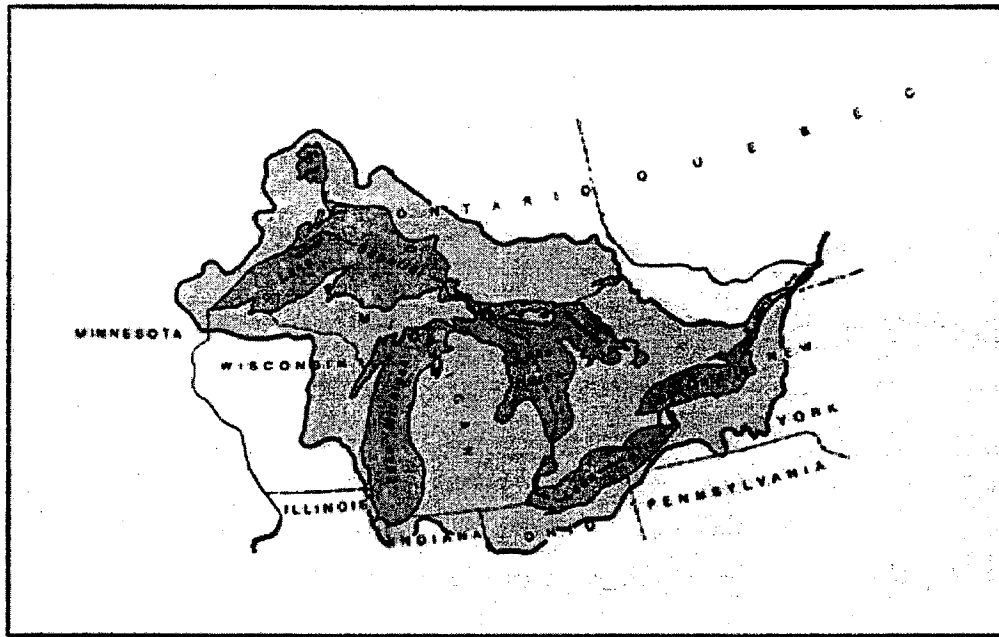
Washington, D.C.



# The Great Lakes Charter Annex

A Supplementary Agreement to  
The Great Lakes Charter

June 18, 2001



## Annexe à la Charte des Grands Lacs

Entente additionnelle à la  
Charte des Grands Lacs

18 Juin 2001



# The Great Lakes Charter

## Annex

### Findings:

“... the Waters and Water-Dependent Natural Resources of the Basin remain at risk of damage from pollution, environmental disruptions, and unsustainable water resource management practices which may ... alter the Great Lakes ecosystem.”

### Purpose:

“The Governors and Premiers commit to further implementing the principles of the Charter by developing an **enhanced water management system** that is simple, durable, efficient, retains and respects authority within the Basin, and, most importantly, protects, conserves, restores, and improves the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.”



# The Great Lakes Charter

## Annex

**Directive #1 - Develop a new set of binding agreement(s)**

**Directive #2 - Develop a broad-based public participation program**

**Directive #3 - Establish a new decision making standard**

**Directive #4 - Project review under the Water Resources Development Act of 1986**

**Directive #5 - Develop a decision support system that ensures the best available information**

**Directive #6 - Further commitments**



# Water Resources Management Decision Support System for the Great Lakes

Coordinated by:  
Great Lakes Commission  
and Collaborators

Funded by:  
Great Lakes Protection Fund





# Objectives

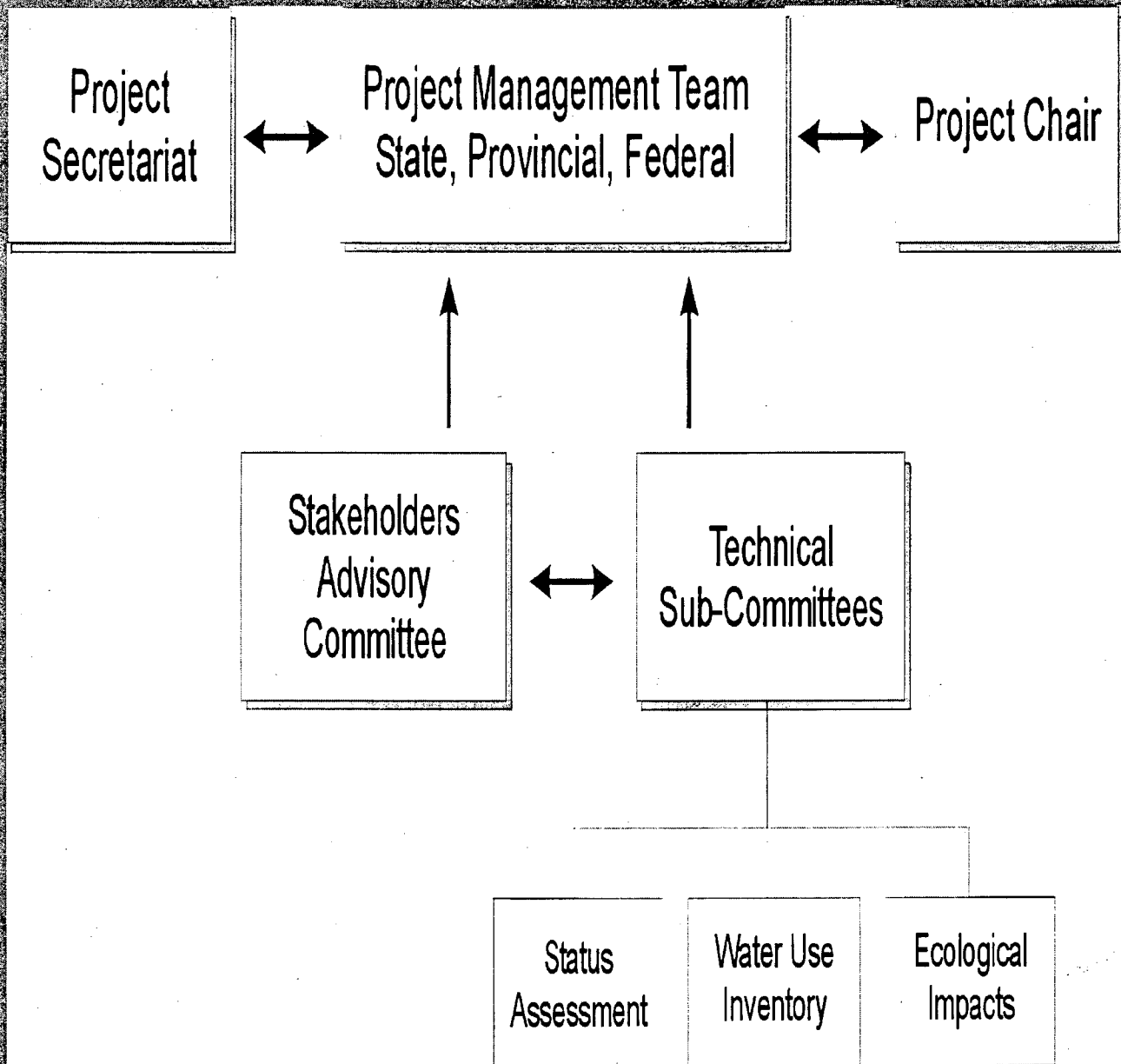
- ✓ Status Assessment of Great Lakes Water Resources
- ✓ Inventory of the Sources and Use of Great Lakes Water
- ✓ Enhanced Understanding of the Ecological Consequences of Such Use

# Project Management Premises

- ✓ State and province driven
- ✓ Fund support will be leveraged
- ✓ Maximize access to/use of existing and planned initiatives
- ✓ Interim products will have immediate applicability
- ✓ Assembly/synthesis of existing data and information is a priority
- ✓ Outcomes will provide strong foundation for follow-up work
- ✓ Provide for sustainability of data/information gathering, analysis and application



# Project Infrastructure



# Project Management Team

## States/Provinces

Illinois

Indiana

Michigan

Minnesota

New York

Ohio

Ontario

Pennsylvania

Wisconsin

Quebec

## US/CA Federal

Environment Canada

U.S. Geological Survey

U.S. Army Corps of  
Engineers

National Oceanic and  
Atmospheric  
Administration

U.S. Environmental  
Protection Agency

U.S. Department of  
Agriculture

## Regional

Council of Great Lakes Governors

Great Lakes Commission



# Stakeholders Advisory Committee

- ✓ State
- ✓ Provincial
- ✓ Federal (U.S./CA)
- ✓ Tribal
- ✓ Regional
- ✓ Academia
- ✓ Business/Industry
- ✓ Citizens



# Project Element One

## Detailed Project Design and Infrastructure

- ✓ Project Management Team
- ✓ Stakeholder Advisory Committee
- ✓ Technical Sub-committee
- ✓ Project Secretariat

# Project Element Two

## Status Assessment of Water Resources

- ✓ Assemble Available Data and Information
- ✓ Characterize and Interpret Data and Information
- ✓ Develop Communication Tools
- ✓ Display and Deliver Project Results

# Project Element Three

## Inventory of Water Withdrawal and Use

- ✓ Needs Assessment
- ✓ Data Base Redesign
- ✓ Software Upgrading
- ✓ Data Base Population
- ✓ Refinement and Testing
- ✓ State/Provincial Approval
- ✓ Recommendations for Institutionalizing



# Project Element Four

## Inventory of Information on Ecological Impacts

- ✓ Literature Search and Analysis
- ✓ Inventory of Existing Models
- ✓ Experts Workshop
- ✓ Synthesis Report Incorporating  
Ecological Impacts Into  
Inventory Efforts and  
Decisionmaking Procedures

# Project Element Five

## Project Synthesis and Next Steps

- ✓ Preliminary Findings/  
Recommendations
- ✓ Workshop-Implementing  
Products Identifying Next Steps
- ✓ Refined Website Release
- ✓ Final Products and Project  
Report



# The Three Key Questions

⌘ How might the definition of “consumptive use” (and associated coefficients) be refined to better reflect usage?

⌘ What are the components of an environmentally sound and economically feasible water conservation program?

⌘ What might the elements of an improvement standard be in the context of decisionmaking under Annex 2001 of the Great Lakes Charter?



# Selected Interim Products

- ◆ Great Lakes Water Use Data Base: update, redesign, and data, needs assessment
- ◆ Report on Water Resources Management Programs and Water Conservation Programs
- ◆ Briefing Paper on State of Knowledge of Consumptive Uses including a review of Consumptive Use Coefficients
- ◆ Scenarios Evaluation Workshop and Assessment

# Selected Interim Products (cont.)

## ◆ Literature Search and Analysis

- ✓ Peer reviewed and grey literature
- ✓ Cumulative impacts
- ✓ Ecological thresholds
- ✓ Indicators for impact assessment
- ✓ Assessment framework

## ◆ Descriptive Inventory of Computer Models

- ✓ 5 categories
- ✓ 69 models
- ✓ 33 analyses

# Selected Interim Products (cont)

## ◆ Ontario/Canada Water Use and Supply

- ✓ Stressors
- ✓ Drivers
- ✓ Ecological indicators
- ✓ Modifiers

## ◆ Ecological Impacts Analysis

- ✓ Experts Workshop
- ✓ Proceedings
- ✓ "Essential Questions"

## ◆ "Resource Improvement"

Standard Analysis: focus group  
and discussion paper (in process)

# Next Steps

- ◆ Intensive activity in all task areas
- ◆ Project synthesis: “pulling it all together”
- ◆ Users’ Workshop: implementing products, identify additional data/information needs
- ◆ Refined web site release
- ◆ Final products and project report

# Dissemination Plan

- ✓ Internet - Great Lakes Information Network
- ✓ [www.glc.org/waterquantity/wrmdss](http://www.glc.org/waterquantity/wrmdss)
- ✓ Conventional "Hard Copy" Dissemination
- ✓ Media Relations
- ✓ Meetings and Conferences



# Communications Tools

## Project List Serves:

- ◆ [pmt-water@great-lakes.net](mailto:pmt-water@great-lakes.net) - serves Project Management Team
- ◆ [sac-water@great-lakes.net](mailto:sac-water@great-lakes.net) - serves Stakeholders Advisory Committee

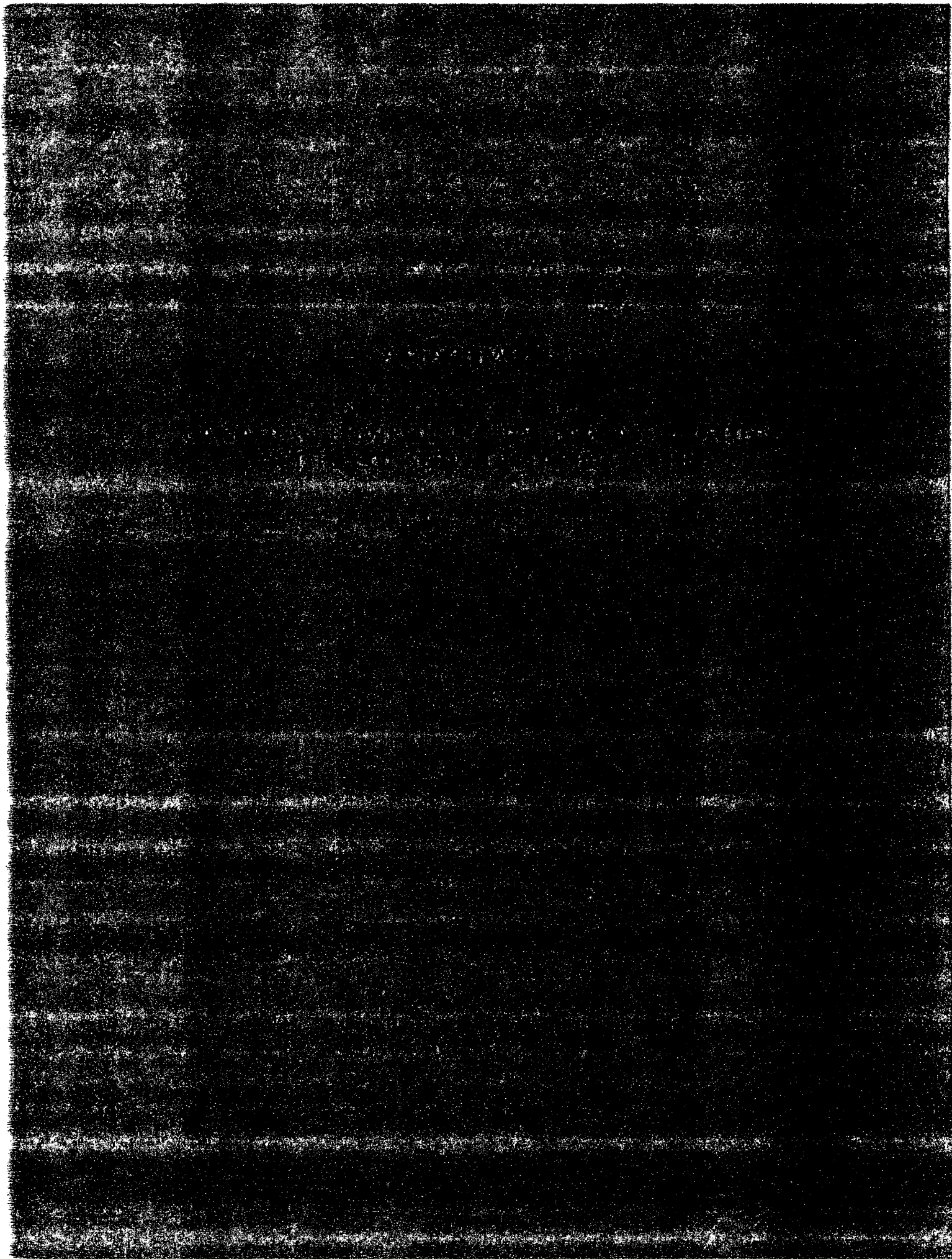
## Project Web Site:

- ◆ [www.glc.org/waterquantity/wrmd/ss/](http://www.glc.org/waterquantity/wrmd/ss/)



# Maintaining Strong Links to Support Annex 2001 Implementation

- ◆ Shared membership – Project Management Team and Working Group
- ◆ Council staff – pivotal liaison function
- ◆ Consultations – resource improvement standard, etc.
- ◆ Presentations – to Working Group
- ◆ Users' Workshop – as products are packaged
- ◆ Others?



**COMMENTARY FOR**

**- DRAFT # 4 -**

**AN ACT TO CONSERVE  
ONTARIO WATERS**

Prepared for and with the assistance of the  
Canadian Environmental Law Association

Prepared by

Joseph F. Castrilli  
Barrister & Solicitor  
Toronto, Ontario

November 2000

# ONTARIO WATER CONSERVATION ACT

## COMMENTARY FOR

- DRAFT # 4-

### INTRODUCTION

The preamble to this Act identifies the importance of water to the long-term well-being of the province, the responsibility of the Province to protect, conserve, and restore the water supply; the growing industrial, commercial, and other developmental pressures on the water supply; the risks posed by climate change to the water supply; the importance of efficient water use to protecting the natural environment and watersheds, lowering demand for new water supply facilities and associated capital, operating, and energy costs, and reducing corresponding greenhouse gas emissions; and recognizes the right of the public to a significant role in the decision-making process.

The definitions used for this Act are based on a wide range of source documents including various provincial policies promulgated under the Planning Act of Ontario; other Ontario statutes, regulations, policies, guidelines, and bills; the statutes, regulations, guidelines, policies, programs, and bills of other provinces; federal statutes, bills, and Parliamentary materials in Canada; federal and state laws, policies, guidelines, and bills in the United States; European Community law; the laws of other foreign states; international treaties and related documents; and scientific, technical, and economic treatises.

The purposes of the Act focus on protecting the water regime from activities that negatively impact the hydrologic regime such as diversions, water removals, and development; encouraging reduction in water use on a watershed basis; and restoring and enhancing the water regime from past damage.

The duties of the Government Ontario are to ensure that the purposes and requirements of the Act are met by persons, governments, and other agencies; to ensure that water conservation plans and remedial plans authorized under the Act are undertaken; to review the adequacy of existing laws and undertake appropriate research to assist those undertaking water conservation and remedial planning; to apply the precautionary principle in decisions under the Act; and to protect the public trust in water for the benefit of present and future generations.

### PART I - WATER PLANNING BOARDS

The purpose of Part I of the Act is to establish water planning boards in Ontario. Under the Act these bodies - who may be conservation authorities,

upper-tier municipalities, or other bodies - will be responsible for water conservation planning and implementation of water conservation measures as described in the Act for watersheds across the province. Part I also authorizes the creation of additional watershed areas and boards for those parts of Ontario - primarily the north - where there currently are no conservation authorities. Part I also sets out the process for appointments to water planning boards, the term of office, and the obligations of these bodies to undertake the tasks, duties, responsibilities, and meet the requirements of this Act.

## **PART I.I - PROTECTION OF ONTARIO WATERS**

Part I.I of the Act is designed to address impacts to the water regime from projects (e.g. diversions of water) between watersheds and within a single watershed (watersheds are defined under the Act and listed in Schedule 2) largely by prohibiting such projects if they are of a certain size. (The project size concept and watershed-based approach are derived from the British Columbia Water Protection Act). The Act would only allow smaller projects within a single watershed to proceed if water-focused information required to be submitted demonstrated that the purposes and duties of the Act will be met. Similar information requirements also are imposed on water removal activities (e.g. consumptive and non-consumptive uses of the type currently regulated as water takings under section 34 of the Ontario Water Resources Act and regulations - which requirements would be rolled into this Act). Both projects and water removals are subject to potential hearings at the request of any person and decisions by the Director, Ministry of the Environment (if there is no hearing) or the Environmental Review Tribunal - a body that anticipates proposed legislative amendments by the province to merge the current Environmental Assessment Board with the Environmental Appeal Board - (if there is a hearing). Appeals from decisions under Part I.I are dealt with under Part V.

Part I.I imposes further obligations on those proposing land use changes, other development, or infrastructure (e.g. sewage or water facilities to facilitate development) under the Planning Act to provide the same water-based information requirements as for projects and water removals. The information must be provided to the water planning board who is required by this Act to issue water impact permits (if there is no request for a hearing) or the Joint Board who may make the decision (if there is a request for a hearing). These decisions must be consistent with the purposes and duties of this Act. The Act also authorizes the designation, including potential emergency designation, of special areas that provide unique benefits to the water regime over a wide geographic area (e.g. Oak Ridges Moraine). The Niagara Escarpment also is designated a special area under this Act. Designation of special areas provides protections similar to those available under the Niagara Escarpment Planning and Development Act and proposed under recent private members' bills proposed in the Ontario Legislative Assembly in the last quarter of 1999-first quarter of 2000 (Bills 12, 71, and 78).

Finally, Part I.1 authorizes private or public entities to grant or hold easements to protect, conserve, restore, or enhance water. (These provisions are based on the New Brunswick Conservation Easements Act).

## **PART II - CONSERVATION OF ONTARIO WATERS**

Part II of the Act is designed to establish a regime of water conservation planning and implementation for every watershed in Ontario. The Act designates water planning boards - established under Part I.1 of the Act - to undertake such planning and implementation at the watershed level, which also is described as a water planning and management area under the Act. The process must begin with an assessment consisting of water use data collection and demand forecasting regarding existing and prospective water supply, use, and demand in the watershed. Following the completion of the assessment and the opportunity for public consultation in regard to the preparation of the assessment, each water planning board must submit a water conservation plan for its water planning and management area for the approval of the Director, Ministry of the Environment. The plan must achieve certain goals and objectives set out in the Act such as efficient water use, reduction in per capita peak daily, monthly, and yearly water consumption rates and related conservation benchmarks.

Part II also requires the plan to contain certain water conservation measures to achieve the Act's goals and objectives. These measures must include water rates that operate on the principle of the more you use, the more you pay - subject to protecting certain disadvantaged groups from genuine hardship from rate increases; water use audits of the public system to identify how much water is used and how usage might be reduced; retrofits of fixtures, faucets, showerheads, and other facilities to increase water-use efficiency; implementation of a system for accounting for, detecting, and preventing water loss through leaks, etc.; enactment of water-use regulations or by-laws to restrict non-essential uses of water during conditions of drought, and other emergency situations; and related measures.

The water conservation planning and measures proposed under the Act are derived from a variety of sources. These sources include the United States Environmental Protection Agency Guidelines for Water Conservation Plans, the State of Washington water rights law (Title 90), the British Columbia Water Conservation Strategy, the Manitoba Water Efficiency Program, and the Quebec Water Commission (BAPE) Report. The concept of planning for protection of water resources on a watershed basis also is derived from the Ontario Conservation Authorities Act.

Part II also permits two or more water planning boards to enter into master water planning and management area conservation plan agreements for the watersheds under their collective responsibility.

Water conservation plans are subject to potential hearings at the request of any person and decisions by the Director, Ministry of the Environment (if there is no hearing) or the Environmental Review Tribunal (if there is a hearing). Appeals from decisions under Part II are dealt with under Part V.

Finally, Part II also requires the private sector and certain provincial activities to undertake, complete, and submit to the Director, and periodically update, water use audits and water use reduction plans. Such plans must be consistent with water conservation plans, remedial plans (discussed below) and the purposes and duties of this Act. These requirements are conceptually analogous to the waste audits and waste reduction plans currently required under Ontario law (Environmental Protection Act - O. Regs. 102/94, 103/94, 104/95).

### **PART III - RESTORATION AND ENHANCEMENT OF ONTARIO WATERS**

Part III imposes obligations on water planning boards and the province where, for what ever reasons the former cannot act, to prepare remedial plans to restore and enhance the water regime in a water planning and management area (i.e. watershed) where it has been diminished or damaged by past human activities. Remedial plans must define the nature and extent of the problem and its causes, evaluate existing and alternative measures, and implement, monitor, and evaluate the effectiveness of the measures in restoring and enhancing water productive capacity, features, and functions.

These requirements are conceptually analogous to the remedial action plans that form part of Annex 2 of the Canada-United States Great Lakes Water Quality Agreement.

Part III also permits two or more water planning boards to enter into master water planning and management area remedial plan agreements for the watersheds under their collective responsibility.

Remedial plans are subject to potential hearings at the request of any person and decisions by the Director, Ministry of the Environment (if there is no hearing) or the Environmental Review Tribunal (if there is a hearing). Appeals from decisions under Part III are dealt with under Part V.

### **PART IV - FUND FOR THE CONSERVATION, RESTORATION AND ENHANCEMENT OF ONTARIO WATERS**

Part IV does not contain statutory text. Rather it recommends the establishment of, and some of the principles surrounding, a Fund to ensure that water conservation and remedial planning, implementation, research and related activities to be undertaken by water planning boards or the province, required by the Act can be financed. The Fund could be financed by those that apply for or



retain permits or other approvals from the province for water diversions, water removals, land use changes, development, and infrastructure related activities.

Support for some of what is recommended is similar to that contained in the British Columbia Waste Management Act (B.C. Reg. 299/92 - Waste Management Permit Fees Regulation regarding application and annual permit fees). One could also draw on the fund approach contained in the Comprehensive Environmental Response, Compensation and Liability Act - Superfund - and related federal laws in the United States. Still other provisions establishing the Fund could be developed specifically for the unique problems to water caused by development and related activities.

The Fund also should be used to provide rebates to farmers, low income, and disabled customers experiencing genuine hardship in paying water bills that may increase as a result of the requirements of this Act. This approach is consistent with practices that have developed in a number of countries and been reported upon by the Organization for Economic Co-Operation and Development (The Price of Water: Trends in OECD Countries; 1999).

## **PART V - PUBLIC PARTICIPATION**

Part V recognizes a public right to participate in the decision-making processes established under the Act. Part V establishes rights to create - or continue - a registry of information concerning matters under this Act; to notice and comment on projects, water removals, developments, water conservation and remedial plans; to hearings, if necessary, regarding these matters; to funding to participate in such hearings; to appeals; and to independent rights of action in the courts, to ensure that the purposes and duties under the Act are fulfilled.

The provisions establishing the registry and the notice and comment provisions rely on those under the Ontario Environmental Bill of Rights, 1993 ("EBR"). However, the requirements under this Act should be more specific and extensive than the EBR as to the information to be placed on the registry, the types of activities for which the public must be notified, what constitutes minimum notice periods and minimum notice methods.

The provisions establishing a right to object and a right to request a hearing relate to applications for permits for diversions or water removals, approvals for development, approvals of water conservation and remedial plans, orders, and proposed policies and regulations. Depending on the matter at issue referrals are made to the Environmental Review Tribunal or the Joint Board. Many, but not all, of these matters would be subject to some type of hearing requirement under current law. However, this Act supplements those requirements, or creates new obligations where a hearing might currently not be required, or could be dispensed with, under existing laws.

Part V also recommends funding for persons requesting or seeking to intervene in a hearing. Again statutory text is not provided, but the principles surrounding establishment of such a regime are set out. Funding requirements could be based on the Intervenor Funding Project Act that was allowed to sunset in 1996.

The appeal scheme established under Part V consists of different paths depending on the matter at issue. First, projects, water removals, developments, water conservation plans, and remedial plans are subject to appeal from the Environmental Review Tribunal or the joint board as the case may be to the Divisional Court of Ontario. The appeal may be based on questions of law or fact or both and the Court may substitute its opinion for that of the board in question. Second, orders, and decisions on policies and regulations are subject to appeal to the Environmental Review Tribunal, which may substitute its opinion for that of the body appealed from (e.g. the Director or the Minister). An appeal from the Environmental Review Tribunal may go to the Divisional Court on a question of law only. An appeal from the Environmental Review Tribunal may go to the Minister, or the Ontario Cabinet if the matter originated with the Minister, on any other question.

Part V also establishes the right of any Ontario resident to bring an action in the Superior Court of Justice to compel compliance with a variety of duties set out under the Act (e.g. the requirement to adopt and implement water conservation or remedial plans), and authorizes certain remedies (e.g. injunction, declaration, etc., but not damages).

The Court also is given certain direction regarding the awarding of costs where a plaintiff is not successful in an action brought under this Act. In particular, the Court is directed by the Act to not award costs against, and potentially to award costs to, a losing plaintiff if the Court finds certain circumstances to apply. These circumstances include that the action is a test case or raises a novel point of law, the plaintiff contributed substantially to the Court's understanding of the matters in issue, etc. However, the Court retains its discretion to award costs against a losing plaintiff where the Court finds a circumstance such as the plaintiff disputed a fact, issue, or opinion when it was unreasonable to have done so, unreasonably delayed the matter by its conduct, failed to comply with the Rules of Civil Procedure or any directions of the Court, etc. The concept of not awarding costs against, and potentially awarding costs to, a losing plaintiff is based on the notion of whether a party has substantively contributed in a responsible manner to the decision-maker's understanding of the issues and is derived from the rules of practice before a number of administrative tribunals in Ontario. (See, e.g. Rules of Practice of Environmental Appeal Board and the Environmental Assessment Board - Appendix G - Guidelines on Cost Awards, 1998, as amended).

Part V also permits any Ontario resident to seek judicial review of decisions made by the Minister or other public bodies under the Act where they have failed to comply with a purpose, duty, or requirement of the Act. Part V also sets the standard of review to be employed by the Court as one of correctness.

## **PART VI - ADMINISTRATION AND ENFORCEMENT**

Part VI addresses a variety of administrative and enforcement matters.

This Part sets out the fee payment obligations of permittees and others under the Act, but leaves the actual quantum amount to be determined by regulations.

The Part also sets out the authority of the Minister to develop policies relating to protection, conservation, restoration, and enhancement of water, including the duty of the Minister to develop a drought policy.

Part VI also sets out the obligations of, and the minimum and maximum annual budget for, the Minister and the Minister of Natural Resources to undertake research dealing with such matters as scientific, technical, economic, legal and related matters to assist responsible authorities in preparing assessments, developing water conservation goals, objectives, measures, remedial plans, establishing surface and groundwater quality and quantity data, and integrating climate change information with water regime related information.

Part VI also sets out the circumstances under which the Director may issue an order (e.g. where person violates a prohibition under the Act), and the initial decision-making process for orders, policies, and regulations.

Part VI also sets out the offences and penalties for persons, officers and directors of corporations, or water planning board. The penalties imposed for violation of the Act are those contained in the Ontario Water Transfer Control Act. Part VI also authorizes the use of administrative penalties for violation of the Act. These requirements are comparable to those contained in the Ontario Environmental Protection Act or the Alberta Environmental Protection and Enhancement Act.

## **PART VII - REGULATIONS**

Part VII sets out a wide array of circumstances where regulations may be promulgated under the Act (e.g. setting out contents for remedial plans or water conservation measures that are in addition to those already contained in the Act).

## **PART VIII - MISCELLANEOUS MATTERS**

Part VIII sets out the short title of the Act.

Part VIII also makes it clear that an incidental extra-territorial effect on the protection, conservation, restoration, or enhancement of water outside Ontario's borders of a decision made under the Act will not invalidate the decision.

## **PART IX - CONSEQUENTIAL AMENDMENTS**

Part IX lists those statutes that are of no force or effect to the extent of their inconsistency with this Act.

### **SCHEDULE 1 - CONSUMPTIVE AND NON-CONSUMPTIVE USES**

Schedule 1 lists the primary industrial, commercial, municipal, institutional, irrigational, and recreational consumptive and non-consumptive uses of water that are subject to permit requirements under the Act. The contents of Schedule 1 are based on the Ontario Ministry of the Environment Guidelines and Procedures Manual for the Permit to Take Water Program (1999). The Manual, with some exceptions, lists these uses as being the ones that are commonly subject to the permit to take water requirements of section 34 of the Ontario Water Resources Act.

### **SCHEDULE 2 - WATERSHEDS**

Schedule 2 sets out two alternative ways of identifying watersheds for the purpose of this Act. The first alternative would rely on the existing conservation authority watersheds but would require the development of additional northern Ontario watersheds to make the Act fully effective. The second alternative lists all rivers of Ontario and defines them, the lands that drain them, and their tributaries as watersheds for the purposes of this Act. Either approach is similar to, but far more detailed than, that used under the British Columbia Water Protection Act.

### **SCHEDULE 3 - ACTS**

Schedule 3 lists certain, primarily planning related, laws of Ontario that are subject to the requirements of this Act.

### **SCHEDULE 4 - SPECIAL AREAS**

Schedule 4 lists the Oak Ridges Moraine and the Niagara Escarpment as areas of Ontario that are subject to the requirements relating to protection of special areas under this Act.