

*Rethinking Public Consultation  
From the Inside Out ~  
“a risk worth taking”*



*An Evaluation of the Ontario Advisory Panel  
Process for the  
Great Lakes Charter Annex Agreements*

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# EXECUTIVE SUMMARY

## **Background “A risk worth taking”<sup>1</sup>**

Sometimes controversy leads to unforeseen opportunities. This report explores how one complex and difficult international negotiation led the Government of Ontario to the realization that a new approach to public consultation on complex policies affecting many stakeholders could be beneficial. This report has been assembled from interviews with stakeholders and government participants involved in the Ontario Great Lakes Charter Annex Advisory Panel between 2004 and 2005. Its findings are intended to assist Ontario in exploring and promoting new approaches to public consultation “from the inside”<sup>2</sup> out. Lessons learned from this unique experience have been framed into recommendations that could serve as a model for other consultations and outcomes in the future.

In 2001 the eight Great Lakes Governors and two Premiers announced that they would be entering into negotiations to improve the existing Great Lakes Charter of 1985, a gentleman’s agreement to protect the waters of the Great Lakes Basin. The new agreement would enhance the water management systems in place in order to better protect, conserve, restore and improve “the Waters and Water-Dependant Natural Resources of the Great Lakes Basin”. This negotiation was in reaction to a number of concerns about growing continental and localized areas of water shortage in North America, the spectre of bulk water exports from the Great Lakes to areas outside the region and growing demands within and near to the Great Lakes. A means to deal with emerging challenges also had to be part of the new negotiated plan. These included climate change impacts and a lack of practical knowledge of how the resiliency of the ecosystem will be impacted by lowered water levels.

While Ontario and Quebec had improved their water management systems and had placed a ban on bulk water diversions, they quickly found in negotiations that the States were reluctant to consider extending the ban to their waters. Consequently, when the first draft of the Agreement was released to the public, the reaction of Ontarians was overwhelmingly negative. Why, they asked, can’t the US ban diversions from the Great Lakes Basin if we can? The Canadian media headlines characterised this controversial omission as a “US water grab”.

The other negotiators accused Ontario of being unable to control their public and messaging to the media. When Ontario’s negotiators considered their next steps they decided, with the Minister of Natural Resources, David Ramsay and the Premier’s approval to take the risk of inviting those stakeholders with the strongest concerns and those who would be impacted to be partners in the remaining negotiations. They

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<sup>1</sup> Kevin Wilson, Assistant Deputy Minister, Ontario Ministry of Natural Resources Negotiating Team

<sup>2</sup> Rob Messervey, Ontario Ministry of Natural Resources Negotiating Team

decided to form an advisory panel and invited 50 representative stakeholders to join them to assist the province in framing their further negotiating positions. The Province notified the negotiators for the other jurisdictions that they would not be able to return to the negotiating table unless discussions on a ban in the US were reopened. The Ontario Government committed to taking the advice of their panel and in exchange asked for their confidentiality for what remained of the negotiating process. The outcome proved to be favourable for all and a “risk worth taking”.

The final draft extended the ban on out of Basin diversions to the US States and dropped other clauses of concern to the public. Ontario was able to represent their public perspective in a much more direct and genuine way in the negotiations and establish a level of trust that is often missing in public consultations. Additionally the Province was able to build a constituency for the long term implementation of the new agreement in Ontario law. Most members of the original Advisory Panel want to continue to work in collaboration with the government on the implementation of the final agreement the *Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement* that could take up to 7 years. This Agreement was approved by all ten Great Lakes jurisdictions in December 2005. The new agreement, unlike previous arrangements, will be legally binding and will set new decision-making and conservation standards for sustainable water use within the region.

### **Successful Components of the Process**

There was a high degree of agreement between government and public participants about the components of this process that contributed to its success. Constructive suggestions were also made on how it could be enhanced and applied more widely in the future. Those with experience in more traditional consultations felt that this process was far more collaborative, and were gratified that their concerns were heard and acted upon. They gained a better understanding of differing perspectives and accepted compromises because they had agreement on the necessity to move forward together. Some of the components that led to this success were:

- Strong political leadership and support
- Commitment of senior staff
- Sincerity and an atmosphere of respect
- Involvement of a broad based group of affected stakeholders
- Establishment of clear ground rules
- Clear follow through and feedback
- Transparency and open communication
- Using the public as a resource and source of intelligence
- Working toward consensus

## Recommendations

Increasingly as environmental and resource use and management issues grow with global threats, there will be imperatives to act and resolve differences that hinder actions. The public now has a more profound appreciation of how failure to act can cause irrevocable harm to the environment and their health. New models to bring about consensus on the way forward on complex government policies and programs will be needed. The following recommendations should be used in developing any public consultation process:

- 1) Involve the public and First Nations early in the process of developing policy and regulations and consider what comprises adequate engagement of First Nations.
- 2) Ensure that all sectors with a particular interest or stake in the policy are fairly represented in discussions with government. It is especially important to include those who are most critical of the policies.
- 3) Rather than coming in with a pre-conceived idea of what the policy or legislation will be, try to reach a consensus through shared decision-making and a balancing of interests.
- 4) Demonstrate that political leadership supports the efforts.
- 5) Maintain ongoing involvement and commitment of senior officials who have influence internally within government, and include other government departments who have a view and who will be involved later.
- 6) Provide staff and participants with adequate resources to support the additional effort, time and care required.
- 7) Develop clear ground rules for participants and government representatives to follow.
- 8) Provide good information, measures that capture decisions clearly and regular updates to all participants, even allowing for briefings and meetings outside the formal processes so that no one who wants to participate is left behind in the discussions and so that stakeholder input is maximized.
- 9) Create an atmosphere of respect for those involved in the discussions and ensure that consultations are open and transparent.
- 10) Follow through on the advice of the stakeholders and public, or provide reasons why advice was not accepted. Report back on progress.

# RETHINKING PUBLIC CONSULTATION FROM THE INSIDE OUT ~ “A RISK WORTH TAKING”

## *An Evaluation of the Ontario Advisory Panel Process for the Great Lakes Charter Annex Agreements*

“Constructive public deliberation is the means by which opinions can be revised, premises altered and common interests discovered.”<sup>3</sup>

### **1. Purpose**

The purpose of this report is to evaluate the Great Lakes Charter Annex Advisory Panel by the Ministry of Natural Resources (MNR), to examine this process as a case study for an alternative approach to public consultation, and to identify the elements critical to the success of this process and ways in which it could be improved that could be applied to future government consultations.

### **2. Objective**

Increasingly public policy issues are complex, multi-faceted, highly technical and political, and involve regulatory components. There is usually a broad cross-section of stakeholders with direct and indirect interests whose perspectives need to be taken into consideration when policy is developed. Consulting each of these sectors individually can be time-consuming, expensive and ineffective in building an informed and enduring constituency for public policy reform.

The Ministry of Natural Resources’ Great Lakes Charter Annex Advisory Panel was created to assist the Ministry’s negotiators in the process of negotiating the Great Lakes Charter Annex Agreements. This Advisory Panel broke down many of the usual barriers to effective public consultation. It created consent on Ontario’s input at the international negotiating table that significantly influenced the outcome of those negotiations. As well, it developed a broad-based constituency, which has continued to shape the implementation of the Charter Annex Agreement both in Ontario and in other jurisdictions.

The objective in evaluating the Advisory Panel process is to identify the key ingredients that contributed to its success in order to inform and improve future public consultation processes in Ontario. Although the Advisory Panel continues to advise the Ministry of

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<sup>3</sup> Steven Daniels and Gregg Walker (1996) “Collaborative Learning: Improving Public Deliberation in Ecosystem-Based Management”, *Environmental Impact Assessment Review* 16, p. 74.

Natural Resources, the discussion of the Advisory Panel process in this report primarily covers the time period from the release of the draft basin-wide agreement in July 2004 to the signing of a substantially revised agreement in December 2005.

### **3. Methodology**

The methodology that was used in evaluating the Advisory Panel process included the following:

First, in consultation with Ministry of Natural Resources' staff, two questionnaires on the Advisory Panel process were developed – one tailored to members of the Great Lakes Charter Annex Advisory Panel, and another directed at key government participants. The first questionnaire was emailed to all members listed as part of the original Advisory Panel. The second questionnaire was distributed to key government negotiators in the Ontario Ministries of Natural Resources, and Intergovernmental Affairs. As well the Ontario Ministry of the Environment, the Canadian Federal Government and other government agencies such as the International Joint Commission and the Council of Great Lakes Governors were asked to participate.

Secondly, the distribution of questionnaires was followed up by telephone calls to those members of the Advisory Panel who attended meetings most frequently and to selected government representatives. Telephone calls were also made to some people who were listed as members of the Advisory Panel but who participated in a more limited way. The telephone interviews with panel members were chosen to ensure that members from the range of sectors were covered. Telephone interviews were also conducted with government and agency representatives in both Ontario and the United States. Additional telephone interviews were conducted with the Advisory Panel's facilitator and with a First Nations participant.

An analysis of the Advisory Panel process based on the information collected through questionnaires and telephone interviews was then carried out. Of the original approximately 60 contacts identified, including government representatives, Panel members and alternates, 39 participated in this evaluation. Several additional Panel members who were not active participants in the process were also contacted. The complete list of those who contributed is listed in Appendix I.

### **4. Background to the Great Lakes Charter and Annex Agreements**

In the 1980's concerns began to emerge in the states and provinces around the water-rich Great Lakes and St. Lawrence River that the region could be vulnerable to emerging trends in North America. Population growth, industrial and agricultural intensification in water-scarce sunbelt areas of the United States were depleting the Ogallala aquifer much faster than it could be replenished, and plans for importing Great Lakes' water to the region were being investigated. In response, jurisdictions in the

Great Lakes began to address the spectre of large scale withdrawals and diversions from the region.

In June 1984, Ontario Premier William Davis promoted regional action by hosting a Futures in Water conference in Toronto where Ontario voiced its opposition to diversions out of the Great Lakes Basin as well as concerns about growing consumptive uses within the Basin. These concerns resulted in an endorsement of a cooperative management approach to the Great Lakes water resources. Consequently, on February 11, 1985 the eight Great Lakes Governors and the Premiers of Quebec and Ontario signed the Great Lakes Charter.

This Charter was a non-binding agreement based on management principles of:

- Recognition of the integrity of the natural resources and the ecosystem of the Great Lakes Basin as a single hydrologic system;
- Cooperation among local, state and provincial agencies, the federal governments of Canada and the US, and the International Joint Commission in the study monitoring, planning and conservation of Great Lakes water resources;
- Protection of the Great Lakes from the serious concerns of new or increased diversions by seeking to implement legislation and establish programs to regulate and manage the resource;
- Prior notice and consultation with other jurisdictions prior to approval or permit of any major new or increased diversion or consumptive use over 19 million litres (5 million gallons) a day; and,
- Commitment to the development of a common database and information on the use and management of the resource and the establishment of a Water Resources Management Committee and Program to coordinate information exchange, research efforts and improved information for future water planning and management decisions.

The Ministry of Natural Resources represented Ontario on this Water Resources Management Committee. However, many jurisdictions never followed through with legislation to implement the Great Lakes Charter. Under the Water Resources Management Committee, several diversion proposals were approved on the US side for communities that straddled the surface water boundaries of the Great Lakes Basin. Ontario and some states as well as environmental groups objected to these proposals. During this same period it became apparent that large consumptive uses of water to irrigate crops within the basin were circumventing the Charter provisions. There was no data on the cumulative impacts of the many water uses that did not require approvals under the Charter “trigger levels”, and scientists were warning that climate change would mean significant lowering of lake levels.

Then, in March 1998 the government of Ontario granted a permit to take water to a small private venture in Sault Ste Marie, Ontario, the Nova Group, to export water in bulk by ship from Lake Superior to Asia. Although the permit was eventually withdrawn, this relatively modest proposal to export 600 million litres (158 million gallons) a year,



one ship at a time, led to the eruption of a political and a public relations crisis for the Ontario, US and Canadian governments that challenged them to revisit virtually all their water management laws. In addition, new worries about how trade agreements might impact the ability of the jurisdictions in the Great Lakes and beyond to manage their waters captured media attention in Canada. In 1999, the International Joint Commission (IJC), a binational body set up by the Boundary Waters Treaty of 1909 to oversee boundary and transboundary water management between Canada and the United States, carried out a reference on these new concerns and about the impacts of bulk water withdrawals from the Great Lakes. The report in 2000 concluded that there were not adequate protections in place in the States and Provinces to meet these new water management challenges.

To address these concerns, the Council of Great Lakes Governors proposed the development of a new binding agreement that would be an annex to the original Great Lakes Charter. On June 18, 2001, the 8 Great Lakes Governors and the Premiers of Quebec and Ontario signed Annex 2001 to the Great Lakes Charter. They thus signalled their intention to negotiate binding agreements that would protect, conserve, restore and improve the Great Lakes for the use and benefit of its citizens.<sup>4</sup> Each jurisdiction selected a negotiating team that reported to their Governors and Premiers. Ontario's negotiating team was made up of staff of the Ministry of Natural Resources and one staff from Intergovernmental Affairs. The Council of Great Lakes Governors, which was facilitating the negotiations on the Annex, set up the Great Lakes Water Management Advisory Committee and invited each jurisdiction to select stakeholders with a regional focus.<sup>5</sup> While this Advisory Committee was not party to the negotiations, they were asked to make periodic submissions on issues and attend meetings with the negotiators on a confidential basis.

This first round of negotiations was challenging for the Ontario negotiators. Their mandate was to "negotiate on the basis of the current Ontario policy and framework".<sup>6</sup> Ontario already had one of the most protective water permitting systems in the region, requiring a permit for all uses above 50,000 litres per day, and did not want to sign an agreement that was less stringent than its own laws. Most importantly Ontario had banned all diversions out of the Great Lakes Basin and the province's other major basins while Quebec had banned diversions out of the province. Ontario's efforts to get similar bans extended to the US were dismissed because the States maintained that this would violate interstate commerce laws. As one negotiator put it "when you are negotiating with the States, at the end of the day they will all agree and you will be left out of it". Furthermore, Ontario and Quebec had concerns that the Annex ignored the cumulative impacts of all water withdrawals on the integrity of the ecosystem.

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<sup>4</sup> Chapter 1, Article 100.

<sup>3</sup> Three groups suggested by Ontario were selected. They were Ontario Power Generation, the Ontario Federation of Agriculture and the Canadian Environmental Law Association. The bi-national Great Lakes United was also selected. These groups also participated in the Ministry of Natural Resources' Charter Annex Advisory Panel. The Council refused Ontario's efforts to include First Nations and a representative of the Municipal sector

<sup>6</sup> Paula Thompson, Ontario Negotiating Team, Ministry of Natural Resources.

Three years later, in 2004 the proposed draft agreements to implement the Great Lakes Charter Annex were released for public comment. There were two agreements -- the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (referred to in this report as the Agreement) which included Ontario and Quebec, and the Great Lakes-St. Lawrence River Basin Water Resources Compact, which included only the eight Great Lakes states. The Agreement is a good-faith agreement among the Great Lakes States and Ontario and Quebec that will be implemented through legislation in Ontario and Quebec, and implemented in the United States through the binding interstate compact into state laws. In the US, the compacts between the States also need Congressional approval.

In Canada, public meetings were held on the draft agreement in Thunder Bay, Sault Ste. Marie, London, Kingston, Toronto and Windsor during the 90 day comment period. Although the public in the United States was generally supportive of the Agreements, the Canadian public expressed strong concerns. Meetings in Toronto and London were particularly acrimonious. First Nations were concerned that they had not been included in negotiations. Others were critical that the Agreements would not prevent large-scale water diversions outside the Great Lakes Basin, and that the Canadian Federal Government would be excluded from the right to approve or veto diversions. They were also critical of the "improvement standard" included in the Agreement that encouraged applicants for water withdrawals to pay for local improvements as part of the terms of their proposal. At the end of the public consultation period the Council of Great Lakes Governors had received over 10,000 submissions directly from the public or passed on from each of the jurisdictions. This convinced the Ontario Government that their public had overwhelming concerns with the Agreement and an appetite for deeper involvement.

Ontario negotiators were criticized by their counterparts in the US as being unable to control their public or messaging to the Canadian media. However, the Ontario negotiators saw the public concerns as supportive of issues that had fallen off the negotiating table. Discussions were held among the Ontario negotiators and senior government staff about the best way to move forward. The decision was made to move ahead using a new level of inclusion of stakeholders as direct advisors to government. This methodology was endorsed by the Minister and the Premier.

## **5. The Advisory Panel Changes History**

As a result, the Minister of Natural Resources David Ramsay announced that Ontario would not sign the agreements as drafted. In November 2004, the Minister established the Great Lakes Charter Annex Advisory Panel, with 50 representatives of different sectors, in order to advise the government through the remainder of the negotiations.

The formation of the Advisory Panel in Ontario resulted in a marked change in Ontario's role in the negotiations. As one negotiator put it, at the international negotiating table it was "now known that Ontario's position had more weight than one voice". Ontario's

strong message was that if you really want to go forward you have to go back to reconsider a ban on diversions. This resulted in the US seeking new legal opinions, which concluded that indeed it was possible for them to commit to a ban. This broke the log jam and negotiations resumed on an Agreement that included a basin-wide ban.

The final agreements, released in 2005, evolved significantly from the first draft Agreements in response to public input in Ontario. Throughout the next year the negotiators worked in partnership with this Panel on all issues to have the Agreements finalized for the November 2005 deadline. In Canada, this included two separate public consultations, meetings with First Nations and the on-going input of Ontario's Charter Annex Advisory Panel, which advised negotiators during the final year of negotiations.

All did not go smoothly in the next round of negotiations in which the Advisory Panel was involved. The new controversial concept of exempting cities and towns situated within counties straddling the boundaries of the Great Lakes Basin from the diversion ban was introduced in the US. It was never made clear how many more users might gain access from this "redrawing" of the boundaries of the Basin. Fundamentals of the Agreements were opened up for debate all over again by one US jurisdiction that had not kept up with the process. Industry lobbyists tried to convince legislators to change key provisions. By the summer prior to the deadline for a final agreement of November 2005, there was no consensus on the working draft. Ontario and other jurisdictions insisted, however, that the latest draft be released to the public anyway so as not to lose commitment or momentum.

Ontario was anxious to alert their public to the changes in the new draft and to the fragility of the status of the negotiations. They decided to go out early to the public and arranged meetings in July 2005. These meetings were in London, Kingston, Thunder Bay, Sault Ste. Marie, Windsor, St. Catharines and Toronto. This second public consultation period yielded one hundred and thirty-seven responses in Ontario. Most of these responses were supportive of having such an Agreement in place and offered constructive criticisms. The contrast between this response and the outcry of the first consultation can be credited to the impact of the public involvement in the Advisory Panel.

Once the public consultation period on the second draft of the Agreement closed in September 2005, the jurisdictions continued to negotiate to reach consensus. The Ontario Advisory Panel was in a uniquely privileged position during the fall of 2005 compared to the public in the US. They were aware of the issues still at play and actively worked with the government from the inside to settle outstanding matters. In contrast, concerned US groups were working to apply pressure from the outside to governments who at that point were not indicating publicly what was going on.

On December 13, 2005, Ontario, Quebec and the eight Great Lakes States signed the Great Lakes - St Lawrence River Basin Sustainable Water Resources Agreement. At the same time, the Great Lakes states also endorsed the Great Lakes – St Lawrence River Basin Water Resources Compact.

## **6. First Nations and the Agreements**

In 2002 when the makeup of the Advisory Committee to the Council of Great Lakes Governors (CGLG) was being considered, Ontario proposed that First Nations in Canada and Tribes in the US be included. This was rejected because concerns were voiced that Tribes and First Nations were not organized in a way that representatives and spokespersons could be found.

Despite this, the Ministry of Natural Resources started in the fall of 2003, to go out and inform First Nations in Ontario of the Great Lakes Charter Annex Agreement. A mailing went out to all 60 communities within the Great Lakes watershed (out of 134 Ontario First Nations) as well as to First Nation political organizations. Meetings then were held in five locations; Sudbury, Barrie, London, Thunder Bay and Kingston.

In December 2003, a land claim for the lakebed under Lake Huron and Georgian Bay was made in Ontario Superior Court by the Saugeen Ojibway. The Statement of Claim stated, "The Treaties signed by the Saugeen Ojibway Nation clearly did not include the land under these waters around their traditional territories; nor were they a part of treaty negotiations. The First Nations of the Saugeen Ojibway Territories are therefore claiming aboriginal title to these territories and therefore their return to the Bands' occupation and control".

During the summer 2004 release of the first draft of the Agreement and 90 day consultation period, MNR held a separate series of First Nations meetings in each city they visited, Thunder Bay, Sault Ste. Marie, London, and Kingston. These were followed in October by a meeting of senior MNR officials with the Chiefs of Ontario political leadership.

November 9-11, 2004, the Chiefs of Ontario held a Special Chiefs' Assembly in Thunder Bay and passed a resolution on Great Lakes Water Quality and Quantity opposing export and diversion of water from the Great Lakes. As well they asked for "a full and open consultation process and resources for face to face meetings with their leadership and broad-based community meetings".

On November 23, 2004 in Sault Ste. Marie, Michigan, Tribes and First Nations gathered and issued a Tribal and First Nation Great Lakes Water Accord (See appendix VII).

As well, on January 31-February 1, 2005, 31 members of Tribes and First Nations met for the first time with the Council of Great Lakes Governors in Oakbrook, Illinois to discuss the draft Agreement. The meeting was hosted by the Council of Great Lakes Governors, while the Ontario Government offered resources to assist First Nations from Ontario to attend. The Ontario government participated in this meeting as well.

The Tribes and First Nations met again in Niagara Falls, Ontario in April 2005 where they formed the United Indian Nations of the Great Lakes and initiated a task force to develop a parallel process of aboriginal engagement on the draft Agreements. The meeting was organized by the First Nations and Tribes but government negotiators were invited to attend.

This dialogue came at a time when two precedent setting court decisions in BC clarified the duty of the crown and third parties to consult with First Nations. "Consultation with First Nations affected by decisions of the Crown must be higher, deeper and sooner than previously expected."<sup>7</sup>

First Nations are committed to seeing that these decisions are followed. They felt they were not contacted soon enough after the Great Lakes Charter Annex was announced in 2001. The depth of consultation should happen with the Treaty holders and ideally in all Great Lakes Basin First Nations communities. One Aboriginal Advisory Panel member interviewed pointed out that "Reports and information do not constitute adequate consultation and engagement. A good model agreement used in Saskatchewan gives First Nations input at the conception of policy development.

This model can be viewed at:

<http://www.fsin.com/landsandresources/resourcemanagement.html>.

When Ontario set up the Advisory Panel in the December 2004, First Nations provincial territorial organizations (PTOs) were invited to participate. Several First Nation representatives did attend the first few meetings. Subsequently the representatives did pull back and asked that a separate and parallel Aboriginal engagement process or panel be set up for First Nations. In October 2005 Ministry of Natural Resources officials met with members of the Chiefs of Ontario environment policy/technical committee to discuss the Agreement and how parallel engagement could be achieved. An Aboriginal Advisory Panel to Ontario's negotiating team was established.

Many of the non-native Advisory Panel members interviewed for this report did regret that their Panel would not benefit from directly having First Nations share their perspectives. First Nations acknowledged they had learned a lot about the Agreement from NGOs who made efforts to dialogue during this process.

The Council of Great Lakes Governors and the negotiating team did have conversations about inclusion of Tribes and First Nations on the Regional Body overseeing the Agreement. However some US Tribes declined that option.

Again when the second Draft of the Agreement was released in June 2005, MNR arranged public meetings in locations near to First Nations and held separate meetings for them in London, Sarnia, Niagara Falls, Kingston, Thunder Bay and Sault Ste Marie.

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<sup>7</sup> Billy Garton and Sandra Carter, April 2002, *First Nations Consultation: Higher, Wider, Deeper and Sooner*, article in Bull, Housser & Tupper Barristers and Solicitors Bulletin

Rob Messervey, one of the Ontario negotiating team, credits the Aboriginal input with being instrumental to Ontario in seeking significant changes to the draft Agreements to strengthen protections of Great Lakes Basin waters. The final Agreements do include several provisions committing to consult with Basin Tribes and First Nations on proposed water diversions subject to the regional review process. As well it commits to establish mechanisms for scientific and technical interaction and data exchange and to facilitate dialogue with and input from First Nations and Tribes on matters within the scope of the Agreement.

At the first meeting of the Regional Body in June 2006, a meeting was held with First Nations and Tribes to further this dialogue. Representatives of Ontario First Nations in attendance were the Union of Ontario Indians, the Chiefs of Ontario, Saugeen First Nation, and the Mohawks of the Bay of Quinte.

In July 2006, a letter of intent was negotiated with Minister Ramsay and Union of Ontario Indian Grand Chief John Beaucage addressing a number of resource management issues. It included an agreement “to develop an approach that defines a role for the Anishinabek Nation in protecting the Great Lakes in partnership with Ontario through the implementation of the Great Lakes Charter Annex”. On March 27th, 2007 Minister Ramsay and Grand Chief Beaucage signed a Memorandum of Understanding to implement this commitment.

Input from First Nations and Tribes has also been sought in the development of regional water conservation objectives for the Great Lakes Basin, intended to guide the development of water conservation programs in each state and province. On March 15 2007, the Council of Great Lakes Governors released the draft conservation objectives for public review. The draft recognizes the need for greater understanding and consideration of aboriginal traditional knowledge through partnerships with Basin Tribes and First Nations

It is important that Aboriginal Traditional Knowledge (ATK) is a component of all environmental regimes as it has much to offer to western science. Canada is a signatory to the Convention on Biological Diversity and has already started to give the due respect to ATK as federal acts such as the Species at Risk Act have already ensured ATK is in the act and a significant part of protecting the species. To this end, the Chiefs of Ontario are hosting an Aboriginal Knowledge Sharing Session this spring for others in government, conservation authorities and NGOs involved in source water protection.

## **7. The Mechanics of the Advisory Panel**

The Advisory Panel was initially composed of about 50 representatives from many different sectors. Approximately 30 members attended continuously throughout the process. Invitations were sent to selected stakeholders after a preliminary meeting in October 2004 “in keeping with the Government’s desire to involve its partners and

clients in the decision making process”.<sup>8</sup> The function of the Advisory Panel was to act as advisors to the Minister of Natural Resources, David Ramsay, in the negotiation of a second draft Agreement.

The Ministry of Natural Resources invited representatives from key industrial sectors with particular interests in water issues such as the agricultural sector, waterpower generators, the aggregate sector, and the bottled water sector. Representatives from the municipal sector, from the Ontario water and wastewater association, the groundwater association, and from many non-governmental organizations, including the government’s strongest critics, were also invited. As well, the Panel included experts such as Jim Bruce from the Soil and Water Conservation Society, and Ralph Pentland, who had a history of involvement with the International Joint Commission and Great Lakes’ issues (e.g. Canadian co-chair of IJC Water Uses Reference Study examining Great Lakes water diversions and consumptive uses). Also, The Walter and Duncan Gordon Foundation, which has a strong interest in enabling water protection, as well as the Munk Centre for International Studies Programme on Water, which hosted an international conference on the Annex Agreements, were asked to be panel members. A complete list of the original participants in the Advisory Panel can be found in Appendix II.

Ontario’s intention was to “build a collaborative process to share information and ideas” between the Ministry of Natural Resources and stakeholders in the issues of Great Lakes water quantity management.<sup>9</sup> At the inaugural meeting on December 15, 2004, the Ministry of Natural Resources told the Panel that their specific mandate was:

- To participate in regularly scheduled meetings to receive information from and provide input to the Great Lakes Charter Annex (GLCA) negotiations process;
- To act as a sounding board for the discussion of issues;
- To offer insights, observations, advice and guidance to Ontario staff responsible for the GLCA negotiations process; and,
- To work with staff to insure the GLCA negotiations process meets Ontario's needs.

The key issues that were identified at the first meeting were diversions and consumptive uses of Great Lakes’ waters, water conservation, the cumulative impacts of diversions and withdrawals, and the concept of making resource improvements in return for water-taking. The Ministry of Natural Resources staff made a commitment to provide members of the Panel with updates on negotiations and to seek the input of the Advisory Panel before signing the final agreement. The Panel discussed all possible options that the Ministry might take to the negotiations with respect to each issue. The Ministry undertook to provide the Panel with comprehensive minutes of each meeting.

In total, ten meetings, including six face-to-face meetings and four teleconferences, were held between December 15, 2004 and November 21, 2005. For the first few

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<sup>8</sup> Ministry of Natural Resources, Invitation to Stakeholders to Attend Inaugural Meeting, Dec. 3, 2004.

<sup>9</sup> Ibid.

meetings, a facilitator, Karen Wianecki was engaged to promote discussion of the issues. She began the first meeting by presenting a scan entitled Issues, Trends, Possible Futures: Why We Need to Work Together. This power point presentation surveyed demographic, geo-political, economic, socio-cultural, environmental and legal trends and issues in North America. It helped create a common understanding in the Panel of the growing problem of the parallel growth of population with water shortages in the US sunbelt. The collective concern this created for Advisory Panel members established a strong foundation for the collaborative problem solving that followed.

Meetings of the Advisory Panel generally preceded working group meetings of the Ministry of Natural Resources negotiators with their counterparts from Quebec and the eight Great Lakes states. Very late in the negotiations, exceptions for straddling counties (i.e. cities, towns in counties straddling the Great Lakes Basin divide) to take Great Lakes' water was introduced by the US negotiators and necessitated last minute discussions of this new issue. The Ministry of Natural Resources used members of the Advisory Panel who were available for emergency teleconferences to help make the decisions on the final agreement.

## **8. Assessment of the Charter Annex Advisory Panel Process**

From the beginning, the Charter Annex Advisory Panel has been a unique process in the history of consultation in Ontario.

It was born out of a public outcry, which encouraged the Minister and ministry staff "to take the leap to be more democratic".<sup>10</sup> The Ministry of Natural Resources, despite the fact that they were involved in confidential negotiations with the eight Great Lakes' states and the province of Quebec, set up an open and transparent process. They came to the Panel with flexibility in their negotiating positions, the belief that the government did not have all the answers and an invitation to advise them on what policy positions Ontario should put forward.

Many Panel members who had been involved in other government consultations were immediately impressed by the openness and sincerity of the Ministry representatives. They have described their experience on the Panel as a "great process", "top-notch" and a "genuine consultation as opposed to a propaganda exercise". Larry Field of Conservation Ontario called it the "most engaging and most open process that I have ever been involved in". Many Panel members commented that the Ministry took a big risk in opening up the process, one that they appreciated. Ministry staff concurred that the Advisory Panel has proven to be "a risk worth taking".

The overwhelming majority of Panel members interviewed for this report supported the process and believed the result of their discussions led to a stronger second Agreement. Many were extremely enthusiastic about the process and hoped that future

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<sup>10</sup> Karen Wianecki, Facilitator for the Advisory Panel.



government consultations would follow this model. However, there was not unqualified support for this view. Although they generally saw the process as a good one, some Panel members were more guarded in their evaluations, particularly as it enters the next stage of actual drafting of legislation. As Bob Yap of Ontario Power Generation expressed it, “the devil is in the details”. Another Panel member, Paul Norris of the Ontario Waterpower Association, cautioned that this process should not be held up as “the” model but that “it can work in the right situation with the right cross-section dealing with the right issue”.

In this section, the report explores the key ingredients that were identified by Panel members and government representatives as contributing to the success of the process. Similarly, where Panel members expressed hesitations or concerns about the process, they have also been included in the appropriate sections.

The following key ingredients were the ones most commonly cited by Panel members and government representatives as the reasons why the Panel was viewed as a satisfying experience. They can be roughly grouped into three areas – people, procedure and process. The Panel members and the Ministry of Natural Resources’ representatives brought personal commitment, skills and information to the table to help make it work; the procedures that were used to develop policy positions and keep Advisory Panel members abreast of developments were very well executed; and, the process itself with its give and take at the negotiations was vibrant and resulted in a largely successful outcome.

Furthermore what was at stake was compelling. People were galvanized because, as Panel member Adele Hurley of the Munk Centre observed, “Water is a unifying topic”. This unification worked to level the playing field between stakeholders, government and agency representatives. Government participants heard and discussed the full range of concerns and priorities of the stakeholders and struggled with them to come to common positions. Their reward was being able to confidently and emphatically state what the Ontario public wants when they went to the negotiating table. “We no longer had to make weak generalisations and surmise about what the public wanted”, one negotiator observed. Ontario clarity allowed negotiators to categorically state what they could and could not support with authority.

## **8.1**            *Political Leadership*

In the case of the Charter Annex Agreement, there was an alignment of political, bureaucratic and public interests, all supportive of the direction of the process. The Advisory Panel was established by the Minister of Natural Resources, David Ramsay, after the first draft agreements were met with criticism from the public, First Nations and stakeholders.<sup>11</sup> The Minister indicated that he had listened to the public, and that in

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<sup>11</sup> Media Release, Ministry of Natural Resources, “Level of Protection in Draft Great Lakes Charter Annex Agreements Not High Enough: Changes Needed Before Ontario Will Sign”, November 15, 2004.

response to the overwhelming public sentiment he would not ratify the agreement as it was first proposed.

When the Minister made his decision, Elizabeth May, Executive Director of the Sierra Club of Canada who became one of the Panel members, said, ""To have your government actually listen to you and say we're not prepared to sign off on this agreement, we do not think there are adequate protections, and we insist on no diversion, this is really very, very important. Now we have a position with one jurisdiction solidly breaking away, I'm hoping we can get to a fundamental rethink.""<sup>12</sup>

The Minister's commitment to considering the input of the Advisory Panel established the importance of its contribution to the process. "It's important to have political support for the process, and to know that they are advocates", observed one government participant. In addition, the attendance of a member of the Minister's staff at meetings allowed Panel members to discuss issues with a representative of his office.

## **8.2**      *Commitment of Senior Staff*

In addition to the commitment of the Minister's office, the involvement of the Assistant Deputy Minister (ADM) in the Ministry of Natural Resources also demonstrated the importance of the Advisory Panel's deliberations and ensured their contribution to the process.

Many of the Advisory Panel members cited the Assistant Deputy Minister's active participation as one of the key factors in the success of the process.<sup>13</sup> Peter White of the Ontario Stone, Sand and Gravel Association stated that "the important thing in this process is the integrity that a senior official has lent to this process. They're not just listening. They're actively involved". In addition, it was observed by two Panel members that senior government people such as the ADM are more comfortable than junior staff members with diverse opinions.

Derek Stack of Great Lakes United contrasted the involvement of senior staff members with a consultation where stakeholders were invited to meet with a different Ministry to discuss another far-reaching, cross jurisdictional agreement. Since none of the Ministry's staff meeting with them would be involved in the negotiations, the stakeholders did not feel confident that their input would be meaningful.

In addition, because the ADM was one of the principal negotiators, his presence at the meetings assured Panel members that they were feeding directly into the process. The

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<sup>12</sup> The Globe and Mail, "Won't Sign Great Lakes Water Deal, Ontario Says", November 16, 2004.

<sup>13</sup> In fact, two Assistant Deputy Ministers were involved over the course of the negotiations and in discussing issues with the Advisory Panel. At one point, the first ADM assumed other responsibilities but remained part of the negotiating team and a second ADM joined the negotiations and worked with the Panel. This was important to retain continuity and relationships already established with other negotiators.

full Ontario negotiating team and their staff attended most of the meetings. Negotiators joined in the discussions and this contributed to placing government staff among the stakeholders on equal footing.

### **8.3**      *Sincerity and Atmosphere of Respect*

“Sincerity” was the one word most often used to describe the process and the Ministry representatives by many different Panel members. In part, the importance of sincerity to stakeholders reflects on other consultation processes where people felt that their input was not taken seriously enough and that they were being put through the motions of consultation to no real effect. However, even Panel members who were new to consultation processes were struck by the sincere interest of the people involved in the negotiating process and the engagement of senior Ministry people in the policy discussions.

The response of Ministry staff to concerns put forward by Panel members was described as “appropriate to the scale of concern”. Panel members generally felt that the Ministry representatives tried hard to get everyone’s view. In particular, the Assistant Deputy Minister, Kevin Wilson, was praised for taking the time to listen to everyone, “not just the loudest voices”. It was observed that he could understand when an important point was being made and make time in the meeting to ensure that it was fully discussed, rather than moving on simply to make sure that the agenda was finished. In one instance, Ministry officials apologized to other people who were making presentations and changed the whole day in order to accommodate an important discussion. “It’s not like the telephone messages that say ‘your concerns are important to us’ and then they put you on hold.”, observed Peter White, “important concerns were given the consideration they deserved.”

The commitment to take the views of the group forward contributed greatly to building trust. This way they communicated their respect for the collective intelligence of the stakeholders on the panel and created an atmosphere where everyone learned from each other. Panel members felt that in this consultation the government was not talking down to them, but that everyone was participating on an equal footing.

### **8.4**      *Broad-based Group of Stakeholders*

Both Panel members and government representatives stressed the importance of including a broad range of diverse interests on the Panel, including public and private sector interests and other relevant government departments. It was felt that having diverse players in the room made it possible to discuss, debate and better understand the full range of issues and their varying impacts on sectors. Elizabeth Griswold of the Canadian Bottled Water Association said that “the overall development of the Advisory Panel and having opposing groups work together for common ground and goals was excellent and beneficial.”

In the case of the Panel, both public and private sector interests were represented, as well as the Ministries of Natural Resources, Environment and Agriculture. The Panel included representatives from the agricultural community, from the aggregate and the bottled water industry, from the hydroelectric sector representing both large and small-scale hydro projects, from the municipal sector, as well as a wide range of non-governmental organizations. The Panel had “good people and good representation” in the opinion of one MNR representative. Michael D’Andrea of the City of Toronto described the Panel as a good cross-section of key stakeholders, and said “participants were genuinely committed to strengthening the agreement, providing input to support the negotiations and were objective enough to realize that through any negotiations compromises were also part of the process”.

Many people on the Advisory Panel felt that they were representing not only the direct interest of their groups but their own personal interests as well. As Adele Hurley of the Munk Centre observed, water is a personal interest to many of us. Peter White, from the aggregates sector, captured this idea when he said that he aspired to represent not only the interests of the aggregates industry but the interests of Ontario as a whole.

MNR stressed that it was particularly important to include people who disagree in order to stimulate debate and probe the issues until a better understanding is reached. By doing this, the government was able to assess many of the implications of the positions it could take during the negotiations. It also gave the Ministry of Natural Resources the opportunity to experiment with ideas that might be taken forward to the negotiating table.

Three Panel members from different industrial sectors felt that industry was not well enough represented on the Advisory Panel. Elizabeth Griswold, for example, who raised this as one of her concerns said, however, that she did not hold the Ministry of Natural Resources responsible for this; rather, she thought that other industry groups did not fully understand the significance of the agreements and the impact that subsequent legislation would have on their sectors. Bob Yap felt that the Panel overall was heavily weighted with non-government organizations and that it was sometimes intimidating for industry representatives to express their opinions.

For some Panel members, the expanding size of the group was good because of its inclusiveness but there was a concern that as it got bigger, the impact of the Panel was diluted.

## **8.5**      *Early Involvement of the Public*

In the case of the Annex Agreements, the public was not involved in the early stages during the development of the initial drafts. Three of the Panel members felt that timing was an important consideration not only in this process, but in all public consultations.

Peter White suggested that the government should “consult early in the process, when you pick people up keep them with you, and keep reaching out”.

In the case of the Charter Annex Agreements, the government had already committed a significant amount of time and energy to developing an agreement before the public had the opportunity to see the results. Jim Bruce of the Soil and Water Association suggested that the government probably should have started the consultation earlier, but described the first agreement as “something to shoot at”. From the government side, there was a similar view that setting up the Panel earlier would have been helpful. One negotiator suggested that if they had had the Panel in place when they were discussing the Chicago Diversion, “we might have had a chance at a better outcome”.

Panel members who had participated in other government consultations observed that the government often is not receptive to criticism after it has done considerable work in drafting a policy or legislation. As a result, it is much more difficult to set up a process of public engagement. Carolyn Day of the Canadian Federation of University Women said that timing is important and coming in early enough before positions are fixed -- “it is better to start when it’s draft number one before you get to draft number 7 when there’s a lot more ownership”.

## **8.6**            *Ground Rules*

The work of the Advisory Panel benefited from the establishment of a very clear set of ground rules. The first and most important context for the discussions was the Minister’s decision in November 2004 that Ontario would not ratify the first draft agreements without significant changes. The Minister indicated that although the agreements would strengthen the regulation of water in many states, it was not acceptable that they were weaker than Ontario’s laws, which prohibit water transfers out of the province’s three major water basins.

The second important set of ground rules was established at the inaugural meeting on December 15, 2004. The mandate of the Advisory Panel was established primarily to assist Ontario negotiators by discussing issues and offering their guidance that could be taken to the bargaining table, as set out in Section 6.

The Minister’s initial announcement made it clear that Ontario would not go forward without the Panel and that Ontario would use the Panel to inform its negotiating position. As Brenda Lucas of the Walter and Duncan Gordon Foundation said, “it was clear that decisions had not already been made and that government representatives were open to input and influence”.

The mandate was also augmented and extended as a result of suggestions from the Panel. At the inaugural meeting, Panel members expressed a strong concern that the Agreement promote sustainable water use and management with the Basin and Ontario, and that the policy direction not be limited to protecting the Great Lakes from

threats outside the basin. The Ministry of Natural Resources showed flexibility in going back to the table with their resolve strengthened on this issue. Ontario had been advocating for controls on water use within the Great Lakes Basin from the onset. However there was resistance from some US negotiators who saw the Agreement as primarily protectionist against applications for water from outside the Basin only.

The ground rules gave both the stakeholders and the Ministry representatives clarity and guidance for their policy discussions, established the direction of the debates and created an important reference for those occasions when discussions ranged beyond the scope of the Panel's work. These ground rules also brought credibility to the process and assured Panel members that what they were doing was important and integral to the development of the government's position.

## **8.7**      *Confidentiality*

Another important rule of the Panel's work was the agreement that members would respect the confidentiality of the discussions. Maintaining confidentiality was also important to other jurisdictions involved in negotiating the agreement with Ontario, especially during sensitive points in the negotiations.

As John Jackson of Great Lakes United commented, confidentiality is sometimes cited as a reason why the government does not release information of interest to stakeholders during consultation processes. However, in this instance, confidentiality was critical to the process and Panel members showed their respect for the Ministry's trust and proved that this trust was not misplaced.

This commitment to confidentiality by the Panel members allowed the Ministry to feel comfortable in being candid, providing information about the technical issues involved and being transparent about their discussions with the states and Quebec. It even allowed the Ministry to discuss openly the political problems presented by a deal made by the US National Wildlife Federation and the Council of Great Lakes Industries.

For their part, the Panel members generally agreed that they did not feel gagged by the confidentiality agreement. Some discussed the issues under negotiation with their groups to ensure that they were properly representing them, while others refrained from even doing this. No member of the Advisory Panel, however, discussed the delicate issues of the negotiations with members of the media while the discussions were underway. The Ministry felt that the confidentiality was absolutely adhered to by the Panel. The only breach of the confidentiality agreement occurred in the United States when members of a US environmental group who were kept informed by its Canadian counterparts divulged information to some media outlets.

Michael D'Andrea of the City of Toronto believes that the commitment to "confidentiality worked because stakeholders could see that leaks could jeopardize negotiations and would mean government would stop being so responsive".

## **8.8** *Follow Through and Feed Back*

Another feature of the Advisory Panel that contributed to the vitality of the process was the fact that the stakeholders were setting the negotiating position with the Ministry of Natural Resources. The result was a dynamic situation where the Panel members were giving advice, positions were accepted or rejected at the negotiating table and the results were being fed back quickly to the Panel and new positions being adopted. When the negotiations were reaching their deadline, the Advisory Panel developed their primary goal and fallback positions and options should their preference not be accepted.

This had the effect of reinforcing the importance of involvement for the stakeholders who could see that their input had an effect. As one MNR representative observed, the worst thing in a consultation process is when the government goes away and does nothing.

In the case of the Advisory Panel, after the inaugural meeting the negotiators took many of the decisions arrived at in the meeting and presented them to the international working group that was charged with drafting the next version of the agreement. The results of the negotiations were then conveyed back to the Advisory Panel. In this give and take scenario, Panel members could see that their input was being seriously considered and put forward. They were also able to understand why certain positions were rejected, and were given the opportunity to discuss how to respond with another position.

Many of the stakeholders gave considerable amounts of time and energy to the lengthy meetings and teleconferences that were the foundation of the negotiations. Panel members have said that they would not have stayed involved in such a long time-consuming process if they had not seen that their input was meaningful.

## **8.9** *Transparency and Open Communication*

Many Panel members stressed how important it was that the process was open. Rick Findlay said:

A big signal that the process would be meaningful was when MNR agreed to share confidential negotiating information and strategies. Rather, if MNR had taken the approach, 'thanks for your input, we'll go away and do what we want with it' it would have been a different process with a different outcome. People were participating in the process with a sense that 'I'm a small part of the larger negotiating process.'

MNR also tried to make the process as inclusive as possible by welcoming anyone with an interest and a commitment to participate. Many members were invited to the Panel after they had made submissions to the first public consultation process. Kelly Warner

of the Federation of Ontario Cottagers' Association commented that "there was no test to pass, no beauty contest. It was democracy at its purest."

All questions and suggestions were given a fair hearing – even "out of the box" ones. The Ministry representatives were open to questions and comments at all times during their presentations. One Panel member, Carolyn Day, described the process as developing a feeling of dialogue, rather than a sense of lecturer and audience.

The long period of time during which the negotiations took place also allowed for a slow build-up of trust between the government negotiators and the stakeholders. The effort that Ministry staff made to listen to the stakeholders and consider their views allowed a consensus to emerge. Carolyn Day compared it to other consultations where the government is often defensive when the public expresses a contrary view. In this case, Ministry representatives either explained their position or "let things sink in and filter through". Sarah Miller of the Canadian Environmental Law Association said that too often the government withholds information from the public in other consultations because they are afraid of controversy and described the candidness and trust of the Ministry of Natural Resources as "a refreshing contrast".

The Ministry staff were perceived by Panel members as playing their cards openly without any hidden agenda. The Ministry would ask Panel members "what position would you like us to take", arrive at a shared decision with the Panel and then proceed to take this position to the negotiating table. In addition, trust and transparency were reinforced by the Ministry's regular reporting back to the Panel on developments at the negotiating table. Earl Morwood of the Ontario Groundwater Association called the reporting back after negotiations "first rate".

The transparency and openness of the government allowed the Panel members to have a realistic, first-hand view of the difficulties Ontario faced in the negotiations. As Adele Hurley expressed it, "they pulled back the curtain and we saw how big the dance floor was. It made everyone sober up and understand that if you wanted the Agreements changed, this is what you were up against".

#### **8.10**      *Presentation of Information and Clear Records*

Another key ingredient in engaging the public in the development of complex policy or legislation is the quality of the information presented and clear record-keeping.

The Ministry of Natural Resources used presentations and summaries of material to stimulate discussions on major policy issues. Panel members were generally impressed with the helpfulness of the information. At the initial meeting, a facilitator provided Panel members with an overview of the issues at stake. Kelly Warner of the Federation of Ontario Cottagers Association commended the Ministry for "doing a great job presenting information in layman's terms". Carolyn Day praised the use of "good old-fashioned chart paper" in the meetings. However, Austin Kirkby of the Niagara on



the Lake Irrigation Advisory Committee expressed frustration at how technical the information was and how difficult it sometimes was to understand.

After each meeting or teleconference, “comprehensive and thorough” minutes were written up and circulated to all members of the Panel before the next meeting. For members of the Panel who could not make meetings, it was possible to stay informed about the discussions through the minutes. The objective for the Ministry was to ensure that materials kept people current and in the mind-set, and generally Panel members agreed that the quality of materials and the information provided was very good.

The Ministry was also careful to ensure that the minutes accurately reflected the decisions made by the group by asking Panel members at each subsequent meeting “did we get it right”. Accuracy was particularly important because recorded decisions being taken at the meetings were brought forward to the negotiations. As Karen Wianecki said, “it is logistically important to have clear records, to understand what everyone has agreed to and what’s actionable. It creates a record of common concerns and follow-up”.

Teleconferences were also an important vehicle for quick communication between Ministry staff and Panel members when negotiations were in their final stages and decisions had to be made quickly.

It was noted that electronic communications, particularly email, played an important role in the work of the Advisory Panel. The use of email to keep people up-to-date and informed worked well for most members of the Panel, particularly those who represented professional organizations. However, on the other hand, this created problems for those members of the Panel who did not necessarily have a computer or easy access to one. For them, it was difficult to keep up with the sometimes fast pace of developments and to stay involved to the same degree as other Panel members.

In addition, the Ministry staff was prepared to provide additional information or to meet outside of the scheduled meetings when individuals or smaller groups needed clarification on an issue or wished to discuss an issue in more depth. The Ministry’s lawyer was a valuable asset to the progress of the policy debates. She was available outside of the meetings to all Panel members to help them understand the complexity of the issues under discussion. This was especially helpful to some members struggling with challenging technical issues. Rather than taking up the time of the whole group, the Ministry could assist members with their expertise.

### **8.11**      *Education of the Stakeholders and Public*

From the initial presentations and overview of the water situation in North America to technical and scientific issues related to the protection of the Great Lakes, the Advisory Panel members were being continually briefed on the scientific and technical issues that were being debated at the negotiating table. Larry Field of Conservation Ontario said it

“broadened his knowledge of water-taking and diversions”. Some Panel members described it as “a big learning curve”.

In addition, Panel members learned about the concerns of other sectors and other Ministries. Specific sectors such as agriculture were able to explain their positions on difficult issues such as irrigation giving Panel members a better appreciation of the complexity of water-related problems. Representatives of Ducks Unlimited brought their knowledge of wetlands to the group. The bottled water industry was able to remove language from the first draft agreement that singled out their industry and their impacts on water removal because they argued that other industries such as the beverage industry used water in the same way.

Perhaps most importantly, as a result of the meetings and teleconferences Panel members were educated about the workings of government – how the political process worked and “the complexities that it took to cut a deal”, as Bob Yap of Ontario Power Generation described it. They learned first-hand the problems that the government’s negotiators faced in their deliberations with their US counterparts, and became aware of the compromises that might have to be made. Kelly Warner of the Federation of Ontario Cottagers Association said that her organization “was given the chance to see from the inside the process and understand the limitations of government power in taking a stand against the further erosion of the health of the Great Lakes”.

Being on the inside enabled Panel members to understand that they could not always get what they wanted in a negotiation process. At a certain point in the series of meetings leading up to the second draft agreement, Panel members were asked to consider whether no agreement would be preferable to a less than ideal agreement. The consensus of the Panel was that the agreement being negotiated would provide better protection for the Great Lakes than no agreement at all.

### **8.12**      *Using the Public as a Resource and Source of Intelligence*

Not only did the Panel members learn about government, but government also learned from the Panel members. Carolyn Day of the Canadian Federation of University Women called it “a learning experience on both sides of the table.” In their meetings with the Panel, the Ministry had the opportunity to learn from the research and the points of view that Panel members brought to the table.

They also had access to their networks, which provided valuable intelligence on the policies being discussed. For example, if the Ministry wanted to know what the Sierra Club would think of a certain position, they were able to find out quickly. The Panel, as a resource, allowed the government to gauge people’s commitment to change.

By engaging the Advisory Panel in a dialogue and debate about the policy issues at stake in the negotiation, the Ministry of Natural Resources was able to work through the advantages and disadvantages of different policy options. The Ministry benefited from

the diversity of opinions reflected in the membership of the Panel. It meant that Ontario representatives were able to bring well-thought out positions to the negotiating table with confidence that they would enjoy a level of public support. The Ministry of Natural Resources could also reject certain positions at the negotiating table knowing from their discussions with the Panel that they were unacceptable. This was the key to the Ministry's success in getting a ban on diversions into the Agreement. Because of this relationship with the Panel, Ontario's credibility at the negotiating table was strengthened. As one government member expressed it, the Ministry was not just speculating about amorphous public opinion but was expressing strongly endorsed actual positions.

Once the Ministry and Panel had built up an atmosphere of trust, when the negotiations reached a critical point towards the end, the government was able to get instant feedback from the Panel. John Jackson pointed out that in many consultations, the public is left out at the end when decisions are finalized but in this process, they were integrally involved in the process even during the final negotiations.

The use of the Advisory Panel as a source of public intelligence was not only useful to Ontario's negotiators. It also served as a helpful lens for the Quebec and U.S. negotiators who could use it to consider how certain issues would play in their own communities.

### **8.13**      *Arriving at a Shared View*

One of the most important features of the Advisory Panel process was the collaboration between the Ministry of Natural Resources and the stakeholders. The lengthy meetings and the detailed discussions of issues resulted in mutually arrived at decisions on the positions that were taken to the negotiating table. While many different points of view were expressed by Panel members, there was also an understanding and acceptance that Ontario negotiators had to speak with one strong voice at the negotiating table. For this to happen, the Advisory Panel also had to speak with one voice. Hence, collective efforts were made to shape Ontario's positions.

During the course of the discussions, the Ministry of Natural Resources and Panel members found that fixed positions on issues shifted. For example, for some Panel members the removal of the "resource improvement standard" was an important improvement in the second agreement. Although one Panel member, Rick Findlay of Pollution Probe, had originally been a firm supporter of this concept, he was influenced by the policy discussions and accepted the argument that resource improvement standards were more appropriate for smaller watersheds where it was possible to agree on what an improvement was than for a large watershed like the Great Lakes Basin.

Most Panel members felt that they had been able to influence the final agreement, and were satisfied that the second agreement was an improvement over the first draft. As Peter White observed, "if you can see yourself in it, you think it's good." The most

significant change in the final agreement was a strengthened commitment to prevent diversions. Carolyn Day of the Canadian Federation of University Women felt that “as a single organization, they could never have been as effective in influencing the final agreement as they were being members of this process”.

When the exception of straddling counties was introduced late in the negotiations, it was extremely unpopular with the Ontario negotiators and the Advisory Panel. There was no information on how many more people outside the surface watershed boundaries would gain access to Great Lakes water under this provision. Some States were adamant that rejection of this option would be a deal breaker for them. The Advisory Panel worked with Ontario’s negotiators to draft tough decision-making standards that would apply to applicants from straddling counties. The involvement of the Advisory Panel in this compromise meant that there was better acceptance of the give and take of the negotiations. Consequently, Ontario government received little criticism in the media when the agreement was signed about the straddling counties exception. This was in stark contrast to the responses to the first draft Agreement.

When the final Agreements were developed, most Panel members were able to support them and to provide well-reasoned comments to the media. The process resulted in defining Ontario’s position on key policy issues and building a consensus on the final agreement.

#### **8.14**      *Resources*

An important factor in this process was the government’s commitment of resources. As one MNR staff stated, “it’s important for government to ensure there’s enough money and resources for these projects”. In this case, there was considerable staff time and resources allocated to the ongoing demands of the process. Not only did negotiators have to prepare for international negotiations, brief the government, liaise with Quebec and the federal government and the IJC and hold public hearings, they had to prepare for Advisory Panel meetings and the Aboriginal Meetings and ensure that information was flowing and decisions were captured. The Ministry also funded a facilitator to conduct the several of the first meetings until all parties became comfortable with the process and a foundation of trust was built. This investment was considered by the Ministry to be worth the time and effort.

The only aspect of this consultation that was not adequately covered from the point of view of Panel members from outside of Toronto was the coverage of travel expenses for face to face meetings. In particular, those Panel members that volunteer for their organizations said that this created difficulties for them, and that they would have attended more meetings if the government had assisted them by paying their travel costs.

## 8.15 *Miscellaneous*

Other aspects that were cited by Panel members as contributing to their overall appreciation of the process was the flexibility of the Ministry of Natural Resources in changing the times and locations of the meetings. Many participants in the process who came from out of town, for example, found it difficult to attend meetings in Toronto at 9 in the morning because of rush hour traffic. The Ministry accommodated them by making meeting times later. The Ministry also moved the meeting location from an airport hotel to downtown in response to Panel members' requests.

One aspect that hindered Panel members and others who declined to participate was the issue of limited resources to devote to the many public consultations going on simultaneously. During the period in which the Great Lakes Charter Annex negotiations were underway, many other important consultations took place which demanded the time and energy of key stakeholders. In a similar vein, Panel members such as Thomas Schmidt of Waterloo Region, felt that as a municipal staff he did not have the flexibility to attend meetings that were set up quickly, rather than well in advance.

Peter White also mentioned that having Panel members eat together with Ministry staff at their discussion tables helped people get to know one another and build a sense of ease. One Ministry staff said "friendships were built".

## **9. Positive Impacts of the Process**

Overall, the Advisory Panel process was viewed by both Panel members and government representatives as a positive experience that led to a positive outcome. The initial release of the draft agreements followed the usual formula of public consultation with notice on the Environmental Bill of Rights registry followed by a public comment period and supplemented by public meetings. However, the creation of the Advisory Panel moved the government into a process of direct engagement with the stakeholders and public representatives. As a result of this process, the environment of cynicism directed at the government was transformed into an environment of support.

The successes of the process that have been described by many of those interviewed include:

- The process allowed Ontario to take a very well-informed position with respect to Canadian concerns into the negotiations, based on the Advisory Panel's advice.
- The policy deliberations of the Advisory Panel strengthened Ontario's hand in the negotiations. The negotiators could advise the working group that on a particular issue, they had had a focussed dialogue with the Advisory Panel and had very strong support for this position. Alternatively, they could definitively say "no" to including a certain provision because the stakeholders and the public would oppose it.

- The Advisory Panel gave a stronger voice to Ontarians who were outnumbered by the other Great Lakes jurisdictions, particularly the 8 states, in the negotiations;
- The positions collaboratively arrived at by the stakeholders and the Ministry of Natural Resources led to an improved agreement;
- The final agreement, which was negotiated with the advice of the Advisory Panel, was viewed as more protective of the Great Lakes than the draft agreement, particularly with respect to diversions. It included a ban on diversions that the US states had maintained was not possible. The ban effectively protects the whole watershed from diversions for the first time with a few limited exceptions;
- Because of the involvement of the stakeholders in the negotiations, support for the final agreement was more firm;
- Pressure from the media was eased because well-informed stakeholders from the Advisory Panel influenced the more positive coverage of the final agreement;
- The Advisory Panel process created momentum for the implementation of the Agreements;
- Many of the stakeholders have committed to continuing involvement in the Advisory Panel to work with the government and other sectors in developing the legislation, regulations and their implementation;
- Ontario is better prepared in moving ahead with the implementation of the Agreements through the development of legislation than other jurisdictions because they have informed and involved stakeholders in place on the Advisory Panel;
- The Ministry of Natural Resources built a legacy of trust with the stakeholders, which is likely to have a positive impact on future unrelated consultation initiatives;
- It pioneered a new level of engagement that other government Ministries and agencies can use to involve the public more effectively in the development of future policy and legislation;
- Members of the Advisory Panel are better informed about the mechanics of government and can apply their knowledge and experience to other consultation processes;
- Members of the Advisory Panel will be able to act as informed watchdogs as the legislation is developed and as implementation of the Agreements is carried out

in all jurisdictions. The full implementation of the Agreement could be many years away because it will have to be passed in all 10 legislatures and by the US Congress. The Agreement itself has a staged timetable for provisions to come into force over five years.

## **10. Summary of Lessons Learned**

In establishing the Advisory Panel, the Minister of Natural Resources and the Ministry staff set out to “build a collaborative process to share information and ideas”. Their commitment to sharing information, even when it was confidential, resulted in effective public participation in the decision-making and improved public policy. While most government consultations still follow a model of stakeholder management, this process engaged the stakeholders directly in the process – from the inside out, instead of from the outside in.

Most, although not all, participants in this process agreed that the Advisory Panel process and the features that have been identified as contributing to its success make it an excellent model for future development of policy and legislation. As Carolyn Day of the Canadian Federation of University Women wrote:

It is a perfect win-win scenario. For the different stakeholder groups, it provides an unprecedented and even-handed access to the formation of government policy. It doesn't pit one sector against another or against the government – but involves them all in dialogue to increase their understanding of the others' concerns, to establish their own credibility and to participate in consensus building. For the government, it provides a chance to work “with” not “against” the various stakeholder groups; to make use of their high level of expertise and research; to access and pool their information and research and that of their networks; to establish trust and credibility between the stakeholders and the Ministry staff, their processes and decisions; to guard against misinformation, “spin” and rumour around important decisions; and to enlist the strong voices of the various stakeholder groups to present an informed and hopefully united front to the public when introducing important and complex pieces of legislation.

Karen Wianecki, the facilitator for the Panel meetings, described how values and priorities have changed government consultation approaches over the last thirty years.

During the 1970's the public's role was very limited in public consultations. Public participation was synonymous with a linear process. Public agencies prepared documents and took them out to the public for comment. Given their limited role, the public became disillusioned. In response, public sector agencies adopted a defensive listening approach whereby public meetings were held, comments were solicited but the process remained ineffective, characterized fundamentally by one-way communication.

An increase in the number of conflicts and an escalation in the number of appeals led public sector agencies to look at the role of adjudication and the court system.

Throughout the mid-1980s, largely in response to an increasingly educated public, the number of conflicts continued to escalate and public sector agencies and organizations began to consider dispute resolution methods as an alternative to the court system. The mid 1980s also saw the emergence of mediation and interest-based negotiation philosophies which promoted a more interactive and collaborative method of discourse. These early processes marked the beginning of non-linear approaches and these early concepts, when combined with ecosystem based management and adaptive management began to question the whole theory of linear planning. For the first time, planning and policy development was viewed as a cyclical process rather than a linear one.

The late 1980s saw the emergence of collaborative stewardship and in early 2000, cooperative conservation movements began to emerge across the continental U.S. Today, stakeholder engagement particularly in the public policy arena is considered from a systems perspective.

The challenge for governments now is to deal with a public that is increasingly well informed and distrustful of simple answers to complex problems with widespread impacts. As the public's understanding of policy issues has grown, their concern for future generations has also increased. This evolution of public awareness has built an imperative for a new co-creative consultation model. Karen sees this consultation as such a model. She described the Panel process as "a best practices in public consultation that yielded huge benefits".

"We also increasingly need solutions that can be flexible, that can allow for new information to be applied once we have better scientific understanding. This is true for the Great Lakes Charter Annex where so much still needs to be known about ground and surface water impacts, cumulative and climate change impacts. This calls for communities of interest to remain involved for a longer time in implementation", said Sarah Miller of the Canadian Environmental Law Association.

Those who were strongly supportive of the process felt that it could be applied to complex policy issues that would benefit from many meetings with stakeholders representing all interests. Some Panel members said that it established a trust that could serve as a good foundation for future consultations. It was suggested, for example, that a similar process could be appropriately applied to the redrafting of the Canada Ontario Agreement and for the renegotiation of the Great Lakes Water Quality Agreement. Other Panel members thought this model could benefit the implementation efforts about to begin on the Watershed Plans and regulations prescribed by the Ontario Clean Water Act. One Panel member, Kelly Warner, felt that the government should use this model for significant policy shifts and a long time-frame. She suggested it be tried to determine what should be done about climate change because it gave government the ability to gauge people's willingness to accept changes.

Some Panel members expressed doubt about the wider applicability of this process. Several people interviewed thought the process was mainly ideal for international issues



but might be less successful when applied to domestic policies. In part, they believed this process worked as well as it did because the interests of Ontario industry, non-governmental organizations and government were aligned in this instance against the interests in the United States.

A few members of the Panel thought it was a good process but expressed hesitation about applying it to every consultation. They believed that one of the strengths of the process was the flexibility and that consultations should be tailored to the issue.

## **11. Recommendations**

The principal recommendation derived from this report is that the successful elements of the Advisory Panel set up by the Ministry of Natural Resources in December, 2004 to assist the Province with their international negotiations on and implementation of the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement should be considered as a mechanism for public engagement in future policy development and implementation.

This model is particularly suited for the development of complex policy initiatives that have an impact on many diverse stakeholders, such as environmental, resource and health protection initiatives that need to endure the changing political landscape to be successful because they build a constituency for the issue.

Regardless of whether the “Advisory Panel” model described here is chosen for consultations, the following recommendations should be used in developing any public consultation process:

Involve the public early in the process of developing policy and regulations.

Ensure that all sectors with a particular interest or stake in the policy are fairly represented in discussions with government. It is especially important to include those who are most critical of the policies.

Rather than coming in with a pre-conceived idea of what the policy or legislation will be, try to reach a consensus through shared decision-making and a balancing of interests.

Demonstrate that political leadership supports the efforts.

Maintain ongoing involvement and commitment of senior government staff who have influence internally within government, and include other government departments who have a view and who will be involved later.

Provide staff and participants with adequate resources to support the additional effort, time and care required.

Develop clear ground rules for participants and government representatives to follow.

Provide good information, measures that capture decisions clearly and regular updates to all participants, even allowing for briefings and meetings outside the formal processes so that no one who wants to participate is left behind in the discussions and so that stakeholder input is maximized.

Create an atmosphere of respect for those involved in the discussions and ensure that consultations are open and transparent.

Follow through on the advice of the stakeholders and public, or provide reasons why advice was not accepted. Report back on progress.

## APPENDIX I.

### **List of Advisory Panels members and Government participants who were consulted for this report**

#### **List of Advisory Panel Participants**

Mark Bassingthwaite	Tania Monteiro
Jim Bruce	Earl Morwood
Sue Chiblow	Mary Muter
Michael D'Andrea	Paul Norris
Carolyn Day	Ralph Pentland
Larry Field	Terry Rees
Rick Findlay	Thomas Schmidt
Ed Gazendam	Betty Semeniuk
Elizabeth Griswold	Art Smith
Adele Hurley	Derek Stack
John Jackson	Marcia Valiante
Austin Kirby	Mark Wales
Brenda Lucas	Kelly Warner
Dan McDermott	Peter White
Sarah Miller	Rob Wright
	Bob Yap

#### **Government Panel Member Participants**

Bill Carr	Rob Messervey
David de Launay	Risa Schwartz
Danielle Dumoulin	Paula Thompson
Leith Hunter	Kevin Wilson

#### **Facilitator**

Karen Wianecki

#### **Others Interviewed**

Peter Fawcett, Deputy Director U.S. Relations, Foreign Affairs Canada  
David Naftzger, Executive Director Council of Great Lakes Governors  
Sam Speck, Chair of international negotiating team and former Director of Ohio Department of Natural Resources

#### **Panel: Unable to Contact**

Elizabeth May  
Debby Korolnek or Lloyd Lemons

**Government and others unable to participate**

Louise Lapiere

Murray Clamen

Michael Vechsler

## APPENDIX II.

### List of Original Advisory Panel Members

Advisory Panel Partner	Representative
AGCare	Greg Hannam
Aggregate Producers Association Of Ontario	Carol Hochu Peter White
Alliance of Ontario Food Processors	Jane Graham
Canadian Bottled Water Association	Elizabeth Griswold
Canadian Chemical Producers' Association	Norm Hubbel
Canadian Environmental Law Association ( <a href="#">publication #584</a> )	Sarah Miller Theresa McClenaghan
Canadian Institute for Environmental Law and Policy	Anne Mitchell Maureen Carter-Whitney
Canadian Plastics Industry Association	Serge Lavoie
Canadian Steel Producers Association	Bruce Boyd
Canadian Water and Wastewater Association	Kara Parisien
Canadian Water Resources Association	Ed Gazendam Craig Mather
City of Toronto	Michael D'Andrea
Conservation Council of Ontario	Chris Winter
Conservation Ontario	Larry Field Nicole Carter
Ducks Unlimited Canada	Mark Bassingthwaite Jim Anderson
Federation of Ontario Cottagers' Associations	Kelly Warner Terry Reset
Federation of Ontario Naturalists	Heather Webb
Georgian Bay Association	Mary Muter
Great Lakes United	Derek Stack John Jackson
Nature Conservancy Canada	James Duncan
Niagara on the Lake Irrigation Advisory Committee	Austin Kirkby Henry Bennemeer
Ontario Clean Water Agency	Glen Lang
Ontario Farm Environmental Coalition	Ron Bonnett
Ontario Federation of Agriculture	Betty Semeniuk Tina Shankula
Ontario Federation of Anglers and Hunters	Dave Brown
Ontario Forest Industries Association	Allyson Lemire Barbara Mossop
Ontario Fruit and Vegetable Growers Association	Art Smith Madeline Mills
Ontario Golf Superintendents Association	Doug Breen
Ontario Groundwater Association	Earl Morwood
Ontario Lumber Manufacturers Association	David Milton
Ontario Marina Operators Association	Al Donaldson
Ontario Mining Association	Peter McBride

<b>Advisory Panel Partner</b>	<b>Representative</b>
Ontario Municipal Water Association	Mayor Deb Shewfeld Ken Hunter
Ontario Power Generation	Bob Yap Deborah LeBlanc
Ontario Water Power Association	Paul Norris
Pollution Probe	Rick Findlay
Sierra Club of Canada	Elizabeth May Dan McDermott
Sierra Legal Defence Fund	Robert Wright
St. Lawrence Seaway Management Corporation	Luc Lefevre
University of Windsor Faculty of Law	Marcia Valiante
Walter Duncan Gordon Foundation	Linda Nowlan
Munk Centre for International Studies	Adele Hurley
Association of Municipalities of Ontario	Debbie Korolnek Lloyd Lemons
Canadian Petroleum Producers Institute	Faith Goodman Anna Salituro
Region of Waterloo	Thomas Schmidt Kaoru Yajima
York Region	Debbie Korolnek Lloyd Lemons
Ralph Pentland	Ralph Pentland
Soil and Water Conservation Society	Jim Bruce
Lake Ontario Waterkeeper	Mark Mattson Tania Monteiro
Canadian Federation of University Women-Ontario Council	Carolyn Day Linda McGregor
Ministry of Natural Resources – Staff Responsible	Kevin J. Wilson
	David de Launay
	Robert Taylor
	Rob Messervey
	Paula Thompson
	Danielle DuMoulin
	Emily Chatten
	Leith Hunter
	Jennifer Tuck
	Carolyn Dodds
Ministry of Intergovernmental Affairs	Bill Carr
Ministry of the Environment	Risa Schwartz
	Marta Soucek
Ministry of Economic Development & Trade	Michael Helfinger
Ministry of Agriculture & Food	Scott Duff

APPENDIX III.

**Lists of Aboriginal Panel Members**

Walpole First Nation – COO Portfolio Holder	Chief Dean Jacobs
Chiefs of Ontario Office	Sue Chiblow
AIAI	Rolanda Elijah
Union of Ontario Indians	Al Dokis
NAN	Carol Ann Audet

## APPENDIX IV.

### Questionnaires used for Panel Members

#### **Survey of Members of the Ministry of Natural Resources Great Lakes Charter Advisory Panel from October 22, 2004 to December 2005**

The policy community of the Ontario Public Service sponsors regular learning events for its members. These events address a broad range of subjects, and focus on different aspects of policy development, analysis, and implementation. The Ministry of Natural Resources is sponsoring a policy symposium on March 21, 2007, to highlight the process used to develop the Ontario position for the Great Lakes Charter Annex Agreement as an example of a different approach to public involvement in complex, multi-party negotiations. The audience for this event will be Ontario Public Service staff and executives who may be involved in similarly complex endeavours in the future. By demonstrating how a more open process lead to a better result for Ontario and for the environment, we hope to encourage others to consider this approach.

**Name:**

**Affiliation:**

**1. History of involvement with issue:**

- How did you first learn of the Great Lakes Charter Annex and why did you become engaged in the process?
- If you were invited to join the panel but did not participate, please explain why you chose not to. (If you did not participate you need not answer further questions after this one.)
- What sector did you represent?
- Once involved, did you feel you were heard and were able to influence the process?
- Were you able to inform others in your sector of progress as the negotiations evolved?

**2. Level of involvement with other government consultations (to compare and contrast this process):**

- Have you represented your sector in other government consultations?
- How did this one differ and compare?

**3. General satisfaction with MNR's Panel Process:**

- Please comment on the MNR Great Lakes Charter Annex Panel consultation process, considering the following components:
  1. Make-up of Panel
  2. Confidentiality – did it work? Did it present challenges for you?
  3. Was the shared information adequate?
  4. Was the information timely?



5. Facilitation of discussions
6. Records of Meetings
7. Defining general objectives and principles
8. Defining first preferences and fall back for bargaining positions
9. Reporting back after each negotiation
10. Holding emergency calls when quick decisions or changes arose
11. Overall democracy of the process

- Were there facets of the process that you felt were particularly beneficial? Please identify them.
- Were there disadvantages or concerns with the process? Please identify them.
- Did you feel that Ontario was the appropriate level of government to negotiate a Great Lakes' agreement? Please explain.

**4. Impact of the process:**

- How would you rate the success of the process in meeting public expectations?
- Did the process promote better understanding of :
  1. The issues under negotiation?
  2. Of other sectors' views of those issues
  3. Of perspectives of other Ministries represented on the Panel
  4. Of challenges the Ontario government was facing in negotiations with the US and Quebec
  5. Of challenges the Ontario Government might face domestically in drafting the Legislation and in implementation
  6. Of the internal government approval process
  7. Of the challenges faced by other governments?
- Did the process alter your positions on the topics under discussion?

**5. Continued involvement and commitment:**

- Did your participation in MNR's Great Lakes Charter Annex Advisory Panel make you better prepared to advocate for implementation of the final Agreements?
  1. In the US?
  2. In Ontario?
- Will you continue to be involved in the process? If so, how?

**6. Future stakeholder involvement or public consultation processes:**

- Should Ontario establish similar panels for public consultation in the future?
- What recommendations would you make to improve the process?
- In which situations do you think a similar process would be beneficial?

Please add other comments, advice, observations and feedback you might have.

Please indicate if you agree that your name may be used in our report.

## APPENDIX V.

### Questionnaires used for Government and Negotiating Team

**For the Government Participants and other Agency Participants in the negotiations on the Great Lakes Charter Annex from October 22, 2004 to December 2005**

**Questions to gauge how the Ontario Ministry of Natural (Resources (MNR) Great Lakes Charter Advisory Panel Process contributed to the Province's Input at the International Negotiating table**

How did Ontario's position in international negotiations change after the establishment of the Ministry of Natural Resources Great Lakes Charter Annex Advisory Committee in the fall of 2004?

What advantages did the Water Panel give the government? Please give examples wherever possible.

Did the Water Panel create specific problems for you in any of the above areas?  
Please explain?

Would you recommend that the government look to this Panel as a model to reform public consultation?

Are there particular recommendations you would highlight from this process?

Are there recommendations you would make to improve a reformed consultation process?

Please add other comments, advice observations and feedback you might have.

Please indicate if you would like your name to be used in our report.

Or, if you would prefer to remain anonymous.

## APPENDIX VI.

### DECEMBER 13, 2005 GREAT LAKES—ST. LAWRENCE RIVER BASIN SUSTAINABLE WATER RESOURCES AGREEMENT<sup>14</sup>

The State of Illinois,  
The State of Indiana,  
The State of Michigan,  
The State of Minnesota,  
The State of New York,  
The State of Ohio,  
The Province of Ontario,  
The Commonwealth of Pennsylvania,  
The Government of Québec,  
The State of Wisconsin,

#### **Recognizing that,**

The Waters of the Basin are a shared public treasure and the States and Provinces as stewards have a shared duty to protect, conserve and manage these renewable but finite Waters;

These Waters are interconnected and form a single hydrologic system;

Protecting, conserving, restoring, and improving these Waters is the foundation of Water resource management in the Basin and essential to maintaining the integrity of the Basin Ecosystem;

Managing to conserve and restore these Waters will improve them as well as the Water Dependent Natural Resources of the Basin;  
Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance;

The States and Provinces must balance economic development, social development and environmental protection as interdependent and mutually reinforcing pillars of sustainable development;

Even though there has been significant progress in restoring and improving the health of the Basin Ecosystem, the Waters and Water Dependent Natural Resources of the Basin remain at risk;

In light of possible variations in climate conditions and the potential cumulative effects of demands that may be placed on the Waters of the Basin, the States and Provinces must act to

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<sup>14</sup> Retrieved from: <http://www.mnr.gov.on.ca/mnr/water/greatlakes/Agreement.pdf>

ensure the protection and conservation of the Waters and Water Dependent Natural Resources of the Basin for future generations;

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

Sustainable development and harmony with nature and among neighbours require cooperative arrangements for the development and implementation of watershed protection approaches in the Basin;

**Reaffirming,**

The principles and findings of the Great Lakes Charter and the commitments and directives of the Great Lakes Charter Annex 2001;

**Acknowledging,**

Nothing in this Agreement is intended to abrogate or derogate from the protection provided for the existing aboriginal or treaty rights of aboriginal peoples in Ontario and Québec as recognized and affirmed by section 35 of the Constitution Act, 1982 or from the treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States, and acknowledging the commitment of these peoples to preserve and protect the waters of the Basin;

The continuing and abiding roles of the United States and Canadian federal governments under the Boundary Waters Treaty of 1909 and other applicable international agreements, that continue unaffected by this agreement, and the valuable contribution of the International Joint Commission;

Effective management is dependent upon all Parties acting in a continuing spirit of comity and mutual cooperation;

*Agree as follows:*

**CHAPTER 1**

## ***GENERAL PROVISIONS***

### ***ARTICLE 100***

#### ***OBJECTIVES***

1. The objectives of this Agreement are:
  - a. To act together to protect, conserve and restore the Waters of the Great Lakes—St. Lawrence River Basin because current lack of scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;
  - b. To facilitate collaborative approaches to Water management across the Basin to protect, conserve, restore, improve and efficiently and effectively manage the Waters and Water Dependent Natural Resources of the Basin;
  - c. To promote co-operation among the Parties by providing common and regional mechanisms to evaluate Proposals to Withdraw Water;
  - d. To create a co-operative arrangement regarding Water management that provides tools for shared future challenges;
  - e. To retain State and Provincial authority within the Basin under appropriate arrangements for intergovernmental cooperation and consultation;
  - f. To facilitate the exchange of data, strengthen the scientific information upon which decisions are made, and engage in consultation on the potential effects of Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;
  - g. To prevent significant adverse impacts of Withdrawals and losses on the Basin Ecosystem and its watersheds; and,
  - h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.
2. The Parties shall interpret and apply the provisions of this Agreement to achieve these objectives.

### ***ARTICLE 101*** ***SCOPE OF APPLICATION***

This Agreement applies to the Waters of the Basin within the Parties' territorial boundaries.

### ***ARTICLE 102***

#### ***GENERAL COMMITMENT***

Each Party to this Agreement shall seek to adopt and implement Measures that may be required to give effect to the commitments embodied within this Agreement.

## ARTICLE 103

### GENERAL DEFINITIONS

In this Agreement,

**“Adaptive Management”** means a Water resources management system that provides a systematic process for evaluating, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

**“Agreement”** means this Agreement.

**“Applicant”** means a Person who is required to submit a Proposal that is subject to management and regulation under this Agreement. **“Application”** has a corresponding meaning.

**“Basin”** or **“Great Lakes—St. Lawrence River Basin”** means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

**“Basin Ecosystem”** or **“Great Lakes—St. Lawrence River Basin Ecosystem”** means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

**“Community within a Straddling County”** means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

**“Compact”** means the Great Lakes—St. Lawrence River Basin Water Resources Compact.

**“Consumptive Use”** means that portion of Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

**“County”** means the largest territorial division for local government in a State. In Québec, County means a regional county municipality (municipalité régionale de comté - MRC). The County boundaries shall be defined as those boundaries that exist as of the signing date of this Agreement.

**“Cumulative Impacts”** mean the impact on the Great Lakes—St. Lawrence River Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future

Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from Individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

**“Diversion”** means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or Great Lakes watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. **“Divert”** has a corresponding meaning.

**“Environmentally Sound and Economically Feasible Water Conservation Measures”** mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that i) are environmentally sound, ii) reflect best practices applicable to the water use sector, iii) are technically feasible and available, iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

**“Exception”** means a transfer of Water that is excepted under Article 201 from the prohibition against Diversions.

**“Exception Standard”** means the standard to be used for Exceptions that is established under Article 201.

**“Intra-Basin Transfer”** means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

**“Measures”** means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

**“New or Increased Diversion”** means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

**“New or Increased Withdrawal or Consumptive Use”** means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

**“Originating Party”** means the Party within whose jurisdiction an Application is made.

**“Party”** means a State or Province that enters into this Agreement.

**“Person”** means a human being or a legal person, including a government or a non-governmental organization, including any scientific, professional, business, non-profit, or

public interest organization or association that is neither affiliated with, nor under the direction of a government.

**“Product”** means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a Product shall be considered to be part of the Product. (ii) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers or water basins is not a Product.

**“Proposal”** means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Agreement.

**“Province”** means Ontario or Québec.

**“Public Water Supply Purposes”** means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

**“Regional Body”** means the Great Lakes—St. Lawrence River Water Resources Regional Body established by this Agreement.

**“Regional Review”** means the collective review by all Parties in accordance with this Agreement.

**“Source Watershed”** means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

**“Standard or Decision-Making Standard”** means the Decision-Making Standard for Management and Regulation established by Article 203 of this Agreement.

**“State”** means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

**“Straddling Community”** means any incorporated city, town or the equivalent thereof, that is either wholly within any County that lies partly or completely within the Basin or partly in two Great Lakes watersheds but entirely within the Basin, whose corporate boundary existing as of



the date set forth in paragraph 2 of Article 709, is partly within the Basin or partly within two Great Lakes watersheds.

“**Technical Review**” means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Agreement meets the Exception Standard following procedures and guidelines as set out in this Agreement.

“**Water**” means ground or surface water contained within the Basin.

“**Water Dependent Natural Resources**” means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

“**Waters of the Basin or Basin Water**” means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

“**Withdrawal**” means the taking of water from surface water or groundwater.

“**Withdraw**” has a corresponding meaning.

**CHAPTER 2  
PROHIBITION OF DIVERSIONS, EXCEPTIONS  
AND MANAGEMENT AND REGULATION OF WITHDRAWALS  
ARTICLE 200**

**PROHIBITION OF DIVERSIONS  
AND MANAGEMENT AND REGULATION OF WITHDRAWALS**

1. The Parties shall adopt and implement Measures to prohibit New or Increased Diversions, except as provided for in this Agreement.
2. The Parties shall adopt and implement Measures to manage and regulate Exceptions in accordance with this Agreement.
3. The Parties shall adopt and implement Measures to manage and regulate Withdrawals and Consumptive Uses in accordance with this Agreement.

**ARTICLE 201  
EXCEPTIONS TO THE PROHIBITION OF DIVERSIONS**

**Straddling Communities**

1. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:
  - a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:
    - i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;
    - ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;
    - iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;
  - b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day (379,000 litres per day) or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,
  - c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day (19 million litres per day) or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

**Intra-Basin Transfers**

2. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Agreement, and not already excepted pursuant to paragraph 1 of this Article, shall be excepted from the prohibition against Diversions, provided that:

- a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day (379,000 litres per day) average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party;
- b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day (379,000 litres per day) or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day (19 million litres per day) average over any 90-day period:
  - i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;
  - ii. The Applicant shall demonstrate that there is no feasible, cost effective and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,
  - iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.
- c. If the Proposal results in a New or Increased Consumptive Use 5 million gallons per day (19 million litres per day) or greater average over any 90-day period:
  - i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;
  - ii. The Applicant shall demonstrate that there is no feasible, cost effective and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;
  - iii. The Proposal undergoes Regional Review; and,
  - iv. If the Originating Party is a State, the Proposal is approved pursuant to the Compact.

### Straddling Counties

- 3. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Agreement shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:
  - a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water.
  - b. The Proposal meets the Exception Standard, with particular emphasis upon ensuring that:
    - i. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;
    - ii. No surface water or groundwater from outside the Basin is used to satisfy any portion of subparagraph (i) above except if it:
      - (a) Is part of a water supply and/or wastewater treatment system that combines water from inside and outside of the Basin;
      - (b) Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

- (c) Maximizes the portion of water returned to the Source Watershed as Basin Water, and minimizes the surface water or groundwater from outside the Basin;
  - iii. All such Water returned meets all applicable water quality standards.
  - c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;
  - d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;
  - e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;
  - f. The Proposal undergoes Regional Review; and,
  - g. If the Originating Party is a State, the Proposal is approved pursuant to the Compact.
- A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

#### Exception Standard

4. The following criteria constitute the Exception Standard:
- a. The need for all or part of the Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;
  - b. The Exception shall be limited to quantities that are considered reasonable for the purposes for which it is proposed;
  - c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:
    - i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;
    - ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;
  - d. The Exception shall be implemented so as to ensure that it shall result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;
  - e. The Exception shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;
  - f. The Exception shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, Provincial and federal laws as well as regional interstate, inter-provincial and international agreements, including the Boundary Waters Treaty of 1909;
  - g. All applicable criteria in this Article have also been met.

#### Review of Article

5. The Parties shall evaluate this Article in the context of the periodic cumulative impact assessment as described in Article 209.

**ARTICLE 202  
IMPLEMENTATION OF THE STANDARD  
AND THE EXCEPTION STANDARD**

1. The Parties shall seek to adopt and implement Measures establishing the Exception Standard under Article 201 and the Decision-Making Standard for management and regulation of Withdrawals and Consumptive Uses under Article 203. The Standards are one of the means by which the Parties shall together protect, conserve, restore, improve and manage the Waters of the Basin.
2. The Standard and the Exception Standards are minimum standards. The Parties may implement Measures that are more restrictive than the requirements of this Agreement. Although a Proposal may meet the Standard or the Exception Standard, it may not be approved under the laws of the Originating Party if that Party has implemented more restrictive Measures.
3. When fully implemented, this Agreement shall lead to Water Withdrawal management systems that are consistent in their fundamentals within the Basin.

**ARTICLE 203  
THE DECISION-MAKING STANDARD FOR  
MANAGEMENT OF WITHDRAWALS AND  
CONSUMPTIVE USES**

The following criteria constitute the Decision-Making Standard for management of new or increased Withdrawals and Consumptive Uses:

1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;
2. The Withdrawal or Consumptive Use shall be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;
3. The Withdrawal or Consumptive Use shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;
4. The Withdrawal or Consumptive Use shall be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;
5. The proposed use is reasonable, based upon a consideration of the following factors:

- a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the Water, and will avoid or minimize the waste of Water;
- b. If the Proposal is for an increased Withdrawal or Consumptive Use, whether efficient use is made of existing Water supplies;
- c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and Water uses sharing the water source;
- d. The supply potential of the Water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;
- e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,
- f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

**ARTICLE 204**  
**PROPOSALS SUBJECT TO REGIONAL REVIEW**

1. Regional Review as outlined in Chapter 5 applies to a Proposal for any Exception requiring Regional Review under Article 201.
2. The Proposal may be approved by the Originating Party thereafter only if it meets the Exception Standard.

**ARTICLE 205**  
**PROPOSALS SUBJECT TO PRIOR NOTICE**

1. The Originating Party shall provide all Parties with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day (19 million litres per day) or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard established under Article 203. The Originating Party shall provide a response to any such comment received from another Party.
2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Article. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

**ARTICLE 206**

## **MANAGEMENT AND REGULATION OF NEW OR INCREASED WITHDRAWALS AND CONSUMPTIVE USES**

1. Each Party shall establish a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical and biological integrity of Source Watersheds, and that other objectives of the Agreement are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.
2. In the event that a Party has not established threshold levels in accordance with paragraph 1 on or before 10 years after paragraphs 1 and 2 of Article 200 come into force, it shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day (379,000 litres per day) or greater average in any 90 day period.
3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. The Regional Body shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs including, without limitation, establishing lower thresholds for management and regulation in accordance with the Standard. The Parties may, by unanimous consent, collectively adopt such thresholds or revisions to their programs.

### **ARTICLE 207 APPLICABILITY**

#### **Determining New or Increased Diversions, Consumptive Uses or Withdrawals**

1. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:
  - a. A list of existing Water Withdrawal approvals as of the date this Article comes into force;
  - b. A list of the capacity of existing systems as of the date this Article comes into force. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

For all purposes of this Agreement, volumes of the Diversions, Consumptive Uses or Withdrawals set forth in the list(s) prepared by each Party in accordance with this Paragraph shall constitute the baseline volume.

The list(s) shall be furnished to the Regional Body within 1 year of the date this Article comes into force.

#### Timing of Additional Applications

2. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

#### Change of Ownership

3. Unless a new owner proposes a project that will result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review, the change of ownership in and of itself shall not require Regional Review.

#### Groundwater

4. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

#### Withdrawal systems

5. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

#### Connecting Channels

6. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

#### Transmission in Water Lines

7. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

#### Hydrologic Units

8. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

#### Bulk Water Transfer

9. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons (20 litres) shall be treated under this Agreement in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons (20 litres) or less.

#### U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

10. Notwithstanding any terms of this Agreement to the contrary, with the exception of Paragraph 14 of this Article, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the



United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Agreement nor any rules or regulations promulgated pursuant to this Agreement. This means that, with the exception of Paragraph 14 of this Article, for purposes of this Agreement, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

11. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Agreement shall not modify any terms thereof, and that this Agreement shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Agreement shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Agreement who are also parties to the decree shall seek formal input from Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.
12. With the exception of Paragraph 14 of this Article, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Agreement, the State of Illinois is prohibited from using any term of this Agreement, including Article 201, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.
13. With the exception of Paragraph 14 of this Article, Articles 200, 201, 202, 203, 204, 205, 206, 207 (Paragraphs 1, 2, 3, 5 and 9 only), 208 and 210 of this Agreement all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water and, therefore, do not apply to the State of Illinois. All other provisions of this Agreement not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Article 304.
14. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Agreement, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Agreement, except Paragraphs 10, 12 and 13 of this Article.

## **ARTICLE 208 EXEMPTIONS FROM THE AGREEMENT**

This Agreement does not apply to Withdrawals of Basin Water for the following purposes:

1. Supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles; or,
2. Use in a non-commercial project on a short-term basis for firefighting, humanitarian or emergency response purposes.

## **ARTICLE 209**

## **AMENDMENTS TO THE STANDARD AND EXCEPTION STANDARD AND PERIODIC ASSESSMENT OF CUMULATIVE IMPACTS**

1. The Standard and the Exception Standard may be amended periodically according to the rules in this Agreement to reflect advancements in science, information and knowledge.
2. The Parties shall co-ordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals may be assessed.
3. The Parties shall collectively conduct within the Basin, on a Great Lake and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin. The assessment of the Cumulative Impacts shall be done upon the earlier of:
  - a. Every 5 years;
  - b. Each time the incremental losses to the Basin reach 50,000,000 gallons (190,000,000 litres) per day average in any 90-day period in excess of the quantity at the time of the last assessment; or,
  - c. At the request of one or more of the Parties.
4. The assessment of Cumulative Impacts shall form a basis for the review of the Standard and the Exception Standard and their application. This assessment shall:
  - a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;
  - b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty, if serious damage may result;
  - c. Consider Adaptive Management principles and approaches recognizing, considering and providing adjustments for the uncertainties in, and evolution of, science concerning the Basin's water resources, watersheds and ecosystems including potential changes to Basin-wide processes, such as lake level cycles and climate; and,
  - d. Include the evaluation of Article 201 concerning Exceptions. Based on the results of this assessment, the provisions in that Article may be maintained, made more restrictive or withdrawn.
5. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.
6. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their proposal meets the no significant adverse Cumulative Impact provision of the Standards.

### **ARTICLE 210**

### **JUDICIAL REVIEW**

The Parties shall seek to adopt and implement Measures to permit a Party to, in an Originating Party's court of competent jurisdiction, seek judicial review of a decision of the Originating Party with respect to a Withdrawal, Consumptive Use or Exception if that decision is, according to this Agreement, subject to the Standard or the Exception Standard.

**CHAPTER 3**  
**PROGRAMS**  
**ARTICLE 300**  
**WATER MANAGEMENT PROGRAM REVIEW**

1. The Parties shall protect, conserve, restore and improve the Waters and Water Dependent Natural Resources of the Basin by implementing programs that apply the Standard and the Exception Standard.
2. Each Party shall submit a report to the Regional Body, detailing the Water management and Water conservation and efficiency programs that implement this Agreement in their jurisdiction.
3. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means and how the provisions of the Standard, the Exception Standard and Water conservation and efficiency programs are implemented.
4. The first report shall be provided by each jurisdiction one year from the date that this Article comes into force and thereafter every 5 years.
5. The Regional Body shall forward each report to all members and shall give the members at least 30 days to consider it.
6. Following that period, the Regional Body shall consider the reports submitted by each Party.
7. The Regional Body shall issue a Declaration of Finding on whether the programs in place in each Party:
  - a. Meet or exceed the provisions of this Agreement;
  - b. Do not meet the provisions of this Agreement; or,
  - c. Would meet the provisions of this Agreement if certain modifications were made and what options may exist to assist the jurisdiction in meeting the provisions of this Agreement.
8. The Regional Body shall distribute the reports to its members.
9. Any Party may ask the Regional Body to issue a Declaration of Finding respecting the Water management and Water conservation and efficiency programs of any of the Parties, including themselves, to determine whether the programs,
  - a. Meet or exceed the provisions of this Agreement;
  - b. Do not meet the provisions of this Agreement; or,
  - c. Would meet the provisions if certain modifications were made and what options may exist to assist the jurisdiction in meeting the provisions of this Agreement.
10. As one of its duties and responsibilities, the Regional Body may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and Water conservation and efficiency programs to implement the Standard and Exception Standard reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

**ARTICLE 301**

## **INFORMATION**

1. In order to develop and maintain a compatible base of Water use information, the Parties shall annually gather and share accurate and comparable information on all Withdrawals in excess of 100,000 gallons per day (379,000 litres per day) or greater average in any 30-day period (including Consumptive Uses) and all Diversions, including all Exceptions.
2. The Parties shall report this information to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be available to the public, consistent with the confidentiality requirements in Article 704.
3. Each Party shall require users to report their monthly Withdrawals, Consumptive Uses and Diversions on an annual basis.
4. Information gathered shall be used to improve scientific understanding of the Waters of the Basin, the impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem, understanding of the role of groundwater, and to clarify what groundwater forms part of the Waters of the Basin.

## **ARTICLE 302 SCIENCE**

1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Agreement.
2. The strategy shall guide the collection and application of scientific information to support:
  - a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Water Withdrawals may be assessed;
  - b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;
  - c. Improved scientific understanding of the Waters of the Basin;
  - d. Improved understanding of the role of groundwater in Basin Water resources management; and,
  - e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

## **ARTICLE 303 AVAILABILITY OF APPLICATIONS AND RECORDS OF DECISION**

1. Each Party shall seek to make publicly available all Applications it receives that are subject to management and regulation under this Agreement.
2. Each Party shall seek to make publicly available the record of decision including comments, objections and responses.

## **ARTICLE 304 WATER CONSERVATION AND EFFICIENCY PROGRAM**

1. Within two years of the signing of the Agreement, the Regional Body shall identify Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives shall be based on the goals of:
  - a. Ensuring improvement of the Waters and Water Dependent Natural Resources;
  - b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;
  - c. Retaining the quantity of surface water and groundwater in the Basin;
  - d. Ensuring sustainable use of Waters of the Basin; and,
  - e. Promoting the efficiency of use and reducing losses and waste of Water.
2. Within two years after Article 200, paragraphs 1 and 2 come into force (Prohibition of Diversions and Management of Exceptions), each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall thereafter annually assess its programs in meeting the Party's goals and objectives, report to the Regional Body every five years and make this annual assessment available to the public.
3. Beginning five years after Article 200, paragraphs 1 and 2 come into force (Prohibition of Diversions and Management of Exceptions), and every five years thereafter, the Regional Body shall review and modify as appropriate the Basin-wide objectives and the Parties shall have regard for any such modifications in implementing their programs. This assessment shall be based on examining new technologies, new patterns of Water use, new resource demands and threats, and the Cumulative Impact assessment under Article 209.
4. Within two years after Article 200, paragraphs 1 and 2 come into force (Prohibition of Diversions and Management of Exceptions), the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:
  - a. Measures that promote efficient use of Water;
  - b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;
  - c. Application of sound planning principles;
  - d. Demand-side and supply-side Measures or incentives; and,
  - e. Development, transfer and application of science and research.
5. Each Party shall implement, in accordance with paragraph 2 above a voluntary or mandatory Water conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate change.

**CHAPTER 4**  
**GREAT LAKES—ST. LAWRENCE RIVER WATER RESOURCES REGIONAL BODY**  
**ARTICLE 400**  
**FUNCTIONS OF THE REGIONAL BODY**

1. The Regional Body is composed of the Governor or Premier of each of the Parties, or a person designated by each of them.

2. The Regional Body is established to undertake the following duties and responsibilities:
  - a. Ensure, in accordance with this Agreement, a formalized process with respect to Proposals that require Regional Review and thereby provide an opportunity to address concerns within the Basin;
  - b. Declare whether or not a Proposal subject to Regional Review meets the Exception Standard;
  - c. Declare whether a Party's Water management programs meet the provisions of this Agreement;
  - d. Facilitate the development of consensus and the resolution of disputes on matters arising under this Agreement;
  - e. Monitor and report on the implementation of this Agreement by the Parties, including: data collection; the implementation of each Party's program to manage and regulate Withdrawals, Consumptive Uses and Diversions; promotion of Water conservation; and, the assessment of Cumulative Impacts;
  - f. Establishment of Basin wide goals and objectives for Water conservation and efficiency, the review of those programs and recommendations and declarations in respect of them;
  - g. Periodically review the Standard and Exception Standard and their application including new scientific information relating to groundwater;
  - h. Recommend options to Parties with respect to the development and enhancement of their Water management programs;
  - i. Develop guidance for the implementation of the Standard and the Exception Standard and in particular the review of a Proposal, the preparation of an Application and the review of the Parties' Water management programs;
  - j. Propose amendments to this Agreement; and,
  - k. Perform any other functions or duties necessary to implement this Agreement.

**ARTICLE 401  
ORGANIZATION AND PROCEDURES OF THE REGIONAL BODY**

1. The Regional Body may establish its own administrative practices and procedures.
2. The Regional Body may create a secretariat by the unanimous consent of its members.
3. The Regional Body shall meet:
  - a. At least once annually; and,
  - b. At any other time at the call of the Chair or at the request of two or more Parties.
4. The members shall appoint a Chair and Vice Chair through the following process:
  - a. For the first year, the Chair and Vice Chair shall be members elected by a vote of the members.
  - b. Each subsequent year, until all members have served, the Vice Chair shall be chosen by drawing lots from amongst those members who have not yet served.
  - c. Each member shall serve as Chair immediately after having served as Vice Chair.
  - d. Each member shall serve as Vice Chair and as Chair, each for one year.
  - e. Once all members have served as Vice Chair and Chair, the original order of serving shall be repeated.
5. In the event that an Application for Regional Review is from the Chair's State or Province, the role of the Chair shall be filled by the Vice Chair or another member.

6. Each Party shall bear an equitable share of the costs of the Regional Body to a maximum amount per annum that is agreed upon each year by the Parties.
7. The Parties shall support the Regional Body using existing agency staff and facilities to the greatest extent possible and are encouraged to make additional resources available through partnerships and co-operative arrangements with government agencies, public or private entities, individuals or academic institutions.
8. The Regional Body shall keep a complete public record of documents provided to it or generated by it, including but not limited to:
  - a. Proposals about which it is notified;
  - b. Applications, Technical Reviews and comments provided by the public;
  - c. Comments or objections made in respect of a Proposal by members of the Regional Body;
  - d. Declarations of Finding;
  - e. Materials in respect of dispute resolution;
  - f. Water management program reports;
  - g. Cumulative Impact Assessments;
  - h. The science strategy developed under Article 302;
  - i. Reports on Water conservation and efficiency programs; and,
  - j. Amendments to the Agreement agreed to by the Parties.
9. Public access to documents is recognized to be subject to confidentiality obligations set out in this Agreement.
10. To the greatest extent possible, the Regional Body shall conduct public participation and Regional Review concurrently and jointly with similar processes under the Compact and in the Originating Party's jurisdiction.
11. The Parties recognize the importance and necessity of public participation in promoting management of the Water resources of the Basin. Consequently, meetings of the Regional Body, at which official action is to be taken, shall be open to the public except when the Regional Body is meeting in executive session.
12. The minutes of the Regional Body shall be a public record.

**CHAPTER 5  
REGIONAL REVIEW  
ARTICLE 500  
REVIEW OF PROPOSALS**

1. This Chapter sets out the process for Regional Review.
2. Regional Review provides the Parties an opportunity to address concerns with respect to a Proposal.
3. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Article 501 of such Proposal is received from the Originating Party.
4. The Parties agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St.

Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

5. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal and shall consult with the Applicant throughout the Regional Review Process.

**ARTICLE 501  
NOTICE FROM ORIGINATING PARTY  
TO THE REGIONAL BODY AND THE PUBLIC**

1. The Originating Party shall determine if an Application is subject to Regional Review.
2. If so, the Originating Party shall provide timely notice to the Regional Body, the Parties to this Agreement, and the public.
3. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Exception Standard have been provided.

**ARTICLE 502  
OTHER NOTICE**

1. An Originating Party may:
  - a. Provide notice to the Regional Body of an Application, even if notification is not required under this Agreement; or,
  - b. Request Regional Review of an application, even if Regional Review is not required under this Agreement.
2. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal.
3. Any such Regional Review shall be undertaken only after consulting the Applicant.
4. An Originating Party may provide preliminary notice of a potential Application.

**ARTICLE 503  
PUBLIC PARTICIPATION**

1. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.
2. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Exception Standard.
3. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Exception Standard.
4. The Regional Body shall consider the comments received before issuing a Declaration of Finding.
5. The Regional Body shall forward the comments it receives to the Originating Party.



**ARTICLE 504**  
**FIRST NATIONS AND TRIBES CONSULTATION**

1. In respect of a Proposal, appropriate consultation shall occur with First Nations or federally recognized Tribes in the Originating Party in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.
2. The Regional Body shall:
  - a. Provide notice to the First Nations and federally recognized Tribes within the Basin of a Proposal undergoing Regional Review and an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Exception Standard;
  - b. Inform the First Nations and federally recognized Tribes of public meetings and invite them to attend;
  - c. Forward the comments that it receives from the First Nations and federally recognized Tribes under this Article to the Originating Party for its consideration before issuing a Declaration of Finding; and,
  - d. Consider the comments that it receives from the First Nations and federally recognized Tribes under this Article before issuing a Declaration of Finding.
3. In addition to the specific consultation mechanisms described above, the Regional Body shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from First Nations and federally recognized Tribes on matters to be dealt with by the Regional Body; and, the Regional Body or the appropriate Parties shall seek to establish mutually agreed upon mechanisms to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Agreement.

**ARTICLE 505**  
**TECHNICAL REVIEW**

Originating Party's Technical Review

1. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.
2. The Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Exception Standard.

Independent Technical Review

3. Any Party may undertake an independent Technical Review of a Proposal and the Originating Party shall assist by providing additional information as may be required.
4. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.
5. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under paragraphs 3 or 4 does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

**ARTICLE 506**  
**DECLARATION OF FINDING**

1. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.
2. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Agreement shall issue a Declaration of Finding that the Proposal under consideration:
  - a. Meets the Exception Standard;
  - b. Does not meet the Exception Standard; or,
  - c. Would meet the Exception Standard if certain conditions were met.
3. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.
4. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Exception Standard.
5. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.
6. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.
7. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.
8. The Regional Body shall release the Declarations of Finding to the public.
9. The Originating Party shall consider the Declaration of Finding before it makes a decision on the Proposal.

**CHAPTER 6  
DISPUTE RESOLUTION  
ARTICLE 600  
GENERAL**

1. The Parties undertake to resolve any disputes under this Agreement in a conciliatory, co-operative and harmonious manner.
2. Where dispute resolution is required, the Parties undertake to use the dispute resolution mechanisms provided for in this Chapter to arrive at a mutually satisfactory resolution.
3. The provisions of this Chapter shall not be used to dispute a Declaration of Finding on a Proposal that is subject to Regional Review.
4. A Person who is not a Party to this Agreement may not seek dispute resolution under this Agreement.

**ARTICLE 601  
PROCEDURE FOR DISPUTE RESOLUTION**

**Initial Steps**

1. A Party may provide detailed written notice to another Party and to the Regional Body of a dispute that in its opinion requires resolution under this Chapter.

**Measures to Settle Disputes**

2. If the dispute is not resolved informally, the Chair shall initiate the most appropriate measures to resolve the dispute. These measures may include:
  - a. The appointment of a panel to hear the Parties to the dispute;
  - b. Consultation with experts;
  - c. Establishment of a working or fact-finding group; or,
  - d. The use of dispute resolution mechanisms such as conciliation or mediation.
3. After resolution is attempted by one of the means suggested in paragraph 2, recommendations shall be made in accordance with directions given by the Chair at the time the mean was adopted. The disputing Parties shall consider the recommendations and exercise their best efforts to settle their dispute.

#### Reference to Regional Body

4. If the disputing Parties, having considered the recommendations, fail to settle the dispute, any one of them may refer the matter to the Regional Body. In this case, the Chair shall, in consultation with the other members who are not involved in the dispute, direct the Regional Body to take such further steps as he or she considers advisable in the circumstances to resolve the dispute.
5. When those steps have been taken, the Regional Body shall issue its recommendations regarding the resolution of the dispute.
6. The disputing Parties shall consider the recommendations and shall exercise their best efforts to settle.

#### Role of the Chair

7. In the event that a dispute involves the Party of the Chair, the role of the Chair set out in this Chapter shall be filled by the Vice Chair or failing him or her, another member who is not a Party to the dispute.

## **CHAPTER 7 FINAL PROVISIONS ARTICLE 700**

### **REAFFIRMATION OF CONSTITUTIONAL POWERS AND RESPONSIBILITIES**

1. Nothing in this Agreement alters the legislative or other authority of Parliament or of the Provincial legislatures or of the federal Government of Canada or of the Provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.
2. This Agreement is not intended to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

## **ARTICLE 701 RELATIONSHIP TO AGREEMENTS CONCLUDED BY CANADA OR THE UNITED STATES OF AMERICA**

1. Nothing in this Agreement is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international

agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Agreement is intended to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Agreement.

#### **ARTICLE 702**

#### **RELATIONSHIP TO FIRST NATIONS AND TRIBES**

1. Nothing in this Agreement is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.
2. Nothing in this Agreement is intended to abrogate or derogate from the protection provided for the existing aboriginal or treaty rights of aboriginal peoples in Ontario and Québec as recognized and affirmed by section 35 of the Constitution Act, 1982.

#### **ARTICLE 703**

#### **RELATIONSHIP TO OTHER AGREEMENTS AMONG THE PARTIES**

1. The Parties assert that by this Agreement they are fulfilling their existing commitments with respect to each other under the Great Lakes Charter and the Great Lakes Charter Annex.
2. The obligations of this Agreement shall be co-ordinated with any obligations set out in other environmental and conservation agreements between or among the Parties.

#### **ARTICLE 704**

#### **CONFIDENTIALITY**

1. Nothing in this Agreement requires a Party to breach confidentiality obligations or requirements prohibiting disclosure that it has under its own laws, to compromise security or a person's commercially sensitive or proprietary information.
2. A Party may take steps, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Regional Body to exercise its authorities contained in this Agreement.

#### **ARTICLE 705**

#### **MEASURES SUBJECT TO TRANSITIONAL PROVISIONS**

Each Party shall, from the date of execution of this Agreement, exercise its best efforts to refrain from taking any action that would defeat the objectives of this Agreement.

#### **ARTICLE 706**

#### **AMENDMENTS**

1. The Parties may agree in writing to amend this Agreement.

2. An amendment to this Agreement requires the consent of all Parties to the Agreement.
3. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement from the date of its entry into force.

**ARTICLE 707  
WITHDRAWAL AND TERMINATION PROCEDURE**

1. Twelve months after it gives written notice to all other Parties, a Party may withdraw from this Agreement.
2. If a Party withdraws, the Agreement shall remain in force among the remaining Parties.
3. This Agreement shall be terminated when all Parties, or all remaining Parties, agree in writing.

**ARTICLE 708  
ENTIRE AGREEMENT**

The Parties consider this Agreement to be a complete and integral whole. Each provision is material and any change or amendment made must be agreed to by all Parties.

**ARTICLE 709  
ENTRY INTO FORCE**

Parts of this Agreement come into force at different times. Except as otherwise provided in this Agreement, if in any part of the Agreement set out below the parties agree to adopt or implement measures or undertake any other action, this shall be done as expeditiously as possible and in any event no later than the earliest date specified for the part in this Article.

The following are the dates that the parts of this Agreement come into force:

1. On the day the Agreement is signed by all Parties:
  - a. Preamble;
  - b. Chapter 1 (General Provisions);
  - c. Article 202 (Implementation of the Standard and the Exception Standard);
  - d. Article 208 (Exemptions from the Agreement);
  - e. Article 302 (Science);
  - f. Article 303 (Availability of Applications and Records of Decisions);
  - g. Article 304, paragraph 1 (Water Conservation Objectives);
  - h. Chapter 4 (Great Lakes—St. Lawrence River Water Resources Regional Body);
  - i. Chapter 6 (Dispute Resolution); and,
  - j. Chapter 7 (Final Provisions).

2. 60 days after the last Party has notified the others that it has completed the Measures necessary to implement the following parts of this Agreement:
  - a. Article 200, paragraphs 1 and 2 (Prohibition of Diversions and Management and Regulation of Exceptions);
  - b. Article 201 (Exceptions to Prohibition of Diversions);
  - c. Article 203 (The Standard for management of Withdrawals and Consumptive Uses);
  - d. Article 204 (Proposals Subject to Regional Review);
  - e. Article 207 (Applicability);
  - f. Article 209 (Amendments to the Standard and Exception Standard and Periodic Assessment of Cumulative Impacts);
  - g. Article 210 (Judicial Review);
  - h. Article 300 (Water Management Program Review);
  - i. Article 304, except for paragraph 1 (Implementation of Water Conservation Programs of the Parties); and,
  - j. Chapter 5 (Regional Review).
3. 5 years after the date paragraph 2 of this Article comes into force or 60 days after the last Party has notified the others that it has completed the Measure necessary to implement it, whichever is first:
  - a. Article 200, paragraph 3 (Management of Withdrawals and Consumptive Uses);
  - b. Article 205 (Proposals Subject to Prior Notice);
  - c. Article 206 (Management and Regulation of New or Increased Withdrawals and Consumptive Uses); and,
  - d. Article 301 (Information).
4. Except as otherwise set out in this Agreement, 60 days following the date that the last Party has notified the others that it has completed the necessary legal procedures, any remaining parts of this Agreement shall come into force.
5. The terms, agreements, and review processes contained in the Great Lakes Charter of 1985 (“Charter”) shall remain in full force and effect unless and until the Parties to the Charter certify in writing that it has been replaced by the terms of this Agreement. Until the coming into force of Chapter 5 of this Agreement, the Regional Body as described in Chapter 4 shall be used for all prior notice and consultation activities as described in the Charter.

## **ARTICLE 710 LANGUAGE**

This Agreement has been made and executed in English and French and both versions are equally authoritative.

Signed this 13th day of December, 2005.  
Governor of Illinois Governor of Indiana  
Governor of Michigan Governor of Minnesota  
Governor of New York Governor of Ohio  
Premier of Ontario Governor of Pennsylvania  
Premier of Québec Governor of Wisconsin

## APPENDIX VII.

### **Tribal and First Nations Great Lakes Water Accord**

**O**ur ancestors have inhabited the Great Lakes Basin since time immemorial, long before the current political boundaries were drawn. Our spiritual and cultural connections to our Mother Earth are manifest by our willingness to embrace the responsibility of protecting and preserving the land and Waters.

Traditional teachings and modern science combine to strengthen our historical understanding that Water is the life-blood of our Mother Earth. Indigenous women continue their role as protectors of the Water. Ceremonial teachings are reminders of our heritage, they are practices of our current peoples, and they are treasured gifts that we hand to our children.

When considering matters of great importance we are taught to think beyond the current generation. We also are taught that each of us is someone's seventh generation. We must continually ask *ourselves* what we are leaving for a future seventh generation.

We understand that the whole earth is an interconnected ecosystem. The health of anyone part affects the health and well being of the whole. It is our spiritual and cultural responsibility to protect our local lands and Waters in order to help protect the whole of Mother Earth.

Tribes and First Nations have observed with growing interest that the Great Lakes Basin governments of the United States and Canada have begun to share our concerns about the preservation of the quality and quantity of the Great Lakes Waters.

The eight States and two Provinces of the Great Lakes Basin entered into the 1985 Great Lakes Charter, Annex 2001, and have drafted an Interstate Compact and International Agreement to implement the provisions of Annex 2001. These agreements, however, make no provisions for including Tribes and First Nations as governments with rights and responsibilities regarding Great Lakes Waters. These agreements also assert that only the States and Provinces have governmental responsibility within the Great Lakes Basin.

Through International treaties and court actions, however, Tribes and First Nations continue to exercise cultural and spiritual rights of self-determination and property rights within traditional territories for our peoples and nations. Tribal and First Nation governments, like all governments, have the duty to protect the interests and future rights of our peoples. Since we have recognized rights and we are not political subdivisions of the States or Provinces, the assertion that the States and Provinces own and have the sole responsibility to protect the Waters is flawed.

Thus, the efforts of the States and Provinces to protect the Waters of the Great Lakes Basin are flawed because these efforts do not include the direct participation of the



governments of Tribes and First Nations. This fundamental flaw endangers the interests of all of the inhabitants of the Great Lakes Basin and, ultimately, because of the interconnectedness of the worldwide ecosystem, endangers the interests of the entire earth.

It is thus our right, our responsibility and our duty to insist that no plan to protect and preserve the Great Lakes Waters moves forward without the equal highest-level participation of Tribal and First Nation governments with the governments of the United States and Canada. Merely consulting with Tribes and First Nations is not adequate, full participation must be achieved.

**B**y this accord signed on November 23, 2004, at Sault Ste. Marie, Michigan, the Tribes and First Nations of the Great Lakes Basin *do hereby demand that our rights and sovereignty be respected, that any governmental effort to protect and preserve the Waters of the Great Lakes Basin include full participation by Tribes and First Nations, and we also hereby pledge that we share the interests and concerns about the future of the Great Lakes Waters, further pledging to work together with each other and with the other governments in the Great Lakes Basin to secure a healthy future for the Great Lakes.*



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