

THE GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT



RESOURCE KIT



GREAT LAKES
ST. LAWRENCE
GOVERNORS
& PREMIERS

GREAT LAKES ST. LAWRENCE GOVERNORS & PREMIERS

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

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¹ All documents in this section developed by the *Council of State Governments—National Center for Interstate Compacts*.

1. Overviews
 - i. Compact Council Overview
 - ii. Regional Body Overview



Great Lakes—St. Lawrence River Basin Water Resources Council

Through the Great Lakes-St. Lawrence River Basin Water Resources Council, the region's Governors cooperatively manage 20% of the world's surface fresh water. The Compact Council's award-winning work protects the largest freshwater body on earth, which provides drinking water to over 40 million people.

The Compact Council

- Fosters economic development through the sustainable use and responsible management of Basin waters.
- In general, bans new diversions of water from the Great Lakes-St. Lawrence Basin but limited exceptions could be allowed in nearby communities when rigorous standards are met.
- Provides communities that apply for an exception with a clear, predictable decision making process; standards to be met; and, opportunities to appeal decisions.
- Has developed regional goals and objectives for water conservation and efficiency, and regularly reviews them. Each State has also developed and implemented a water conservation and efficiency program that may be voluntary or mandatory.
- Manages a framework for how the States coordinate water use in their jurisdiction, using a consistent standard to review proposed uses of water. The States have flexibility regarding their water management programs and how to apply this standard.
- Spearheads a regional science strategy to ensure that the best available information, knowledge and decision making tools are being used.
- Is committed to continued, and ongoing public involvement.

The Compact Council includes the eight Great Lakes Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. They work closely with one another and the Regional Body, which includes the Governors and the Canadian Premiers of Ontario and Québec, to protect the region's waters and ensure that they remain at healthy levels.

All Compact Council meetings are open to the public and comprehensive information is publicly available.

For More Information

The Conference of Great Lakes St. Lawrence Governors & Premiers serves as the Compact Council's Secretariat. The phone number is (312) 407-0177. For additional information, please visit the Compact Council's website www.glscompactcouncil.org.



Great Lakes-St. Lawrence River

Water Resources Regional Body

Conseil régional des ressources en eau des Grands Lacs et du fleuve Saint- Laurent

Through the Great Lakes-St. Lawrence River Water Resources Regional Body, the region's Governors and Premiers cooperatively manage 20% of the world's surface fresh water. The Regional Body's award-winning work protects the largest freshwater body on earth, which provides drinking water to over 40 million people.

The Regional Body

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- Provides communities that apply for an exception with a clear, predictable decision making process; standards to be met; and, opportunities to appeal decisions.
- Has developed regional goals and objectives for water conservation and efficiency, and regularly reviews them. Each State and Province has also developed and implemented a water conservation and efficiency program that may be voluntary or mandatory.
- Manages a framework for how the States and Provinces coordinate water use in their jurisdiction, using a consistent standard to review proposed uses of water. The States and Provinces have flexibility regarding their water management programs and how to apply this standard.
- Spearheads a regional science strategy to ensure that the best available information, knowledge and decision making tools are being used.
- Is committed to continued, and ongoing public involvement.

The Regional Body includes the eight Great Lakes Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin, and the Premiers of Ontario and Québec. They work closely with one another and the Governors' Great Lakes Compact Council to protect the region's waters and ensure that they remain at healthy levels.

All Regional Body meetings are open to the public and comprehensive information is publicly available.

For More Information

The Conference of Great Lakes St. Lawrence Governors & Premiers serves as the Regional Body's Secretariat. The phone number is (312) 407-0177. For additional information, please visit the Regional Body's website www.gslregionalbody.org.

2. Background, Organization and Road to Development

GREAT LAKES—ST. LAWRENCE RIVER BASIN
WATER RESOURCES COMPACT
BACKGROUND, ORGANIZATION AND ROAD TO
DEVELOPMENT

BACKGROUND

A central and continuing issue of common concern to the Great Lakes region is the health and maintenance of the waters of the Great Lakes. To this end, the Council of Great Lakes Governors (Council) assists the Great Lakes Governors and Premiers in coordinating activities under the Great Lakes Charter of 1985, a voluntary agreement through which the Great Lakes States and Provinces cooperatively manage the waters of the Great Lakes. The Council also coordinated the authority granted to the Governors under the U.S. Water Resources Development Act (WRDA) of 1986. This Act required the Governors' unanimous approval on any proposed out-of-basin diversion or export of water from the Great Lakes Basin.

In the spring of 1998, the Province of Ontario approved a permit for the Nova Group of Sault Saint Marie, Ontario that would have allowed the Nova Group to remove 160 million gallons per year from Lake Superior and then be sold in Asia. Although the Ontario government subsequently rescinded the permit, the accompanying public uproar in Ontario and concern voiced by the Council's Governors led to the review of the issue of bulk removals by the International Joint Commission (IJC).

In an effort to avoid future threats to the Great Lakes, the Governors in 1998 directed the Great Lakes Protection Fund to fund a study of potential legal problems that the Great Lakes face along with solution options. When the report was delivered to the Governors in the spring of 1999, the Governors formed the Water Management Working Group (Working Group) to address the issues raised in the legal team's report. Later in the year, the Provinces of Ontario and Québec joined the Working Group.

On June 18, 2001, the Great Lakes Governors and Premiers of Ontario and Québec signed the Great Lakes Charter Annex 2001 (Annex 2001) in Niagara Falls, New York. Annex 2001 is an amendment to the Great Lakes Charter of 1985, both good-faith agreements signed by all the Great Lakes Governors and Premiers. In Annex 2001, the Governors and Premiers agreed to prepare Basin-wide binding agreement(s), such as an interstate compact and agreements, protocols or other arrangements including a dispute resolution process between the States and Provinces that would protect preserve, restore and improve the Great Lakes for the use and benefit of its citizens. The Governors and Premiers also committed to continue a process that ensures ongoing public input in the preparation and implementation of the binding agreement(s) called for in Annex 2001. Included in this process were periodic progress reports to the public.

On December 13, 2005, the Great Lakes Governors and Premiers signed the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement, and the

Great Lakes Governors endorsed and called for the legislative enactment of the companion Great Lakes—St. Lawrence River Basin Water Resources Compact.

The agreements detail how the States and Provinces will manage and protect the Basin and provide a framework for each State and Province to enact laws for its protection.

The agreements include the following points:

- Economic development will be fostered through the sustainable use and responsible management of Basin waters.
- There will be a ban on new diversions of water from the Basin. Limited exceptions could be allowed, such as for public water supply purposes in communities near the Basin, but exceptions would be strictly regulated.
- The States and Provinces will use a consistent standard to review proposed uses of Basin water.
- Regional goals and objectives for water conservation and efficiency will be developed, and they will be reviewed every five years. Each State and Province will develop and implement a water conservation and efficiency program.
- The collection of technical data will be strengthened, and the States and Provinces will share the information, which will improve decision-making by the governments.
- There is a strong commitment to continued public involvement in the implementation of the agreements.

The Great Lakes-St. Lawrence River Basin Water Resources Council (Compact Council) was established on December 8, 2008, when the Great Lakes-St. Lawrence River Basin Water Resources Compact became State and federal law. Each of the eight Great Lakes State legislatures ratified the Compact and Congress provided its consent for this historic accord. In order to put the agreement into law in Ontario and Québec, the Provinces have amended their statutes and have amended their regulations as appropriate. No federal legislation is required in Canada. The Governors and Premiers are continuing to work aggressively to implement these agreements into action.

ORGANIZATION AND STRUCTURE

Objective

On September 4, 2001 Council of Great Lakes Governors Chair Governor Bob Taft of Ohio called for the re-appointment of the Working Group. The objective of the Working Group was to provide recommendations to the Great Lakes Governors and Premiers regarding implementation of Annex 2001.

Management Team

The Great Lakes Water Management Initiative entered the final phase of operation under the leadership of Council Co-Chairs Governor Jim Doyle of Wisconsin and Governor Bob Taft of Ohio. The implementation of Annex 2001 fell under the day-to-day direction of a Water Management Working Management Team (Management Team). The Management Team membership included Working Group Chair Sam Speck,

Director, Ohio Department of Natural Resources; Dana Debel, Environmental Policy Advisor to Michigan Governor Jennifer Granholm; Rob Messervey, Manager of the Water Resources Section of the Lands and Waters Branch of the Ontario Ministry of Natural Resources; Patrick Henderson, Legislative Director, Office of Wisconsin Governor Jim Doyle; and, David Naftzger, Executive Director of the Council. To support the efforts of the Management Team and Working Group, legal counsel and policy research experts were contracted by the Council under the direction of the Management Team.

Water Management Working Group

Under Governor Taft's Co-Chairmanship of the Council, Sam Speck, Director, Ohio Department of Natural Resources, chaired the Working Group. The Chair worked with the Management Team and Council staff to design the process for developing recommendations to the Governors Premiers and manage the development process.

The Working Group consisted of the Council staff and at least two members from each State/Province as appointed by their respective Governor/Premier. Each Governor/Premier selected at least one member to represent technical expertise on water management issues and at least one member to represent policy issues and speak on behalf of his/her respective Governor/Premier. Any State/Province could select additional individuals to attend meetings as needed.

The role of the Working Group was to perform the work necessary to implement Annex 2001. The Working Group also created Sub-committees to work on specific tasks. Sub-committees include the Compact Structure Sub-committee (charged with the development of the Great Lakes—St. Lawrence River Basin Water Resources Compact); the Decision Making Standard Sub-committee (charged with the development of the Standard used for reviewing new or increased withdrawals of Basinwater); and, the International/Inter-provincial Agreement(s) Sub-committee (charged with the development of the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement). A Legal Team provided advice and assistance to the Working Group and Sub-committees on legal questions and issue that arose. A Tribes/First Nations Team provided advice and assistance to members of the Working Group as it engaged in ongoing discussions with Tribes and First Nation representatives. Finally, a Communications Team provided the Working Group with assistance in reaching out to the public and coordinating public comments. Members of the Sub-committees and Teams were members of the Working Group or their designees within State/Provincial government and did not represent outside entities or organizations. The Working Group Chair appointed leadership of the Sub-committees and Teams in consultation with the Working Group.

The Working Group received advice and comment from an Advisory Committee, Resource Group and Observers as well as from consultants contracted by the Council.

Advisory Committee

The Advisory Committee comprised approximately 25 individuals representing a broad range of stakeholder interests in the Great Lakes region. All members of the Advisory Committee were selected by consultation and agreement of the Working Group and represented a cross-section of stakeholders within the region while taking into account geographic representation.

The role of the Advisory Committee was to advise the Working Group during all phases of the project. Individual Committee members provided briefings on relevant issues in their area of expertise and provided ongoing input to the Working Group. The Advisory Committee members also provided information regarding the Working Group's progress to members of their organizations.

The Advisory Committee met with the Working Group periodically, at a minimum of two times a year, during the course of the negotiations.

Resource Group and Observers

The Resource Group and Observers comprised governmental bodies with technical expertise regarding Great Lakes issues. The members included the Great Lakes Commission, International Joint Commission, the Great Lakes Congressional Task Force, U.S. Geological Survey, U.S. Army Corps of Engineers, Environment Canada, Foreign Affairs Canada and the U.S. State Department.

The role of the Resource Group and Observers was to advise the Working Group. They provided their advice independent of the Advisory Committee. The Resource Group and Observer members were also asked to provide specific work products and gave periodic status reports to the Working Group and the Advisory Committee.

The Resource Group and Observers met periodically with the Working Group, at a minimum of two times a year, during the course of the project.

Tribes/First Nations

The Governors and Premiers and the Tribes and First Nations have a shared goal of protecting the Great Lakes. Dialogue and consultations occurred in an ongoing manner among the Great Lakes States, Ontario, Québec, Tribes and First Nations about how to best protect Basin waters. Discussions were also ongoing about how intergovernmental cooperation could be improved in order to better protect Basin waters. Regardless, nothing in the Great Lakes-St. Lawrence River Basin Water Resources Compact is intended to abrogate or derogate from aboriginal or treaty rights or rights held by any Tribe or First Nation based upon its status as a Tribe or First Nation.

Council of Great Lakes Governors

David Naftzger, Executive Director of the Council, and selected staff served as facilitators under the direction of the Management Team. The facilitators served as a neutral third party to allow the Chairs to take positions representing their State and Provincial interests. In addition to facilitating the Working Group, Sub-committees, the

Advisory Committee, Resource Group and Observer meetings, Council staff coordinated meeting logistics, prepared meeting agendas, briefing materials, meeting summaries, and provided speakers and independent technical experts as needed.

Decision Making

All decision making by the Working Group was done by consensus. Consensus is a process through which a group makes a decision that all group members can support although they may not agree with every aspect. The agreement should be the best one for the group as a whole. In the consensus building process, solutions were developed that attempted to meet the interests of all members. To reach consensus, presentation and discussion of diverse viewpoints was needed. To be certain that the group agreed, the meeting facilitators periodically tested for agreement. Frequent testing for agreement helped reduce delays in decision making and clarified disagreements.

Public Participation

To assure public access, understanding, and support for the Governors' and Premiers' water management program, public meetings and consultation was conducted in all States and Provinces.

Along with periodic meetings with the Advisory Committee, project progress was shared with interested and affected parties through a quarterly Council newsletter, periodic updates posted on the Council website, and periodic e-mails to interested parties.

In addition, two public comment periods over 150 days were held to solicit the general public's input on drafts of the Great Lakes—St. Lawrence River Sustainable Water Resources Agreement and the Great Lakes—St. Lawrence River Water Resources Compact. The first public comment period began on July 19, 2004, and the second public comment period began on June 30, 2005. Overall, more than 60 public meetings were held and 13,000 public comments were submitted. Substantial revisions were made to the draft agreements in response to the public comments received.

3. Great Lakes—St. Lawrence River Basin Water Resources Compact

DECEMBER 13, 2005

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the “Great Lakes—St. Lawrence River Basin Water Resources Compact.”

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, 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 the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. **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 this Compact.

Consumptive Use means that portion of the 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.

Council means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the 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.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

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 water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake 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 Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

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 or registration is made or required.

Party means a State party to this Compact.

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 Compact.

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 members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

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 of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

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, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, 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 Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

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.

Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

1. Findings:
 - a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;
 - b. The Waters of the Basin are interconnected and part of a single hydrologic system;
 - c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;
 - d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;
 - e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,
 - f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.
2. Purposes:
 - a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;
 - b. To remove causes of present and future controversies;
 - c. To provide for cooperative planning and action by the Parties with respect to such Water resources;
 - d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;
 - e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;
 - f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;
 - g. To promote interstate and State-Provincial comity; 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.

Section 1.4. 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 Compact.
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 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 2
ORGANIZATION**

Section 2.1. Council Created.

The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the Council.
2. Unless otherwise stated, the rule of decision shall be by a simple majority.
3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by

unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.

4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;
2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,
3. Develop and adopt plans consistent with the Water resources plans of the Parties.

Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.
2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition,

confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

**ARTICLE 3
GENERAL POWERS AND DUTIES**

Section 3.1. General.

The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact.

The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures.

The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or

individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.
2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. 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 of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.
2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:
 - a. 30 days after the first report is submitted by all Parties; and,
 - b. Every five years after the effective date of this Compact; and,
 - c. At any other time at the request of one of the Parties.
3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

ARTICLE 4
WATER MANAGEMENT AND REGULATION

Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.
2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.
3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.
4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.
5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.
6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are 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 of the effective date of this Compact, 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 annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.
3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, 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 will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.
4. Within two years of the effective date of this Compact, 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.

Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.
2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.
3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any

implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.
5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been approved by the Originating Party.

Section 4.5. Regional Review.

1. General.

- a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.
- b. 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 Section 4.5.2 of such Proposal is received from the Originating Party.
- c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.
- d. 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.
- e. 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.
- f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.
 - a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.
 - b. 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 Standard of Review and Decision have been provided.
 - c. An Originating Party may:
 - i. Provide notice to the Regional Body of an Application, even if notification is not required; or,
 - ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.
 - d. An Originating Party may provide preliminary notice of a potential Proposal.
3. Public Participation.
 - a. 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.
 - b. 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 Standard of Review and Decision.
 - c. 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 Standard of Review and Decision.
 - d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.
 - e. The Regional Body shall forward the comments it receives to the Originating Party.
4. Technical Review.
 - a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.
 - b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.
 - c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.
 - d. 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.
 - e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d 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.

5. Declaration of Finding.
 - a. 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.
 - b. 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 Compact shall issue a Declaration of Finding that the Proposal under consideration:
 - i. Meets the Standard of Review and Decision;
 - ii. Does not meet the Standard of Review and Decision; or,
 - iii. Would meet the Standard of Review and Decision if certain conditions were met.
 - c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.
 - d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.
 - e. 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.
 - f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.
 - g. 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.
 - h. The Regional Body shall release the Declarations of Finding to the public.
 - i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces 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 or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. 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 Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.
2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. 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 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 or greater average over any 90-day period, the Proposal shall also undergo Regional Review.
2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, 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 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 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 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 of 5 million gallons 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. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.
3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact 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, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;
 - 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. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

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.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:
 - a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;
 - b. The Exception will 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 the 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 will be implemented so as to ensure that it will 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 will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;
 - f. The Exception will 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; and,
 - g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making 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 all other objectives of the Compact 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. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons 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. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, 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 Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

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 will 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 will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;
4. The Withdrawal or Consumptive Use will 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.

Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.
2. Baseline.
 - a. 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:
 - i. A list of existing Withdrawal approvals as of the effective date of the Compact;
 - ii. A list of the capacity of existing systems as of the effective date of this Compact. 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.
 - b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.
 - c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.
3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.
4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.
5. Groundwater. 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.
6. Withdrawal Systems. 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.
7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.
8. Transmission in Water Lines. 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.
9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact 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 or less.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply 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 the vehicles.
2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, 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 Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, 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.
2. 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 Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact 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 Compact who are also parties to the decree shall seek formal input from the Canadian Provinces of 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.
3. With the exception of Paragraph 5 of this Section, 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 Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.
5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.
6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed 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, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations 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.
2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.
3. 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 Standard of Review and Decision.

ARTICLE 5 TRIBAL CONSULTATION

Section 5.1. Consultation with Tribes

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.
2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.
3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

ARTICLE 6 PUBLIC PARTICIPATION

Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.
2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.
2. Assure public accessibility to all documents relevant to an Application, including public comment received.
3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.
4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

**ARTICLE 7
DISPUTE RESOLUTION AND ENFORCEMENT**

Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.
2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.
- b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.
3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.
 - a. No action under this subsection may be commenced if:
 - i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,
 - ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.
 - b. No action under this subsection may be commenced unless:
 - i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,
 - ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

ARTICLE 8 ADDITIONAL PROVISIONS

Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.
2. Nothing contained in this Compact shall be construed as affecting or intending to

affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact 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.
4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact 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 Compact is intended to infringe nor shall be construed 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.
3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.
2. A Party may take measures, 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 Council to exercise its authorities contained in this Compact.

Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other

necessary authority in the same manner as this Compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

**ARTICLE 9
EFFECTUATION**

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

Section 9.3. Entire Agreement.

The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in

the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this ____ day of (month), (year).

4. Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement

DECEMBER 13, 2005

**GREAT LAKES—ST. LAWRENCE RIVER BASIN SUSTAINABLE WATER
RESOURCES AGREEMENT**

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 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.

“Diversión” 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

5. Frequently Asked Questions: Great
Lakes—St. Lawrence River Basin Water
Resources Compact



Frequently Asked Questions

Great Lakes—St. Lawrence River Basin Water Resources Compact

Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement

What is the Great Lakes—St. Lawrence River Basin Water Resources Compact and the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement?

On December 13, 2005, the Great Lakes Governors and Premiers signed historic agreements to protect the Great Lakes—St. Lawrence River Basin for future generations. The agreements include the following:

1. The Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement (the Agreement), a good-faith agreement among the Great Lakes States, Ontario and Québec; that has been implemented in Ontario and Québec through Provincial laws, and in the States, through
2. The Great Lakes—St. Lawrence River Basin Water Resources Compact (the Compact), an agreement among the Great Lakes States that was passed into law through an interstate compact.

How were these agreements developed?

On June 18, 2001, the Great Lakes Governors and the Premiers of Ontario and Québec signed the Great Lakes Charter Annex. This historically significant measure outlined unprecedented protections for the Great Lakes—St. Lawrence River Basin to help improve the health of the Basin ecosystem. It provided a framework to update the management of Basin waters. The Governors and Premiers then asked a Working Group made up of State and Provincial staff, to develop agreements to implement the Annex into law.

Who else helped shape the agreements?

The Working Group consulted with an Advisory Committee including representatives from industry, agriculture, shipping, municipal governments, environmental non-governmental organizations and others. They also worked with representatives from the Canadian and U.S. federal governments and scientific experts and consulted with Tribes and First Nations.

Extensive public input also had a significant impact on the agreements. Over 13,000 public comments were received during the two official public comment periods held regarding the draft agreements. Over 60 public meetings were held throughout the region to receive public input.

How do you define the Great Lakes—St. Lawrence River Basin?

The Great Lakes—St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois Rivières, Québec. This Basin includes the waters within

the geographic areas surrounding each body of water where water drains toward the Lakes and the River, including groundwater.

How are diversions of water out of the Basin addressed under these agreements?

The agreements ban new or increased diversions with limited and strictly regulated exceptions. Draft sequence of events for reviewing “Straddling County” diversion proposals have been drafted and have been made available on the Compact Council and Regional Body websites.

Is there some flexibility for communities located on or near the Great Lakes—St. Lawrence River Basin?

Under strictly defined circumstances, it is possible that communities located on or near the Great Lakes—St. Lawrence River Basin divide could obtain an exception from the ban on diversions. Communities that straddle the Basin and communities in straddling counties would only be eligible if the water is used for public water supply purposes. Depending on the location of the water use, an escalating series of other strict eligibility requirements would also have to be met, including requiring water remaining after use to be returned to the Basin, requiring the proposal to undergo regional review before it may be approved, and in some instances unanimous approval must be given before an exception can be granted. When reviewing a straddling county proposal, substantive consideration will be given to whether or not there is scientific evidence that the community’s existing groundwater supply is hydrologically interconnected to the waters of the Basin.

There is recognition of a practical issue related to the return of water to the Basin. Of course, public water supply and wastewater systems may not be able to track every molecule of water in some particular circumstances. Therefore, water that is returned may be co-mingled under such circumstances. If water is co-mingled, the discharge must be treated to prevent aquatic invasive species and meet water quality discharge standards. In addition, an effort must be made to maximize the portion of water being returned as Basin water, and minimize outside water.

How are uses of water in the Basin to be managed?

The States, Ontario and Québec manage in-Basin withdrawals using a natural resource based standard while retaining flexibility regarding its application. The standard includes requirements that, for example, the use must not result in significant harm to the Basin’s waters or related natural resources.

Each State and Province has developed a program to determine which uses must meet this standard while ensuring that, overall, uses are sustainable. After ten years of the agreements taking effect, if a State or Province has not determined its program’s scope and adopted a threshold for regulation, then all new or increased withdrawals over 100,000 gallons per day would be subject to management and regulation.

State and Provincial water management programs will be reviewed every five years by the Regional Body and the Compact Council. These entities will include the Governors, Premiers or their designees.

There will be an opportunity for each State and Province to provide input on new or increased uses that result in a consumptive loss of water through evaporation or incorporation into a product of more than 5 million gallons per day (19 million litres per day). Importantly, the final decision on all consumptive uses within the Basin would be made by the host State or Province.

Additionally, the collection of technical data has been strengthened, and the States and Provinces share the information, which will improve decision-making by the governments.

Will pre-existing withdrawals, diversions and consumptive uses have to meet the standards?

The standards are intended for water withdrawals, for exceptions to the ban on diversions and for consumptive uses from the Great Lakes—St. Lawrence River Basin that are new or increased subsequent to the enactment of the Compact for the States and entry into force of relevant provisions of the Agreement. Water conservation and efficiency programs will be developed by the States and Provinces in order to reduce waste by all users.

How are consumptive use volumes to be calculated?

They are calculated using commonly accepted methods (for example, metering or other water engineering and irrigation methods proposed by the applicant) and based on a 90-day average to ensure an accurate volume can be measured. The States and Provinces will individually and collectively work with stakeholders to develop methods for accurately calculating consumptive uses.

Will these agreements and the standards cut off or restrict economic growth?

Absolutely not. All of the Governors and Premiers want to see continued economic growth in their States and Provinces and understand that the sustainable use of Basin waters will play a critical role in the preservation of existing businesses and the creation of new jobs. By preserving, restoring, protecting and improving our waters, we will ensure that there is enough water in the future for business use, residential use and economic growth, and preservation of a healthy environment that encourages people to locate in our region. Failure to manage Basin waters responsibly would put future economic growth at risk.

How long will the regional review process take and will it restrict access for uses in the Great Lakes—St. Lawrence River Basin?

The regional review process is anticipated to take approximately six months and will not interfere with existing processes. The overwhelming majority of proposed uses will be reviewed only by the individual State or Province in which the application is made. To the extent possible, the approval process will be incorporated into existing jurisdictional permit-approval timeframes. A draft sequence of events for reviewing “straddling county” diversion exception proposals has been created and posted to the Regional Body and Compact Council websites.

Will the water management system encourage better water conservation and efficient use of water?

Absolutely. The new water management system includes provisions requiring improved water conservation and efficient use of Basin water, including input from the public, as well as region-wide goals and objectives for conservation and efficient use. Additionally, the States and

Provinces have developed water conservation and efficiency programs that are consistent with regional goals and objectives. These programs may be voluntary or mandatory.

What kind of conservation and efficiency measures will be required for approved water uses?

All proposals for new or increased withdrawals of Great Lakes—St. Lawrence River Basin water must incorporate environmentally sound and economically feasible water conservation and efficiency measures. One of the goals is to promote efficient water use and minimize waste.

Do these new agreements affect the International Boundary Waters Treaty or the role of the International Joint Commission?

No. Nothing in the agreements is intended to affect the application of the Boundary Waters Treaty of 1909, whose requirements continue to apply with respect to boundary waters between Canada and the United States in addition to the requirements of the agreements.

How do the agreements affect Tribes and First Nations?

The agreements reflect how the Great Lakes States, Ontario and Québec exercise their own existing rights and obligations, by managing the activities of citizens under their jurisdiction. Nothing in the agreements is intended change any of the rights that any of the Tribes or First Nations may currently have.

The Great Lakes States, Ontario and Québec have consulted with representatives from the region's Tribes and First Nations. Of course, our shared objective is to protect Basin waters. Our dialogue is continuing.

How did the agreement implementation process work?

The Great Lakes States and Provinces entered into a good-faith agreement incorporating their commitments to one another. Since then, they have been working to implement into law what they have promised in the agreement.

The Provinces are implementing the agreement through modifications to their applicable legislative/regulatory measures. The States are implementing the agreement by passing an interstate compact into law. In the United States, Congress will be asked to consent to the compact.

When did the implementing agreements go into effect?

The Compact came into force on December 8, 2008. Portions of the agreements will be phased in over different time periods. Some provisions have already gone into effect, and the second set of provisions will come into force on or about March 2, 2015. The Governors and Premiers are working aggressively to put the other provisions of these agreements into action.

How did this project affect the Illinois diversion?

The Illinois diversion continues to be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties

to the decree shall seek formal input from the Canadian Provinces of Ontario and Québec with respect to the proposed modification.

There are a lot of numbers in the agreements. Can you give an example of how 5 million gallons (19 million litres) might be used? How might 100,000 gallons per day be used? Since the average person uses about 100 gallons of water per day at home, 5 million gallons of water would approximately equal the daily water use of 50,000 people.

If the average washing machine holds 50 gallons of water, 100,000 gallons could fill approximately 2,000 washing machines.

6. Development Rosters

- i. Governors' and Premiers' Water Management Working Group
- ii. Advisory Committee
- iii. Resource Group
- iv. Observers

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7. Background on Compacts¹

- i. Compacts—Frequently Asked Questions
- ii. Understanding Interstate Compacts
- iii. Interstate Compacts v. Uniform Laws
- iv. Congressional Consent and Other Legal Issues

¹ All documents in this section 7 developed by the *Council of State Governments—National Center for Interstate Compacts*.

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Frequently Asked Questions Compacts Generally

What is an interstate compact?

Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters. Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states. The very nature of an interstate compact makes it an ideal tool to meet the demand for cooperative state action: developing and enforcing stringent standards, while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

How prevalent are interstate compacts?

More than 200 interstate compacts exist today. On average, a state belongs to 25 interstate compacts.

There are 22 compacts that are national in scope, several with 35 or more member states and independent administrative commissions. More than 30 compacts are regional in scope, with 8 or more member states.

What types of interstate compacts exist?

Although there are many types of interstate compacts, they can generally be divided into three camps:

a. *Border Compacts*: agreements between two or more states that establish or alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress's approval. Examples include the Virginia-Tennessee Boundary Agreement of

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1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.

b. *Advisory Compacts*: agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings. Such compacts do not result in any change in the state's boundaries nor do they create ongoing administrative agencies with regulatory authority.

c. *Regulatory Compacts*: broadest and largest category of interstate compacts may be called "regulatory" or "administrative" compacts. Such compacts are a development of the 20th century and embrace wide-ranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact. Many regulatory compacts require congressional consent to be effective because they regulate areas that impact one of congress's enumerated powers, such as interstate commerce, navigable streams, and extradition.

What are the advantages of an interstate compact?

The emergence of broad public policy issues that ignore state boundaries and the principles of federalism have presented new governing challenges to both state and federal authorities. Complex regional and national problems have shown little respect for the dual lines of federalism or the geographical boundaries of states. Thus, interstate compacts have reemerged not only as devices for adjusting interstate relations but also for governing the nation.

Interstate compacts provide an effective solution in addressing suprastate problems. Compacts enable the states—in their sovereign capacity—to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications. Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

What are the disadvantages of an interstate compact?

Interstate compacts may often require a great deal of time to both develop and implement.

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While recent interstate compact efforts have met with success in a matter of a few years, some interstate compacts have required decades to reach critical mass.

Further, the ceding of traditional state sovereignty, particularly as required by several modern administrative compacts may be perceived as a disadvantage. The very purpose of an interstate compact is to provide for the collective allocation of governing authority between and among party states, which does not allow much room for individualism. The requirement of substantive “sameness” prevents party states from passing dissimilar enactments.

As the balance of power continues to realign in our federalist system, states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts.

How is an interstate compact created?

Compacts are essentially contracts between or among states. To be enforceable, they must satisfy the customary requirements for valid contracts, including the notions of offer and acceptance. An offer is made when one state, usually by statute, adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

What does a modern interstate compact look like, structurally?

When developing the interstate compact mechanism, one needs to look at it as a human body—the compact itself is the skeleton, the rules, regulations and forms are the muscles and the by laws are the skin. The compact should contain the minimum basics upon which it needs to operate, in terms of the agreement between states and the operation of a governing body. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states, subject to the legislatively delegated authority.

Will my states constitution permit the creation and/or joining of a compact?

Compact language is usually drafted with state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations in mind. The validity of the state authority to enter into compacts and potentially delegate authority to an interstate agency has been specifically recognized and unanimously upheld by the *U.S. Supreme Court in West Virginia v. Sims*, 341 U.S. 22 (1951).

Can any of the language in the new compact be changed or must all states use identical language? Can my state pass only certain parts of the revised compact?

Generally, the compact language must be identical with regard to the substantive provisions of the agreement. However, the enabling legislation, which embodies that

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agreement, does not have to be uniform in all party states and can be utilized to fit variations into the compactual pattern. The enabling legislation can be used to condition the impact of a compact in a particular state. While these allowances may be made for format, the operative language of the agreement must be identical from state-to-state; otherwise these material differences in language in any state statute purporting to adopt the compact could render it “void” or “voidable”.

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Understanding Interstate Compacts

Interstate compacts represent an opportunity for multistate cooperation, reinforcing state sovereignty and avoiding federal intervention. The emergence of broad public policy issues that cross jurisdictional boundaries present new governing challenges to state authorities. Compacts enable the states – in their sovereign capacity – to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action.

Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

What is an Interstate Compact?

Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters. Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states and evolving to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

It should be noted that an interstate compact is not a uniform state law. In fact, an interstate compact differs from a uniform state law in several ways, most notably that a uniform law does not depend on contractual obligations and a state can therefore change any portion of the law, thus losing any degree of uniformity initially intended. Second, courts of different states may interpret the provisions of a uniform state law differently

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and since the highest court in a state is the final arbiter on legal issues within that state, there is no satisfactory way to achieve a reconciliation of divergent interpretations.

Compacts are created when an offer is made by one state, usually by statute that adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided.

How prevalent are Interstate Compacts?

Compacts were seldom used until the 20th century. Between 1783 and 1920, states approved just 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. On average, a state today belongs to 25 interstate compacts.

Although there are many types of interstate compacts, they can generally be divided into three camps:

- **Border Compacts:** agreements between two or more states that establish or alter the boundaries of a state.
- **Advisory Compacts:** agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings.
- **Regulatory Compacts:** broadest and largest category of interstate compacts may be called “regulatory” or “administrative” compacts. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact.

Compacts Today

The purpose of interstate compacts ranges from implementing common laws to exchanging information about similar problems. They apply to everything from conservation and resource management to civil defense, emergency management, law enforcement, transportation, and taxes. Other compact subjects include education, energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is the New York-New Jersey Port Authority, which arose from a 1921 compact between the two states. But other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are designed for regional or national participation, whereas the compacts of old were usually bi-state agreements. Recent efforts include the *Emergency Management Assistance Compact*, the *Interstate Insurance Product Regulation Compact*, *National Crime Prevention & Privacy Compact*, and the *Wildlife Violator Compact*.

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Other examples of compact activity include the revision of existing interstate agreements; updating agreements that maintain relevance, but which require a modernization of their structures. Recent examples include the *Interstate Compact for Adult Offender Supervision* and the *Interstate Compact for Juveniles*.

Congressional Consent

Article I, Section 10, Clause III of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Historically, this clause generally meant all compacts must receive congressional consent. However, it has been found in a number of instances, notably the 1893 US Supreme Court case *Virginia v. Tennessee* that not all compacts require congressional consent. It is well established today that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

Fortunately, even though congressional consent may be needed, it is not particularly burdensome to acquire. Though usually satisfied by means of a congressional resolution granting the states the authority to create a compact, the Constitution specifies neither the means nor the timing of the required consent. Over the years, the Supreme Court has held that congressional consent may be expressed or implied and may be obtained either before or after a compact is enacted.

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Interstate Compacts vs. Uniform Laws

Interstate Compacts

Interstate compacts are formal agreements between states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another. Compacts are considered contracts because of the manner in which they are enacted. There is an offer (the presentation of a reciprocal law to state legislatures), acceptance (the actual enactment of the law) and consideration (the settlement of a dispute or creation of a regulatory scheme).

Since a state is forbidden by the Constitution to impair the obligation of contracts, it cannot unilaterally renounce an interstate compact except as agreed by the parties. Consequently, the interstate compact is the instrument best suited for the establishment of permanent arrangements among the states. The interstate compact is effective in the formulation of arrangements where a high degree of stability is desired.

Interstate compacts are not uniform laws. Unlike laws such as the Uniform Commercial Code, compacts are not subject to unilateral amendment. Nor are interstate compacts mere administrative agreements. As contracts, compacts constitute solemn treaties between the states, which are acting as sovereigns within a constituent union when adopting a compact.

Therefore, compacts have standing as both binding state law and a contract between the member states such that no one state can unilaterally act in conflict with the terms of the compact. Any state law in contradiction or conflict with the compact is unconstitutional, absent the reserve of power to the party states. The terms of the compact take precedence over state law even to the extent that a compact can trump a state constitutional provision. In effect, by entering a compact, the party states have contractually agreed that the terms and conditions of the compact supercede state considerations to the extent authorized by the compact relative to any conflicting laws or principles.

Advantages of Interstate Compacts

- Interstate compacts provide an effective solution that respects fundamental principles of federalism, recognizing the supremacy of the federal government regarding national issues while allowing the states to take appropriate collective action in addressing suprastate problems. Compacts enable the states – in their sovereign capacity – to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while concomitantly respecting the view of Congress on the appropriateness of joint action. The interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

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- Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self-regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. The very nature of an interstate compact makes it an ideal tool to meet the need of cooperative state action in developing and enforcing standards upon the party states. Compacts also enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time. In short, through the compact device, states acting jointly can control not only the solution to a problem but also shape the future agenda as the problem changes. The closer the coordination between the various elements of the cooperative undertaking, the more necessary is the use of the compact approach.
- Interstate compacts can be structured to respect the balance of power among federal, state, and local interests. While many regulatory compacts provide power to regulate cross-border problems, they can be structured to do so in a manner that preserves national interests. To a large extent, the Compact Clause requiring congressional consent to compacts that impact federal interests ensures that federal concerns are at the forefront of compact construction while simultaneously enabling states to maintain functional and regulatory control over an issue. Approval by Congress provides states with the authority to regulate in an area which would otherwise be unavailable to the state.
- Interstate compacts can broaden a state's parochial focus by allowing states to act collectively and jointly to address regional and national problems. Making decisions based on the state line boundaries can be problematic because boundaries do not necessarily reflect natural or logical divisions to supra-state problems. State legislatures and state regulators generally do not make decisions that are likely to restrict their own citizens' activities based on the need to protect a neighboring state's interests. Consequently, an interstate compact provides the opportunity to make decisions across state boundaries without resorting to federalization, which has limitations in resolving cross-boundary problems.
- Interstate compacts provide party states with a predictable, stable and enforceable instrument of policy control. The contractual nature of compacts ensures their enforceability on the party states. The fact that compacts cannot be unilaterally amended ensures that party states will have predictable and stable policy platform for resolving problems. By entering into an interstate compact, each party state acquires the legal right to require the other states to perform under the terms and conditions of the compact.

Disadvantages of interstate compacts

The principle disadvantage of compacts may be characterized as twofold:

- The long negotiations and arduous course they must run before becoming effective; and

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- The ceding of traditional state sovereignty, particularly as required by several modern administrative compacts. The very purpose of an interstate compact is to provide for the collective allocation of governing authority between party states, which does not allow much room for individualism. The requirement of substantive “sameness” prevents party states from passing dissimilar enactments notwithstanding, perhaps, pressing state differences with respect to particular matters within the compact. To the extent that a compact is used as a governing tool, they require, even in the boundary compact context, that party states cede some portion of their sovereignty.

Uniform Laws

The concept of uniformity is most familiar in connection with the work of the National Conference of Commissioners on Uniform State Laws. That organization has accomplished much by preparing uniform laws and offering them for consideration by the states. A number of these laws, especially in the commercial field, have achieved wide adoption over a period of years. However, uniformity attained in this way is subject to dissipation from two directions:

1. Uniformity can be impaired by the unilateral action of particular state legislatures in amending a uniform statute so that it is no longer uniform or in introducing non-uniform provisions when the act is being initially considered by the legislature.
2. Differing interpretations of provisions of uniform acts can impair the degree of uniformity actually achieved. The ordinary law, for all its identity in language with the laws of other states, is only a simple statute organically unconnected with the statutes of other jurisdictions. Accordingly, the courts in different states can and sometimes do interpret identical provisions differently. Since the highest court of each state is the final authority on the meaning of the statutes of its own state, there is no satisfactory way to achieve a reconciliation of divergent interpretations.

If uniform provisions are embodied in a compact, no state could subsequently destroy this uniformity by unilateral amendment of its own statute except to the extent that such variation might be permitted by specific provision of the compact. To some degree, this limitation of a state's freedom to alter its law unilaterally may raise questions. However, if the virtue of a uniform measure is to be found in the identity of the law from state to state, the superior stability produced by a compact should be considered.

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Congressional Consent and other Legal Issues

While a host of legal issues exist for interstate compacts, state officials have traditionally been most concerned with two areas: 1) congressional consent and the permission for states to enter into regional and national interstate agreements (and the resultant federal statutory authority granted to the compact); and 2) the loss of state sovereignty by delegating regulatory authority to a third party administrative agency that may oversee a regional or national agreement. In both instances, thorough case law charts the maturation of the interstate compact mechanism and offers clear and compelling support to states that may be considering the creation and/or adoption of an interstate compact.

Legal History of Compacts

Compacts are rooted in the nation's colonial past where agreements similar to modern compacts were utilized to resolve inter-colonial disputes, particularly boundary disputes. These boundary disputes arose from broad royal land charters that left colonial borders subject to constant adjustment. The colonies and crown employed a process by which colonial disputes would be negotiated and submitted to crown through the Privy Council for final resolution. This created a long tradition of resolving state disputes through negotiation followed by submission of the proposed resolution to a central authority for approval.

This “compact process” was formalized in the Articles of Confederation. Article VI provides, “No two or more states shall enter into any treaty, confederation or alliance whatever without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.”

The founders were so concerned over managing interstate relations and particularly the creation of powerful political and regional allegiances that they barred states from entering into “any treaty, confederation or alliance whatever” without the approval of Congress. The founders also constructed an elaborate scheme for resolving interstate disputes. Under Art. IX of the Articles of Confederation, Congress was to “be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever[.]”

The concern over unregulated interstate cooperation resulted in the adoption of the “compact clause” in Article I, sect. 10, cl. 3 of the U.S. Constitution. That clause provides that “No state shall, without the consent of Congress enter into any agreement or compact with another state, or with a foreign power[.]” In effect, the Constitution does not so much authorize states to enter into compacts as it bars states from entering into compacts absent congressional consent. Unlike the Articles of Confederation in which interstate disputes were resolved by Congress, the Constitution vests ultimate resolution of interstate disputes in the Supreme Court either under its original jurisdiction or through

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the appellate process. For a thorough discussion on the history of interstate compacts from their origins to the present, *see generally*, Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 *ROGER WILLIAMS U. L. REV.* 71 (2003).

Congressional Consent

Although compact clause appears to require congressional consent in every case, the Supreme Court has determined that the clause is activated only by those agreements that would alter the balance of political power between the states and federal government or intrude on a power reserved to Congress. *Virginia v. Tennessee*, 148 U.S. 503 (1893). Thus, where an interstate agreement accomplishes nothing more than what the states are otherwise empowered to do unilaterally, the compact does not intrude on federal interests requiring congressional consent. *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978). In this circumstance, the compact continues to be a contract between the states, the meaning of which may be subject to the Supreme Court's original jurisdiction over disputes between the states. The compact is not, however, "federalized" for purposes of enforcement and interpretation.

However, where congressional consent is required because the compact intrudes on federal interests, the lack of congressional consent renders the agreement void as between the states. By contrast, where the compact does not intrude on federal interests, the agreement is not invalid for lack of congressional consent. *New Hampshire v. Maine*, 426 U.S. 363 (1976).

Even where congressional consent is given, the mere act of consent is not dispositive of whether the compact actually required consent. *U.S. Steel Corp.*, *supra*, 470-71 ("The mere form of the interstate agreement cannot be dispositive The relevant inquiry must be one of impact on our federal structure.").

Congressional consent is given in one of three ways:

1. Consent can be implied after the fact when actions by the states and federal government indicate that congress has granted its consent even in the absence of a specific legislative act. *Virginia v. Tennessee*, *supra*.
2. Consent can be explicitly given after the fact, as in the case of border compacts, by enacting legislation that specifically recognizes and consents to the compact.
3. Consent can be given preemptively by congress passing legislation encouraging states to adopt compacts to solve particular problems. Thus, the Interstate Compact on Adult Offender Supervision (ICAOS) is based on congressional consent granted under the Crime Control Act of 1934, 4 U.S.C.A. § 112(a), which provides, "The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts." This was the

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consent relied upon in the adoption of the Interstate Juvenile Compact and the ICAOS's precursor, the Interstate Compact on Probation and Parole.

Considerations in obtaining consent:

1. In giving consent, Congress is not required to accept a compact as presented nor is Congress constrained in imposing limitations or conditions on the party states as a condition precedent to the acceptance of a compact. Congress is fully within its authority to impose limitations on compacts, both in terms of their duration and substance. *See, e.g.*, 16 U.S.C § 544 et seq, concerning the Columbia River Gorge Commission.
2. Although the states may negotiate a compact and obtain near universal assent to the instrument, Congress retains full authority to alter, amend, or set conditions on the compact as part of granting its consent. *See*, *Columbia River Gorge United-Protecting People & Property v. Yeutter*, 960 F.2d 110 (Cir. 9th 1992); *Seattle Master Builders v. Pacific N.W. Elec. Power*, 786 F.2d 1359, 1364 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059, 93 L. Ed. 2d 989, 107 S. Ct. 939 (1987). Other conditions that Congress can impose include the waiver of Eleventh Amendment immunity to compact commissions and agencies, (*See*, *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959)) and jurisdictional selection for litigation of disputes, (*See*, 42 U.S. 14616). Because of the purely gratuitous nature of consent, Congress may extract as part of its consent to an interstate compact conditions that it might not otherwise extract in other contexts. *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 43 (1988).
3. States that adopt an interstate compact to which congress has attached conditions – even after the fact – are deemed to have acceded to those conditions as a part of the compact. *See*, *Petty v. Tennessee-Missouri Bridge Commission*, *supra*. (congressionally mandated provisions regarding suability of bridge commission were binding on states because Congress was within its authority to impose conditions as part of its consent and the states acceded to those conditions by enacting the compact.)
4. Congress does not pass upon a compact in the manner as a court of law deciding a question of constitutionality. The requirement that Congress approves a compact is an act of political judgment about the compact's potential impact on national interests and, if approved, to impose any conditions necessary to ensure that those national interests are not harmed by the compact. In short, the Congressional consent requirement is an exercise of political judgment as to the appropriateness of the compact vis-à-vis national concerns, not a legal judgment as to the correctness of the form and substance of the compact. As a rule, there are virtually no limitations on Congress's substantive right to grant, withhold, or condition the granting of its consent, save perhaps a finding that the compact itself somehow violated constitutional principles.

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Limitations on Congressional Consent do exist. Once congress grants consent to a compact, the general principle is that consent cannot be withdrawn nor additional conditions added subsequent to the granting of consent. Although the matter has never been finally determined by the U.S. Supreme Court, at least two lower courts have held that congressional consent, once given, is not subject to alteration. *See, Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962); *Mineo v. Port Authority of New York and New Jersey*, 779 F.2d 939 (3rd Cir. 1985).

Delegation of State Authority to a Joint Administrative Agency

Delegation of authority to a joint administrative agency of the state is not only constitutionally allowed, but encouraged.

1. ***WEST VIRGINIA EX. REL. DYER VS. SIMS, 341 U.S. 22 (1951)*** – Justice Felix Frankfurter refers to interstate compacts as “*one of the axioms of modern government.*” Writing for a unanimous Court, which upheld the validity of a state’s authority to enter into an interstate compact, and to delegate authority to an interstate agency, Justice Frankfurter also called such action by the states as “*a conventional grant of legislative power.*”
2. In the *Dyer* case Justice Frankfurter sums up advantages of interstate compacts:
 - a) As a means of resolving disputes concerning problems which are clearly the states responsibility but which transcend the boundaries of a particular state.
 - b) As a means of uniformly and cooperatively managing problems of an inherently interstate nature by eliminating the inconsistency which arises with potentially conflicting provisions of the laws of each state.
 - c) As a means of safeguarding the national interest.
 - 1) For purposes of public safety (e.g., crime control measures).
 - 2) To maintain the principles of federalism enshrined in the Constitution. Without a mechanism such as compacts to allow states to occupy their necessary and proper sphere of authority within our federal system, we are in danger of usurpation of state prerogatives and power by the central government.
 - a) In times of crises there is a natural tendency of government to become more centralized in order to protect the national interest from external threats, however states have a duty to be vigilant not to cede more authority or control than necessary for such external threats to be resisted.
 - b) In areas of regulation where uniformity is called for, there is a federal tendency to preempt the states’ authority for reasons of administrative convenience, to avoid the specter of 50 different sets of rules.
 - c) Just as nature abhors a vacuum in the physical world, the regulatory and statutory world abhors the failure of a regulatory structure to properly administer its responsibilities and some power structure will emerge to fill the void. (e.g., Adult Offender

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compact and threats of federal intervention over offenders by Congress; Insurance industry and its failure to successfully regulate failing insurance companies, (Sen. Howard Metzenbaum chastised NAIC in late 80's); threat of congress to amend Federal Energy Regulatory Commission Act to allow federal siting of electrical power lines if states failed to streamline the process.

8. Existing Great Lakes Laws, Agreements and other information

- i. Great Lakes Water Management Chronology—Key Events
- ii. International Boundary Waters Treaty of 1909
- iii. Wisconsin et al. v. Illinois et al. (Lake Michigan Diversion) 1967 and 1980 Consent Decrees
- iv. Water Resources Development Act of 1986, as amended in 2000
- v. Great Lakes Charter of 1985
- vi. Great Lakes Charter Annex of 2001

GREAT LAKES WATER MANAGEMENT CHRONOLOGY KEY EVENTS

1848-1985

1. **1848-1899.** Chicago River reversed (“Illinois Diversion”) diverting water from Lake Michigan down the Chicago Sanitary and Ship Canal and eventually to the Mississippi River to reverse flow of untreated domestic sewage into Lake Michigan and Chicago’s drinking water intakes.
2. **1899.** Initial lawsuit filed before the U.S. Supreme Court by the States of Wisconsin, (et al.) challenging the Illinois Diversion.
3. **1909.** International Boundary Waters Treaty signed between Great Britain (on behalf the Dominion of Canada) and the United States. Created the International Joint Commission (IJC), made up of three U.S. Commissioners (appointed by the President and confirmed by the Senate) and three Canadian Commissioners (appointed by the Prime Minister) charged with responsibility for arbitrating disputes involving diversions and construction projects that affect the level and flow of boundary waters (does not include tributary or groundwater).
4. **1939-1943.** Water begins to be diverted into Lake Superior from the Long Lac and Ogoki watersheds (Ontario) in the amount of 5580 cubic feet per second (3.6 billion gallons per day) for hydropower generation to support Allied armament manufacturing for WWII.
5. **1940-1950’s.** The IJC establishes the Water Control Boards for St. Mary’s River, Niagara River, and Lake Ontario-St. Lawrence River, charged with implementing water level and outflow control plans for run-of-river diversions to meet needs of hydropower and commercial navigation.
6. **1967.** Initial U.S. Supreme Court Consent Decree entered into regarding the Illinois Diversion, limiting the amount of the Diversion to 3,200 cubic feet per second (2.06 billion gallons per day). The Consent Decree also charges the U.S. Army Corps of Engineers with operations/monitoring/maintenance of diversion structure and water flow, and State of Illinois with implementation of water use allocation and conservation programs.
7. **1980.** U.S. Supreme Court Consent Decree regarding the Illinois Diversion amended. Diversion remains limited to 3,200 cubic feet per second.
8. **1981.** The Powder River Coal Company proposes to build a \$2.1 billion coal slurry pipeline to the Great Lakes to bring western low-sulfur coal to the mid-west. The proposal includes a fresh water line to Gillette, Wyoming, for feed for the coal slurry line. For the proposal to go forward, the company must obtain authority for eminent domain from the Federal government. The Federal

government does not give the company eminent domain, and therefore the project does not go forward.

9. **1982.** The U.S. Army Corps of Engineers performs a study on the possibility of diverting Great Lakes Water to recharge the Ogallala Aquifer, which stretches from Wyoming to Texas. After the study is completed, the U.S. Army Corps of Engineers refuses to allow the proposed diversion to go forward.

1985-1998

1. **1985.** In response to the 1982 Wyoming coal slurry proposal, the Ogallala Aquifer regeneration study and other “Grand Proposals” to divert Great Lakes water, the Great Lakes Charter of 1985 is signed by all ten Great Lakes Governors and Premiers. The Charter—a good faith agreement—commits the Governors and Premiers to:
 - a. Give prior notice to and consult with each other before approving any new or increased diversions or consumptive uses over 5 million gallons per day average over any 30-day period;
 - b. Manage and regulate all new withdrawals that resulted in a new or increased diversion or consumptive use of Great Lakes water over 2 million gallons per day average over any 30-day period; and,
 - c. Collect and share comparable information on all Great Lakes water withdrawals of 100,000 gallons per day average over any 30-day period.
2. **1986.** Two versions of the Water Resources Development Act of 1986 (WRDA) are passed by the U.S. House and the Senate. The 1986 WRDA is a large omnibus bill that, among other things, authorizes for construction and/or study 270 U.S. Army Corps of Engineers’ projects. Congress inserts a provision (Section 1109) that prohibits all new diversions of Great Lakes water out of the Great Lakes *States* unless approval is given by each of the Great Lakes Governors. In addition, Section 1109 would “...prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin,” effectively preventing any future studies similar to the 1982 Ogallala Aquifer recharge study.

The House and Senate versions of this bill are sent to a House and Senate conference committee. The committee is charged with resolving the numerous differences (primarily differing spending authorizations) between the House and Senate versions of the WRDA. During the course of these negotiations, Section 1109 is revised to prohibit all new diversions out of the Great Lakes *basin* unless approval is given by each of the Great Lakes Governors.

The conference committee’s version of the WRDA bill, including Section 1109, is passed by both chambers and signed by the President. The legislation does not include any standard or process to be used when reviewing proposals to divert Great Lakes water, nor any process for appealing any such decision.

3. **1987.** Water Resources Management Committee (created by the Great Lakes Charter of 1985) releases report entitled “Managing the Waters of the Great Lakes Basin.”
4. **1990.** The Village of Pleasant Prairie, Wisconsin, seeks and receives approval from the Great Lakes Governors to divert 3.2 million gallons per day from Lake Michigan for public water supply purposes.
5. **1992.** The City of Lowell, Indiana, is denied approval for a diversion of 2 million gallons per day for public water supply purposes. The proposal is vetoed by Michigan Governor John Engler.
6. **1995.** The Great Lakes Charter’s prior notice and consultation procedure for in-basin withdrawals exceeding 5 million gallons per day consumptive use is initiated when Michigan’s Mud-Creek Irrigation District proposes to use Great Lakes water that will result in a consumptive loss of between 5-6 million gallons per day. Despite objections raised by Indiana Governor Evan Bayh and the Premiers of Ontario and Québec, the proposal goes forward.
7. **1996.** Memorandum of Understanding signed by the parties to the the U.S. Supreme Court Consent Decree to update the manner in which the Illinois Diversion is measured.
8. **1998.** The City of Akron, Ohio, seeks and receives approval from the Great Lakes Governors to divert up to 4.8 million gallons per day from the Lake Erie watershed for public water supply purposes. Approval by all Governors stipulates requirement to achieve no net loss by returning an amount of water to the Great Lakes basin equal to the amount of water withdrawn from the Great Lakes basin.

1998-Present

1. **1998.** The Nova Group (an Ontario-based company) requests and receives a permit from the Ontario Ministry of the Environment to ship (in bulk containers) approximately 160 million gallons per year of raw water from Lake Superior for the purpose of selling the water “in Asia.” Because the amount of water withdrawn is less than 5 million gallons per day average over any 30-day period, and because the proposal is in Canada, neither the Great Lakes Charter’s prior notice and consultation requirements nor the WRDA are applicable.

The permit is rescinded in response to strong objections raised by the Great Lakes Governors and the general public.

2. **February, 1999.** The governments of the United States and Canada jointly request that the IJC study the effects of bulk removals and diversions from boundary waters such as the Great Lakes, and provide recommendations to the two federal governments as they deem appropriate.

3. **May, 1999.** At the request of the Great Lakes Governors, the Great Lakes Protection Fund provides the Governors with a commissioned legal report (the “Lochhead Report”) describing the current legal framework governing management of the Great Lakes waters. The report also highlights the potential legal vulnerabilities of the current framework, including the lack of a standard to be used when the Governors exercise their WRDA authority over diversion proposals. The Lochhead report also provides recommendations for addressing those vulnerabilities.
4. **October, 1999.** At their Leadership Summit in Cleveland, Ohio, the Great Lakes Governors and Premiers release a joint statement committing to update the legal framework governing Great Lakes water management to ensure that authority for managing the Great Lakes remains with the Great Lakes Governors and Premiers. In their statement they specifically pledged to:
 - a. Develop a new agreement that will bind the States and Provinces more closely to collectively manage the waters of the Great Lakes Basin.
 - b. Develop a new common standard against which water projects will be reviewed.
 - c. Secure funds to develop a better base of Great Lakes Basin water use data.

A Water Management Working Group appointed by the Great Lakes Governors and Premiers begins developing recommendations to meet the pledges made by the Governors and Premiers.

5. **February, 2000.** The IJC releases its report entitled Protection of the Waters of the Great Lakes: Final Report to the Governments of Canada and the United States. Among its many recommendations, the IJC recommends that “...[T]he Great Lakes States and Ontario and Québec, in carrying out their responsibilities under the Great Lakes Charter, should develop...the standards and the procedures...that would be used to make decisions concerning removals or major new or increased consumptive uses.”
6. **September, 2000.** The U.S. Congress passes an amendment to Section 1109 of the 1986 WRDA, adding a prohibition of *exports* of Great Lakes water unless approval is given by all eight Great Lakes Governors.

In addition, the amendment “...encourage[s] the Great Lakes States, in consultation with the Provinces of Ontario and Québec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin.”

7. **December, 2000.** The Governors’ and Premiers’ Water Management Working Group releases for a 60-day public comment period a draft Annex to the Great

Lakes Charter of 1985. Substantive revisions are made to the Annex pursuant to the public comments received.

8. **June 18, 2001.** In Niagara Falls, New York, the Great Lakes Governors and Premiers together sign the Great Lakes Charter Annex of 2001 (“Annex 2001”). Included in its six directives, Annex 2001:
 - a. Commits the Great Lakes Governors and Premiers to the creation of new, more binding agreements for collectively managing the Great Lakes within three years;
 - b. Includes the parameters for the creation of a new standard for reviewing proposals to withdraw Great Lakes water;
 - c. Calls for the development of a broad-based public participation program.

In addition, at the meeting Ohio Governor Bob Taft is elected the new Chair of the Council of Great Lakes Governors, replacing Pennsylvania Governor Tom Ridge who had served as Chair since 1998.

9. **September, 2001.** Each of the Great Lakes Governors and Premiers appoint representatives to a Water Management Working Group (“Working Group”) to develop recommendations for meeting the commitments contained in Annex 2001. As Council Chair Governor Bob Taft’s representative, Sam Speck, Director of the Ohio Department of Natural Resources, is appointed Working Group Chair.
10. **November, 2001.** At an organizational meeting, the Working Group is organized into Sub-committees that are charged with developing recommendations for the Governors and Premiers that will meet the commitments made in Annex 2001. The Sub-committees include:
 - a. Compact Structure Sub-committee, charged with developing a draft, legally binding Compact between the States.
 - b. Decision Making Standard Sub-committee, charged with developing the Standard to be used when reviewing and deciding whether to approve proposals to withdraw Great Lakes Water.
 - c. International/Inter-provincial Agreement(s) Sub-committee, charged with developing one or more good-faith agreements among the States and Provinces.

Additional teams made up of representatives of the Governors and Premiers are organized during the course of the Working Group’s deliberations. These teams include a Tribes/First Nations Team, a Legal Team, a Communications Team and a Drafting Team. In addition, a group of regional stakeholders is identified by the Working Group to participate on an Advisory Committee that will provide feedback and input on the recommendations developed by the Working Group. A Resource Group is also formed and Observers are invited to participate. The Resource Group comprises governmental bodies that have technical expertise regarding Great Lakes issues.

11. **March, 2002.** The first joint meeting of the Working Group and the Advisory Committee, Resource Group and Observers is held in Washington, D.C.
12. **March, 2002—July, 2004.** Regular conference calls and meetings of the Working Group and its Sub-committees are held to develop draft agreements to implement the commitments contained in Annex 2001. Calls and meetings are held by the Working Group with the Advisory Committee, Resource Group and Observers. Consultations are held with the region's Tribes and First Nations.
13. **July 19, 2004.** The first draft of the Annex 2001 Implementing Agreements are released, initiating a 90-day public comment period. Meetings are also held with the Advisory Committee, Resource Group and Observers to solicit their input on the drafts. Two regional public meetings are held in Chicago, Illinois, and Toronto, Ontario. In addition, over 30 public meetings are held by the individual States and Provinces. Over 10,000 public comments are received.

In addition, Wisconsin Governor Jim Doyle is elected Co-Chair of the Council of Great Lakes Governors.

14. **Fall, 2004-Spring, 2005.** The Working Group revises the draft Annex 2001 Implementing Agreements in response to the public comments received.
15. **June 30, 2005.** Revised draft Annex 2001 Implementing Agreements are released for a 60-day public comment period.
16. **Fall, 2005.** The Annex 2001 Implementing Agreements are revised and finalized by the Working Group in preparation for the Governors' and Premiers' review and consideration.
17. **December 13, 2005.** The Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement ("Agreement") is signed by all ten Great Lakes Governors and Premiers. In addition, the Great Lakes—St. Lawrence River Basin Water Resources Compact is endorsed by the eight Great Lakes Governors who urge its passage by the eight Great Lakes legislatures, and who also urge that the U.S. Congress provide its consent to the compact.
18. **December 8, 2008.** The Great Lakes-St. Lawrence River Basin Water Resources Compact comes into force after having passed all eight Great Lakes State legislatures, been consented to by the U.S. Congress and signed by the President.

**TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN
RELATING TO BOUNDARY WATERS, AND QUESTIONS ARISING
BETWEEN THE UNITED STATES AND CANADA**

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purpose of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the

subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE II

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto. It is understood however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE V

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

- The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.
- The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for the power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.
- The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

Note: The third, fourth and fifth paragraphs of Article V were terminated by the Canada-United States Treaty of February 27, 1950 concerning the diversion of the Niagara River.

ARTICLE VI

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal

apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Article III or IV of this Treaty the approval shall be governed by the following rules of principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

1. Uses for domestic and sanitary purposes;
2. Uses for navigation, including the service of canals for the purposes of navigation;

3. Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary. The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of all interests on the other side of the line which may be injured thereby.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters flowing there from or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate,

subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions any matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission fail to agree.

ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate, thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand and nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRYCE [SEAL]

And WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding to wit:

Resolved further, (as a part of this ratification), that the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste. Marie, in the use of water flowing over such lands, subject to the requirements of navigation in boundary water and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's river, within its own territory, and further, that nothing in the treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect, form part of the treaty;

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said Treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

NOW THEREFORE, be it known that I, William Howard Taft, President of the United States of America, have caused the said Treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof. In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten, [SEAL] and of the Independence of the United States of America the hundred and thirty-fourth.

Wm. H. Taft

By the President:
P C Knox
Secretary of State
Protocol of Exchange

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of St. Mary's River at Sault Ste. Marie, in the use of the alters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

IN WITNESS WHEREOF, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]
JAMES BRYCE [SEAL]

III RULES OF PROCEDURE

of the International Joint Commission

The International Joint Commission, by virtue of the provisions of Article XII of the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909, hereby revokes the Rules of Procedure which it adopted on the 2nd day of February, 1912, as subsequently amended, and, in their place and stead, adopts the following Rules of Procedure:

Part I - General

Definitions

1. (1) In the construction of these rules, unless the context otherwise requires, words importing the singular number shall include the plural and words importing the plural number shall include the singular, and:
 - (2) "applicant" means the Government or person on whose behalf an application is presented to the Commission in accordance with Rule 12;
 - (3) "Government" means the Government of Canada or the Government of the United States of America;
 - (4) "person" includes Province, State, department or agency of a Province or State, municipality, individual, partnership, corporation and association, but does not include the Government of Canada or the Government of the United States of America;
 - (5) "oath" includes affirmation;
 - (6) "reference" means the document by which a question or matter of difference is referred to the Commission pursuant to Article IX of the Treaty;
 - (7) "the Treaty" means the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909;
 - (8) "Canadian section" consists of the commissioners appointed by Her Majesty on the recommendation of the Governor in Council of Canada;
 - (9) "United States section" consists of the commissioners appointed by the President of the United States.

CHAIRMEN

2. (1) The commissioners of the United States section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the United States Section of the International Joint Commission, and he shall act as chairman at all meetings of the Commission held in the United States and in respect to all matters required to be done in the United States by the chairman of the Commission.
 - (2) The commissioners of the Canadian section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the Canadian Section of the International Joint Commission, and he shall act as chairman at all meetings of the Commission held in Canada and in respect to all matters required to be done in Canada by the chairman of the Commission.

(3) In case it shall be impracticable for the chairman of either section to act in any matter, the commissioner of such section who is senior in order of appointment shall act in his stead.

PERMANENT OFFICES

3. The permanent offices of the Commission shall be at Washington, in the District of Columbia, and at Ottawa, in the Province of Ontario, and, subject to the directions of the respective chairmen acting for their respective sections, the secretaries of the United States and Canadian sections of the Commission shall have full charge and control of said offices, respectively.

DUTIES OF SECRETARIES

4. (1) The secretaries shall act as joint secretaries at all meetings and hearings of the Commission. The secretary of the section of the Commission of the country in which a meeting or hearing is held shall prepare a record thereof and each secretary shall preserve an authentic copy of the same in the permanent offices of the Commission.

(2) Each secretary shall receive and file all applications, references and other papers properly presented to the Commission in any proceeding instituted before it and shall number in numerical order all such applications and references; the number given to an application or reference shall be the primary file number for all papers relating to such application or reference.

(3) Each secretary shall forward to the other for filing in the office of the other copies of all official letters, documents records or other papers received by him or filed in his office, pertaining to any proceeding before the Commission, to the end that there shall be on file in each office either the original or a copy of all official letters and other papers, relating to the said proceeding.

(4) Each secretary shall also forward to the other for filing in the office of the other copies of any letters, documents or other papers received by him or filed in his office which are deemed by him to be of interest to the Commission.

MEETINGS

5. (1) Subject at all times to special call or direction by the two Governments, meetings of the Commission shall be held at such times and places in the United States and Canada as the Commission or the Chairmen may determine and in any event shall normally be held each year in the United States in April and in Canada in October, beginning ordinarily on the first Tuesday of the said months.

(2) If the Commission determines that a meeting shall be open to the public, it shall give such advance notices to this effect as it considers appropriate in the circumstances.

SERVICE OF DOCUMENTS

6. (1) Where the secretary is required by these rules to give notice to any person, this shall be done by delivering or mailing such notice to the person at the address for service that the said person has furnished to the Commission, or if no such address has been furnished, at the dwelling house or usual place of abode or usual place of business of such person.

(2) Where the secretary is required by these rules to give notice to a Government, this shall be done by delivering or mailing such notice to the Secretary of State for External Affairs of Canada or to the Secretary of State of the United States of America, as the case may be.

(3) Service of any document pursuant to Rule 22 shall be by delivering a copy thereof to the person named therein, or by leaving the same at the dwelling house or usual place of abode or usual place of business of such person. The person serving the notice or request shall furnish an affidavit to the secretary stating the time and place of such service.

CONDUCT OF HEARINGS

7. Hearings may be conducted, testimony received and arguments thereon heard by the whole Commission or by one or more Commissioners from each section of the Commission, designated for that purpose by the respective sections or the chairmen thereof.

DECISION BY THE WHOLE COMMISSION

8. The whole Commission shall consider and determine any matter or question which the Treaty or international agreement, either in terms or by implication, requires or makes it the duty of the Commission to determine. For the purposes of this rule and Rule 7, "the whole Commission" means all of the commissioners appointed pursuant to Article VII of the Treaty whose terms of office have not expired and who are not prevented by serious illness or other circumstances beyond their control from carrying out their functions as commissioners. In no event shall a decision be made without the concurrence of at least four commissioners.

SUSPENSION OR AMENDMENT OF RULES

9. The Commission may suspend, repeal, or amend all or any of the rules of Procedure at any time, with the concurrence of at least four commissioners. Both Governments shall be informed forthwith of any such action.

GENERAL RULE

10. The Commission may, at any time, adopt any procedure which it deems expedient and necessary to carry out the true intent and meaning of the Treaty.

AVAILABILITY OF RECORDS

11. (1) The following items in the official records of the Commission shall be available for public information at the permanent offices of the Commission:

- Applications
- References
- Public Notices
- Press Releases
- Statements in Response
- Statements in Reply
- Records of hearings, including exhibits filed
- Briefs and formal Statements submitted at hearings or at other times

(2) Decision rendered and orders issued by the Commission and formal opinions of any of the Commissioners with relation thereto, shall be available similarly for public information after duplicate originals of the decisions or orders have been transmitted to and filed with the Governments pursuant to Article XI of the Treaty.

(3) Copies of reports submitted to one or both of the Governments pursuant to the Treaty shall be available similarly for public information only with the consent of the Government or Governments to whom the reports are addressed.

(4) Reports, letters, memoranda and other communications addressed to the Commission, by boards or committees created by or at the request of the Commission, are privileged and shall become available for public information only in accordance with a decision of the Commission in that effect.

(5) Except as provided in the preceding paragraphs of this rule, records of deliberations, and documents, letters, memoranda and communications of every nature and kind in the official record of the Commission, whether addressed to or by the Commission commissioners, secretaries, advisers or any of them, are privileged and shall become available to public information only in accordance with a decision of the Commission to that effect.

(6) A copy of any document, report, record or other paper which under this rule is available for public information may be furnished to any person upon payment of any cost involved in its reproduction.

PART II - APPLICATIONS

Presentation to Commission

12. (1) Where one or the other of the Governments on its own initiative seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required,

it shall present to the Commission an application setting forth as fully as may be necessary for the information of the Commission the facts upon which the application is based and the nature of the order of approval desired.

(2) Where a person seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, he shall prepare an application to the Commission and forward it to the Government within whose jurisdiction such use, obstruction or diversion is to be made, with the request that the said application be transmitted to the Commission. If such Government transmits the application to the Commission with a request that it take appropriate action thereon, the same shall be filed by the Commission in the same manner as an application presented in accordance with paragraph (1) of this rule. Transmittal of the application to the Commission shall not be construed as authorization by the government of the use, obstruction or diversion proposed by the applicant. All applications by persons shall conform, as to their contents, to the requirements of paragraph (1) of this rule.

(3) Where the Commission has issued an Order approving a particular use, obstruction or diversion, in which it has specifically retained jurisdiction over the subject matter of an application and has reserved the right to make further orders relating thereto, any Government or person entitled to request the issuance of such further order may present to the Commission a request, setting forth the facts upon which it is based and the nature of the further order desired. On receipt of the request the Commission shall proceed in accordance with the terms of the Order in which the Commission specifically retained jurisdiction. In each case the secretaries shall notify both Governments and invite their comments before the request is complied with.

COPIES REQUIRED

13. (1) Subject to paragraph (3) of this rule, two duplicate originals and fifty copies of the application and of any supplemental applications, statement in response, supplemental statement in response, statement in reply and supplemental statements in reply shall be delivered to the other secretary.

On receipt of such documents, the secretary shall forthwith send one duplicate original and twenty-five copies to the other secretary.

(2) Subject to paragraph (3) of this rule, two copies of such drawings, profiles, plans of survey, maps and specifications as may be necessary to illustrate clearly the matter of the application shall be delivered to either secretary and he shall send one copy forthwith to the other secretary.

(3) Notwithstanding paragraphs (1) and (2) of this rule, such additional copies of the documents mentioned therein as may be requested by the Commission shall be provided forthwith.

AUTHORIZATION BY GOVERNMENT

14. (1) Where the use, obstruction or diversion of waters for which the Commission's approval is sought has been authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority, two copies of such authorization and of any plans approved incidental thereto shall accompany the application when it is presented to the Commission in accordance with Rule 12.

(2) Where such a use, obstruction or diversion of waters is authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority after an application has been presented to the Commission in accordance with Rule 12, the application shall deliver forthwith to the Commission two copies of such authorization and of any plans approved incidental thereto.

NOTICE OF PUBLICATION

15. (1) As soon as practicable after an application is presented or transmitted in accordance with Rule 12, the secretary of the section of the Commission appointed by the other Government shall send a copy of the application to such Government.

(2) Except as otherwise provided pursuant to Rule 19, the secretaries, as soon as practicable after the application is received, shall cause a notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion. Subject to paragraph (3) of this rule, the notice shall state that the application has been received, the nature and locality of the proposed use, obstruction or diversion, the time within which any person interested may present a statement in response to the Commission and that the Commission will hold a hearing or hearings at which all persons interested are entitled to be heard with respect thereto.

(3) If the Commission so directs, the notice referred to in paragraph (2) of this rule, appropriately modified, may be combined with the notice of hearing referred to in Rule 24 and published accordingly.

16. (1) Except as otherwise provided pursuant to Rule 19, a Government and any interested person, other than the applicant, may present a statement in response to the Commission within thirty days after the filing of an application. A statement in response shall set forth facts and arguments bearing on the subject matter of the application and tending to oppose or support the application, in whole or in part. If it is desired that conditional approval be granted, the statement in response should be set forth the particular condition or conditions desired. An address for service of documents should be included in the statement in response.

(2) When a statement in response has been filed, the secretaries shall send a copy forthwith to the applicant and to each Government except the Government which

presented the said statement in response. If so directed by the Commission, the secretaries shall inform those who have presented statements in response, of the nature of the total response.

STATEMENT IN REPLY

17. (1) Except as otherwise provided pursuant to Rule 19, the applicant and, if he is a person, the Government which transmitted the application on his behalf, one or both may present a statement or statements in reply to the Commission within thirty days after the time provided for presenting statements in response. A statement in reply shall set forth facts and arguments bearing upon the allegations and arguments contained in the statements in response.

(2) When a statement in reply has been filed, the secretary shall send a copy forthwith to each Government except the Government which presented the said statement in response, statement in reply and to all persons who presented statements in response.

SUPPLEMENTAL OR AMENDED APPLICATIONS AND STATEMENTS

18. (1) If it appears to the Commission that either an application, a statement in response or a statement in reply is not sufficiently definite and complete, the Commission may require a more definite and complete application, statement in response or statement in response or statement in reply as the case may be, to be presented.

(2) Where substantial justice requires it, the Commission with the concurrence of at least four Commissioners may allow the amendment of any application, statement in response, statement in reply and any document or exhibit which has been presented to the Commission.

REDUCING OR EXTENDING TIME AND DISPENSING WITH STATEMENTS

19. In any case where the Commission considers that such action would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the Treaty, the Commission may reduce or extend the time for the presentation of any paper or the doing of any act required by these rules or may dispense with the presentation of statements in response and statements in reply.

INTERESTED PERSONS AND COUNSEL

20. Governments and persons interested in the subject matter of an application, whether in favour of or opposed to it, are entitled to be heard in person or by counsel at any hearing thereof held by the Commission.

CONSULTATION

21. The Commission may meet or consult with the applicant, the Governments and other persons or their counsel at any time regarding the plan of hearing, the mode of conducting the inquiry, the admitting or proof of certain facts or for any other purpose.

ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS

22. (1) Requests for the attendance and examination of witnesses and for the production and inspection of books, papers and documents may be issued over the signature of the secretary of the section of the Commission of the country in which the witness reside or the books, papers or documents may be when so authorized by the Chairman of that section.

(2) All applications for subpoena or other process to compel the attendance of witnesses or the production of books, papers and documents before the Commission shall be made to the proper courts of either country, as the case may be, upon the order of the Commission.

HEARINGS

23. (1) The time and place of the hearing or hearings of an application shall be fixed by the Chairmen of the two sections.

(2) The secretaries shall forthwith give written notice of the time and place of the hearing or hearings to the applicant, the Governments and all persons who have presented statements in response to the Commission. Except as otherwise provided by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion of water.

(3) All hearings shall be open to the public.

(4) The applicant, the Governments and persons interested are entitled to present oral and documentary evidence and argument that is relevant and material to any issue that is before the Commission in connection with the application.

(5) The presiding chairman may require that evidence be under oath.

(6) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the applicant, the Governments and the Commission. With the consent of the presiding chairman, counsel for a person other than the applicant may also examine or cross-examine witnesses.

(7) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(8) The Commissioners shall be free to determine the probative value of the evidence submitted to it.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

(10) The hearing of the application, when once begun shall proceed at the times and places determined by the Chairmen of the two sections to ensure the greatest practicable continuity and dispatch of proceedings.

EXPENSES OF PROCEEDINGS

24. (1) The expenses of those participating in any proceeding under Part II of these rules shall be borne by the participants.

(2) The Commission, after due notice to the participant or participants concerned, may require that any unusual cost or expense to the Commission shall be paid by the person on whose behalf or at whose request such unusual cost or expense has been or will be incurred.

GOVERNMENT BRIEF RE NAVIGABLE WATERS

25. When in the opinion of the Commission it is desirable that a decision should be rendered which affects navigable waters in a manner or to an extent different from that contemplated by the application and plans presented to the Commission, the Commission will, before making a final decision, submit to the Government presenting or transmitting the application a draft of the decision, and such Government may transmit to the Commission a brief or memorandum thereon which will receive due consideration by the Commission before its decision is made final.

PART III - REFERENCES

Presentation to Commission

26. (1) Where a question or matter of difference arising between the two Governments involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States of America and Canada is to be referred to the Commission under Article IX of the Treaty, the method of bringing such question or matter to the attention of the Commission and invoking its action ordinarily will be as set forth in this rule.

(2) Where both Governments have agreed to refer such a question or matter to the Commission, each Government will present to the Commission, at the permanent office in its country, a reference in similar or identical terms setting forth as fully as may be necessary for the information of the Commission the question or matter which it is to examine into and report upon and any restrictions or exceptions which may be imposed upon the Commission with respect thereto.

(3) Where one of the Governments, on its own initiative, has decided to refer such a question or matter to the Commission, it will present a reference to the Commission at the permanent office in its country. All such references should conform, as to their contents, to the requirements of paragraph (2) of this rule.

(4) Such drawings, plans of survey and maps as may be necessary to illustrate clearly the question or matter referred should accompany the reference when it is presented to the Commission.

NOTICE AND PUBLICATION

27. (1) The secretary to whom a reference is presented shall receive and file the same and shall send a copy forthwith to the other secretary for filing in the office of the latter. If the reference is presented by one Government only, the other secretary shall send a copy forthwith to his Government.

(2) Subject to any restrictions or exceptions which may be imposed upon the Commission by the terms of the reference, and unless otherwise provided by the Commission, the secretaries, as soon as practicable after the reference, and unless otherwise provided by the Commission, the secretaries, as soon as practicable after the reference is received, shall cause a notice to be published in the Canada Gazette, the Federal Register and in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference. The notice shall describe the subject matter of the reference in general terms, invite interested persons to inform the Commission of the nature of their interest and state that the Commission will provide convenient opportunity for interested persons to be heard with respect thereto.

ADVISORY BOARDS

28. (1) The Commission may appoint a board or boards, composed of qualified persons to conduct on its behalf investigations and studies that may be necessary or desirable and to report to the Commission regarding any questions or matters involved in the subject matter of the reference.

(2) Such board ordinarily will have an equal number of members from each country.

(3) The Commission ordinarily will make copies of the main or final report of such board or a digest thereof available for examination by the Governments and interested persons prior to holding the final hearing or hearings referred to in Rule 29.

HEARINGS

29. (1) A hearing or hearings may be held whenever in the opinion of the Commission such action would be helpful to the Commission in complying with the terms of a reference. Subject to any restrictions or exceptions which may be imposed by the terms

of the reference, a final hearing or hearings shall be held before the Commission reports to Governments in accordance with the terms of reference.

(2) The time, place and purpose of the hearing or hearings on a reference shall be fixed by the Chairmen of the two sections.

(3) The secretaries shall forthwith give written notice of the time, place and purpose of the hearing or hearings to each Government and to persons who have advised the Commission of their interest. Unless otherwise directed by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette, the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference.

(4) All hearings shall be open to the public, unless otherwise determined by the Commission.

(5) At a hearing, the Governments and persons interested are entitled to present, in person or by counsel, oral and documentary evidence and argument that relevant and material to any matter that is within the published purpose of the hearing.

(6) The presiding chairman may require that evidence be under oath.

(7) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the Governments and the Commission. With the consent of the presiding chairman, counsel for any interested personal may also examine or cross-examine witnesses.

(8) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

PROCEEDINGS UNDER ARTICLE X

30. When a question or matter of difference arising between the two Governments involving the rights, obligations or interests of either in relation to the other or to their respective inhabitants has been or is to be referred to the Commission for decision under Article X or the Treaty, the Commission, after consultation with the said Governments, will adopt such rules of procedures as may be appropriate to the question or matter referred or to be referred.

U.S. Supreme Court

WISCONSIN v. ILLINOIS, 388 U.S. 426 (1967)

388 U.S. 426

WISCONSIN ET AL. v. ILLINOIS ET AL.

No. 1, Original.

Decree April 21, 1930. Decree enlarged May 22, 1933. Decree entered June 12, 1967.

*

[[Footnote *](#)] Together with No. 2, Original, Michigan v. Illinois et al., No. 3, Original, New York v. Illinois et al., and No. 11, Original, Illinois v. Michigan et al.

The Court, having reopened Nos. 1, 2 and 3, Original, and having granted leave to file No. 11, Original, entered this decree.

Decree reported, [281 U.S. 696](#) ; decree enlarged, [289 U.S. 395](#) .

Solicitor General Marshall for the United States.

Bronson C. La Follette, Attorney General, and William F. Eich, Assistant Attorney General, for the State of Wisconsin.

Douglas M. Head, Attorney General, and Raymond A. Haik, Special Assistant Attorney General, for the State of Minnesota.

William B. Saxbe, Attorney General, and Jay C. Flowers, for the State of Ohio.

William C. Sennett, Attorney General, and Thomas W. Corbett, Deputy Attorney General, for the Commonwealth of Pennsylvania.

Frank J. Kelley, Attorney General, Robert A. Derengoski, Solicitor General, and Nicholas V. Olds and Esther E. Newton, Assistant Attorneys General, for the State of Michigan.

Louis J. Lefkowitz, Attorney General, and Randall J. Leboeuf, Jr., Special Assistant Attorney General, for the State of New York.

William G. Clark, Attorney General, Thomas M. Thomas and Robert L. Stern, Special Assistant Attorneys General, and George A. Lane for the State of Illinois et al. [[388 U.S. 426, 427](#)]

DECREE.

This Court having reopened Original cases Nos. 1, 2, and 3, and having granted leave to file Original case No. 11, and having referred all such cases to a Special Master who has filed his Report, and the parties having agreed to the form of the decree, the Findings of Fact in the Report are hereby adopted, and it being unnecessary at this time to consider the Special Master's legal conclusions,

IT IS ORDERED, ADJUDGED, AND DECREED that:

- 1. The State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, including, among others, the cities of Chicago, Evanston, Highland Park, Highwood and Lake Forest, the villages of Wilmette, Kenilworth, Winnetka, and Glencoe, the Elmhurst-Villa Park-Lombard Water Commission, the Chicago Park District and the Metropolitan Sanitary District of Greater Chicago, their employees and agents and all persons assuming to act under their authority, are hereby enjoined from diverting any of the waters of Lake Michigan or its watershed into the Illinois waterway, whether by way of domestic pumpage from the lake the sewage effluent derived from which reaches the Illinois waterway, or by way of storm runoff from the Lake Michigan watershed which is diverted into the Sanitary and Ship Canal, or by way of direct diversion from the lake into the canal, in excess of an average for all of them combined of 3,200 cubic feet per second. "Domestic pumpage," as used in this decree, includes water supplied to commercial and industrial establishments and "domestic use" includes use by such establishments. The water permitted by this decree to be diverted from Lake Michigan and its watershed may be apportioned by the State of Illinois among its municipalities, political subdivisions, agencies, and instrumentalities [388 U.S. 426, 428] for domestic use or for direct diversion into the Sanitary and Ship Canal to maintain it in a reasonably satisfactory sanitary condition, in such manner and amounts and by and through such instrumentalities as the State may deem proper, subject to any regulations imposed by Congress in the interests of navigation or pollution control.**
- 2. The amount of water diverted into the Sanitary and Ship Canal directly from Lake Michigan and as storm runoff from the Lake Michigan watershed shall be determined by deducting from the total flow in the canal at Lockport (a) the total amount of domestic pumpage from Lake Michigan and from ground sources in the Lake Michigan watershed, except to the extent that any such ground sources are supplied by infiltration from Lake Michigan, by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities the sewage effluent derived from which reaches the canal, (b) the total amount of domestic pumpage from ground and surface sources outside the Lake Michigan watershed the sewage effluent derived from which reaches the canal, (c) the total estimated storm runoff from the upper Illinois River watershed reaching the canal, (d) the total amount of domestic pumpage from all sources by municipalities and political subdivisions of the States of Indiana and Wisconsin the sewage effluent derived from which reaches the canal, and (e) any water diverted by Illinois, with the**

consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed.

3. For the purpose of determining whether the total amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities is not in excess of the maximum amount permitted by this decree, the amounts of domestic pumpage from the lake by the [388 U.S. 426, 429] State and its municipalities, political subdivisions, agencies, and instrumentalities the sewage and sewage effluent derived from which reaches the Illinois waterway, either above or below Lockport, shall be added to the amount of direct diversion into the canal from the lake and storm runoff reaching the canal from the Lake Michigan watershed computed as provided in paragraph 2 of this decree. The accounting period shall consist of the period of 12 months terminating on the last day of February. A period of five years, consisting of the current annual accounting period and the previous four such periods (all after the effective date of this decree), shall be permitted, when necessary, for achieving an average diversion which is not in excess of the maximum permitted amount; provided, however, that the average diversion in any annual accounting period shall not exceed one hundred ten (110) per cent of the maximum amount permitted by this decree. The measurements and computations required by this decree shall be made by the appropriate officers, agencies, or instrumentalities of the State of Illinois under the general supervision and direction of the Corps of Engineers of the United States Army.

4. The State of Illinois may make application for a modification of this decree so as to permit the diversion of additional water from Lake Michigan for domestic use when and if it appears that the reasonable needs of the Northeastern Illinois Metropolitan Region (comprising Cook, Du Page, Kane, Lake, McHenry, and Will Counties) for water for such use cannot be met from the water resources available to the region, including both ground and surface water and the water permitted by this decree to be diverted from Lake Michigan, and if it further appears that all feasible means reasonably available to the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities [388 U.S. 426, 430] have been employed to improve the water quality of the Sanitary and Ship Canal and to conserve and manage the water resources of the region and the use of water therein in accordance with the best modern scientific knowledge and engineering practice.

5. This decree shall become effective on March 1, 1970, and shall thereupon supersede the decree entered by this Court in Nos. 1, 2, and 3, Original Docket, on April 21, 1930, as enlarged May 22, 1933, provided that for the period between January 1, 1970, and March 1, 1970, the amount of water diverted by Illinois into the Sanitary and Ship Canal (determined in accordance with paragraph 2 of this decree) shall not exceed an average of 1,500 cubic feet per second.

6. The complaint of the State of Illinois in No. 11, Original Docket, on behalf of its instrumentality, the Elmhurst-Villa Park-Lombard Water Commission, is hereby

dismissed, without prejudice to that Commission sharing in the water permitted by this decree to be diverted from Lake Michigan.

7. Any of the parties hereto may apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the suits in Nos. 1, 2, and 3, Original Docket, for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

8. All the parties to these proceedings shall bear their own costs. The costs and expenses of the Special Master shall be equally divided between the plaintiffs as a group and the defendants as a group in Nos. 1, 2, and 3, Original Docket. The costs and expenses thus imposed upon the plaintiffs and defendants shall be borne by the individual plaintiffs and defendants, respectively, in equal shares. [388 U.S. 426, 431]

U.S. Supreme Court

WISCONSIN v. ILLINOIS, 449 U.S. 48 (1980)

449 U.S. 48

WISCONSIN ET AL. v. ILLINOIS ET AL.
ON BILL IN EQUITY

No. 1. Orig. Decree April 21, 1930 Decree enlarged May 22, 1933 Decree entered
June 12, 1967 Decree amended December 1, 1980 *

[Footnote *] Together with No. 2, Orig., Michigan v. Illinois et al., and No. 3, Orig.,
New York v. Illinois et al.

Decree amended.

Decree reported: 281 U.S. 696; decree enlarged: 289 U.S. 395; decree entered: 388
U.S. 426.

ORDERED:

A. Paragraph 3 of the Decree entered by the Court herein on June 12, 1967, is
amended to read as follows:

3. For the purpose of determining whether the total amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political sub-divisions, agencies and instrumentalities is not in excess of the maximum amount permitted by this decree, the amounts of domestic pumpage from the lake by the State and its municipalities, political sub-divisions, agencies and instrumentalities the sewage and sewage effluent derived from which reaches the Illinois waterway, either above or below Lockport, shall be added to the amount of direct diversion into the canal from the lake and storm runoff reaching the canal from the Lake Michigan watershed computed as provided in Paragraph 2 of this decree. The annual accounting period shall consist of twelve months terminating on the last day of September. A period of forty (40) years, consisting of the current annual accounting period and the previous thirty-nine (39) such periods (all after the effective date of this decree), shall be permitted, when necessary, for achieving an average diversion which is not in excess of the maximum permitted amount; provided, however, that the average diversion in any annual accounting [449 U.S. 48, 49] period shall not exceed 3680 cubic feet per second, except that in any two (2) annual accounting periods within a forty (40) year period, the average annual diversion may not exceed 3840 cubic feet per second as a result of extreme hydrologic conditions; and, that for the first thirty-nine (39) years the cumulative algebraic sum of each annual accounting period's average diversion minus 3200 cubic feet per second shall not exceed 2000 cubic feet per second-years. All measurements and computations required by this decree shall be made by the appropriate officers, agencies or instrumentalities of the State of Illinois, or the

Corps of Engineers of the United States Army subject to agreement with and cost-sharing by the State of Illinois for all reasonable costs including equipment, using the best current engineering practice and scientific knowledge. If made by the State of Illinois, the measurements and computations shall be conducted under the continuous supervision and direction of the Corps of Engineers of the United States Army in cooperation and consultation with the United States Geological Survey, including but not limited to periodic field investigation of measuring device calibration and data gathering. All measurements and computations made by the State of Illinois shall be subject to periodic audit by the Corps of Engineers. An annual report on the measurements and computations required by this decree shall be issued by the Corps of Engineers. Best current engineering practice and scientific knowledge shall be determined within six (6) months after implementation of the decree based upon a recommendation from a majority of the members of a three-member committee. The members of this committee shall be appointed by the Chief of Engineers of the United States Army Corps of Engineers. The members shall be selected on the basis of recognized experience and technical expertise in flow measurement or hydrology. None of the committee members shall be employees of the Corps of Engineers or employees or paid consultants of any of the parties to these proceedings other than [449 U.S. 48, 50] the United States. The Corps of Engineers shall convene such a committee upon implementation of this decree and at least each five (5) years after implementation of this decree to review and report to the Corps of Engineers and the parties on the method of accounting and the operation of the accounting procedure. Reasonable notice of these meetings must be given to each of the parties. Each party to these proceedings shall have the right to attend committee meetings, inspect any and all measurement facilities and structures, have access to any data and reports and be permitted to take its own measurements.

B. Paragraph 5 of the said Decree entered by the Court herein is amended by adding thereto an additional sentence to read as follows:

The amendment to Paragraph 3 of this decree shall take effect on the first day of October following the passage into law by the General Assembly of the State of Illinois of an amendment to the Level of Lake Michigan Act providing that the amount used for dilution in the Sanitary and Ship Canal for water quality purposes shall not be increased above three hundred twenty (320) cubic feet per second, and that in allocations to new users of Lake Michigan water, allocations for domestic purposes be given priority and to the extent practicable allocations to new users of Lake Michigan water shall be made with the goal of reducing withdrawals from the Cambrian-Ordovician aquifer.

C. A certified copy of the above legislation shall be served upon the parties and filed with the Clerk of the Supreme Court by the State of Illinois. If no party raises an objection to the adequacy of the legislation within 30 days of service, Illinois will have complied with the requirements of the amendment made by this Order to paragraph 5 of the Decree entered by the Court herein on June 12, 1967. Any such

objection shall be raised in the manner set forth in Paragraph 7 of said Decree. [449 U.S. 48, 51]

IT IS FURTHER ORDERED THAT:

Each of the parties to this proceeding shall bear its own costs. The expenses of the Special Master shall be borne by the State of Illinois and the Metropolitan Sanitary District of Greater Chicago, three-fifths thereof by the State of Illinois and two-fifths thereof by the Metropolitan Sanitary District of Greater Chicago.

JUSTICE MARSHALL took no part in the consideration or decision of this order.

STATEMENT OF INTENT AND TECHNICAL BASIS FOR PROPOSED AMENDMENTS TO 1967 DECREE

This statement sets forth the intent of the parties and the technical basis for the revisions to certain of the provisions of paragraphs 3 and 5 of the 1967 Decree.

The proposed change in the 1967 Decree has been designed to alter in part the provisions of the existing Decree that prevent Illinois from effectively utilizing and managing the 3200 cubic feet per second (cfs) of Lake Michigan water which Illinois was allocated.

Under the existing system, increasing amounts of impervious areas and increasing demand by domestic users elevate the risk that the language of the decree will be violated in any one or five year period if additional allocations are made by the State to domestic users for a period of years consistent with good management practice.

The proposed change accomplishes the following:

1. Increases the period for determining compliance with the 3200 cfs limit from a five year running average to a forty year running average;
2. During the first thirty-nine years of the decree, allows Illinois to exceed the 3200 cfs limit by 2000 cfs-years in the aggregate (one cfs-year is the volume of water resulting from an average flow of one cfs for a period of one year); [449 U.S. 48, 52]
3. Limits the average diversion in any one accounting period to 115% of 3200 cfs, but in two years of any forty year period permits the average diversion to reach 120% of 3200 cfs, to allow for extreme hydrologic conditions.

The lengthening of the averaging period from five to forty years reduces the variability of the averaged figure, thus decreasing the amount of water that needs to be held in reserve for storm water runoff and increasing the amount of water that may be allocated for domestic purposes to reduce in part the pumpage from the Cambrian-Ordovician aquifer.

The lengthening of the averaging period also allows an increase in the planning period to a period of time that is more compatible with the life of certain types of water supply facilities, thus permitting more efficient use of the available diversion

without increasing the total allowable diversion, and permitting better management of all the water resources of the region.

In establishing the limits of paragraph three of the amended decree, the available data and uncertainties as to the behavior of and interactions between the various elements of the hydrologic regime under current and future conditions were limiting factors.

To estimate maximum hydrologic variations that must be considered in the allocation accounting process, the forty-four year precipitation and runoff data contained in "Water Yield, Urbanization, and the North Branch of the Chicago River," a report by the Northeastern Illinois Planning Commission and Hydrocomp, Inc., dated October 14, 1976, were used. These data assumed a 30% imperviousness factor and were used by the parties to approximate the conditions of the entire Lake Michigan diversion watershed at the present time.

These data indicate that the maximum departure above the mean annual stormwater flow is 59%. Assuming, therefore, [449 U.S. 48, 53] that the mean annual stormwater flow is 683 cfs, the maximum departure is 405 cfs. This could result in a diversion of 13% above the allowable 3200 cfs maximum. Given the relatively short period of record and the likelihood of increased runoff resulting from urbanization, it was agreed that a 15% exceedance, to a maximum of 3680 cfs, would be allowed in any year to accommodate high stormflows and that in any two years of the 40 year accounting period the diversion may be increased by 20%, to a maximum of 3840 cfs, to accommodate extraordinary hydrologic conditions.

Because of year-to-year variations in storm runoff there will be series of years when the average annual diversion will need to exceed 3200 cfs for best management, and some years when the diversion will be less than the 3200 cfs average. Calculations of the cumulative sum of the annual departures show that the maximum cumulative exceedance of 3200 cfs would be slightly below 1500 cfs-years as indicated by the forty-four years of data that were used. The possibility exists that in the initial forty year period the cumulative exceedance may be greater than 1500 cfs-years. Since the record used is relatively short and urbanization is likely to increase runoff, the maximum cumulative exceedance has been established at 2000 cfs-years.

The goal of this amended Decree is to maintain the longterm average annual diversion of water from Lake Michigan at or below 3200 cfs. [449 U.S. 48, 54]

WATER RESOURCES DEVELOPMENT ACT OF 1986

As amended September, 2000

1962d-20. Prohibition on Great Lakes Diversions

(a) The Congress finds and declares that -

1. The Great Lakes are the most important natural resource to the eight great Lakes States and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the great Lakes region, and recreational uses for millions of United States and Canadian citizens;
2. the Great Lakes need to be carefully managed and protected to meet current and needs within the Great Lakes basin and Canadian provinces;
3. any new diversions of Great lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes states and Canadian provinces; and
4. four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Water Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the united States would affect the relations of the Government of the United States with the Government of Canada.

(b) It is therefore declared to be the purpose and policy of the Congress in this action -

1. to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;
2. to encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin;
3. to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and
4. to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

(c) As used in this section, the term "Great Lakes State" means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(d) No water shall be diverted or exported from any portion of the Great Lakes within the United States, from any tributary within the United States of any of the Great Lakes, for use outside the Great Lake basin unless such diversion or export is approved by the Governor of each of the Great Lakes States.

(e) No Federal agency may undertake an study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governors of each of the Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters treaty of 1909.

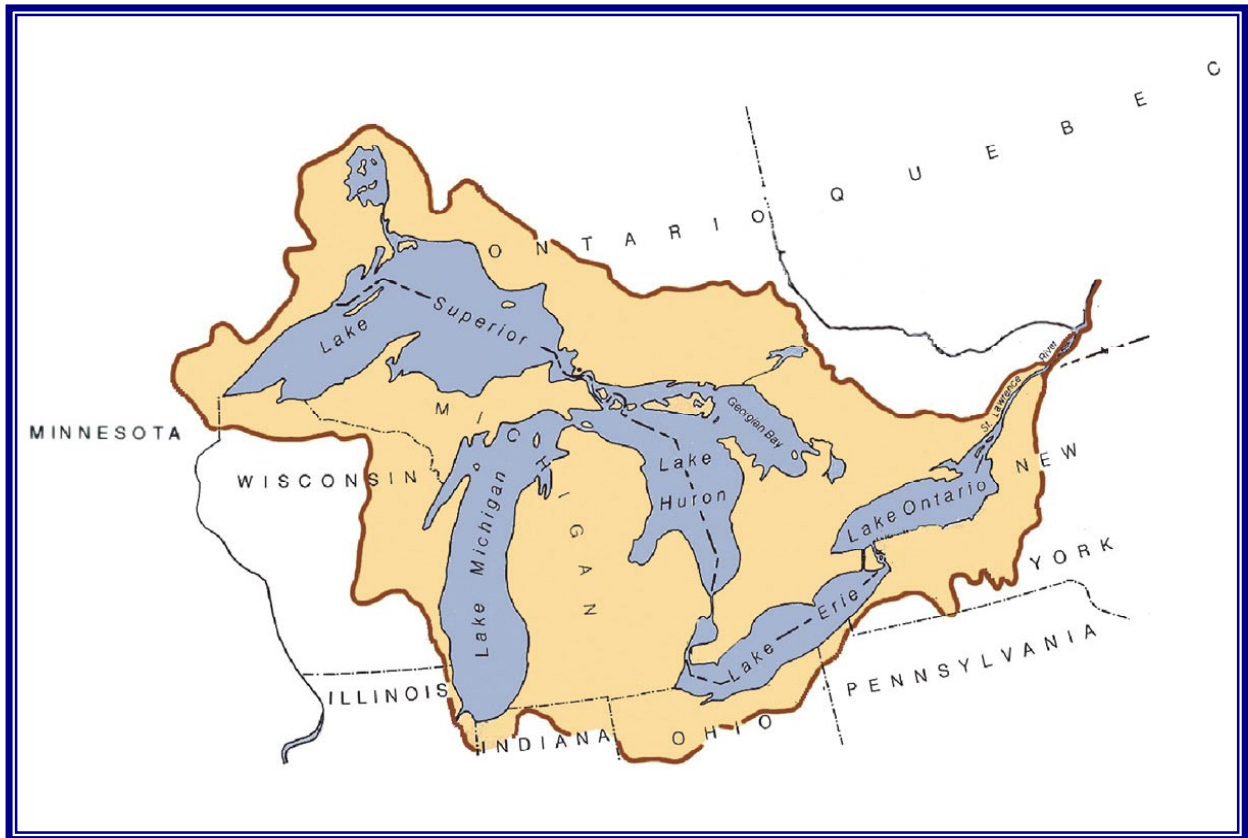
(f) This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on the date of the enactment of this Act.

(Nov. 17, 1986, P.L. 99-662, Title XI, 1109, 100 Stat. 4230.)

The Great Lakes Charter

Principles for the Management of Great Lakes Water Resources

February 11, 1985



La Charte des Grands Lacs

Principes de gestion des ressources en eau des Grands Lacs

11 février 1985

The Council of Great Lakes Governors is a non-profit, non-partisan partnership of Governors of the Great Lakes states—Illinois (George H. Ryan), Indiana (Frank O'Bannon), Michigan (John Engler), Minnesota (Jesse Ventura), New York (George E. Pataki), Ohio (Bob Taft), Pennsylvania (Tom Ridge), and Wisconsin (Scott McCallum). The Premiers of Ontario (Mike Harris) and Quebec (Bernard Landry) are associate members. Through the Council, the Governors collectively tackle the environmental and economic challenges facing the citizens of the region.

The Great Lakes Basin map is courtesy of the International Joint Commission.

Printed June 2001

THE GREAT LAKES CHARTER

PRINCIPLES FOR THE MANAGEMENT OF GREAT LAKES WATER RESOURCES

FINDINGS

THE GOVERNORS AND PREMIERS OF THE GREAT LAKES STATES AND PROVINCES JOINTLY FIND AND DECLARE THAT:

The water resources of the Great Lakes Basin are precious public natural resources, shared and held in trust by the Great Lakes States and Provinces.

The Great Lakes are valuable regional, national and international resources for which the federal governments of the United States and Canada and the International Joint Commission have, in partnership with the States and Provinces, and important, continuing an abiding role and responsibility.

The waters of the Great Lakes Basin are interconnected and part of a single hydrologic system. The multiple uses of these resources for municipal, industrial and agricultural water supply; mining; navigation; hydroelectric power and energy production; recreation; and the maintenance of fish and wildlife habitat and a balanced ecosystem are interdependent.

Studies conducted by the International Joint Commission, the Great Lakes States and Provinces, and other agencies have found that without careful and prudent management, the future development of diversions and consumptive uses of the water resources of the Great Lakes Basin may have significant adverse impacts on the environment, economy, and welfare of the Great Lakes region.

As trustees of the Basin's natural resources, the Great Lakes States and Provinces have a shared duty to protect, conserve, and manage the renewable but finite waters of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, and managing the water resources of the Great Lakes is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by each and every Great Lakes State and Province.

Management of the water resources of the Basin is subject to the jurisdiction, rights and responsibilities of the signatory States and Provinces. Effective management of the water resources of the Great Lakes requires the exercise of such jurisdiction, rights, and responsibilities in the interest of all the people of the Great Lakes Region, acting in a continuing spirit of comity and mutual cooperation. The Great Lakes States and Provinces reaffirm the mutual rights and obligations of all Basin jurisdictions to use, conserve, and protect Basin water resources, as expressed in the Boundary Waters Treaty of 1909, the Great Lakes Water Quality Agreement of 1978, and the principles of other applicable international agreements.

PURPOSE

THE PURPOSES OF THIS CHARTER are to conserve the levels and flows of the Great Lakes and their tributary and connecting waters; to protect and conserve the environmental balance of the Great Lakes Basin ecosystem; to provide for cooperative programs and management of the water resources of the Great Lakes Basin by the signatory States and Provinces; to make secure and protect present

developments within the region; and to provide a secure foundation for future investment and development within the region.

PRINCIPLES FOR THE MANAGEMENT OF GREAT LAKES WATER RESOURCES

IN ORDER TO ACHIEVE THE PURPOSES OF THIS CHARTER, THE GOVERNORS AND PREMIERS OF THE GREAT LAKES STATES AND PROVINCES AGREE TO THE FOLLOWING PRINCIPLES:

Principle I Integrity of the Great Lakes Basin

The planning and management of the water resources of the Great Lakes Basin should recognize and be founded upon the integrity of the natural resources and ecosystem of the Great Lakes Basin. The water resources of the Basin transcend political boundaries within the Basin, and should be recognized and treated as a single hydrologic system. In managing Great Lakes Basin waters, the natural resources and ecosystem of the Basin should be considered as a unified whole.

Principle II Cooperation Among Jurisdictions

The signatory States and Provinces recognize and commit to a spirit of cooperation among local, state, and provincial agencies, the federal governments of Canada and the United States, and the International Joint Commission in the study, monitoring, planning, and conservation of the water resources of the Great Lakes Basin.

Principle III Protection of the Water Resources of the Great Lakes

The signatory States and Provinces agree that new or increased diversions and consumptive uses of Great Lakes Basin water resources are of serious concern. In recognition of their shared responsibility to conserve and protect the water resources of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, the States and Provinces agree to seek (where necessary) and to implement legislation establishing programs to manage and regulate the diversion and consumptive use of Basin water resources. It is the intent of the signatory States and Provinces that diversions of Basin water resources will not be allowed if individually or cumulatively they would have any significant adverse impacts on lake levels, in-basin uses, and the Great Lakes Ecosystem.

Principle IV Prior Notice and Consultation

It is the intent of the signatory States and Provinces that no Great Lakes State or Province will approve or permit any major new or increased diversion or consumptive use of the water resources of the Great Lakes Basin without notifying and consulting with and seeking the consent and concurrence of all affected Great Lakes States and Provinces.

Principle V Cooperative Programs and Practices

The Governors and Premiers of the Great Lakes States and Provinces commit to pursue the development and maintenance of a common base of data and information regarding the use and management of the Basin water resources, to the establishment of a systematic arrangements for the exchange of water data and information, to the creation of a Water Resources Management Committee, to the development of a Great Lakes Water Resources Management Program, and to additional and concerted and coordinated research efforts to provide improved information for future water planning and management decisions.

IMPLEMENTATION OF PRINCIPLES

Common Base of Data

THE GREAT LAKES STATES AND PROVINCES WILL PURSUE THE DEVELOPMENT AND MAINTENANCE OF A COMMON BASE OF DATA AND INFORMATION regarding the use and management of Basin water resources and the establishment of systematic arrangements for the exchange of water data and information. The common base of data will include the following:

1. Each State and Province will collect and maintain, in comparable form, data regarding the location, type, and quantities of water use, diversion, and consumptive use, and information regarding projections of current and future needs.
2. In order to provide accurate information as a basis for future water resources planning and management, each State and Province will establish and maintain a system for the collection of data on major water uses, diversions, and consumptive uses in the Basin. The States and Provinces, in cooperation with the Federal Governments of Canada and the United States and the International Joint Commission, will seek appropriate vehicles and institutions to assure responsibility for coordinated collation, analysis, and dissemination of data and information.
3. The Great Lakes States and Provinces will exchange on a regular basis plans, data, and other information on water use, conservation, and development, and will consult with each other in the development of programs and plans to carry out these provisions.

Water Resources Management Committee

A WATER RESOURCES MANAGEMENT COMMITTEE WILL BE FORMED, COMPOSED OF REPRESENTATIVES APPOINTED BY THE GOVERNORS AND PREMIERS OF EACH OF THE GREAT LAKES STATES AND PROVINCES. Appropriate agencies of the federal governments, the International Joint Commission, and other interested and expert organizations will be invited to participate in discussions of the Committee.

The Committee will be charged with responsibility to identify specific common water data needs; to develop and design a system for the collection and exchange of comparable water resources management data; to recommend institutional arrangements to facilitate the exchange and maintenance of such information; and to develop procedures to implement the prior notice and consultation process established in this Charter. The Committee will report its findings to the Governors and Premiers of the Great Lakes States and Provinces within 15 months of the appointment of the Committee.

Consultation Procedures

THE PRINCIPLE OF PRIOR NOTICE AND CONSULTATION WILL APPLY TO ANY NEW OR INCREASED DIVERSION OR CONSUMPTIVE USE OF THE WATER RESOURCES OF THE GREAT LAKES BASIN which exceeds 5,000,000 gallons (19 million litres) per day average in any 30-day period.

The consultation process will include the following procedures:

1. The State or Province with responsibility for issuing the approval or permit, after receiving an application for such diversion or consumptive use, will notify the Offices of the Governors and Premiers of the respective Great Lakes States and Provinces, the appropriate water management agencies of the Great Lakes States and Provinces and, where appropriate, the International Joint Commission.
2. The permitting State or Province will solicit and carefully consider the comments and concerns of the other Great Lakes States and Provinces, and where applicable the International Joint Commission, prior to rendering a decision on an application.
3. Any State or Province which believes itself to be affected may file a written objection to the proposed diversion or consumptive use. Notice of such objection stating the reasons therefore will be given to the permitting State or Province and all other Great Lakes States and Provinces.
4. In the event of an objection to a proposed diversion or consumptive use, the permitting State or Province will convene a consultation process of the affected Great Lakes States and Provinces to investigate and consider the issues involved, and to seek and provide mutually agreeable recommendations to the permitting State or Province.
5. The permitting State or Province will carefully consider the concerns and objections expressed by other Great Lakes States and Provinces, and the recommendations of any consultation process convened under this Charter.
6. The permitting State or Province will have lead responsibility for resolution of water management permit issues. The permitting State or Province will notify each affected Great Lakes State or Province of its final decision to issue, issue with conditions, or deny a permit.

The prior notice and consultation process will be formally initiated following the development of procedures by the Water Resources Management Committee and approval of those procedures by the Governors and Premiers. During the interim period prior to approval of formal procedures, any State or Province may voluntarily undertake the notice and consultation procedure as it deems appropriate.

Basin Water Resources Management Program

IN ORDER TO GUIDE THE FUTURE DEVELOPMENT, MANAGEMENT, AND CONSERVATION OF THE WATER RESOURCES OF THE GREAT LAKES BASIN, THE SIGNATORY STATES AND PROVINCES COMMIT TO THE DEVELOPMENT OF A COOPERATIVE WATER RESOURCES MANAGEMENT PROGRAM FOR THE GREAT LAKES BASIN.

Such a program should include consideration of the following elements:

1. An inventory of the Basin's surface and groundwater resources;

2. An identification and assessment of existing and future demands for diversions, into as well as out of the Basin, withdrawals, and consumptive uses for municipal, domestic, agricultural, manufacturing, mining, navigation, power production, recreation, fish and wildlife, and other uses and ecological considerations;
3. The development of cooperative policies and practices to minimize the consumptive use of the Basin's water resources; and
4. Recommended policies to guide the coordinated conservation, development, protection, use, and management of the water resources of the Great Lakes Basin.

Research Program

THE GREAT LAKES STATES AND PROVINCES RECOGNIZE THE NEED FOR AND SUPPORT ADDITIONAL RESEARCH in the area of flows and lake levels required to protect fisheries and wildlife, a balanced aquatic environment, navigation, important recreational uses, and the assimilative capacity of the Great Lakes system. Through appropriate state, provincial, federal and international agencies and other institutions, the Great Lakes States and Provinces will encourage coordinated and concerted research efforts in these areas, in order to provide improved information for future water planning and management decisions.

PROGRESS TOWARD IMPLEMENTATION

THE GOVERNORS AND PREMIERS OF THE GREAT LAKES STATES AND PROVINCES COMMIT TO THE COORDINATED IMPLEMENTATION OF THIS CHARTER. To this end, the Governors and Premiers shall, no less than once per year, review progress toward implementation of this Charter and advise one another on actions taken to carry out the principles of the Charter together with recommendations for further action or improvements to the management of the Great Lakes Basin water resources.

The signatory States and Provinces consider each of the principles and implementing provisions of this Charter to be material and interdependent. The rights of each State and Province under this Charter are mutually dependent upon the good faith performance by each State and Province of its commitments and obligations under the Charter.

The following sequence will be adhered to by the Great Lakes States and Provinces in implementing the provisions of this Charter:

1. The Water Resources Management Committee will be appointed by the Governors and Premiers within 60 days of the effective date of this Charter and will submit its recommendations to the Governors and Premiers of the Great Lakes States and Provinces within 15 months of the appointment of the Committee.
2. Upon the signing of the Charter, and concurrent with the activities of the Water Resources Management Committee, the Great Lakes States and Provinces will commence collecting and assembling existing Great Lakes water use data and information. The water use data collected and assembled by the States and Provinces will include, but not be limited to, the data and information specified under the "Common Base of Data" provisions of the Charter.

Copies of the data and information collected and assembled by the States and Provinces will be submitted to the Water Resources Management Committee. The Great Lakes States and Provinces will pursue: the collection of data and information on the use and management of Basin water resources; the establishment of systematic arrangements for the exchange of water data and information on a continuing basis as enabled by existing state and provincial data

collection and regulatory programs; and where necessary, the enactment of water withdrawal registration and diversion and consumptive use management and regulatory programs pursuant to the provisions of the Charter.

3. To assist in the ongoing collection of Great Lakes water use data and information, and in the development of the Basin Water Resources Management Program, States and Provinces will pursue the enactment of legislation where it is needed for the purpose of gathering accurate and comparable information on any new or increased withdrawal of Great Lakes Basin water resources in excess of 100,000 gallons (380,000 litres) per day average in any 30-day period.
4. The prior notice and consultation process will be formally initiated following the development of procedures by the Water Resources Management Committee and approval of those procedures by the Governors and Premiers. Any State or Province may voluntarily undertake additional notice and consultation procedures as it deems appropriate. However, the right of any individual State or Province to participate in the prior notice and consultation process, either before or after approval of formal procedures by the Governors and Premiers, is contingent upon its ability to provide accurate and comparable information on water withdrawals in excess of 100,000 gallons (380,000 litres) per day average in any 30-day period and its authority to manage and regulate water withdrawals involving a total diversion or consumptive use of Great Lakes Basin water resources in excess of 2,000,000 gallons (7,600,000 litres) per day average in any 30-day period.
5. Development of the Basin Water Resources Management Program will commence upon receipt and formal approval by the Great Lakes Governors and Premiers of the recommendations of the Water Resources Management Committee.

RESERVATION OF RIGHTS

THE GREAT LAKES STATES AND PROVINCES MUTUALLY RECOGNIZE THE RIGHTS AND STANDING OF ALL GREAT LAKES STATES AND PROVINCES TO represent and protect the rights and interests of their respective jurisdictions and citizens in the shared water and other natural resources of the Great Lakes region.

Each Great Lakes State and Province reserves and retains all rights and authority to seek, in any state, provincial, federal, or other appropriate court or forum, adjudication or protection of its rights in and to Basin water resources, in such manner as may now or hereafter be provided by law.

In entering into this Charter, no Great Lakes State or Province shall be deemed to imply its consent to any diversion or consumptive use of Great Lakes Basin water resources now or in the future.

DEFINITIONS

FOR PURPOSES OF THIS CHARTER:

Withdrawal means the removal or taking of water from surface or groundwater.

Consumptive use means that portion of water withdrawn or withheld from the Great Lakes Basin and assumed to be lost or otherwise not returned to the Great Lakes Basin due to evaporation, incorporation into products, or other processes.

Diversion means a transfer of water from the Great Lakes Basin into another watershed, or from the watershed of one of the Great Lakes into that of another.

Interbasin diversion means a transfer of water from the Great Lakes Basin into another watershed.

Great Lakes Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois Rivieres, Quebec.

Great Lakes Basin water resources means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.

Great Lakes Basin Ecosystem means the interacting components of air, land, water, and living organisms, including humankind, within the Great Lakes Basin.

Great Lakes States and Provinces means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the Commonwealth of Pennsylvania, and the Provinces of Ontario and Quebec.

Great Lakes Region means the geographic region comprised of the Great Lakes States and Provinces.

Signed and entered into the 11th of February 1985.

The image shows ten handwritten signatures arranged in two columns. Each signature is written in black ink on a white background and is positioned above a horizontal line. The signatures are: James J. Blanchard, Anthony S. Earl, Robert D. Orr, Rudy Perpich, Dick Thornburgh, Richard F. Celeste, René Lévesque, Mario M. Cuomo, Frank Miller, and James R. Thompson.

James J. Blanchard, Governor of Michigan
Robert D. Orr, Governor of Indiana
Dick Thornburgh, Governor of Pennsylvania
René Lévesque, Premier of Quebec
Frank Miller, Premier of Ontario

Anthony S. Earl, Governor of Wisconsin
Rudy Perpich, Governor of Minnesota
Richard F. Celeste, Governor of Ohio
Mario M. Cuomo, Governor of New York
James R. Thompson, Governor of Illinois

LA CHARTE DES GRANDS LACS

PRINCIPES DE GESTION DES RESSOURCES EN EAU DES GRANDS LACS

CONSTATATIONS

Les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs constatent et déclarent conjointement que:

Les ressources en eau du bassin des Grands Lacs constituent des ressources naturelles publiques de grande valeur partagées et tenues en fiducie par les États et provinces du bassin des Grands Lacs.

Les Grands Lacs constituent de précieuses ressources régionales, nationales et internationales à l'égard desquelles les gouvernements fédéraux respectifs des États-Unis et du Canada et la Commission mixte internationale assument, de façon constante et en association avec les États et les provinces, un rôle et une responsabilité essentiels et constants.

Les eaux du bassin des Grands Lacs sont reliées entre elles et font partie d'un même système hydrologique. Les multiples utilisations auxquelles se prêtent ces ressources sont interdépendantes et comprennent: l'alimentation en eau à des fins municipales, industrielles et agricoles; l'exploitation minière; la navigation; la production hydro-électrique et énergétique; les loisirs et le maintien de l'habitat du poisson et de la faune et de l'équilibre de l'écosystème.

Des études menées par la Commission mixte internationale, par les États et les provinces du bassin des Grands Lacs et par d'autres organismes ont montré qu'à défaut d'une gestion sage et prévoyante, une éventuelle augmentation des dérivations et consommations des eaux du bassin des Grands Lacs pourrait avoir des effets défavorables appréciables sur l'environnement, l'économie et la prospérité de la région des Grands Lacs.

À titre de fiduciaires des ressources naturelles du Bassin, les États et les provinces du bassin des Grands Lacs partagent collectivement le devoir de protéger, conserver et gérer les ressources renouvelables mais limitées que sont les eaux du bassin des Grands Lacs, pour l'usage, le bénéfice et la jouissance de tous leurs citoyens, y compris les générations à venir. Pour s'acquitter de ce devoir, le moyen le plus efficace consiste à élaborer collectivement des principes, des politiques et des programmes unifiés et coopératifs qui auront tous été convenus et adoptés et auront reçu l'adhésion de tous et chacun des États et provinces du bassin des Grands Lacs.

La gestion des ressources en eau du Bassin est soumise à la juridiction, aux droits et aux responsabilités des États et provinces signataires. Une gestion efficace des ressources en eau des Grands Lacs requiert, dans l'intérêt des populations de la région des Grands Lacs, que cette juridiction, ces droits et ces responsabilités s'exercent dans un esprit constant de bonne entente et de coopération mutuelle. Les États et provinces du bassin des Grands Lacs réaffirment les droits et obligations réciproques de tous les gouvernements du Bassin d'utiliser, de conserver et de protéger les ressources en eau du Bassin, tel qu'il est énoncé dans le Traité des eaux limitrophes internationales de 1909, dans l'Accord relatif à la qualité de l'eau dans les Grands Lacs de 1978 et dans les principes de tous les autres accords internationaux pertinents.

OBJECTIFS

Les objectifs de la présente Charte sont les suivants: maintenir les niveaux et les débits des eaux des Grands Lacs, de leurs tributaires et des cours d'eau qui les relient; protéger l'équilibre de l'écosystème du bassin des Grands Lacs; assurer l'élaboration et la mise en oeuvre d'un programme coopératif de gestion des ressources en eau du bassin des Grands Lacs par les États et les provinces signataires; protéger les aménagements situés à l'intérieur de la région, et établir des bases solides en vue des futurs investissements et développements dans la région.

PRINCIPES DE GESTION DES RESSOURCES EN EAU DES GRANDS LACS

Afin d'atteindre les objectifs de la présente Charte, les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs conviennent des principes qui suivent:

Principe I^{er}

L'intégrité du bassin des Grands Lacs

La planification et la gestion des ressources en eau du bassin des Grands Lacs devraient reconnaître et avoir pour fondement l'intégrité de ses ressources naturelles et de son écosystème. Les ressources en eau du Bassin transcendent les frontières politiques qui traversent le Bassin, et devraient être considérées comme constituant un seul système hydrologique. Dans le cadre de la gestion des eaux du bassin des Grands Lacs, les ressources naturelles et l'écosystème du Bassin devraient être considérés comme formant un tout.

Principe II

Coopération entre les gouvernements

Les États et provinces signataires s'engagent à agir dans un esprit de coopération, avec les organismes locaux, les organismes des États, les organismes provinciaux, les gouvernements fédéraux respectifs du Canada et des États-Unis et la Commission mixte internationale dans l'étude, la surveillance, la planification et la conservation des ressources en eau du bassin des Grands Lacs.

Principe III

Protection des ressources en eau des Grands Lacs

Les États et provinces signataires conviennent que les nouvelles dérivations et consommations des eaux du bassin des Grands Lacs et l'accroissement de celles qui existent déjà sont une source d'inquiétude. Conscients de leur responsabilité commune de conserver et protéger ces ressources en eau pour l'usage, le bénéfice et la jouissance de tous leurs citoyens, les États et provinces conviennent de proposer l'adoption (le cas échéant) de lois établissant des programmes de gestion et de réglementation des dérivations et de la consommation des eaux du Bassin, et d'assurer l'application de ces lois. Les États et provinces signataires ont l'intention de faire en sorte que les dérivations des eaux du Bassin ne soient pas permises si, individuellement ou cumulativement, elles devaient avoir des effets défavorables appréciables sur le niveau de l'eau des lacs, les utilisations des eaux à l'intérieur du Bassin ou l'écosystème des Grands Lacs.

Principe IV

Notification et consultation préalables

Les États et provinces signataires ont l'intention de faire en sorte qu'aucun État ou province du bassin des Grands Lacs n'autorise ni ne permette d'importante nouvelle dérivation ou consommation des eaux du bassin des Grands Lacs ni d'accroissement important d'une dérivation ou consommation d'eau existante sans notifier et consulter les États et provinces du bassin des Grands Lacs touchés par un tel projet, et rechercher leur consentement et leur accord.

Principe V

Programmes coopératifs

Les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs s'engagent à mettre sur pied et à maintenir une banque commune de données et d'informations portant sur l'utilisation et la gestion des ressources en eau du Bassin, à établir des mécanismes systématiques d'échange de données et d'informations, sur ces ressources, à créer un Comité de gestion des ressources en eau, à élaborer un programme de gestion des ressources en eau du bassin des Grands Lacs, et à assurer, par d'autres recherches concertées et coordonnées, une meilleure information en vue des décisions ultérieures en matière de planification et de gestion des ressources en eau.

MISE EN OEUVRE DES PRINCIPES

Banque commune de données

Les États et provinces du bassin des Grands Lacs assureront la constitution et le maintien d'une banque commune de données et d'informations portant sur l'utilisation et la gestion des ressources en eau du Bassin, et l'établissement de mécanismes systématiques d'échange de données et d'informations sur l'eau. La banque commune de données sera constituée comme suit:

1. Chacun des États et provinces recueillera et maintiendra sous une forme comparable des données concernant l'emplacement et la nature des utilisations, dérivations et consommations d'eau, et les volumes d'eau touchés, ainsi que des informations sur les projections relatives aux besoins actuels et futurs.
2. Afin de fournir des renseignements précis destinés à servir ultérieurement de base à la planification et à la gestion des ressources en eau, chacun des États et provinces établira et maintiendra un système de collecte de données concernant les utilisations, dérivations et consommations d'eau importantes dans le Bassin. Les États et provinces rechercheront, en collaboration avec les gouvernements fédéraux respectifs du Canada et des États-Unis et avec la Commission mixte internationale, des mécanismes et institutions appropriés pour assurer, d'une manière coordonnée, l'assemblage, l'analyse et la diffusion des données et informations.
3. Les États et provinces du bassin des Grands Lacs échangeront régulièrement des plans, des données et autres informations concernant l'utilisation, la conservation et la mise en valeur des eaux, et se consulteront sur l'élaboration de programmes et de plans visant à mettre en œuvre ces dispositions.

Comité de gestion des ressources en eau

Un Comité de gestion des ressources en eau sera constitué. Ses membres seront nommés par les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs. Les organismes compétents des gouvernements fédéraux, la Commission mixte internationale et d'autres organismes spécialisés et intéressés seront invités à participer aux travaux du Comité.

Le Comité sera chargé: de déterminer de façon précise les besoins courants de données sur l'eau; de mettre au point un système de collecte et d'échange de données comparables en matière de gestion des eaux; de proposer des mécanismes institutionnels visant à faciliter l'échange et le maintien de ces informations; et d'établir les modalités d'application de la procédure de notification et de consultation préalables établie par la présente Charte. Le Comité fera rapport de ses constatations aux gouverneurs des États et aux Premiers ministres des provinces du bassin des Grands Lacs dans les quinze mois qui suivront la nomination de ses membres.

Procédure de consultation

Le principe de la notification et de la consultation préalables s'appliquera à toute nouvelle dérivation ou utilisation des eaux du bassin des Grands Lacs et à tout accroissement de celles qui existent déjà, dont le volume excéderait en moyenne 5 000 000 de gallons (19 000 000 de litres) par jour pendant 30 jours.

La procédure de consultation comportera les modalités suivantes :

1. Après réception d'une demande pour une telle dérivation ou consommation d'eau, l'État ou la province responsable de la délivrance de l'autorisation ou du permis notifiera le Cabinet de chaque gouverneur des États et de chaque Premier ministre des provinces du bassin des Grands Lacs, les organismes compétents en matière de gestion des eaux dans chacun de ces États et provinces et, s'il y a lieu, la Commission mixte internationale.
2. Avant de prendre une décision sur une demande, l'État ou la province qui délivre le permis prendra en considération les commentaires et les préoccupations soumis par les autres États et provinces du bassin des Grands Lacs et, le cas échéant, ceux de la Commission mixte internationale.
3. Tout État ou province qui s'estime touché peut formuler, par écrit, une objection à la dérivation ou la consommation projetée. Tel État ou province en fera notification, motifs à l'appui, à l'État ou la province qui délivre le permis et à tous les autres États et provinces du bassin des Grands Lacs.
4. Dans le cas où l'on soulèverait une objection à une dérivation ou une consommation projetée, l'État ou la province qui délivre le permis amorcera une procédure de consultation auprès des États et provinces du bassin des Grands Lacs qui sont touchés par le projet, afin d'étudier les problèmes qui se posent et de rechercher et dégager des recommandations qui soient acceptables pour tous les intéressés.
5. L'État ou la province qui délivre le permis examinera attentivement les préoccupations et les objections formulées par d'autres États ou provinces du bassin des Grands Lacs, et les recommandations résultant de toute consultation tenue conformément à la présente Charte.
6. L'État ou la province qui délivre le permis sera le principal intervenant responsable de résoudre des questions touchant les permis en matière de gestion de l'eau. Tel État ou province fera

notification, aux États et provinces du bassin des Grands Lacs qui sont intéressés, de sa décision finale de délivrer le permis sans condition ou sous condition, ou de refuser de le délivrer.

La procédure de notification et de consultation préalables s'appliquera formellement dès que ses modalités d'application auront été élaborées par le Comité de gestion des ressources en eau et approuvées par les gouverneurs et les Premiers ministres. Entre temps, tout État ou province pourra amorcer cette procédure de notification et de consultation de son propre gré et en la manière que cet État ou province jugera appropriée.

Programme de gestion des ressources en eau du Bassin

Afin de guider la mise en valeur, la gestion et la conservation des ressources en eau du bassin des Grands Lacs, les États et provinces signataires s'engagent à élaborer un programme coopératif de gestion de ces ressources.

Ce programme tiendra compte des éléments qui suivent :

1. Un inventaire des ressources en eau du Bassin, tant de surface que souterraines ;
2. Une identification et une évaluation de la demande actuelle et future pour des dérivations tant vers l'intérieur que vers l'extérieur du Bassin, des prélèvements et des consommations d'eaux, à des fins municipales, domestiques, agricoles, industrielles, minières, de navigation, de production énergétique, de loisirs, pour le poisson et la faune et pour d'autres fins, et une évaluation des aspects écologiques ;
3. L'élaboration de politiques et de programmes coopératifs visant à restreindre au minimum la consommation de l'eau du Bassin; et
4. Des lignes directrices visant, d'une manière coordonnée, la conservation, la mise en valeur, la protection, l'utilisation et la gestion des ressources en eau du bassin des Grands Lacs.

Programme de recherche

Les États et provinces du bassin des Grands Lacs reconnaissent la nécessité de recherches plus poussées portant sur les débits et les niveaux d'eau requis pour assurer la protection des pêches et de la faune, l'équilibre du milieu aquatique, la navigation, les usages récréatifs importants et la capacité assimilatrice du système des Grands Lacs, et appuient de telles recherches.

Les États et provinces du bassin des Grands Lacs favoriseront, par l'entremise d'organismes appropriés des États, par l'entremise d'organismes provinciaux, fédéraux et internationaux appropriés et par l'entremise d'autres institutions, la poursuite de travaux de recherche concertés et coordonnés dans ces domaines de façon à obtenir de meilleures informations en vue de la prise de décisions en matière de planification et de gestion des ressources en eau.

APPLICATION PROGRESSIVE

Les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs s'engagent à mettre en oeuvre la présente Charte par une action coordonnée. À cette fin, ils devront, au moins une fois l'an, passer en revue les progrès réalisés dans ce sens, échanger des renseignements sur les mesures prises en vue de se conformer aux principes de la Charte et formuler des recommandations quant aux dispositions additionnelles à prendre et aux améliorations à apporter dans la gestion des ressources en eau du bassin des Grands Lacs.

Les États et provinces signataires sont d'avis que tous les principes et dispositions d'application de la présente Charte sont importants et interdépendants. Les droits de chaque État et de chaque province en vertu de la présente Charte sont mutuellement subordonnés à l'exécution de bonne foi, par chaque État et province, de ses engagements et obligations respectifs en vertu de la présente Charte.

La mise en oeuvre des dispositions de la présente Charte s'effectuera selon les étapes suivantes:

1. Le Comité de gestion des ressources en eau sera constitué dans les soixante jours qui suivront l'entrée en vigueur de la présente Charte. Il présentera ses recommandations aux gouverneurs des États et aux Premiers ministres des provinces du bassin des Grands Lacs dans les quinze mois qui suivront la nomination de ses membres.
2. Dès la signature de la présente Charte, et simultanément au début des activités du Comité de gestion des ressources en eau, les États et provinces du bassin des Grands Lacs entreprendront la collecte des données et informations existantes sur l'utilisation des eaux des Grands Lacs. Ces données comprendront, sans s'y limiter, les données et informations indiquées dans la présente Charte sous le titre « Banque commune de données ».

Des exemplaires des données et informations recueillies par les États et provinces seront présentés au Comité de gestion des ressources en eau. Les États et provinces s'efforceront: de recueillir des données et informations concernant l'utilisation et la gestion des ressources en eau du Bassin; d'établir des mécanismes systématiques d'échange de ces données et informations sur une base continue, conformément aux programmes existants de collecte des données et de réglementation de chaque État ou province; d'adopter s'il y a lieu, des programmes pourvoyant à l'enregistrement des prélèvements d'eau et des programmes de gestion et de réglementation des dérivations et consommations d'eau, conformément aux dispositions de la présente Charte.

3. Afin d'aider à poursuivre la collecte de données et d'informations sur l'utilisation des eaux des Grands Lacs et à l'élaboration d'un programme de gestion des ressources en eau du Bassin, les États et provinces assureront, le cas échéant, l'adoption de lois visant la collecte d'informations précises et comparables concernant tout nouveau prélèvement ou tout accroissement d'un prélèvement d'eau existant dans le bassin des Grands Lacs, dont le volume excéderait en moyenne 100 000 gallons (380 000 litres) par jour pendant 30 jours.
4. La procédure de notification et de consultation préalables s'appliquera formellement dès que ses modalités d'application auront été élaborées par le Comité de gestion des ressources en eau et approuvées par les gouverneurs et les Premiers ministres. Tout État ou province pourra, de son propre gré, entreprendre des procédures supplémentaires de notification et de consultation, en la manière que cet État ou province jugera appropriée. Toutefois, un État ou une province n'aura le droit de participer à la procédure de notification et de consultation préalables, soit avant ou après l'approbation des modalités d'application par les gouverneurs et Premiers ministres, que si cet État ou province satisfait à deux conditions, à savoir: être en mesure de fournir des informations précises et comparables concernant les prélèvements d'eau excédant en moyenne 100 000 gallons (380 000 litres) par jour pendant 30 jours, et posséder la compétence requise pour gérer et réglementer les prélèvements d'eau comportant une dérivation ou une consommation globale moyenne de plus de 2 000 000 de gallons (7 600 000 litres) d'eau par jour pendant 30 jours.
5. L'élaboration du programme de gestion des ressources en eau du Bassin commencera sur réception et approbation officielle, par les gouverneurs des États et les Premiers ministres des provinces du bassin des Grands Lacs, des recommandations du Comité de gestion et des ressources en eau.

DROITS RÉSERVÉS

Les États et provinces du bassin des Grands Lacs se reconnaissent réciproquement le droit et l'intérêt requis pour faire valoir et protéger les droits et intérêts de leurs gouvernements et citoyens respectifs relativement aux ressources en eau et aux autres ressources naturelles de la région des Grands Lacs, qu'ils partagent.

Les États et provinces du bassin des Grands Lacs se réservent le droit de s'adresser à un tribunal d'un État ou d'une province, à un tribunal fédéral, ou à tout autre tribunal compétent, selon la procédure actuellement en vigueur ou toute procédure établie ultérieurement par la loi, en lui demandant d'adjudger ou de protéger leurs droits respectifs relativement aux ressources en eau du Bassin.

En signant la présente Charte, nul État ou province du bassin des Grands Lacs n'est réputé consentir implicitement, aujourd'hui ou dans l'avenir, à une dérivation ou une consommation quelconque des ressources en eau du bassin des Grands Lacs.

DÉFINITIONS

Aux fins de la présente Charte,

L'expression **prélèvement** désigne l'action de prendre de l'eau de surface ou de l'eau souterraine.

L'expression **consommation** désigne la quantité d'eau prélevée ou retenue du bassin des Grands Lacs, et présumée perdue ou non retournée au bassin des Grands Lacs en raison d'un phénomène d'évaporation, de son incorporation à un produit, ou d'un autre phénomène.

L'expression **dérivation** désigne un transfert d'eau du bassin des Grands Lacs à un autre bassin hydrographique, ou du bassin hydrographique d'un des Grands Lacs à celui d'un autre.

L'expression **dérivation entre bassins** désigne un transfert d'eau du bassin des Grands Lacs à un autre bassin hydrographique.

L'expression **bassin des Grands Lacs** désigne le bassin hydrographique des Grands Lacs et du fleuve Saint-Laurent situé en amont de Trois-Rivières (Québec).

L'expression ressources **en eau du bassin des Grands Lacs** désigne les Grands Lacs et tous les ruisseaux, rivières, lacs, canaux de liaison et autres masses d'eau, y compris les affluents souterrains, situés à l'intérieur du bassin des Grands Lacs.

L'expression **écosystème des Grands Lacs** désigne les composants en interaction de l'air, du sol, de l'eau et des organismes, y compris l'être humain, qui se trouvent dans le bassin des Grands Lacs.

L'expression **États et provinces du bassin des Grands Lacs** désigne les États suivants: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin et le Commonwealth de Pennsylvanie, et les provinces de l'Ontario et du Québec.

L'expression **région des Grands Lacs** désigne la région géographique constituée par les États et provinces du bassin des Grands Lacs.

Fait et signé en ce 11^e jour de février 1985.

The image shows ten handwritten signatures, each on a horizontal line. The signatures are arranged in two columns and five rows. The left column contains signatures for James J. Blanchard, Robert D. Orr, Dick Thornburgh, René Lévesque, and Frank Miller. The right column contains signatures for Anthony S. Earl, Rudy Perpich, Richard F. Celeste, Mario M. Cuomo, and James R. Thompson.

James J. Blanchard, Gouverneur du Michigan

Robert D. Orr, Gouverneur de l'Indiana

Dick Thornburgh, Gouverneur de la Pennsylvanie

René Lévesque, Premier ministre du Québec

Frank Miller, Premier ministre de l'Ontario

Anthony S. Earl, Gouverneur du Wisconsin

Rudy Perpich, Gouverneur du Minnesota

Richard F. Celeste, Gouverneur de l'Ohio

Mario M. Cuomo, Gouverneur de l'État de New York

James R. Thompson, Gouverneur de l'Illinois



TOM RIDGE
CHAIRMAN
Governor of Pennsylvania

JOHN ENGLER
Governor of Michigan

SCOTT MCCALLUM
Governor of Wisconsin

FRANK O'BANNON
Governor of Indiana

GEORGE E. PATAKI
Governor of New York

GEORGE H. RYAN
Governor of Illinois

BOB TAFT
Governor of Ohio

JESSE VENTURA
Governor of Minnesota

MIKE HARRIS
Premier of Ontario

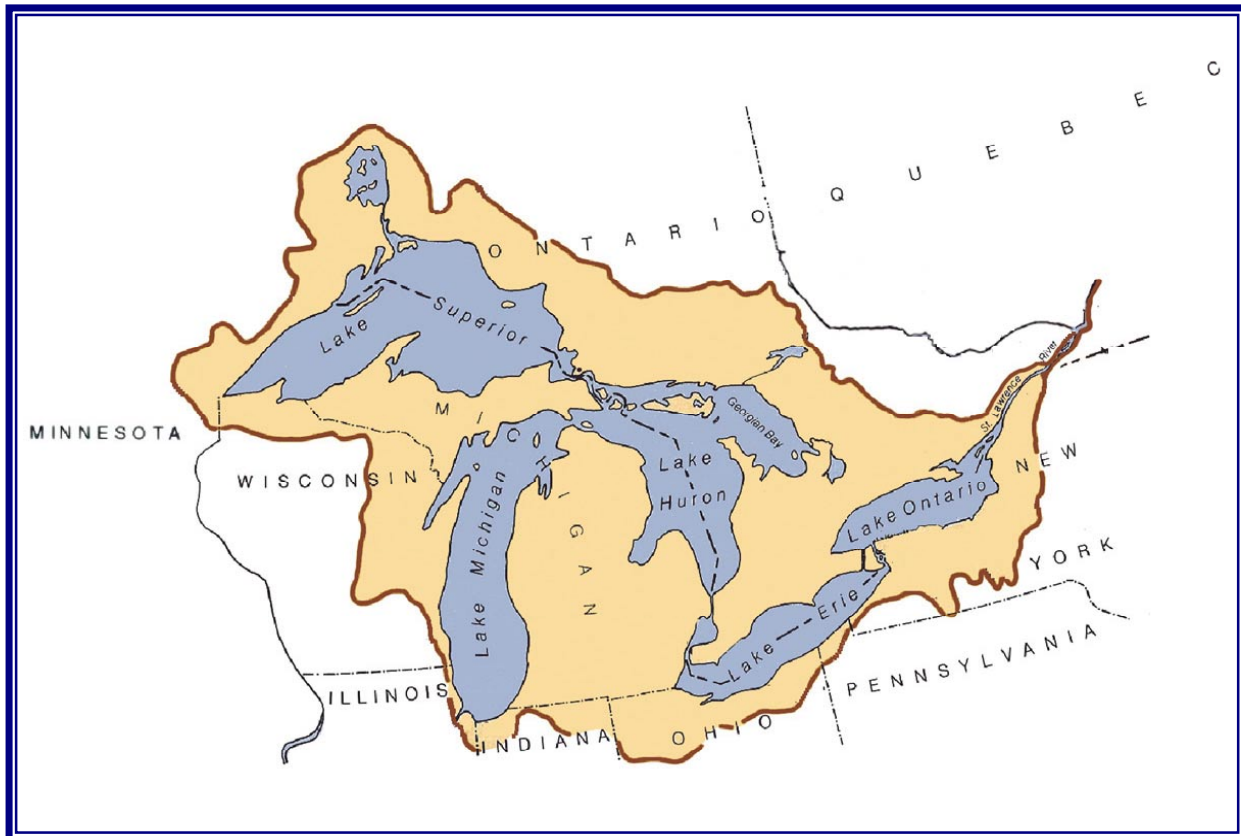
BERNARD LANDRY
Premier of Quebec

35 East Wacker Drive Suite 1850 Chicago, Illinois 60601
Voice 312-407-0177 *Fax* 312 407-0038 *Website* www.cglg.org

The Great Lakes Charter Annex

A Supplementary Agreement to The Great Lakes Charter

June 18, 2001



Annexe à la Charte des Grands Lacs

Entente additionnelle à la Charte des Grands Lacs

18 juin 2001

The Council of Great Lakes Governors is a non-profit, non-partisan partnership of Governors of the Great Lakes states—Illinois (George H. Ryan), Indiana (Frank O'Bannon), Michigan (John Engler), Minnesota (Jesse Ventura), New York (George E. Pataki), Ohio (Bob Taft), Pennsylvania (Tom Ridge), and Wisconsin (Scott McCallum). The Premiers of Ontario (Mike Harris) and Quebec (Bernard Landry) are associate members. Through the Council, the Governors collectively tackle the environmental and economic challenges facing the citizens of the region.

The Great Lakes Basin map is courtesy of the International Joint Commission.

Printed June 2001

THE GREAT LAKES CHARTER ANNEX

A SUPPLEMENTARY AGREEMENT TO THE GREAT LAKES CHARTER

June 18, 2001

FINDINGS

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

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

PURPOSE

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

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

DIRECTIVES

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

DIRECTIVE #1

Develop a new set of binding agreement(s).

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

DIRECTIVE #2

Develop a broad-based public participation program.

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

DIRECTIVE #3

Establish a new decision making standard.

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

The new standard shall be based upon the following principles:

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

DIRECTIVE #4

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

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

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

DIRECTIVE #5

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

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

DIRECTIVE #6

Further commitments.

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

FINAL PROVISIONS

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

DEFINITIONS

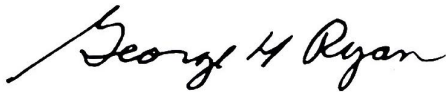
Waters of the Great Lakes Basin (also termed in the Great Lakes Charter as “Water Resources of the Great Lakes Basin”) means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.

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

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

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

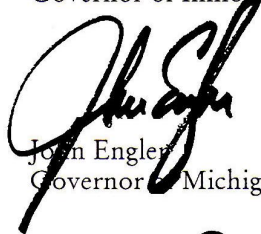
Signed and entered into the 18th day of June 2001.



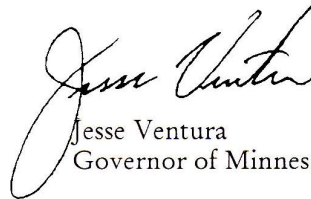
George H. Ryan
Governor of Illinois



Frank O'Bannon
Governor of Indiana



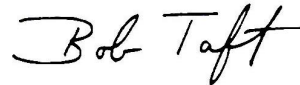
John Engler
Governor of Michigan



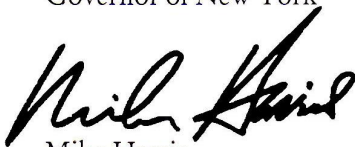
Jesse Ventura
Governor of Minnesota



George E. Pataki
Governor of New York



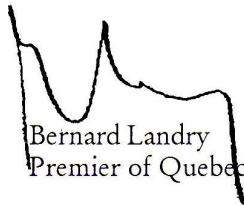
Bob Taft
Governor of Ohio



Mike Harris
Premier of Ontario



Tom Ridge
Governor of Pennsylvania



Bernard Landry
Premier of Quebec



Scott McCallum
Governor of Wisconsin

ANNEXE À LA CHARTE DES GRANDS LACS

ENTENTE ADDITIONNELLE À LA CHARTRE DES GRANDS LACS

18 Juin 2001

CONSTAT

Les Grands Lacs constituent un trésor public binational, dont les États et les provinces du bassin des Grands Lacs sont fiduciaires. Depuis seize ans, les gouverneurs des États et les premiers ministres des provinces du bassin des Grands Lacs se basent sur une série de principes les guidant pour établir, maintenir et renforcer le régime de gestion régional de l'écosystème des Grands Lacs. La protection, la conservation, la restauration et l'amélioration des Grands Lacs constituent l'assise de la norme juridique à partir de laquelle doivent se prendre les décisions relatives à la gestion des ressources en eau.

Des progrès notables ont déjà été enregistrés au chapitre de la restauration et de l'amélioration de la santé de l'écosystème du bassin des Grands Lacs. Cependant, les eaux du bassin et les ressources naturelles qui en dépendent demeurent vulnérables à la pollution, aux perturbations environnementales et aux pratiques non durables de gestion hydrique qui peuvent, individuellement et cumulativement, altérer le régime hydrologique de l'écosystème des Grands Lacs.

OBJECTIF VISÉ

En acceptant la présente annexe, les gouverneurs des États et les premiers ministres des provinces du bassin des Grands Lacs réaffirment leur engagement envers les cinq grands principes mis de l'avant dans la Charte des Grands Lacs et confirment que les dispositions de la Charte demeurent en vigueur. Les gouverneurs et les premiers ministres s'engagent à mettre en œuvre les principes de la Charte en élaborant un mode de gestion de l'eau amélioré qui soit simple, durable et efficace, qui maintienne et respecte les pouvoirs exercés autour du bassin et, au premier chef, qui protège, conserve, restaure et améliore les eaux du bassin des Grands Lacs et les ressources naturelles qui en dépendent.

Les pouvoirs des États et des provinces doivent être permanents, exécutoires et conformes aux lois étatiques, provinciales et fédérales ainsi qu'aux traités qui leur sont respectivement applicables. À cette fin, et pour protéger adéquatement les ressources en eau et l'écosystème des Grands Lacs, les gouverneurs et les premiers ministres s'engagent à développer et à appliquer aux nouveaux projets de prélèvement d'eau du bassin des Grands Lacs une nouvelle norme commune de conservation basée sur la ressource. La norme portera également sur les projets d'augmentation des prélèvements existants et de la capacité existante de prélèvement d'eau du bassin des Grands Lacs.

DIRECTIVES

Les gouverneurs et les premiers ministres mettent de l'avant les directives suivantes pour concrétiser les principes de la Charte.

DIRECTIVE 1

Élaborer un ou plusieurs nouveaux accords obligatoires.

Les gouverneurs et les premiers ministres conviennent de préparer immédiatement un accord obligatoire touchant l'ensemble du bassin, formé par exemple d'une entente entre les États et d'un accord, protocole ou convention entre les États et les provinces, selon ce qui pourra être nécessaire à la réalisation d'un tel accord dans les trois années suivant la date d'entrée en vigueur de l'annexe. Cet accord aura pour but de confirmer l'objectif des gouverneurs et des premiers ministres consistant à protéger, à conserver, à restaurer, à améliorer et à gérer les eaux du bassin des Grands Lacs et les ressources naturelles qui en dépendent. Cet accord maintiendra les pouvoirs établis sur la gestion des eaux du bassin des Grands Lacs et viendra étayer et consolider la structure existante et les efforts collectifs de gestion déjà déployés par les diverses organisations gouvernementales dans le bassin des Grands Lacs.

DIRECTIVE 2

Élaborer un vaste programme de participation publique .

Les gouverneurs et les premiers ministres s'engagent au maintien d'un processus assurant une constante mise à contribution du public dans la préparation et à l'application de l'accord obligatoire prévu dans la présente annexe, notamment par la préparation périodique de rapports d'avancement destinés à la population.

DIRECTIVE 3

Établir une nouvelle norme régissant les décisions.

Le nouvel accord obligatoire établira une norme décisionnelle qu'utiliseront les États et les provinces pour examiner les nouveaux projets de prélèvement d'eau ainsi que les projets visant à accroître les prélèvements existants ou la capacité existante de prélèvement.

La nouvelle norme reposera sur les principes suivants :

- prévenir ou minimiser les pertes d'eau du bassin par la restitution d'eau prélevée et l'adoption de mesures de conservation de l'eau qui soient judicieuses sur le plan environnemental et économiquement réalisables;
- absence d'impacts significatifs, individuels ou cumulatifs, sur la quantité ou la qualité des eaux du bassin des Grands Lacs et des ressources naturelles qui en dépendent;
- amélioration des eaux du bassin des Grands Lacs et des ressources naturelles qui en dépendent;
- respect des lois étatiques, provinciales et fédérales ainsi que des traités applicables.

DIRECTIVE 4

Examen des projets en vertu de la «Water Resources Development Act» de 1986, §1109, 42 U.S.C. §1962d-20 (1986) (modifiée en 2000).

D'ici la finalisation de l'accord défini à la directive I, les gouverneurs des États riverains des Grands Lacs notifieront et consulteront les premiers ministres de l'Ontario et du Québec au sujet de toutes les propositions assujetties à la «Water Resources Development Act» de 1986 des États-Unis, §1109, 42 U.S.C. §1962d-20 (1986) (modifiée en 2000) (WRDA), à l'aide du processus de notification et de consultation

préalables prévu à la Charte. En procédant ainsi, les gouverneurs et les premiers ministres reconnaissent que les provinces canadiennes ne sont pas assujetties ou liées à la WRDA, et que les gouverneurs ne sont pas juridiquement liés par les commentaires des premiers ministres concernant les projets visés par la WRDA.

DIRECTIVE 5

Élaborer un système d'aide à la décision visant l'utilisation de la meilleure information disponible.

Les gouverneurs et les premiers ministres demandent que soit conçu un système de collecte de l'information, avec le soutien des organismes fédéraux compétents, qui aiderait les États et les provinces à appliquer la Charte, la présente annexe et tout nouvel accord. Ce système nécessitera une évaluation de l'information et des systèmes existants, une mise à jour complète des données sur les utilisations actuelles de l'eau, l'identification des besoins, l'adoption de mesures prévoyant une meilleure compréhension du rôle des eaux souterraines, et l'adoption d'un plan de mise en œuvre permanente.

DIRECTIVE 6

Autres engagements.

Les gouverneurs des États et les premiers ministres des provinces du bassin des Grands Lacs s'engagent par ailleurs à coordonner l'application et la surveillance de la Charte et de la présente annexe; à veiller, au besoin, à l'adoption et à l'application de législations créant des programmes pour gérer et régir les projets de prélèvement d'eau ou d'accroissement de prélèvements existants dans le bassin des Grands Lacs; à établir un processus de planification pour protéger, conserver, restaurer et améliorer les eaux du bassin des Grands Lacs et les ressources naturelles qui en dépendent; et à établir et à appliquer des mécanismes efficaces de prise de décision et de règlement des différends. Les gouverneurs et les premiers ministres s'engagent également à élaborer des directives régissant la mise en œuvre des moyens convenus pour promouvoir l'utilisation et la conservation efficaces des eaux du bassin des Grands Lacs relevant de leur juridiction respective, et à mettre au point un mécanisme pour évaluer les effets individuels et cumulatifs des prélèvements d'eau. Par ailleurs, les gouverneurs et les premiers ministres s'engagent à continuer d'améliorer les sources et l'utilisation de l'information scientifique concernant les eaux du bassin des Grands Lacs et les impacts sur l'écosystème des prélèvements en différents lieux et de différentes sources, et de mieux comprendre le rôle des eaux souterraines du bassin des Grands Lacs en coordonnant leurs activités de collecte et d'analyse des données. Enfin, les gouverneurs et les premiers ministres s'engagent à déterminer, dans le nouvel accord obligatoire, les seuils de prélèvement déclenchant des évaluations régionales et les critères à appliquer pour faciliter la définition des mesures acceptables pour l'amélioration des eaux du bassin des Grands Lacs et des ressources naturelles qui en dépendent.

DISPOSITIONS FINALES

La présente annexe entre en vigueur à compter du jour où elle a été signée par toutes les Parties. Les Parties ont signé la présente entente en double exemplaire, en anglais et en français, les deux textes faisant également foi.

DÉFINITIONS

Eaux du bassin des Grands Lacs (aussi appelées « ressources en eau du bassin des Grands Lacs » dans la Charte des Grands Lacs) : Grands Lacs et l'ensemble des ruisseaux, rivières, lacs, voies interlacustres et autres masses d'eau, y compris les eaux souterraines tributaires, situés dans le bassin des Grands Lacs.

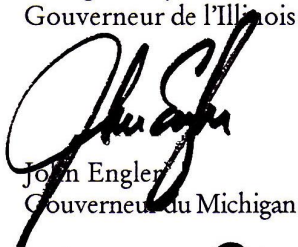
Ressources naturelles qui en dépendent : éléments interdépendants que sont la terre, l'eau et les organismes vivants touchés par les eaux du bassin des Grands Lacs.

Amélioration des eaux du bassin des Grands Lacs et des ressources naturelles qui en dépendent : effets bénéfiques et de rétablissement additionnels sur l'intégrité physique, chimique et biologique des eaux du bassin des Grands Lacs et des ressources naturelles qui en dépendent, engendrés par des mesures de conservation, de valorisation ou de restauration, ces mesures pouvant par exemple consister, mais sans s'y limiter, en une atténuation des impacts négatifs des prélèvements d'eau existants, la remise en état de secteurs où l'équilibre environnemental est fragile ou la mise en œuvre de mesures de conservation dans des secteurs ou des installations ne faisant pas partie du projet spécifique réalisé par le promoteur du prélèvement ou en son nom.

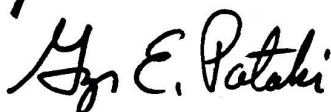
Signé et conclu le 18^e jour de juin 2001.



George H. Ryan
Gouverneur de l'Illinois



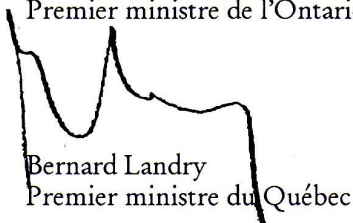
John Engler
Gouverneur du Michigan



George E. Pataki
Gouverneur de l'État de New York



Mike Harris
Premier ministre de l'Ontario



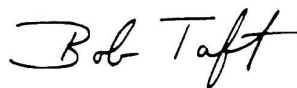
Bernard Landry
Premier ministre du Québec



Frank O'Bannon
Gouverneur de l'Indiana



Jesse Ventura
Gouverneur du Minnesota



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Gouverneur de l'Ohio



Tom Ridge
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CHAIRMAN
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