

Draft Annex Implementing Agreements Public Comments Summary

Over 10,000 comments were received by the Council of Great Lakes Governors during the 90-day public comment period which ran from July 19 through October 18, 2004. Because of the number of comments received, this overview is not intended to be comprehensive but rather to illustrate some of the general themes that were identified repeatedly. All public comments received are available in electronic form upon request.

Averaging Period

Comments called for changes to the averaging period—either to be lowered to 30 days or increased up to one year.

For example, many of the comments received from environmental groups, such as the Ohio Environmental Council, suggested that the averaging period should be lowered to 30 days in order to capture potential harm to the resource. Other groups that supported lowering the averaging period to 30 days included some municipal representatives such as the Great Lakes Cities Initiative and the Western Lake Superior Sanitary District. While most Tribes did not provide comments on the averaging issue, those that did, including the Bad River Band of Lake Superior Tribe of Chippewa Indians, asked for the averaging period to be reduced to 30 days as well.

On the other hand, representatives of agriculture, including the Ontario Federation of Agriculture and the Michigan Farm Bureau, wrote that a 120-day or longer averaging period should be used. These groups suggested that this time period would better reflect the seasonality of agricultural water use.

Representatives of the public water supply sector, including Ed Glatfelter of the Central Lake County Joint Action Water Agency (and member of the Advisory Committee), suggested yet another approach. He argued that public water supply use is of a cyclical nature occurring on an annual frequency. Therefore, it was suggested that the proposed averaging periods exaggerate public water supply use. He suggested that consideration should be given to an annual averaging period for this type of use.

Bottled Water

Many comments from members of the general public, including those sent in by David and Sally Fickes, for example, expressed great concern with allowing bottled water to be defined as a consumptive use. Several, including John F. Rohe for example, suggested a complete moratorium on new bottled water operations. In addition to concerns from the general public, others, including the Little Traverse Bay Bands of Odawa Indians, also opposed a blanket definition of bottled water as a consumptive use when it may be intended for consumption outside the Great Lakes Basin.

Conservation Requirements

Representatives from several environmental non-governmental organizations suggested that conservation requirements should apply to all uses. Some, including the Lake

Michigan Federation, suggested that clear water conservation goals and timelines should be articulated in the agreements.

Others, however, felt that limits should be placed on conservation requirements. Several comments received from agricultural representatives suggested that generally accepted practices for agriculture should satisfy conservation requirements. For example, the Michigan Farm Bureau noted that agricultural proposals that implement State or Province-approved water conservation measures should be considered to be in compliance with conservation and ecological impact requirements under the agreements.

Several representatives from industry, including, for example, the Alliance of Automobile Manufacturers, suggested that past water conservation efforts should be recognized. Others, including the National Association of Manufacturers suggested that although conservation should be encouraged, it should be voluntary for existing users and within the realm of standard technology for new users. Some, including BP Products of North America, expressed support for the idea of water conservation but wrote that they did not see a need to encourage it through permitting and enforcement as outlined in the draft agreements.

Consumptive Use versus Withdrawal Triggers for Review Thresholds

Opinions differed on whether review thresholds should be based on the amount of the consumptive use or withdrawal. For example, comments received by a number of representatives of industry, including the National Association of Manufacturers, suggested that review thresholds should recognize consumptive uses instead of being based on strict withdrawal amounts.

On the other hand, comments received from several environmental groups, including collective comments submitted by a group of environmental non-governmental organizations, suggested that all review thresholds (both jurisdictional and regional) should be based on withdrawal amounts.

Many representatives from the agricultural sector, such as the Illinois Farm Bureau, expressed concern about farmers' ability to accurately determine the amount of water that is lost to the Basin as a result of any particular use. For example, Illinois Farm Bureau wrote that the definition of consumptive use as it pertains to agriculture is not accurate and that a program based on water withdrawals would therefore not be realistic. They suggested that the goal for agriculture should be efficient use.

Definition of Diversion

Currently, the draft agreements consider transfers of water from one Great Lake Basin into another to be a diversion. Several comments suggested that this definition should be changed so that the definition of diversion is limited to transfers of water outside the Great Lakes Basin. Others felt strongly that this definition should remain unchanged.

Several representatives of municipalities, including the cities of Detroit and Midland, and a number of representatives of business, such as DuPont Engineering, suggested that

diversion criteria should not apply to transfers of water between Great Lakes watersheds that are within the larger Great Lakes Basin. Comments received from some representatives of agriculture, such as the Agricultural Partnership for Great Lakes Basin Conservation, also echoed this approach.

Alternatively, representatives from several environmental groups, including comments from the collective environmental non-governmental organizations, expressed praise for the current definition of diversions. These groups wrote that this type of approach would be an improvement on the definition of diversion in the original Great Lakes Charter. In particular, they suggested that the definition of diversion be expanded to include diversions between major rivers that are tributary to the Great Lakes or St. Lawrence River.

Diversions

Many comments supported a prohibition on diversions. Examples include Michigan Congressman Bart Stupak and the Little Traverse Bay Bands of Odawa Indians. On the other hand, several comments supported science-based decision making on diversions, arguing that this approach is more legally defensible.

The Illinois Diversion

While most comments received did not address the Illinois diversion, several comments were submitted on whether future increases to this diversion should be subject to the requirements of the agreements.

Several Illinois public water suppliers including, for example, the DuPage Water Commission, stated that the Illinois diversion must be recognized in the final Compact as an existing use. By extension, they argued that the Illinois diversion should remain under the continuing jurisdiction of the United States Supreme Court pursuant to the consent decree.

On the other hand, several comments, including those from the Canadian Environmental Law Association, said that Canadians should have a voice in any future requests to increase the Illinois diversion. They suggested that any future increases should be subject to the regional review process established in the draft agreements.

Representatives from a number of environmental groups, including the Nature Conservancy, also suggested that the Illinois diversion should be subject to the draft agreements. Their comments expressed concern that, under the draft agreements, the Illinois diversion would be the only existing diversion explicitly referenced and the only one that would be exempt from the review process established for increased uses.

Improvement

Many comments were submitted on the concept of improvement. Several comments suggested that the improvement requirement should be extended to apply to all withdrawals over the 100,000 gallons per day reporting level. For example, the comments of Ducks Unlimited suggested that extending this requirement to all

withdrawals would capitalize on the Annex 2001 principal of “no harm, conservation and improvement.” Although most Tribes/First Nations groups did not comment on improvement, those that did such as the Great Lakes Indian Fish and Wildlife Commission suggested that improvement should be retained in the agreements and the requirement should be expanded.

By contrast, many comments expressed concerns related to the proposed improvement requirement including comments received by industrial groups such as the Council of Great Lakes Industries. They suggested that clarifications are needed including how long an improvement must be maintained. Additionally, the Council of Great Lakes Industries expressed concern that the improvement requirement would commodify the resource by allowing diversions to occur at the “price” of improvement. Therefore, they suggested that this requirement be entirely removed from the agreements.

Comments received from several agricultural groups, such as the Michigan Farm Bureau, expressed support for the idea that in-Basin uses below the regional review threshold should not be required to implement improvements. They suggested that the benefits agriculture provides through, for example, increasing aquifer recharge and providing food and fiber to humankind should be considered adequate improvement.

Review Thresholds

A range of viewpoints was expressed regarding thresholds for reporting and review. Several comments called for threshold levels for regional review to be raised while others called for those thresholds to be lowered. A few comments provided recommendations on adjusting the reporting threshold level.

Several comments, including those submitted by the Great Lakes Cities Initiative, suggested that the threat to the watershed is the same from in-Basin uses and diversions. They suggested that the regional review threshold should be lowered to 1 million gallons per day for both in-Basin uses and diversions. Some comments, including those received by the New York Power Authority, expressed concern that the 1 million gallon per day regional review threshold for diversions included in the draft agreements could be viewed as a weakening of the Governors’ current authorities under the Water Resources Development Act. They recommended that this figure should not be increased any further than 1 million gallons per day.

New York State Assemblymen DiNapoli, Tokasz, Koon and Higgins, suggested that regional review thresholds for diversions and consumptive uses should be lowered from the levels included in the draft agreements. But, they recommended that existing municipal water supply facilities should not have to obtain regional approval for expansion.

On the other hand, several representatives of business and industry suggested that review thresholds should be raised. For example, DuPont Engineering suggested that the thresholds for regional review be raised to 10 to 25 million gallons per day for diversions and consumptive uses respectively. Other representatives from industry, including

Smurfit-Stone Container Corporation, suggested a 15 million gallons per day threshold for the regional review of diversions. Comments received from several agricultural groups, including the Agricultural Partnership for Great Lakes Basin Conservation, suggested that regional review thresholds for consumptive uses should remain at the currently proposed level of 5 million gallons per day or be raised even higher.

Several comments also related to reporting thresholds. For example, the City of Detroit suggested that the threshold for reporting be raised to from 100,000 gallons per day to 1 million gallons per day.

Scope of the Agreements

Several comments suggested that in-Basin consumptive uses should be regulated differently than proposed in the draft agreements. For example, the joint comments of Consumers Energy Company and the National Wildlife Federation, suggested that diversions and in-Basin uses are different in character. Therefore, they suggested that it is appropriate to review diversions regionally and to limit the review of in-Basin uses to the State or Provincial level. Other representatives of industry such as the Pennsylvania Chamber of Business and Industry suggested that while it may be appropriate for large-scale in-Basin use proposals to be reviewed and commented on, they did not believe it was necessary to do this on a regional basis.

Structure of the Regional Body

Several comments related to the structure of the regional body. Several comments expressed concern that the regional body may be structured in a way that the States would overrule the Provinces. This sentiment was expressed by, for example the City of Sarnia, Ontario, and the Council of Canadians. They suggested that it is imperative for the Federal governments to become involved with the development of any new water management system in order to create an equal footing between the two countries.

Others, including the City of Midland, Michigan, raised other concerns about voting equity. Because Michigan is the only State or Province that is nearly entirely within the Great Lakes Basin, the City suggested that the proposed voting structure is uneven and should be reconsidered. The comments from New York State Assemblymen DiNapoli, Tokasz, Koon and Higgins, for example, also expressed concern with how voting would be handled. The Assemblymen suggested that a clear rationale needs to be given for any voting structure. They suggested that the circumstances for allowing a State to abstain from a Compact Council vote should be clarified.

The Township of St. Clair suggested that that municipalities and local governments should be granted a joint seat at the table. Several Tribes/First Nations, such as the Chippewa Ottawa Resource Authority, demanded to be included as full partners on the newly developed Regional Body and Compact Council.

Tribes/First Nations

Many of the comments from Tribes/First Nations supported the protections in the agreements but expressed concern regarding the manner in which Tribes and First

Nations were engaged in the process. Most representatives from environmental non-governmental organizations did not offer specific comments related to Tribes/First Nations. But, in the joint submission of several groups, it was suggested that explicit language should be added to the agreements indicating that they are not intended to infringe upon the sovereignty and existing rights of any Tribe or First Nation.

It was also suggested by some groups, including the Chippewa Ottawa Resource Authority, that every sovereign Tribe and First Nation should be allowed to participate at the level of the States and Provinces, acknowledging Tribes and First Nations in a government-to-government manner. Comments including those submitted by the Nottawaseppi Huron Band of Potawatomi suggested that it is inappropriate to merely allow Tribes and First Nations to submit comments as members of the general public.