

FREQUENTLY ASKED QUESTIONS

Great Lakes Charter Annex Implementing Agreements

Q: Why were the Great Lakes Charter and the Great Lakes Charter Annex created?

A: The purpose of the Great Lakes Charter and the Great Lakes Charter Annex is to protect and conserve the waters of the Great Lakes Basin. The basin's waters are vital to Ontario's economy, environment and culture.

The charter was developed by Ontario, Quebec and the eight Great Lakes states in response to shared concerns about growing water use in the Great Lakes Basin and the potential negative effects of proposals to divert large quantities of water out of the basin. The annex was a response to renewed concerns about proposals to export water in bulk. The parties agreed to take steps to ensure the waters of the Great Lakes Basin are protected for future generations.

Q: How would the Great Lakes Charter Annex be implemented?

A: Two draft agreements were developed to carry out the commitments in the Great Lakes Charter Annex. The Great Lakes Basin Sustainable Water Resources Agreement is a draft good-faith agreement among the two provinces and eight states. The Great Lakes Basin Water Resources Compact is a draft binding agreement among the eight Great Lakes states.

Q: Did the draft implementing agreements reflect a consensus among all of the states and provinces?

A: No. The draft agreements were not final and did not represent unanimous consensus among the states and provinces. They were released so that citizens in Ontario, Quebec and the eight states could provide input on the agreements to their governments.

Q: Why did Ontario decide not to sign the agreements unless they were strengthened?

A: Ontario has listened to feedback from stakeholders, First Nations and the general public. Ontario has concerns about the level of protection in the draft agreements and is not prepared to ratify them in their current form. Ontarians, and the Ontario government, clearly want a "no diversions" agreement, or the position of "no net loss" as proposed by the International Joint Commission. Ontario is also seeking better conservation measures and more involvement of the public, First Nations and stakeholders.

Q: Doesn't Ontario already prohibit water transfers?

A: Yes. Ontario prohibited water transfers out of the province's three major water basins in 1999 and recently put in place tough new rules for water takings in the province. These laws will not change. Ontario took part in negotiations on the Charter Annex agreements so it could promote stronger regulation of water uses and diversions on the U.S. side of the Great Lakes.

Ontario's three water basins are the Great Lakes-St. Lawrence Basin, the Hudson Bay Basin, and the Nelson Basin.

Q: Won't the proposed agreements end a moratorium on diversions on the U.S. side of the Great Lakes Basin?

A: No, the United States does not have a moratorium on diversions out of the Great Lakes Basin. Under the U.S. Water Resources Development Act proposed diversions must be approved by each of the eight Great Lakes states. Two diversions have been approved under the Act since it was passed in 1986.

Q: What happens if the Great Lakes states are not willing to prohibit Great Lakes diversions or adopt the "no net loss" approach proposed by the International Joint Commission? Will Ontario walk away from the negotiations?

A: Ontario is not prepared to sign the agreements in their current form. It is still early in the process, and it would be inappropriate to resume negotiations with anything other than a positive attitude towards the outcome.

Q: What is the concept of "no net loss" proposed by the International Joint Commission?

A: The International Joint Commission has recommended that no removals of Great Lakes Basin water be permitted that would compromise the integrity of the Great Lakes Basin ecosystem. The standard proposed by the IJC is that there should be "no net loss" to the area from which the water is taken. No net loss is defined as no loss greater than 5 per cent – in other words, 95 per cent of water taken must be returned. The standard also specifies that the water be returned in a condition that protects the quality of Great Lakes waters and prevents the introduction of alien invasive species, and requires that there be no practical alternatives for obtaining the water, full consideration of the cumulative impacts of water withdrawals, effective conservation practices, and sound planning practices.

Q: Are the agreements binding?

A: The Great Lakes Basin Sustainable Water Resources Agreement among the provinces and states would be a non-binding, good-faith agreement. However, all 10 jurisdictions would modify their laws to implement the agreement. The Great Lakes Basin Water Resources Compact would be a binding agreement among the eight states that are parties to the Great Lakes Charter Annex.

Q: When would the agreements come into force?

A: Once the premiers and governors signed the final implementing agreements, each province and state would seek to develop or modify laws for its jurisdiction using the agreements as a foundation. In the United States, the U.S. Congress would also have to approve the binding compact among the states.

Q: Why is this a State-Provincial agreement? Shouldn't Canada and the U.S. negotiate a new binational treaty to protect Great Lakes waters?

A: If the Canadian federal government were to negotiate a binational treaty, it would have to deal directly with the U.S. federal government, which would have to represent the interests of water users across the continental United States, not just the Great Lakes states.

The U.S. Great Lakes states and Quebec share with Ontario many common interests on the use and protection of this valued resource. Other U.S. states may have an interest in accessing Great Lakes waters that will conflict with our desire to prevent diversions from the basin. Through this effort Ontario is seeking the strongest possible protections for our shared Great Lakes waters.

Q: Aren't the federal governments and the International Joint Commission responsible for Great Lakes water management?

A: Management of the Great Lakes Basin waters in Canada is a shared responsibility involving all levels of government as well as the International Joint Commission (IJC). Neither the federal nor the provincial governments have exclusive jurisdiction, but the provinces are responsible for the general management of waters within their borders.

The draft agreements recognize the authority of the federal governments and the IJC. Through the Boundary Waters Treaty, the federal government and the IJC have the authority to approve uses, obstructions and diversions of boundary waters that may affect water levels or flows. Their authority would apply only to large-scale removals and diversions directly from the Great Lakes themselves, but would not apply to the regulation of water uses or diversions from tributaries or groundwater, or to small-scale diversions.

Through the International Boundary Waters Treaty Act the Canadian federal government also prohibits bulk water removals out of boundary waters. This is consistent with Ontario's prohibition of water transfers out of the province's three major water basins.

Ontario will continue its dialogue with the federal government on the draft agreements to strengthen the coordination of our shared Great Lakes water management activities.

Q: Doesn't the Boundary Waters Treaty between Canada and the U.S. already prohibit water diversions out of the Great Lakes?

A: The Boundary Waters Treaty requires approval of the International Joint Commission for diversions of boundary waters that may affect water levels and flows.

In Canada, the treaty is reinforced by the International Boundary Waters Treaty Act that prohibits bulk removals out of boundary waters on the Canadian side. This prohibition does not apply to water diversions out of tributary rivers or groundwater and does not apply to diversions on the U.S. side of the basin.

Q: Don't these agreements grandfather some diversions that take excessive amounts of water out of the Great Lakes?

A: The currently drafted agreements would grandfather lawful existing water uses. Any existing users seeking new or increased amounts would be subject to the new standard.

Q: Will the agreements apply to potential future changes to major existing diversions like the Chicago Diversion?

A: Ontario is concerned about the Chicago Diversion. The existing Chicago Diversion is regulated by a decree of the United States Supreme Court. However, increases to existing diversions fall under the current draft state-provincial Annex agreement, and if a proposed increase is above the trigger level of 3.8 million litres per day (1 million gallons per day), then it will be subject to the regional review process. When it resumes negotiations, Ontario will be seeking the strongest possible protections for Great Lakes Basin waters through the prohibition of new or increased diversions or the IJC approach of no net loss.

Q: Wouldn't the proposed standards and the regional review process put an unnecessary regulatory burden on Ontario businesses and municipalities that require new or increased water withdrawals in the Great Lakes Basin?

A: The waters in the Great Lakes Basin are critical to the economic development of the region. Conserving and protecting the Great Lakes will help ensure there is enough water for future economic growth and business and residential use. It will also provide a healthy environment for residents of the Great Lakes Basin. Ontario already regulates water withdrawals. The draft agreements would commit all states and provinces in the Great Lakes Basin to regulate water withdrawals based on a new minimum standard.

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