

Technical Fact Sheet

Feuille de renseignements



Ministry of Natural Resources

Ministère des Richesses naturelles

December 13, 2005

COMPARISON OF FINAL ANNEX IMPLEMENTING AGREEMENTS AND DRAFT AGREEMENTS RELEASED IN JUNE 2005

In June 2005, Ontario released draft Great Lakes Charter Annex implementing agreements for public review. The draft agreements did not represent a consensus of the 10 Great Lakes states and provinces. In September 2005 Ontario returned to the negotiating table to seek consensus on final agreements that protect and conserve the waters of the Great Lakes-St. Lawrence River Basin. On December 13, 2005, final agreements were signed by the 10 premiers and governors. Here is how the final Annex agreements compare to the drafts released in June.

KEY ISSUES	JUNE 2005 DRAFT AGREEMENTS	FINAL ANNEX AGREEMENTS
Ban on water diversions (Article 200)	Ban on diversions with limited, strictly regulated exceptions based on environmental standard, plus additional restrictions	Ban on diversions, as in June 2005 draft
Exceptions to ban on diversions (Article 201)	<ul style="list-style-type: none"> No exemptions from return flow requirements of environmental standard, with no water from outside Basin to ensure no invasive species Exception from ban on diversions, subject to regulation based on environmental standard PLUS additional restrictions, for: Straddling communities (cities, towns that straddle Great Lakes-St. Lawrence River Basin boundary or boundary between two Great Lakes watersheds) Communities in straddling counties (cities, towns in counties that straddle Great Lakes-St. Lawrence River Basin boundary) Intra-basin transfers (water uses that cross the boundary between one Great Lake watershed and another Great Lake watershed) 	<p>As in June 2005 draft, except:</p> <ul style="list-style-type: none"> <u>New</u> overarching ecosystem integrity principle added to guide regional review of diversion exceptions (Article 500, par. 4) <u>New</u> substantive consideration of whether <u>or not</u> existing water use of a community in a Straddling County is derived from groundwater hydrologically interconnected to Basin waters (Article 201, par. 3) <u>New</u> diversion definition clarifies full range of potential means of diversion to be subject to prohibition (Article 103) <u>New</u>-Water use only permitted within the community boundary - defined when agreements come into force (Article 103, 201) <u>Maintained</u> -No exemptions from return flow requirements of environmental standard. <u>Modified</u> - Return of non-basin water not permitted unless part of a public water supply/wastewater system that co-mingles basin/non-basin water & only if treated to meet quality discharge standards, prevent invasive species and if basin water portion maximized (Article 201, par. 1a, 2b, 3b, 4c)
Intra-basin diversions (Article 201, par. 2)	<ul style="list-style-type: none"> Excepted from ban Only permitted if there are no reasonable alternatives in watershed where water is needed, and water is returned to source Great Lake watershed for larger transfers Flexibility for location of return flow only for smaller transfers Regulated based on environmental standard, with additional restrictions 	As in June 2005 draft

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Bulk Transfers (Article 207, par. 9)	<ul style="list-style-type: none"> • Water transfers in containers greater than 20 litres considered a diversion • Water transfers in containers 20 litres or less managed as a consumptive use 	<ul style="list-style-type: none"> ○ Water transfers in containers greater than 20 litres considered a diversion – as in June 2005 draft ○ States and provinces to determine how transfers in containers 20 litres or less will be treated – allowing jurisdictions to manage as a consumptive use or impose further regulations (Ontario regulates such consumptive uses under the Permit to Take Water Program and imposes restrictions in designated high use watersheds)
Illinois Diversion at Chicago (Article 207, par 10-14)	<ul style="list-style-type: none"> • Illinois withdrawal and diversion remain under authority of U.S. Supreme Court Decree (currently capped at 3200 cubic feet per second) • Formal input of Ontario, Quebec on any proposed modification of Supreme Court Decree • Illinois subject to all other provisions of the agreement (e.g., water management and conservation programs, information sharing, science, cumulative impact evaluation etc.) Illinois prohibited from seeking to withdraw basin water under agreements (e.g., through exceptions to ban on diversions) • A proposed diversion out of the territorial boundaries of the Great Lakes states and provinces would be subject to all terms of the agreement, including the prohibition of diversions 	As in June 2005 draft
Management and regulation of water withdrawals and consumptive uses (Articles 200, 205, 206)	<ul style="list-style-type: none"> • Management and regulation of withdrawals 100,000 gallons/day by states and provinces based on environmental standard • Up to 10-year phase-in for regulation of water withdrawals to allow jurisdictions that do not currently regulate water uses to establish programs • Proposals involving larger consumptive use subject to regional review. • Water management programs of states, provinces subject to a one-time regional review, one year after agreements in force 	<p>State/provincial flexibility in managing and regulating consumptive uses based on a modified environmental standard (see environmental standard):</p> <ul style="list-style-type: none"> ○ 100,000 gallon/day threshold for regulation replaced with 100,000 default threshold PLUS environmental criteria (Article 206, par. 1,2) ○ Proposals involving larger consumptive use subject to prior notice and comment by 10 jurisdictions rather than regional review (Article 205) ○ 5-year phase-in of regulation rather than 10-years (Article 709, par 3) ○ <u>New</u> accountability provisions: ○ New authority of regional body to recommend approaches to develop, enhance state/provincial programs (Article 300, par. 10) ○ New authority of regional body to review, make recommendations on programs including but not limited to thresholds for regulation, in recognition that programs will evolve (Article 206, par. 3) ○ Regional review of water management programs <u>now every 5 years</u> (Article 300)
Environmental standard (Article 201, par. 4; Article 203)	<ul style="list-style-type: none"> • Standard for all proposed diversions or withdrawals includes: • Conservation of existing supplies • Use limited to reasonable quantities • Water returned to source Great Lake watershed (some flexibility) - NO exemptions from return flow requirement, with NO supplementary water from outside the Basin permitted due to risk of invasive species; • No significant adverse or cumulative impacts • Water conservation measures <p>Compliance with applicable laws and agreements explicitly including the Boundary Waters Treaty</p>	<p>Two environmental standards:</p> <ul style="list-style-type: none"> • “Exceptions standard” (for proposed diversions excepted from ban) – as in June 2005 draft, except for recognition of co-mingled public water systems in return flow (see return flow) (Article 201, par. 4) • Standard for proposed withdrawals, consumptive uses within the basin modified to include “reasonable use” consideration that balances environmental, economic, social factors, including restoration of hydrologic conditions (Article 203)

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Return flow requirements (Articles 201, 203)	<ul style="list-style-type: none"> • For proposed diversions and withdrawals, water must be returned to source Great Lake watershed – with no exemptions • Some flexibility in location of return flow, e.g., for intra-basin transfers • NO supplementary water from outside the basin permitted due to risk of invasive species; • Flexibility in location of return flow only for smaller intra-basin transfers. Larger transfers must return all water back to source Great Lake watershed • Return flow requirements for diversions excepted from ban explicitly require compliance with all applicable water quality standards 	<ul style="list-style-type: none"> ○ As in June 2005 draft, except: ○ Return of non-basin water <u>not</u> permitted unless: <ul style="list-style-type: none"> ○ part of a public water supply/wastewater system that ○ co-mingles basin/non-basin water ○ discharge meets quality standards ○ treated to prevent invasive species and ○ basin water portion of return flow maximized and ○ non-basin water minimized
“Resource improvement”, restoration (Article 203, par. 5 f)	<ul style="list-style-type: none"> • Requirement for “resource improvement” project removed from standard due to risk of enabling “buying” approval for diversions by funding resource improvement • Replaced with broader commitment by states and provinces to Great Lakes restoration 	<ul style="list-style-type: none"> • As in June 2005 draft: • Broad commitment to restoration maintained (Articles 100, 304) • Resource improvement excluded from standard for exceptions to the prohibition on diversions (Article 201, par. 4) • Modified: • Modified standard for withdrawals, consumptive uses includes consideration of “reasonable use” which may consider whether a proposal restores “hydrologic conditions or functions” (e.g. enhanced groundwater recharge, wetland restoration to enhance hydrologic function- e.g. hurricane Katrina) (Article 203, par. 5 f)
Water conservation (Articles 300, 304)	<ul style="list-style-type: none"> • Environmental standard for new or increased water withdrawals and diversions requires conservation measures and conservation of existing water supplies • Broad commitment to conservation programs by states and provinces for existing and proposed water uses • Conservation programs subject to annual reporting • Strengthened commitment to conservation programs by states and provinces for existing and proposed water uses – including 5-year deadline for implementation; sharing of best management practices, performance standards, monitoring, research, etc. 	<ul style="list-style-type: none"> • As in June 2005 draft, maintains requirement for states, provinces to develop, implement program PLUS : • <u>New</u>-Regional, basin-wide goals, objectives to be completed within 2 yrs of signing (Article 304, par. 1) • Conservation programs by states and provinces to be completed <u>within 2 years</u> of agreements coming into force and to be consistent with the basin-wide goals and objectives (Article 304, par. 2) • <u>New</u>-Conservation programs now subject to regional review every 5 years by the regional body (Article 300)
Cumulative impact assessment (Article 209)	<ul style="list-style-type: none"> • Commitment to periodic regional assessment of cumulative impacts of water uses at least every 5 years or at request of one or more state/province, as foundation for review of minimum standard and its application • Cumulative impact evaluation part of environmental standard for proposed new or increased water withdrawals, diversions • Explicit recognition of climate change and precautionary approaches, use of up-to-date guidelines, development of evaluation mechanism • Commitment to review provisions for exceptions to ban on diversions as part of periodic cumulative impact assessment, resulting in withdrawal of exception provisions, more restrictive provisions, or maintenance of provisions 	<p>As in June 2005 with minor modifications to:</p> <ul style="list-style-type: none"> • Clarify the need for caution in the context of uncertainties such as climate change (“precautionary approach” terminology modified but intent remains) (Article 209, par. 4b) • Add reference adaptive management approach (par. 4c) • Clarify that cumulative impact assessment is the responsibility of the Parties (par. 5, 6) • Commit to building science, mechanisms for cumulative impact assessment as a component of a regional science strategy (see information and science) (Article 302, par. 2a,b)

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<p>Overarching principles of agreements (Preamble, Articles 100, 209, 500 par. 4)</p>	<p>Strengthened foundations of agreements including integrity of basin ecosystem; need for precautionary approaches in face of climate change uncertainties and cumulative effects; protection for future generations; recognition of commitment of Tribes and First Nations to protect Basin waters; recognition of Boundary Waters Treaty and role of federal governments & International Joint Commission</p>	<p>As in June 2005 draft, except:</p> <ul style="list-style-type: none"> • <u>New</u> overarching ecosystem integrity principle added to guide regional review of diversion exceptions (Article 500 par. 4) • “Precautionary approach” language modified, intent maintained, strengthened in places (preamble, Article 100 par. 1a, Article 201 par. 3e, Article 209 par 4 b/c, Article 500 par. 4) • Public trust principle returned to Compact • Adaptive Management principle added • “Climate change “ terminology modified in some places, maintained or added in others (preamble, Article 209 par.4 b/c, Article 500 par. 4)
<p>Relationship to Boundary Waters Treaty, federal governments, International Joint Commission (Preamble, Articles 201, 203, 701)</p>	<p>Agreement, standard 203 explicitly recognize authority of federal governments and International Joint Commission under Boundary Waters Treaty, which are unaffected and complemented by agreements</p>	<p>Maintained as in June 2005 draft</p>
<p>Regional Oversight (Articles 300, 302, 304, Chapters 4,5,6)</p>	<ul style="list-style-type: none"> • Agreements commit to creation of a “regional body” to oversee agreement. Among their roles are: <ul style="list-style-type: none"> ○ Review of regionally significant water use proposals based on the environmental standard plus additional restrictions ○ Resolution of disputes ○ Annual reporting of water management, conservation programs ○ One-time regional review of state/ provincial water management programs ○ Periodic review of environmental standard and its application based on cumulative impact assessment, including review of exceptions to the prohibition ○ Coordination of consultation with basin Tribes and First Nations and public review of regionally significant proposals ○ Issuing public declarations of the results of regional reviews of proposals and state/provincial programs ○ General replacement of regional oversight on proposed diversions with a virtual ban on diversions 	<p>As in June 2005 draft PLUS strengthened regional oversight related to:</p> <ul style="list-style-type: none"> • <u>New</u> overarching ecosystem integrity principle to guide regional review of diversion exceptions (Article 500, par. 4) • <u>New</u> Regional Science Strategy (Article 302) • Regional review and public declaration of finding on water management <u>& conservation programs every 5 years</u> (Article 300) • Regional conservation goals and objectives (Article 304, par 1) • Role of regional body in review of water management and conservation programs , recommendation of program improvements (Article 300, par. 10)
<p>Recognition and role of First Nations (Article 504)</p>	<ul style="list-style-type: none"> ○ Commitment to consult with Basin Tribes, First Nations on regionally significant proposals ○ Explicit recognition of Tribes and First Nations commitment to protection of Great Lakes-St. Lawrence River Basin waters ○ Parallel dialogue with First Nations, Tribes ongoing 	<p>As in June 2005 draft PLUS:</p> <ul style="list-style-type: none"> ○ <u>New</u> commitment to enable dialogue with and advice of tribes, First Nations to Regional Body (Article 504, par. 3) ○ <u>New</u> commitment to facilitate ongoing scientific and technical interaction and data exchange (Article 504, par. 3)
<p>Public Participation (Articles 503, 401 par. 8-12)</p>	<ul style="list-style-type: none"> ○ Commitment to public notice, participation in review of regionally significant proposals ○ Declarations of regional body made public ○ Meetings of regional body open to public, proceedings publicly accessible 	<p>As in June 2005 draft PLUS commitment that the following documents will be made public (Article 401, par 8):</p> <ul style="list-style-type: none"> ○ Water management, conservation program reports; ○ Cumulative impact assessments; ○ Declarations of findings on water management and conservation programs; ○ Regional Science Strategy

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Information and Science (Articles 301, 302)	<ul style="list-style-type: none"> • Commitment to: • Annual collection and sharing of information on water withdrawals and diversions • Mandatory annual water use reporting by water users • Collect information and develop a mechanism for cumulative impact evaluation • Periodic regional cumulative impact assessment • Gather information to improve the understanding of underground water and its relationship to the waters of the Great Lakes-St. Lawrence River Basin 	<p>As in June 2005 draft PLUS stronger commitment to science, including <u>new</u> regional Science Strategy (Article 302) that includes:</p> <ul style="list-style-type: none"> ○ Mechanisms, science to support periodic cumulative impact assessment ○ Knowledge of Basin water resources and role of groundwater ○ Research on conservation measures, best management practices
Enforcement (Articles 210, 600, 601) (Compact Article 7)	<ul style="list-style-type: none"> • Commitment to process for dispute resolution • State-provincial agreement to be implemented through enforceable domestic legislation • U.S. Interstate Compact binding and enforceable (e.g. judicial review by states themselves and by persons who are aggrieved by decision made under the Compact) Agreement commits to mechanisms to permit a state or province to seek judicial review of another state or province's decision with respect to a withdrawal that is subject to the standard under the Agreement 	Maintained as in June 2005 draft
U.S. Compact Vote (Compact Section 4.9)	<ul style="list-style-type: none"> • For U.S. diversion proposals (intra-basin transfers 5+ mgd, communities in straddling counties that meet exception criteria), the U.S. Compact requires vote by 8 Great Lakes Governors. One vote against proposal stops it (consistent with existing U.S. law). • No vote on consumptive uses proposals 	Maintained as in June 2005 draft

- 30 -

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