

# ANNEX 2001 – AN UPDATE

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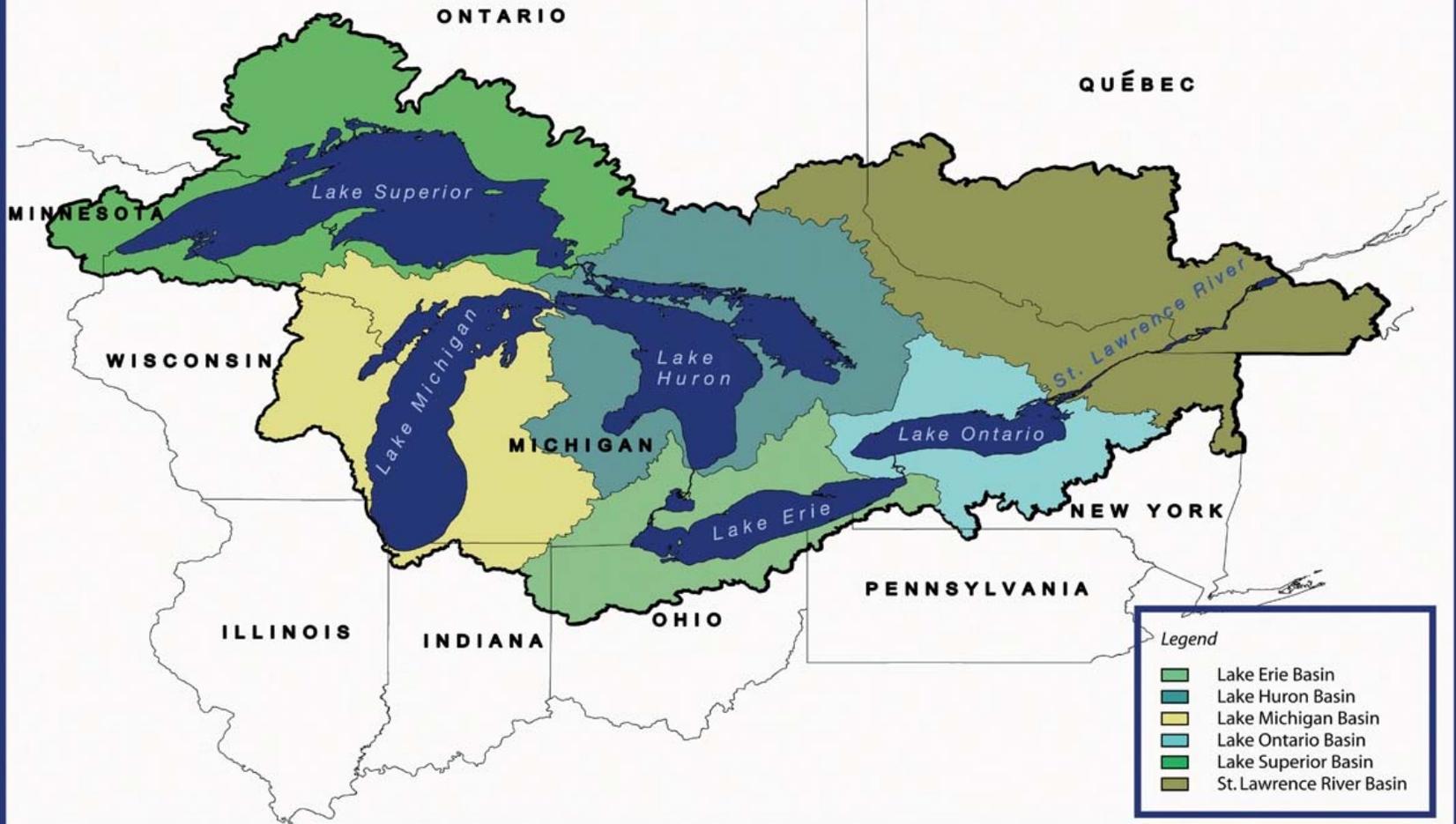
ILLINOIS



DEPARTMENT OF

NATURAL  
RESOURCES

# The Great Lakes Basin



# Timeline - Great Lakes Water Quantity Management

- 1909 - Boundary Waters Treaty
- 1930, 1967 and 1980 Illinois Diversion Consent Decrees
- 1985 - Great Lakes Charter
- Existing State/Provincial laws and programs



## **Timeline - continued**

- **1986 - U.S. federal statute (WRDA) prohibits diversion of Great Lakes water unless approved by Governors of all Great Lakes States**
- **1998 - Nova Group proposal**
- **1999 - Recurring lower lake levels/climate change**
- **2002 - Canada amends International Boundary Waters Treaty Act**

# Timeline - continued

- 20 years/4 proposals under the Charter and/or WRDA
  - Pleasant Prairie, Wisconsin
  - Lowell, Indiana
  - Akron, Ohio
  - Mud Creek, Michigan
- Dialogue with the Federal Governments
  - 2000 IJC reference
- Dialogue with the Tribes and First Nations

# Challenges With New Water Management Authority

- Requirements of GATT, NAFTA, WTO
- U.S. Constitution; Dormant Commerce Clause
- Potential vulnerability of State-only diversion bans

# Governors and Premiers Made a Commitment

- In October 1999 a commitment was made to create a common standard to protect the water resources
- Secure more funds to develop a better base of water use data



# Guiding Principles

- **Protect the Great Lakes Basin**
- **Be durable**
- **Be simple**
- **Be efficient**
- **Retain authority with  
Governors and Premiers**



# Annex 2001

- **June 18, 2001: Great Lakes Governors and Premiers of Ontario and Québec came together in Niagara Falls**
- **All 10 signed the Great Lakes Charter Annex 2001**
  - **To update the way Great Lakes Basin water withdrawals will be managed**
  - **To protect, conserve, restore and improve the Great Lakes water resources for future generations**



# Implementing the Annex

- All 10 jurisdictions have been working together for over 3 years to develop agreements to implement the Annex
- Advisory Committee, technical experts and federal government representatives have been participating
- Dialogue has been ongoing with Tribes and First Nations



# Details of the Draft Agreements

- **The Annex Implementing Agreements**
  - A good faith State-Provincial agreement
  - A compact for the States
- **Include a science-based standard to review diversions and in-basin consumptive uses**
- **Require water users to practice conservation**
- **Allow economic development while providing environmental protection**

## Details - continued

- The draft agreements are not intended to infringe on rights held by a Tribe or First Nation.
- The draft agreements are not intended to conflict with the International Boundary Waters Treaty.
- The draft agreements are being changed to reflect the comments received. That process is continuing and the draft agreements remain works in progress.

# State or Provincial Review

- New or increased diversions, and all new or increased withdrawals for in-basin use over 100,000 gallons per day, will be reviewed by the State or Province in which they originate
- All proposed uses reviewed by the States and Provinces must be consistent with the criteria in the decision making standard

# Criteria for Decision Making Standard

- No reasonable alternative including efficient use and conservation of existing supplies
- Limited to quantities reasonable for purpose
- Return flow
- Environmentally sound/economically feasible conservation measures
- No significant adverse impact
- Resource improvement (all diversions/conserves > 5mgd)
- Compliance with applicable

# Regional Review

- **New or increased diversions over 1 MGD will be subject to regional review**
- **New or increased consumptive uses over 5 MGD will be subject to regional review**

*Photo Courtesy Indiana Dunes National Lakeshore  
Lake Michigan National Park Service*



# Key Issues Discussed by Working Group

- Diversions
- Intra-basin diversions
- Consumptive uses
- Conservation
- Resource improvement
- Defining the ground water divide

# Key Issues Discussed by Working Group

- Historical diversions
- Federal, IJC role
- Averaging periods
- Cumulative impacts
- Notice, thresholds, regional review process
- Enforcement

# Diversions

Draft Agreements	Possible Alternatives
<ul style="list-style-type: none"><li>• Regulation based on common standard (e.g. return flow, improvement, conservation, no significant impacts)</li><li>• Regional review 1+ MGD (unanimous Compact vote - U.S. projects)</li><li>• Exemptions and exceptions (e.g. ballast, straddling communities)</li></ul>	<ul style="list-style-type: none"><li>• Prohibition with limited exceptions (e.g. ballast, straddling communities – manage as consumptive use)</li><li>• Partial prohibition &amp; no net loss</li><li>• Moratorium for X years with scientific study &amp; negotiation of new standard</li><li>• No net loss (95%-IJC; 100%)</li></ul>

# Intra-Basin Diversions

Draft Agreements	Possible Alternatives
<ul style="list-style-type: none"><li>• Regulation based on common standard</li><li>• Regional review 1+ MGD (unanimous Compact vote - U.S. projects)</li><li>• Some flexibility in defining intra-basin diversions e.g. straddling communities, connecting channels</li></ul>	<ul style="list-style-type: none"><li>• Prohibition with limited exceptions</li><li>• Partial prohibition &amp; no net loss</li><li>• Moratorium for X years with scientific study &amp; negotiation of new standard</li><li>• No net loss (95%-IJC; 100%)</li><li>• Management as</li></ul>

# In-Basin Consumptive Uses

Draft Agreements	Possible Alternatives
<ul style="list-style-type: none"><li>• Regulation based on common standard</li><li>• Regional review 5+ MGD (Super-majority Compact vote - U.S. projects)</li></ul>	<ul style="list-style-type: none"><li>• Regional review for large consumptive uses</li><li>• Prior Notice and Consultation - regional review <u>if</u> requested</li><li>• PNC - regional review hybrid</li><li>• PNC only</li><li>• State/Provincial regulation only - regional review of jurisdictional programs only</li></ul>

# Conservation

## Draft Agreements

- Conservation 'plan' for proposals that trigger regional review
- Conservation 'measures' for other proposed withdrawals
- No reasonable alternative, including conservation of existing water supplies
- Jurisdictional conservation programs - subject to

## Possible Alternatives

- Stricter requirements, ie. Best available technology, emphasis on saving water vs. cost
- Less specificity, more flexibility at jurisdictional level - proposals consistent with jurisdictional plan

# Resource Improvement

Draft Agreements	Possible Alternatives
<ul style="list-style-type: none"><li>• Resource improvement project required for <u>all</u> diversions and for consumptive uses that trigger regional review</li><li>• Preference for hydrologic improvements</li></ul>	<ul style="list-style-type: none"><li>• Broader basin-wide commitment to restoration</li><li>• Link to water conservation</li><li>• Scale to cost of project</li><li>• Make voluntary</li><li>• Defer - to allow for further research</li><li>• Remove from standard</li></ul>

# Defining Ground Water Divide

## Draft Agreements

- Ground water & surface water divides defined as coterminous initially
- To be updated as scientific understanding of ground water flows improves

## Possible Alternatives

- Ground water & surface water divides defined as coterminous permanently
- Commitment to modify divides after X years
- Commitment to study, revisit issue every X years

# Next Steps

- Public comments reviewed and discussed
- The Working Group will consider comments and revise draft agreements, additional public review
- Agreements presented to Great Lakes Governors and Premiers
- Interstate compact approved by Congress and the States
- Provincial implementation



# Annex Implementing Agreements Results

- Promote sustainable water withdrawals
- Stand as guiding principles to protect the waters of Great Lakes Basin now and in the future
- Provide necessary framework to help States and Provinces pass legislation that will protect the Great Lakes Basin



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