

TESTIMONY
Samuel W. Speck
Chair, Council of Great Lakes Governors Water Management Working Group
Director, Ohio Department of Natural Resources

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Thank you for the opportunity to testify before the U.S. Senate Committee on Environment and Public Works. This morning I would like to share with you what the Great Lakes Governors and Premiers are doing to protect the waters of the Great Lakes and keep management of those waters in the Great Lakes Basin.

As you are aware, Ohio's Governor Bob Taft is the current Chair of the Council of Great Lakes Governors. I am appearing in my role as Chair of the Council's Water Management Working Group and as Director of the Ohio Department of Natural Resources. I also serve the Great Lakes Commission as its current Chair. Michael Donahue, President/CEO of the Great Lakes Commission, recently submitted testimony regarding the work of the Commission at the July 16 hearing of the U.S. Senate Subcommittee on Oversight of Government Management. I will summarize my remarks and would request that my full written testimony be submitted for the record.

The Council's Water Management Working Group is at a critical stage in the efforts of the eight Great Lakes States and two Provinces to strengthen our collective means for protecting the waters of the Great Lakes Basin. The Working Group is developing a new resource-based decision making standard for diversions and consumptive uses of Basin water in accordance with the Great Lakes Charter Annex.

The region's Governors are pleased with the leadership Congress has shown in recognizing the critical importance of the Great Lakes and the pressing need to restore and safeguard them for generations to come. We particularly commend Senators DeWine, Levin, and you, Senator Voinovich, for the introduction of Senate Bill 1398. The Council of Great Lakes Governors believes that the bills now pending in the House and Senate offer an opportunity to focus much-needed financial resources on priority needs. What is important in the near term is continuing the focus on restoration efforts, and Senate Bill 1398 does just that.

Nearly two decades ago, our States jointly formed the Council of Great Lakes Governors, in part to fulfill our lead responsibilities as stewards of the Great Lakes Basin's water resources and in recognition of the tremendous ecological, economic and social benefits they provide. The Great Lakes Governors and Premiers have continued to provide leadership on Great Lakes issues including the following:

- Creation of the Great Lakes Charter in 1985 to provide a framework for managing the Basin waters;
- Use of the Water Resources Development Act (WRDA) of 1986 as a tool to protect the Basin water resources;

- Commitment made in 1999 to develop a new agreement which would bind the States and Provinces more closely to collectively plan, manage and make Great Lakes water usage decisions;
- Adoption of the Annex in 2001, an amendment to the Great Lakes Charter to further the principles of the Charter;
- Formation of the Council's Great Lakes Priorities Task Force chaired by Ohio Environmental Protection Agency Director Chris Jones; and,
- Continuation of the Council's Water Management Working Group to develop the agreements called for in the Annex, which is the focus of my testimony today.

Overview of the Great Lakes Charter Annex

In 1985, the Great Lakes Governors and Premiers created the Great Lakes Charter to provide a framework for managing the waters of the Great Lakes Basin. This is a good-faith agreement involving prior notice and consultation on large diversions and uses within the Basin exceeding five million gallons per day (MGD). Further, it outlines a commitment to develop programs to manage diversions and consumptive uses.

The next year (1986), Congress enacted WRDA, recognizing the Governors' central role in protecting Great Lakes Basin water resources. WRDA does the following:

- Prohibits diversions unless approved by all eight Great Lakes States Governors;
- Allows a veto without standards;
- Regulates first drop (no threshold);
- As U.S. Federal law, does not include the Provinces regarding decisions; and,
- Addresses diversions, not in-Basin consumptive uses.

In addition, there is a question whether ground water is included in WRDA.

In 1998, a proposal by the Nova Group, Inc. to export bulk water from the Ontario waters of Lake Superior to the Far East caused the State, Provincial, and federal governments to react with calls to re-examine the strength and adequacy of the legal foundations for water management authorities.

Starting in 1999, water levels in the Great Lakes – which had been atypically high for much of the preceding 30 years – fell considerably as cyclical patterns took effect. While the recent, lower water levels are in fact close to the historic average, the public's perception of dramatic loss has given added impetus to concern about the future of our Great Lakes water resources.

At their annual meeting in Cleveland in October 1999, the Great Lakes Governors and Premiers committed to:

- Developing a new agreement and standard which would bind the Great Lakes States and Provinces more closely to collectively plan, manage and make decisions.
- Securing funds to develop a better base of water use data necessary to make sound decisions.

The Governors and Premiers further stated that the agreement should reflect the following principles:

- Protect the resource;
- Be durable;
- Be simple;
- Be efficient; and,

- In particular, they wanted to retain authority within the Basin to manage the waters based upon resource protection principles.

The Governors' and Premiers' leadership role was recognized in the 2000 International Joint Commission report which recommended maintaining and strengthening the authority of the Governors/Premiers regarding management of Great Lakes waters. The WRDA 2000 amendment also promoted partnership with the Canadian Provinces and encouraged the Great Lakes Governors to develop and implement a mechanism that provides a common standard for decision making.

On June 18, 2001, the Governors and Premiers adopted the Annex to the Great Lakes Charter. In the Annex, they committed themselves to move forward on a number of fronts.

In contrast to WRDA, this initiative under the Annex has the following provisions:

- Requires the use of a common resource-based standard;
- Includes the Canadian Provinces of Ontario and Quebec in all regional decision making;
- Includes the application of a new standard for in-Basin consumptive uses, not just diversions;
- Includes ground water; and,
- Commits to improve the sources and applications of scientific information regarding the management of the Waters of the Great Lakes Basin.

The Annex includes a set of directives to further the principles of the Charter:

- First, create a new resource-based decision making standard to review new proposals to withdraw water from the Great Lakes Basin.
- Second, draft Basin-wide binding agreements such as an interstate compact and a State-Provincial agreement.
- Third, is a call for the design of a decision support system to include an assessment of available information, update data on existing water uses, identify additional needs and develop a plan to implement an ongoing support system.
- Fourth, a commitment was made to ensure ongoing public input in the preparation and implementation of the agreements.
- Fifth, further commitments were made to improve scientific information, including the role of ground water.

The Water Management Working Group has been working together with an Advisory Committee and Resource Group over the past two years to implement the Annex through Basin-wide agreements including a new decision making standard. The Advisory Committee represents diverse stakeholder interests from about 26 large regional/national organizations representing agricultural, environmental, industrial, municipal, shipping, recreational, manufacturing, and utility groups. In addition, stakeholder interests from governmental and quasi-governmental organizations are also involved through a Resource Group and as invited Observers.

Draft Decision Making Framework

A decision making framework is being developed which includes a two-tier review structure. Under the framework being discussed, new or increased diversions or consumptive uses exceeding a regional review threshold level of three MGD would be reviewed by all ten jurisdictions. Proposals that do not exceed the regional review threshold level would be reviewed using a common resource-based standard by the individual State or Province in which

the diversion or consumptive use is proposed. The draft framework continues to be discussed and revised.

Draft decision making criteria being discussed that will be used for review of diversions and consumptive uses are consistent with the following Annex principles:

- Preventing or minimizing Basin water loss through return flow and implementation of environmentally sound and economically feasible water conservation measures.
- No significant adverse individual or cumulative impact to the quantity or quality of the waters and water dependent natural resources of the Great Lakes Basin.
- An improvement to the waters and water dependent natural resources of the Basin. An improvement means an additional beneficial, restorative effect to the physical, chemical, and biological integrity of the waters and water dependent natural resources.
- Compliance with all applicable state, provincial, federal, and international laws and treaties.

The resource improvement requirement is unique with no similar standard in existence which we can use as a model. Mitigation of impacts associated with a withdrawal are not being considered as an improvement. An improvement could be based on hydrologic conditions, water quality or habitat. Most likely, hydrologic improvements will be preferred.

The issue of how to address out-of-Basin diversions is a critical issue for the States and Provinces, yet there are many diverse views on this. For example, Ohio has several communities that straddle the Great Lakes Basin drainage divide. Flexibility is needed to allow these communities to serve their citizens in areas immediately adjacent to the Basin divide where adequate quantities of potable quality water are not available. Yet, Ontario and Quebec have enacted legislation that largely prohibits diversions. The challenge is to craft agreements that will be acceptable to all the jurisdictions and meet the intent of the Annex.

Timeline

The Governors and Premiers agreed to create the necessary agreements within three years of the effective date of the Annex, in other words, by June of 2004. The Water Management Working Group is on schedule and its goal is to release draft documents for public review later this year. Consensus takes patience and we must allow ourselves adequate time to craft agreements acceptable to all ten jurisdictions.

Regardless of the timeline, a flexible agreement must be drafted that will allow for the incorporation of new scientific information into the decision making process. For example, in many areas we do not currently know where the Basin ground water divides are relative to the surface water divides.

Conclusion

The Annex will be attempting to do something that has never been done before. We are trying to protect 20% of the world's fresh surface water, not on a basis of economic protection, but on protection of the resource.

In reality, there are so many competing and conflicting interests that the only way it will be accomplished is through partnerships. It will not be enough to simply have State-Provincial partnerships but federal governments, local communities, NGOs and the private sector will also need to be included. The water management regime we develop will show how an effective

partnership can protect one of the world's greatest natural resources and may be used by others as a model in the future.