

Citizens Advisory Council

to the Department of Environmental Protection

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Please Note: Our New Fax Number is 717-772-5748

February 27, 2001

Ms. Irene Brooks
Director
Office of River Basin Cooperation
15th Floor – Rachel Carson State Office Building
Harrisburg, PA 17105

Dear Ms Brooks:

The Citizens Advisory Council¹ to the Pennsylvania Department of Environmental Protection has reviewed Annex 2001, the proposed amendment to the Great Lakes Charter of 1985. The Annex is consistent with the Charter's finding that:

“...without careful and prudent management, the future development of diversions and consumptive uses of the water resources of the Great Lakes Basin may have significant adverse impacts on the environment, economy and welfare of the Great Lakes region.”

Annex 2001 moves toward such an agreement on water management in the Great Lakes basin. It is an excellent first step, and we applaud the principles laid out in the Annex 2001, with a few caveats, as laid out below.

1. While we recognize the administrative advantages of using a de minimis threshold, we question how the 1 million gallons per day proposed in the Annex was derived. Utilizing a de minimis sets a precedent that should not proceed without a sound scientific basis.
 - What is the scientific basis of using a de minimis level of 1 million gallons per day? At 75 gpd as an average per capita use, 1 million gpd would serve a population of over 13,000, a not insignificant sized community. Can this same threshold be used throughout the basin, or might it need to vary from lake to lake based on differing recharge rates?
 - We assume that because the Great Lakes Charter includes tributaries in its definition of Great Lakes Basin water resources, that the Annex and resulting agreement will also include tributaries. Will the de minimis apply to diversions from tributaries as well?
 - We note that this is a substantial step back from current authority under the Water Resources Development Act (WRDA) of 1986, which requires unanimous approval by all of the Council of Great Lakes Governors for any bulk export or diversion of waters from the basin.

¹ The Citizens Advisory Council to the Pennsylvania Department of Environmental Protection was legislatively created in 1971. The Council is charged with reviewing all environmental laws of the Commonwealth and making appropriate suggestions for the revision, modification and codification of these laws.



- We assume that a de minimis threshold will be used in the final agreement; is 1 million gallons per day expected to be the amount used in the final agreement?
 - Clear criteria are needed if this approach is to proceed, including a provision requiring analysis of the cumulative impact of diversions and consumptive uses, and providing for health and safety variances.
 - Annex 2001, if approved, will be in effect for up to 3 years while the final agreement is negotiated. If a final agreement is not reached, do we revert to WRDA?
2. We also question whether the Governors have reviewed the cumulative impact of such withdrawals on the Great Lakes ecosystem. As stated in Principle III of the Charter:
- “The signatory States and Provinces agree that new or increased diversions and consumptive uses of Great Lakes Basin water resources are of serious concern...It is the intent of the signatory states and provinces that diversions of Basin water resources will not be allowed if individually or cumulatively they would have any significant adverse impacts on lake levels, in-basin uses, and the Great Lakes Ecosystem.”
- The de minimis exemption sets a precedent and opens a loophole that could lead to serious water loss, and the cumulative impact of this exemption could be dramatic. What is the projected cumulative impact of de minimis withdrawals over the next 10-20 years?
 - Has consideration been given to limiting the number of de minimis withdrawals that will be allowed in each lake before the exemption is no longer available?
 - Has consideration been given to the environmental impact of the infrastructure and construction needed to implement even a de minimis withdrawal? What will be the cumulative impact of such construction in addition to the impact caused by the actual loss of water?
3. Pennsylvania has made significant strides in empowering its citizens to assist in restoring and protecting their watersheds, and in providing local governments with the tools needed to plan for local land uses. How will Annex 2001 affect Pennsylvania land use policy, goals and objectives laid out by the 21st Century Environment Commission and ensuing programs and policies?
- Annex 2001 and the final agreement should contain a commitment to develop an overall strategy for restoring and protecting the Great Lakes ecosystem, to guide improvement measures, not just let them develop ad hoc.
 - Annex 2001 and the final agreement should address the diversion issue in terms of sustainable growth. How much regional growth can be sustained by the resource? Conversely, how much water can be diverted without adversely affecting the region and the integrity of the Great Lakes ecosystem?
 - The Annex and the final agreement should integrate water supply and water quality considerations, especially in light of existing water agreements already in place in the basin.
4. The Charter's stated purpose is "...to conserve the levels and flows of the Great Lakes and their tributary and connecting waters; to protect and conserve the environmental balance of the Great Lakes Basin ecosystem; ..." Principle I includes a statement that "In managing great Lakes Basin waters, the natural resources and ecosystem of the Basin should be considered as a unified whole." However current water use laws prevent harm

only to other human uses of water, with little consideration for the effects of water use projects on plant or animal life.

Annex 2001 as currently drafted will include a standard that no jurisdiction will allow a new/increased withdrawal (above the de minimis) unless the applicant establishes that its proposal, together with the applicant's existing use:

- Includes implementation of all reasonable and appropriate water conservation measures; and
- Does not, individually or cumulatively, together with current basin-wide water uses, cause significant adverse impact to the quantity or quality of the waters and water dependent natural resources of the basin; and
- Results in an Improvement to the Waters and Water Dependent Natural Resources of the Basins, and
- Complies with all applicable laws.

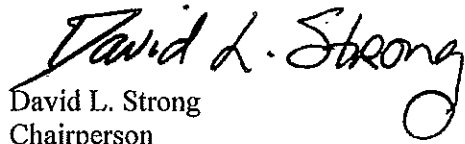
These standards will go a long way towards protecting the ecology of the basin. Provisions #2 and #3 not only prohibit significant harm by a water use proposal, but assure that improvements are focused on the water system itself, not ancillary, unrelated efforts.

We believe that the water conservation provisions could be stronger and require maximum achievable rather than reasonable and appropriate conservation before new/increased uses are considered. In addition, the Annex and final agreement should address the full range of human actions that damage the water system and its natural resources, not just withdrawals.

5. Ongoing public involvement in negotiating the final agreement, and the public education such involvement will require, is essential for the final agreement to truly protect the lakes, be understood by the public and ultimately be passed into law in every state and province. Ongoing public involvement is also necessary in individual permit decisions related to water withdrawals and other activities which affect the water resource of the basin.
6. We note that an Environmental Impact Statement may be required under the National Environmental Policy Act because of the Annex's relationship to the Water Resources Development Act.

We appreciate the opportunity to comment on this important agreement. Council requests that DEP report back at an upcoming Council meeting on the progress of the agreement, and on what other states and commenters had to say. If you have any questions, please contact Sue Wilson, Council's Executive Director at 717 787-4527 or email Suswilson@state.pa.us.

Sincerely,


David L. Strong
Chairperson