

The Future of the Great Lakes Water Quality Agreement: The ENGO Perspective

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Erie County Environmental Coalition • Friends of Milwaukee Rivers
Friends of Whiskey Island • Georgian Bay Association
Great Lakes Aquatic Habitat Network and Fund • Great Lakes United
Illinois Council of Trout Unlimited • Indiana Toxics Caucus
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Lake Erie Region Conservancy • Lake Ontario Waterkeeper • Lighthouse Point
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In response to the Binational Executive Committee's (BEC) invitation to comment on their draft review of the Canada-U.S. Great Lakes Water Quality Agreement (GLWQA), the sixty-four groups who submit this brief congratulate the members of the binational Agreement Review Committee (ARC) for pulling together a summary that we believe fairly reflects the discussions carried out during 2006.

Therefore, in this brief, instead of focusing on the ARC document, we present our preliminary position on revision of the Agreement. As the review and possible renegotiation continues over the next couple of years, we will present more details on these policy directions.

1. We support opening up the GLWQA to revitalize it, provided the governments make a commitment not to weaken provisions currently in the Agreement.

The GLWQA has made a very significant contribution over the past 35 years to improving environmental conditions in the Great Lakes. We believe, however, that the GLWQA needs to be revitalized because it is now less of a driver of Great Lakes programs than it previously was. Certain provisions are out of date and new understandings of some of the problems have arisen. In addition, the governments are paying less attention to the Agreement than they previously did.

Therefore, we believe that the GLWQA should be revised.

However, we do not believe the existing Agreement should be abandoned and replaced by a completely new agreement. Many important provisions of the GLWQA have not yet been fully implemented. In addition, the principles stated in the Agreement, such as ecosystem, virtual elimination and zero discharge, are as vital now as when they were first put into the Agreement. Therefore, if the governments decide to open up the Agreement, they should make a commitment not to weaken any of the provisions currently in it.

2. The governments should commit to full public involvement in any significant decisions regarding changes to the GLWQA, including:

- **An opportunity to comment on advice from Environment Canada and the U.S. Environmental Protection Agency to Foreign Affairs and International Trade Canada (DFAIT) and the U.S. Department of State**
- **An opportunity to comment on preliminary positions of DFAIT and State Department**
- **Formal public hearings on a complete draft of proposed revisions to the Agreement, if it is revised**
- **Formal status as observers at the negotiating table during negotiations.**

Thus far, this review of the GLWQA has been conducted in an open manner. In the fall of 2005, the International Joint Commission (IJC) held fourteen public meetings and estimates that 4,100 people participated in their process. Throughout 2006, the governments chaired nine review working groups; they estimate that 350 people participated in those groups.

In their draft review report, the ARC recommends that the “public should be consulted in any revision of the Agreement.” The consultation processes thus far have not been based on government proposals for possible revisions. Thus, while very welcome, public involvement opportunities to date are far less important than those requested above. The decisions over the next couple of years will be the critical ones in determining whether to revise the Agreement and the content of any revised Agreement.

Therefore, we urge the governments to make specific commitments—now, before the first key government steps are taken—as to the opportunities that will be provided for input.

The four mechanisms provided in our recommendation are the minimum that we urge the governments to commit to. These mechanisms have precedents in the last revision of the GLWQA, in 1987. Among other steps, Environment Canada held three public meetings on the Canadian side of the Great Lakes basin on the draft amended agreement; the U.S. EPA held four public meetings on a similar document. In addition, five environmental non-government representatives were appointed as official observers to the negotiations and directly participated in the discussions during the formal bilateral negotiating session.

3. As part of the review, the governments should ensure that a neutral, professional, detailed assessment of progress and performance under the Agreement is carried out before decisions are made on how to proceed with revitalization of the Agreement.

Since June 2004, we have been urging BEC to ensure that a detailed independent review of the GLWQA is carried out. The review working group process has not replaced the need for such a review. The ARC report is based on the extensive knowledge of the many people on the conference calls. But that knowledge was not always comprehensive and the varying levels of expertise on the calls were not conducive to the detailed discussion necessary for the ARC report to be said to constitute an expert review. The ARC report did not include a detailed assessment of what progress was achieved and not achieved under each section of the Agreement; nor does it include neutral professional judgments on the appropriate future direction of the Agreement.

The study conducted by the National Research Council of the United States and The Royal Society of Canada prior to the amendment of the Agreement in 1987 is frequently referred to as an essential input into that review and renegotiation process. Twenty years have passed since that independent review so a similar new review is needed. Many are now talking about amendments to the Agreement that are more extensive than those in 1987. Surely this means that another independent study such as the one prior to 1987 is essential.

4. Regarding the scope of the GLWQA, we recommend that the governments adopt the recommendation of the IJC: “The Agreement’s focus should remain on water quality, but take account of a broader array of stressors that impact on it.”¹

There is considerable discussion as to whether the scope of the Agreement should be changed and on the extent of any such changes. Some have proposed that it become a Great Lakes Ecosystem Agreement, which would address all environmental issues in the basin. Others have

¹ International Joint Commission, *Advice to Governments on their Review of the Great Lakes Water Quality Agreement*, August 2006, p. 11

proposed that it become a Great Lakes Sustainability Agreement, which would balance social, economic and environmental considerations.

We believe that the GLWQA should not become the only or even the prime agreement for addressing Great Lakes issues. We fear that an agreement that tried to address all issues would become an agreement that would be so dense and expansive that it would be impossible to implement and would wash out any focus, or be so general in nature as to be non-specific and, as a result, useless. In addition, there are other existing agreements, such as the Convention on Great Lakes Fisheries, and potential agreements that have valuable roles to play. We believe that, provided there is communication amongst those implementing these various agreements, it is best to keep each agreement separate and more focused.

Therefore, we recommend that the GLWQA retain its focus on water quality, but with a somewhat broader view of what impacts water quality.

The understanding by scientists and policy makers of the factors affecting water quality has increased since the Agreement was last revised. Therefore, we recommend that the GLWQA be revised to add new stressors or to reflect a better understanding of stressors already in the Agreement. The stressors that we believe should be added or given a greater emphasis include: invasive species, pollutants of recent concern (endocrine disruptors, carcinogens, neuro-developmental toxicants, flame retardants, pharmaceuticals, phthalates, perfluorinated compounds, perfluorooctane sulfonate, bisphenol A, nanoparticles), air pollution from sources beyond the Great Lakes basin, radionuclides, groundwater pollution, fish farms, intensive agricultural operations, urban development, water levels, and climate change.

5. The GLWQA should be revised to include the entire St. Lawrence River.

Currently the GLWQA includes the St. Lawrence River only up to the point where it ceases to be the border between Canada and the U.S., which is near Cornwall and Massena. This is inconsistent with the ecosystem approach in the GLWQA. Therefore, we urge that the entire St. Lawrence River be included in the Agreement.

The Agreement is based on the Boundary Waters Treaty of 1909. As a result, some argue that the Agreement can apply only to boundary waters, which means that the St. Lawrence River cannot be included once it passes Cornwall-Massena and is wholly located within Canada. However, Lake Michigan, which is wholly within the United States, is already included in the Agreement as it is part of the Great Lakes Basin ecosystem. Therefore, it is inconsistent to artificially chop off the ecosystem part way down the St. Lawrence River.

6. New principles and approaches should be added to or expanded in the Agreement.

Prevention

It is now well recognized that prevention is both more effective and less expensive than remediation in protecting human and ecosystem health. Prevention should be a key principle in any revised Agreement.

In order to achieve a preventive approach, the precautionary approach and reverse onus should

be added to the GLWQA. The precautionary approach is the “principle of taking a cautious, environmentally conservative approach to avoid and prevent pollution, according to threats of serious or irreversible damage, even with a lack of full scientific certainty.”² Reverse onus is “a concept to require the producer, user or discharger of a substance to demonstrate that neither the substance nor its degradation products or byproducts are likely to pose a threat to the ecosystem.”³

Watershed approach

The watershed approach should also be given much more emphasis in the Agreement. A watershed approach focused on the major tributaries to the Great Lakes should be the core organizing mechanism for protecting the waters of the Great Lakes because it is through these tributaries that many of the stressors enter the Great Lakes and St. Lawrence River.

7. New science provisions should be added to the GLWQA, including:

- **Identifying indicators for the various goals in the Agreement**
- **Commitment by the governments to gather enough data to be able to report on status of these indicators**
- **Supporting research that will give warnings on emerging stressors**
- **Ensuring that the monitoring and research results are widely available and easily accessible in a timely manner.**

Successful protection and restoration of the Great Lakes and St. Lawrence River basin depends on the presence of adequate and consistently funded monitoring and scientific research. In the past the Great Lakes basin has been at the forefront of this type of monitoring and research. Unfortunately, funding cuts over the past fifteen years have had a devastating impact on this critical knowledge base. Therefore, revitalization of the Agreement also must include a revitalization of Great Lakes monitoring and science.

A strong connection between monitoring, science and policy-makers is essential if these features are to be effective in protecting the basin’s environment. It is for this reason that we have put in the recommendation regarding easy and timely access to monitoring and research results.

8. A strong public role should be embedded in the Agreement, including:

- **Public initiative options, such as a citizen petition mechanism**
- **Public representation on all IJC boards and the creation of a citizens’ advisory board to the IJC**
- **Commitment to create public advisory committees for government initiatives or programs related to the Great Lakes, and/or inclusion of the public on program steering committees**

A recurring theme in the ARC report of April 2007 is the need to include provisions in the GLWQA through which the governments commit to public involvement. We recommend that, in

² IJC, *Eighth biennial report on Great Lakes water quality*, 1996

³ IJC, *Eighth biennial report on Great Lakes water quality*, 1996

addition to providing for this through a general commitment, the governments should commit to specific public involvement provisions. These should include mechanisms that allow the public to take the initiative in prompting actions, such as citizen petitions that require reviews by the federal governments or the IJC.

The public also should be assured of more meaningful participation in IJC activities. Citizen experts in the appropriate fields should be included on the IJC's existing boards, that is, the Water Quality Board, the Science Advisory Board, and its Council of Great Lakes Research Managers. In addition, a new citizens advisory board should be set up for the IJC. This board should advise the IJC commissioners on the adequacy of government programs to achieve the goals of the GLWQA and make recommendations on how these programs could be improved.

In addition, the governments should commit through the Agreement to include the public in meaningful ways in their domestic programs on Great Lakes matters. This should include a commitment to set up public advisory committees for their GLWQA-related programs and/or to include representatives of the public on their steering committees for these programs.

9. The GLWQA should recognize and define the role of the Tribes, First Nations and Metis in Agreement activities.

Approximately 350,000 descendants of the first peoples of the Great Lakes basin live in 110 nations on approximately three million hectares of federally recognized reserve land in the Great Lakes-St. Lawrence River basin. Many more of their descendants live off the reserves, most of them in urban centres. These aboriginal peoples have rights as sovereign independent governments.

The unique role of the Tribes, First Nations and Metis in protecting and restoring the Great Lakes should be recognized in the GLWQA. Among other mechanisms, this should include their participation as IJC commissioners and membership on all IJC boards. The specific provisions related to the Tribes, First Nations and Metis should be worked out through extensive discussions with these peoples.

10. The GLWQA should define the role of the provinces, states, and local governments in Agreement activities.

The roles of the provinces and states are at times mentioned in the existing GLWQA, but not in a comprehensive and focused way. This aspect of the Agreement needs to be strengthened, since the provinces and states operate many of the programs that are essential to achieve the goals of the Agreement. The provinces and states should be fully included in the negotiating process in order to obtain their buy-in to the activities that they will need to carry out.

Local governments, such as cities, towns, villages, townships, counties, and regions, are not currently mentioned in the GLWQA. Yet, as the members of the Great Lakes and St. Lawrence Cities Initiative note, "Municipal governments are on the front lines of Great Lakes water management." Achieving the Agreement's goals has involved and will continue to require billions of dollars in expenditures on municipal infrastructure alone. The essential role of municipal governments should be recognized in the Agreement.

11. Commitments in the GLWQA should be written in a way that leads to implementation by fostering enforceability and accountability. This means that commitments in the Agreement should:

- **Have specific targets and timetables for achieving those targets**
- **Replace words such as “seek” and “strive” with “achieve”**
- **Include a commitment to put the targets and timelines in the Agreement into each country’s legislation**
- **Include provisions for regular reporting to the public on progress towards the targets and timetables**

The main recurring theme in the ARC report is that the governments have failed to implement the existing GLWQA. The main changes that need to be made to the Agreement are ones that will improve the likelihood of existing and new commitments being carried out. Those changes listed above are a minimal and beginning list of provisions that should be put into the Agreement to foster implementation. Some of our previous recommendations, such as citizen rights to petition, would add to the accountability and enforceability necessary to ensure implementation of the Agreement.

12. Provisions for periodic independent audits of progress generated by the Agreement should be strengthened, and government responses to those audits should be made more specific.

In one of its most important provisions, the Agreement provides the rudiments of government accountability by requiring the IJC to regularly report on progress under the Agreement. However, there is widespread dissatisfaction with the way in which the IJC has lately been carrying out its reporting role. Among other problems, the IJC has been hampered in carrying out this role by the failure of the governments to submit the necessary data for the IJC to conduct these assessments.

Reviews of the issue of governance are currently underway that will help us come to a conclusion on revisions that should be made to the IJC to better fulfill this role and as to whether additional mechanisms are needed. Later we will propose solutions to this need for an independent audit. For now, we recommend two steps to improve accountability under the Agreement and make it more feasible to conduct proper audits:

- The governments should commit to provide the necessary data, in a timely manner, to auditors of progress.
- The governments should commit to regularly report on progress for each of the commitments in the Agreement.

13. The governments should demonstrate their commitment to a revitalized GLWQA by:

- **Having the Agreement approved and signed by the appropriate government officials (the prime minister and president at a minimum) and the appropriate aboriginal representatives**
- **Making financial commitments adequate to achieve the goals of the Agreement.**

The main goal we hope to achieve through the review and possible revision of the GLWQA is revitalization of the Agreement that draws public and political attention back to the need for basin-wide ecosystem protection. To help in achieving this, the governments should state their commitment to the existing or revised Agreement in a high-profile way.

Conclusion

The thirteen recommendations in this brief lay out the direction that the sixty-four groups listed below believe should be taken to revitalize the Great Lakes Water Quality Agreement. As the review and possible renegotiation continues over the next couple of years, we will contribute more detailed recommendations. We look forward to engaging in ongoing discussions with the governments on these matters.

For further information or to discuss this matter, please contact John Jackson at (519) 744-7503 or jjackson@glu.org.

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Friends of Whiskey Island – Cleveland, Ohio
Georgian Bay Association – Toronto, Ontario
Great Lakes Aquatic Habitat Network and Fund – Petoskey, Michigan
Great Lakes United – Montréal, Québec, and Buffalo, New York

Illinois Council of Trout Unlimited – Highland Park, Illinois
Indiana Toxics Action – Gary, Indiana
Indiana Wildlife Federation – Zionsville, Indiana
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Ohio Environmental Council – Columbus, Ohio
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Protecting Our Water and Environment Resources (POWER) – Georgetown, Ontario
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