

**Council of Great Lakes Governors
Water Management Working Group
Meeting with Tribal and First Nations Representatives**

Meeting Summary

Oakbrook Hills Conference Center
3500 Midwest Road
Oakbrook, Illinois
February 1, 2005

OPENING AND INTRODUCTIONS

Tribal Chairman Frank Ettawageshik of the Little Traverse Bay Bands of Odawa Indians began the meeting with an opening ceremony. Mr. Kerry MeToxen of the Oneida Tribe of Indians of Wisconsin, a U.S. Air Force veteran, presented a staff with eagle feathers. Next, Mr. Robert Goulais of the Union of Ontario Nations said a morning prayer and sang. Grand Chief John Beaucage of the Anishinabek Nation and Chief Vernon Roote of the Chippewa Saugeen First Nation then provided perspective on the historical importance of the Great Lakes by sharing stories.

After the opening ceremony, Sam Speck, Director of the Ohio Department of Natural Resources and Water Management Working Group Chair welcomed participants and requested introductions. Mr. Speck stressed that the Working Group's efforts are aimed at ensuring that State and Provincial water management authority is exercised in a manner that will protect the Great Lakes. He said that it is a great privilege to be working toward this objective.

WORKING GROUP PRESENTATIONS

Director Speck then provided an overview of the history of State and Provincial Great Lakes water management. A copy of his presentation is available from Council staff upon request.

The floor was then opened for questions. It was suggested by a representative of a Tribe or First Nation that historical diversions affect Tribes and First Nations who should be involved in decision making. One participant asked if an assessment has been made regarding any negative environmental impacts associated with existing (historical) diversions such as the Illinois diversion. In response it was noted that a number of studies have been conducted regarding the impacts of the Illinois diversion. A Working Group member stated that the Illinois diversion was originally created in part to help protect Lake Michigan from effluent discharge, and therefore that any analysis should consider the impacts on both water quality and quantity. It was further explained that the primary use of the Illinois diversion is now for public drinking water supply rather than effluent discharge. It was also noted that the entire metropolitan region's sewerage system was built to move treated wastewater away from Lake Michigan.

Next, a question was asked regarding the availability of public comments on the draft agreements and whether there would be further opportunities for comment. It was stated that the public comments received by the Council of Great Lakes Governors during the

official public comment period are available electronically upon request. Director Speck followed up by noting that there will most likely be an additional sixty day public comment period after the agreements have been revised. Further, the Council currently continues to accept public comments.

A participant next asked whether the Canadian constitution poses any challenges for Great Lakes water management. As background, it was pointed out that the eight Great Lakes States intend to implement the draft agreements through a legally enforceable inter-State compact. Because this mechanism is not necessary for the Canadian Provinces, there may be the concern that the States will be more effectively bound by the agreements than Ontario and Québec. However, it was noted that the Great Lakes States and Provinces will sign an agreement. The Provinces will then implement the agreement in their laws and regulations.

A representative of the Working Group confirmed that the draft Annex implementing agreements are not intended to affect any commitments made by either Federal Government. However, the Federal Governments will not be signatories. In turn, it was stressed by a representative of a First Nation that the Provinces do not have the authority to speak on behalf of aboriginal peoples. It was suggested that more dialogue is needed regarding the appropriate nature of consultation that is required under the Canadian constitution.

Next, a participant asked how many meetings Ontario has held with aboriginal peoples to discuss the draft agreements. In response, it was noted that in 2003 Ontario representatives met in six locations with First Nation representatives. In addition, in 2004, and as part of the 90 day public comment period, Ontario had further meetings across Ontario with First Nations leaders to discuss the draft agreements. Ontario representatives have also met with the Chiefs of Ontario and have included First Nations' participation in a new Advisory Panel that is discussing the draft agreements.

A meeting participant asked for additional details regarding the structure of the Council staff, Water Management Working Group and the process that is being used to develop the draft Annex Implementing Agreements. David Naftzger, Executive Director of the Council of Great Lakes Governors, provided an overview. A written overview of the structure is available from Council staff upon request.

The concern was then expressed by a representative of a Tribe or First Nation that corporations and multi-national corporations may view the lakes as an economic resource without considering the impacts of their actions on the lakes. Accordingly, it was suggested that polluting corporations and shippers should be subject to penalties. In response, it was stated that while pollution and water quality are issues of concern to the Working Group, these issues are being addressed by the Great Lakes Governors through their priorities for Great Lakes restoration and protection. In addition, it was noted that the Great Lakes Regional Collaboration (which includes the Council of Great Lakes Governors and Great Lakes Tribes) is addressing those issues. It was also noted that the

draft agreements will address the impact of future water use proposals through a standard including the requirement that no significant adverse impact result from future water use.

Following these questions and discussion, Ken DeBeaussaert, Director of the Michigan Office of the Great Lakes, next provided an overview of the draft Annex Implementing Agreements that were released for public comment on July 19, 2004. The draft agreements would include an Agreement among all ten States and Provinces as well as a legally enforceable inter-State Compact for the Great Lakes States. Both the Agreement and the Compact would include a science-based standard used to review both diversions and in-basin consumptive use proposals. In particular, it was noted that the draft agreements are not intended to infringe on aboriginal or treaty rights, or rights held by a Tribe or First Nation based on its status as a Tribe or First Nation. Mr. DeBeaussaert's full presentation is available from Council staff upon request.

Rob Messervey, Manager of the Water Resources Section of the Lands and Waters Branch of the Ontario Ministry of Natural Resources, next provided an overview of some of the key issues under discussion by the Working Group as well as various options for addressing them. These issues include diversions, intra-basin diversions, in-Basin consumptive uses, conservation, resource improvement and defining the groundwater divide. Mr. Messervey's full presentation is available from Council staff upon request.

The floor was again opened for questions. A participant asked if the draft agreements could be used to prevent unsustainable growth. For example, if a city is built in the middle of the desert, would it be able to obtain water? In response, it was noted that although the draft agreements do not address hypothetical proposals, any new proposals would have to meet the requirements outlined in the standard, including the requirements of no reasonable alternative source of water (including the conservation of existing supplies) and return flow.

Another participant asked if there were any efforts to put a monetary value on Great Lakes water, given its international importance. A Working Group member answered that there has not been an attempt to attach a monetary value to water. The concern was expressed that there would be a great risk of commodifying water if such a study were undertaken.

Next, a participant asked what would happen if there was a proposal that would affect lake levels and flows. Further, the question was asked whether this type of a proposal would be only submitted to the International Joint Commission (IJC)'s jurisdiction. It was pointed out that there are no proposals of that nature at this time. Further, a Working Group member clarified that nothing in the draft agreements is intended to interfere with the International Boundary Waters Treaty or other commitments undertaken by the Federal Governments. Lastly, it was noted that issues are only taken under consideration by the IJC when both the U.S. and Canadian governments agree that the proposal should be so forwarded.

A representative of a Tribe or First Nation next asked how much water can be withdrawn

by multiple users before there will be a negative cumulative impact on the Lakes. In response, it was noted that although the Working Group is not aware of a particular number at this time, the draft agreements would provide a mechanism to collect and periodically review data regarding cumulative impacts. Specifically, the draft agreements provide three different mechanisms for the States and Provinces to collectively review cumulative impacts: cumulative impacts would be reviewed every five years, each time the incremental losses to the Basin reach 50,000,000 gallons (190,000,000 litres) per day average in any 120 day period in excess of the quantity at the time of the last assessment, or at the request of a State or Province. This information would then be used to inform revisions of the agreements as necessary.

A representative of a Tribe or First Nation followed up by asking if there has been an assessment of the impacts of current water uses. In response, it was noted that although there is not sufficient current data on this issue, one of the provisions in the draft agreements is to require information collection for all uses over 100,000 gallons per day and to develop a better understanding of the role of groundwater. It was also noted that additional suggestions for how best to develop this data would be appreciated. It was suggested by a representative of a Tribes and First Nation that a moratorium on new withdrawals would be the only rational response until the impacts of existing uses can be determined.

TRIBES/FIRST NATIONS PRESENTATIONS

Tribal Chairman Frank Ettawageshik presented Director Speck with an original copy of the Tribal and First Nations Great Lakes Water Accord signed in November of 2004 in Sault Ste. Marie, Michigan. Tribal Chairman Ettawageshik explained that the Accord was signed while women, who are caretakers of the water, sang. He also explained that the Accord had been ceremonially smudged and printed on acid-free paper. He also presented Director Speck with a copy of the Midwest Alliance of Sovereign Tribes Resolution #05-01 in support of the Tribal and First Nations Great Lakes Water Accord. Grand Chief John Beaucage next presented Director Speck with the Chiefs of Ontario Resolution 04/60.

Tribal Chairman Ettawageshik next described two visions of the future, one in which the Great Lakes have been depleted, and one in which the Great Lakes are strong and healthy seven generations from now. He emphasized that the Great Lakes should be protected for future generations. He also noted that we were once a future generation. He then introduced Grand Council Chief Chris McCormick who began a presentation explaining the structure of the Chiefs of Ontario. His presentation is available from Council staff upon request.

Grand Council Chief McCormick next introduced Grand Chief John Beaucage who gave a presentation illustrating several of the First Nations' concerns with the draft Annex Implementing Agreements. His presentation is available from Council staff upon request.

The floor was next opened for questions and comments. One participant asked how Tribes and First Nations should be included in the development of the draft agreements. A representative of a Tribe or First Nation suggested that there should be a more inclusive structure and that it may be appropriate to include Tribes and First Nations as full participants with the States and Provinces both as the Annex Implementing Agreements are developed and after they are adopted. As another option, it was suggested that there could also be a parallel process among the Tribes and First Nations, with coordination between the States and Provinces and the Tribes and First Nations.

At this point, a representative of the Working Group clarified the stewardship responsibilities of the States and Provinces. It was noted that the States and Provinces recognize that this is not an exclusive responsibility. It was suggested by a member of a Tribe or First Nation that language should be drafted that fully acknowledges the equality of all sovereigns.

A representative of a First Nation noted that an Ontario First Nation currently is involved in a court case wherein they are claiming the ownership of 150 miles of Great Lakes shoreline. The representative noted that this is more shoreline than that of the Commonwealth of Pennsylvania.

A representative of a Tribes or First Nation next expressed the concern that the Governors and Premiers depend on constituents, including business, for election. It was suggested, therefore, that they might not always place the protection of the Great Lakes as a paramount interest.

Next, Grand Chief Beaucage introduced Chief Eli Moonias of Marten Falls Indian Reserve #65. Chief Moonias discussed the Ogoki River diversion to the Great Lakes which exists in the Marten Falls area in the Hudson Bay Basin. He talked about how this diversion has affected his community. He recommended that the draft Annex Implementing Agreements consider the Great Lakes ecosystem to include the Hudson Bay Basin and diversions “into” the Great Lakes Basin in addition to diversions out of the Basin. It was further recommended that the agreements include a section that would provide compensation and/or a percentage paid to First Nations to compensate for the damages caused by these diversions. A Working Group member said that the Working Group will work to ensure that the type of impacts outlined in Chief Moonias’s presentation will be prevented in future projects. Copies of Chief Moonias’s presentation are available from Council staff upon request.

Next, Grand Chief Beaucage introduced Chief Vernon Roote from the Chippewa Saugeen First Nation. Chief Roote reiterated his comments made at the September 20 public meeting in Toronto by stating that no government should sign any agreement which affects Tribal or First Nations rights without first consulting the Tribes and First Nations. He suggested that every government, including the Tribes and First Nations, should have a veto over any projects that could result in a net loss to the Basin. Copies of Chief Roote’s presentation are available from Council staff upon request.

It was suggested by a representative of a Tribes or First Nation that one option for involving Tribes and First Nations could be to allow them to revise draft language in the Agreement for the Working Group's consideration.

NEXT STEPS

Dave Naftzger then provided an overview of the Working Group's calendar over the next several months. In particular, he noted that the Working Group will meet again in March, 2005 and anticipates a second opportunity for public comment on revised draft Annex Implementing Agreements in the spring. The Working Group's goal is to present revised, finalized agreements to the Governors and Premiers for their consideration this summer.

Grand Chief Beaucage indicated that Great Lakes Tribes and First Nations may meet in early April in Niagara Falls. He suggested that the meeting could provide an opportunity for attendees to discuss the draft Annex Implementing Agreements.

Director Speck thanked the Tribal and First Nations representatives for their participation and input. He said that the Working Group looks forward to continued dialogue. He noted that the Working Group will continue to discuss how best to continue dialogue with representatives of the Tribes and First Nations. David Naftzger also thanked the Tribal and First Nations representatives for their participation. He emphasized that the draft agreements are a work in progress and that alternatives are still under consideration.

Tribal Chairman Frank Ettawageshik thanked members of the Governors' and Premiers' Working Group for the opportunity to meet. Grand Chief John Beaucage also provided closing remarks, indicating that he looks forward to a fruitful relationship with the representatives of the States and Provinces. He emphasized that everyone is working towards the same goal, protecting the Great Lakes.

Chairwoman Cristina Danforth of the Oneida Tribe of Indians of Wisconsin closed the meeting with a prayer.

**Council of Great Lakes Governors
Water Management Working Group
Meeting with Tribal and First Nations Representatives**

Attendee List

Oakbrook Hills Conference Center
3500 Midwest Road
Oakbrook, Illinois
February 1, 2005

TRIBES AND FIRST NATIONS

Anishinabek Nation

Grand Chief John Beaucage

Association of Iroquois and Allied Indians

Grand Chief Christopher McCormick

Bad River Band of Lake Superior Tribe of Chippewa Indians

Ms. Shannon Swanstrom, Attorney

Chiefs of Ontario

Ms. Sue Chiblow, Environmental Coordinator

Mr. Nathan Wright

Chippewas of Aamjiwnaang First Nation

Mr. Darren Henry, Counselor

Mr. Rodrick Plain, Counselor

Chippewas of Nawash

Mr. Geewadin Elliott, Senior Councillor

Mr. Paul Jones

Chippewa Saugeen First Nation

Chief Vernon Roote

Grand Traverse Bay Band of Ottawa and Chippewa

Mr. Andy Knott, Environmental Stewardship Director

Grassy Narrows First Nation

Chief Simon Fobister

Great Lakes Indian Fish & Wildlife Commission

Ms. Ann McCammon Soltis, Policy Analyst

Mr. Jim Zorn, Policy Analyst

Lac du Flambeau Band of Lake Superior Chippewa
Ms. Michele (Abbey) Thompson, Public Relations Official

Little River Band of Ottawa Indians
Ogema Lee Sprague

Little Traverse Bay Bands of Odawa Indians
Tribal Chairman Frank Ettawageshik

Marten Falls First Nation
Chief Eli Moonias

Mohawk Council of Akwesasne
Chief A. Francis Boots
Mr. Gil Terrance

Nishnawbe Aski Nation
Chief Dan Kooses

Oneida Nation of the Thames
Chief Randall Phillips
Counselor Joel Abram

Oneida Tribe of Indians of Wisconsin
Chairwoman Cristina Danforth
Mr. Kevin Cornelius
Mr. Bill Gollnick
Mr. Kerry MeToxen

Première Nation de Longue-Pointe
Mr. Gordon Polson

Saginaw Chippewa Indian Tribe of Michigan
Ms. Sally Kniffen

Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Ms. Cathy Abramson

St. Regis Band of Mohawk Indians
Mr. Ken Jock, Environment Division Director

Union of Ontario Nations

Mr. Robert Goulais

WATER MANAGEMENT WORKING GROUP

Illinois

Mr. Dan Injerd, Manager, Lake Michigan Management Section
Department of Natural Resources

Michigan

Mr. Ken De Beussaert, Director
Office of the Great Lakes

Mr. John Wernet, Deputy Legal Counsel
Office of Governor Granholm

Minnesota

Mr. Kent Lokkesmoe, Director, Division of Water
Department of Natural Resources

New York

Mr. Don Zelazny, Great Lakes Programs Coordinator
Department of Environmental Conservation

Ohio

Mr. Dick Bartz, Chief, Division of Water
Department of Natural Resources

Dr. Samuel Speck, Director
Department of Natural Resources
Great Lakes Water Management Initiative Chairman

Ontario

Mr. Babak Abbaszadeh, Senior Policy Advisor, Office of the Minister
Ministry of Natural Resources

Mr. Rob Messervey, Manager, Water Resources Section, Lands and Waters Branch
Ministry of Natural Resources

Pennsylvania

Ms. Pam Bishop, Esq., Bureau of Regulatory Counsel
Department of Environmental Protection

Mr. Bill Gelles, Office of Chief Counsel, S.E. Regional Counsel
Department of Environmental Protection

Québec

Ms. Louise Lapierre, Direction des affaires intergouvernementales
Ministry of Environment

Wisconsin

Mr. Chuck Ledin, Chief of Great Lakes and Watershed Planning
Department of Natural Resources

Council of Great Lakes Governors

Mr. Peter Johnson, Senior Program Manager

Ms. Carol Knowles, Consultant

Ms. Zoe Munro, Program Associate

Mr. David Naftzger, Executive Director

Ms. Lisa Wojnarowski, Program Associate