

September 6, 2011

Heather Grant, Director General, North American Policy Bureau, Canadian Department of Foreign Affairs & International Trade

Michael Rooney, Director, U.S. Transboundary Affairs Division, Canadian Department of Foreign Affairs & International Trade

Jim Vollmershausen, Environment Canada

Matthew Rooney, Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State

Elizabeth Lee Martinez, Director, Office of Canadian Affairs, U.S. Department of State

Susan Hedman, Environmental Protection Agency Administrator (Region 5) EPA

Dear GLWQA Negotiators,

As you are very aware, our two countries are now in the critical final stages of renegotiating the Great Lakes Water Quality Agreement (GLWQA.) Great Lakes United is providing a coordinating role for citizen organizations in the United States and Canada who have spent considerable time over the past seven years participating in the review of the existing Agreement and making detailed input to you. To see our detailed submissions from 2010, please go to [http://www.glu.org/en/campaigns/healthy\\_waters/glwqa](http://www.glu.org/en/campaigns/healthy_waters/glwqa).

At this important juncture, Great Lakes United wishes to impress upon the leaders in this negotiation that the Great Lakes and St. Lawrence River ecosystem is a global freshwater treasure and a living resource that millions in our two countries depend on, but the vitality and resilience of this ecosystem is increasingly threatened by multiple environmental stresses. Unless we take bold action rapidly, the Great Lakes are at real risk of irreparable ecological damage and decline. As guardians of the lakes, the United States and Canada share a unique responsibility to safeguard nearly one-fifth of the fresh water on Earth and the living systems it supports.

Since 1972 our nations have established shared goals and strategies to protect the Great Lakes through a formal agreement. The GLWQA has made a remarkable difference as a visionary

document for the future of the Great Lakes and as a catalyst for actions to protect and restore the Great Lakes. But as Secretary of State Clinton and then Foreign Affairs Minister Cannon said in June 2010, there is much more work to be completed and new threats to the health of the Great Lakes ecosystem to be addressed.

We are writing now, as you reach this concluding stage in the negotiations, to remind you of several essential elements that we believe you should use in making your final decisions on the language and scope of a new Agreement. These follow below in this letter. In addition, we have attached a list of evaluation criteria that we will use, and that we hope you will use, in assessing a new Agreement's substance and the process for getting to an Agreement.

### ***Substance of the Agreement***

► **A visionary strategy for the 21st Century.** The new Agreement must retain its goals of restoring the Lakes and protecting them from toxic pollution, and also expand them to meet today's and tomorrow's challenges. This means addressing threats from climate disruption, ending the onslaught of invasive species, stopping habitat loss and preventing new pollution threats. This includes not only research and sharing information, but actions to prevent further damage and restore the ecosystem.

► **No Backsliding.** Commitments to prevent toxic pollution in the lakes must remain a pillar of the Agreement. Risk management should not replace the present zero discharge and virtual elimination goals in the Agreement to prevent and eliminate toxic discharges into the Great Lakes.

► **Finish the clean-up and restoration of contaminated harbors.** Since the last revision of the Agreement in 1987, only four of the 43 contaminated "hot spots" (a.k.a. Areas of Concern) have been cleaned up enough to reach initial restoration targets. The other sites continue to degrade water quality and pose health risks. The Agreement needs to reinvigorate commitments on both sides of the border to get this job done, done well, and on a faster timeline.

► **Protect each lake from headwaters to deep waters – the watershed approach.** Lakewide management plans (LaMPs) need to recognize that many problems in the lakes start upstream, and solutions need to include tributaries and groundwater as integral parts of the ecosystem to be effective. And, while the current focus of LaMPs - toxic pollution directly to the waters of the open lakes - is a major concern, so is polluted runoff from fields and streets, sewer overflows, habitat loss, groundwater contamination, the spread of invasive species, pollution and habitat destruction from mining, and more. We must embrace the ecosystem approach by planning for the whole system and all the threats, and use consistent planning approaches across all the lakes.

### ***Governing, Leadership and Implementation***

► **Strengthen the independent role of the International Joint Commission (IJC).** The IJC has played a critical role in advancing Great Lakes science and telling the public and our governments the hard truth about conditions in the lakes, emerging threats, and where our governments are falling short of living up to their commitments. This role was diminished following the 1987 Agreement changes, and further weakened by budget cuts that have reduced

the IJC's resources and capacities in recent decades. Now more than ever, we need the independent voice of the IJC to play a strong role as assessors of progress under the Agreement.

► **Commit to timelines, benchmarks, and measures for success.** We need specificity. Plans without deadlines will languish. We need dates, clearly identified benchmarks for measuring progress, including straightforward measures of water quality, biological health, ecological resilience and human safety. Also, in those cases where the commitment in the new Agreement is to develop a plan, the Agreement should state the date by which the plan will be completed.

► **Commit to a role for the public and other key stakeholders on the proposed new binational governing body for the Agreement and other key committees.** Without the participation of non-governmental public representatives, the new binational executive committee that oversees implementation of the Agreement will continue to operate with minimal citizen involvement and largely behind closed doors. The Agreement will be more effective if critical decisions and ongoing assessment of the Agreement's implementation include more affected parties, citizens and stakeholders to improve transparency, accountability, and provide broader perspectives.

► **Commit to science leadership.** The new Agreement must restore and support the role of investigatory science and early warning capacity that it once fostered through government scientists and the IJC. We need strategic science to understand the increasing complexity of interactions in the Great Lakes, coupled with transparent approaches to investigations and dissemination of scientific information. This will open doors to new solutions.

► **Commit to accountability measures.** The Agreement should specify that the IJC's and the Parties' formal reports will be reviewed by Congress and Parliament, including oversight hearings and citizen testimony. The federal governments should establish implementation agreements with affected provinces, states, First Nations, tribes and métis delineating their respective roles and responsibilities. Citizens should have the right to petition the governments to take action under the Agreement. Governments should commit sufficient money and staffing to complete implementation.

► **Rebuild the binational constituency for Great Lakes protection.** The governments of both nations must expand and support opportunities for collaboration between scientists, government officials, public agencies, citizen organizations and multiple stakeholders. This will foster stronger strategies and build constituencies to help drive solutions. Examples include convening binational task groups to achieve specific objectives, participatory sessions at meetings, citizen roles on boards and committees, vastly improved reporting and communication on strategies and actions, and using outcome-based work plans that can inform constituencies of strategies, actions and likely impacts.

We appreciate your attention to this matter as we work together across the border to protect the Great Lakes-St. Lawrence River ecosystem. We look forward to the signing of a new GLWQA that will lead us forward. We also look forward to working with you over the coming decades on the implementation of the new Agreement.

Yours sincerely,

A handwritten signature in blue ink that reads "John Jackson". The signature is written in a cursive style with a large, prominent initial "J".

John Jackson  
Program Director

Attachment via Email

# ***Citizen Criteria for Success/Performance Evaluation Great Lakes Water Quality Agreement, Renegotiation***

**September 6, 2011**

## **I. Substance on Water Quality and Ecosystem Health and Resilience**

### **Scope**

- Does the Agreement address the full scope of current and anticipated water quality issues related to the Great Lakes ecosystem, including the impact of invasive species, habitat loss, climate influences, mining impacts, emerging pollutants, etc.?

### **Backsliding**

- Is there anything in the new agreement that is a retreat from the previous agreement?
- Are we still taking an ecosystem approach to the Great Lakes-St. Lawrence River
- Is the language on zero discharge and virtual elimination of toxic substances still intact?

### **Long-standing issues**

- Does the new Agreement include methods and means to accelerate progress on commitments in the existing (1978 + Protocols) Agreement through new strategies and commitments?

### **Specifically:**

- Does the agreement adopt a full-watershed approach for all GL tributaries?
- Is there a strategy to accelerate clean-up at AOCs?
- Does the Agreement address the health of regional residents?

### **Anticipatory capacity**

- Does the Agreement include adequate capacity to identify and anticipate and develop responsive strategies for current and emerging issues?
- Is there a climate adaptation and/or mitigation strategy that factors in influences of warmer water, increased storm intensity and frequency and higher extremes between heavy precipitation and drought?
- Is there a strategy for maintaining or restoring biological integrity that addresses 1) the current density of invasive species in the Great Lakes and their impact on ecological function and 2) anticipates future invasions and best ways to prevent or contain them?
- Is there a strategy for addressing pharmaceutical and cosmetic pollution in waste water?
- Is there a strategy for strengthening international cooperation to reduce atmospheric loadings of persistent toxic chemicals, including mercury?
- Is there a strategy to address increasing threats from mining activity in the Lake Superior basin?

## **Prevention and Protection**

- Does the Agreement address preventative and protective needs, including preventing degradation in high quality habitats, promoting green chemistry to eliminate pollution sources, and evidence of the precautionary principle within its strategies?

## **II. Compliance and Accountability Systems**

### **Administrative structures**

- Is there an alternative structure, (different from the BEC) that meets the needs for binational collaboration on binational strategies and includes a meaningful role for Tribes and First Nations and métis, the public and municipal stakeholder representatives?
- Is the relationship between this body and the IJC clearly delineated, including respective responsibilities and functions?

### **Plans and evaluation**

- Does the Agreement include requirements for clearly written, outcome-based work plans with timelines to achieve Agreement Objectives?
- Are there requirements to report to Congress and Parliament every three years on progress and challenges in meeting benchmarks and objectives?

### **Deadlines, benchmarks, measures of success**

- Does the Agreement include timelines, deadlines and dates for reaching benchmarks and various objectives, and measures for success?

### **Role of the IJC**

- Does the Agreement require periodic third party review of progress?
- Is review and assessment of progress on objectives specified as an IJC role in the Agreement?
- Is review and assessment of the Parties' performance on implementation specified as an IJC role in the Agreement?
- Is scientific knowledge management and strategic scientific investigation specified as a role of the IJC in the Agreement?

### **Sound strategic science**

- Does the new Agreement include provisions that will help restore the capacity of Great Lakes science across a full range of needs that include monitoring and surveillance, baseline data and trends analysis, investigation of new threats and anticipation of likely new challenges?
- Does it clarify the role of the Parties and the IJC in science needs and activities related to the Agreement?

Does it...

- Align research priorities with new priority objectives under the Agreement, e.g., impacts of invasive species on water quality, emerging toxic threats, etc.?
- Designate a specific body to serve as the chief Great Lakes research coordination and review body, and charge it with identifying research priorities on an ongoing basis, maintaining an inventory of research, and identifying gaps?
- Simplify and specify a formal process to identify and select indicators and endpoints for assessing progress and objectives on ecosystem health at various scales and zones (such as lakewide and nearshore waters), including specific chemical, physical and biological indicators already widely-used throughout the Great Lakes management and scientific communities?
- Include a role for the public to be included in strategies for setting priorities for research, coordination and indicators?

#### **Role of non-federal jurisdictions**

- Are there provisions to establish implementation agreements with states and provinces and First Nations, tribes and métis?
- Is there language that recognizes the roles of municipalities in restoration and clean-up and structures to support their collaboration and access to resources?

#### **Role of the public, stakeholders, citizens groups**

Does the Agreement include language that affirms that:

- Meetings related to the administration of the Agreement and its programs are open to the public?
- Work plans, meeting notes, scientific findings and other information related to the Agreement and its implementation are available to citizens of both nations?
- There are specific roles for citizen participation in Agreement oversight and on advisory boards or committees?
- There is a means for citizens to petition the Parties to take action under the Agreement?
- Does the new Agreement provide for, inspire and enable public participation?
- Are there formal mechanisms and resources to include the public in implementation of the Agreement?
- Are there actions in the new Agreement that specifically support public collaboration and constituency building?
- Are decision-making processes transparent?

#### **Domestic compliance mechanisms**

- Is there a clear, written delineation of roles and responsibilities between federal and state/provincial governments, and written guidance on the roles and consultation with first nation and tribal governments, métis, and city, county and other local jurisdictions?
- Is there a sufficient process to identify gaps and barriers in domestic policy that are currently preventing (or will prevent) compliance with the agreement, and do the Parties have stated strategies in place to address them?
- Are there mechanisms to regularly inform and advise elected representatives, legislative bodies and administrative agencies as to needs and obligations for resources and/or policy reform to ensure capacity for compliance and implementation?
- Are there significant funding commitments in each nation to address barriers in planning and research, to fund clean-up, restoration and protection projects, support needed research, and support needed enforcement and robust public involvement?
- Are there any significant consequences for either Party for failing to comply with any of the above?

### **III. Process**

- Has the process and timing of major decisions been available and clear to those outside the negotiating team?
- Has the public been regularly kept up to date on the status of the negotiations?
- Has the process been inclusive and has there been active consultation with public constituencies and state and provincial and local governments and First Nations Métis and Tribes in all phases of the process?
- Has there been room for meaningful dialogue and exchange between the negotiators and with the public and stakeholders, both within and outside of formal processes?
- Have the negotiators consulted with the parties responsible for implementation and oversight of the Agreement, including state and provincial enforcement agencies?
- Have the consultation mechanisms been easily usable and have they suited the needs of people with varying access to technologies and resources?
- Have sufficient materials about the process and substance of the agreement renegotiation been made available to the public in each phase of the consultations to allow for meaningful input?
- Was the public given enough time to provide meaningful input at each phase of the negotiation process?
- Does the public know what the specific direction or intent of the Parties is in terms of substance and language?
- Was there a public consultation period after a full draft of a new GLWQA was prepared and did the public get to comment on the draft language?
- Have public consultations included discussions on the broader scope of the state of the Great Lakes ecosystem, including the impact of invasive species, habitat loss and climate influences?