

January 26, 2010

Via e-mail to the following recipients:

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Re: Public Consultation during GLWQA Renegotiation

Dear GLWQA Renegotiation Heads of Delegation and Chief Negotiators:

We write today to recommend important changes to the public consultation process for the renegotiation of the Great Lakes Water Quality Agreement. The process outlined by the governments on their January 14 public Webinar is inadequate and unsatisfactory. The process outlined will not provide for sufficient public input that is both relevant and meaningful to you as you renegotiate the agreement. We urge you to re-evaluate your consultation plans and make changes to the process to ensure the public consultation process undertaken this year is as or more robust than the one that the Canadian and U.S. governments followed in their 1987 negotiations.

In its final report, the Agreement Review Committee, which was set up by the Binational Executive Committee, concluded:

The Agreement should recognize the critical role and essential participation of the public in the successful implementation of the Agreement by the Parties and other orders of government. The public should be consulted in any revision of the Agreement. [Agreement Review Committee, *Report to the Great Lakes Binational Executive Committee: Volume 1*, September 2007, p. 22.]

Unfortunately, the planned public consultation mechanisms fail to follow-up in a serious manner on your Agreement Review Committee's conclusion.

As the governments have rightly pointed out, they conducted the review of the GLWQA in an open manner and there has been substantial public participation. This participation in the review process shows the high degree to which the public wants to be involved in the revision and implementation of the Agreement. To severely limit the public's role at this critical renegotiation stage would inevitably lead not only to considerable disillusionment among the engaged public, but also to a significant loss of confidence in the credibility of the Agreement because of the absence of transparency during the renegotiation process. It also means that the governments will not fully benefit from the thoughtful input that the public has to offer, which inevitably would result in an improved Agreement.

The reason given by the governments on the January 14 webinar for not needing more public consultation now was due to the extensive public involvement during the review process. This is an entirely unsatisfactory explanation. The consultation processes during the review phase and this initial phase of renegotiation have not been based on government proposals for possible revisions. Thus, while very welcome, public involvement opportunities now during the period when the Agreement is actually being revised are even more important than those that occurred during the review process.

Therefore, we urge you to make the following changes to the public consultation mechanisms:

1. **Release a draft government position or options paper on governance issues.** Asking the public to make input on governance issues without the governments releasing a paper that outlines options that they are considering around governance means that it is extremely difficult for the public to make relevant input. It also means that the public will not be able to be most effective at letting you know our thoughts on what you are thinking about.
2. **The release of the draft government position or options paper should set off a 60-day public comment period.** On the webinar, the governments said that the public has until February 14 to submit comments on governance. That is one month from the time of your announcement for the public to comment on the broad array of critical governance issues. This is a completely inadequate amount

of time for the public to provide meaningful input on these issues that are so central to the Agreement. To make the situation even worse, this is the only chance that the public will have to comment on governance during the entire renegotiation process.

3. **Once the governments have negotiated draft language on governance, release it again for a public comment period.** This allows you to obtain more public input before you pull the entire revised GLWQA together.
4. **For the “issues” consultations that you plan to hold later this year, follow a process similar to the one we recommended for the governance consultations in recommendation 1, i.e., release a draft position or options paper followed by a 60-day public comment period followed by another opportunity for comment after the governments have completed their first round of negotiations on the topic.**
5. **Compile a web-posted summary of comments received from public input at each stage of the consultations.** This should include who the comments were received from, and points of agreement and disagreement by the public, and the government response to the comments received. This provision is critical to provide for a transparent negotiation process.
6. **Release a final draft of the complete revised Great Lakes Water Quality Agreement for comment prior to completing negotiations and hold public hearings in both countries on this draft.** Prior to completing revisions to the Agreement in 1987, the governments released a complete draft of the Agreement for public comment. 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. This was a very useful process and should be repeated near the end of this set of negotiations.

We are confident that making the changes in the consultation process that we have recommended above will result in a much better Great Lakes Water Quality Agreement than we would otherwise have since it would gain from the considerable wisdom, expertise and experience that the public can bring to the deliberations. Also a more serious public consultation will result in a much more engaged public for the future.

We ask for a prompt response to our request since the clock is rapidly ticking forward on the governance public consultation period. For further information or to discuss this matter, please contact John Jackson at (519) 744-7503 or jjackson@glu.org.

Sincerely,

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