

**THE GREAT LAKES MEDIATION
MEMORANDUM OF UNDERSTANDING
July 29, 1996**

The terms that follow set forth the principles of a Memorandum of Understanding ("MOU") that would address the dispute over the alleged violation by the State of Illinois of the diversion limits set forth in the 1967 and 1980 Supreme Court Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as modified, 449 U.S. 48 (1980) ("Decree"). The principles are the product of voluntary negotiations among the State of Illinois, the other seven Great Lakes states, the Metropolitan Water Reclamation District of Greater Chicago and the United States during a mediation that began in December 1995. Representatives from Canada and the Province of Ontario observed the negotiations and participated in the discussions.

The final acceptance of these terms may require ratification by principals not present at the mediation. Moreover, certain terms will not become final and binding unless and until the Decree is amended. Thus, the terms represent the principles that the negotiators believe will resolve the dispute. The negotiators will use their best efforts toward obtaining final approval of the principles and implementing the Memorandum of Understanding ("MOU"), provided, however, that there shall be a transition period described in paragraph 4 below.

1. Lakefront Diversion Measurement System -- The "lakefront diversion measurement system" shall refer to measurement of waters diverted from Lake Michigan or its watershed by the State of Illinois, and municipalities, political subdivisions, agencies and instrumentalities, and shall include measurement of the "direct diversion" (as used in the Decree) to the Sanitary and Ship canal system by acoustic velocity meters ("AVMs"), and also include measurement of "domestic pumpage" (as defined and used in the Decree). AVMs shall be installed at the lakefront near the Chicago River Controlling Works and the O'Brien lock. The State of Illinois shall bear the non-federal cost of installing the AVMs. Subject to Congressional direction and funding, the U.S. Geological Survey and the U.S. Army Corps of Engineers ("Army Corps") shall be responsible for overseeing the installation and calibration of the AVMs.
2. Stormwater Runoff -- In order to make lakefront diversion measurement feasible, a value for stormwater runoff shall be fixed. Based on analysis performed by the Army Corps, stormwater runoff shall be set at 800 c.f.s. through the year 2020, subject to the conditions of paragraph 4.
3. Consumptive Use Credit -- There shall be a credit in the lakefront diversion measurement system of 168 c.f.s. for consumptive use, subject to the conditions in paragraph 4. In 2010, any party can request that the

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consumptive use credit be reevaluated based on more recent scientific evidence.

4. Transition Period -- During a three-water-year transition period beginning after the installation and initial calibration of the AVMs at the lakefront (WY 1997), the Army Corps shall, subject to Congressional direction and funding, maintain a dual reporting system (i.e. the diversion accounting system established pursuant to the Decree and the lakefront diversion measurement system) for the purpose of: (1) assessing the technical acceptability of moving the diversion measurement system to the lakefront and (2) completing the QA/QC program for the lakefront diversion measurement system and domestic pumping meters. In addition, subject to Congressional direction and funding, the Army Corps shall initiate a technical review of the accuracy of the reported domestic and industrial withdrawals from Lake Michigan or its watershed that are part of the State of Illinois' allocation program. The Army Corps shall also undertake a technical review of the accuracy of the sluice gate rating curve at Wilmette lock. The parties understand that there might not necessarily be a "one-for-one" correspondence between the diversion accounting system established pursuant to the Decree and the lakefront diversion measurement system.

In the event that: (1) the lakefront diversion measurement system is shown to be technically acceptable to the satisfaction of the Parties and a Technical Committee appointed pursuant to the Decree; and (2) the State of Illinois is making demonstrable progress toward compliance with this MOU and toward compliance with the Decree, including reduction and extinguishment of the cumulative excess average c.f.s.-water-years as defined in the Decree ("Overage") (approximately 3,500 c.f.s.-water-years in WY 1995), then the lakefront diversion measurement system will be accepted by the parties hereto.

In the event that the parties accept the lakefront diversion measurement system, then during the transition period the parties understand that (1) 800 c.f.s. for stormwater runoff and a 168 c.f.s. credit for consumptive use will be used for calculating the annual diversion limit and the annual diversion, and (2) Illinois shall adhere to the lakefront diversion method equivalent of 2,568 c.f.s. annual diversion limit. In the event that the Decree is amended, the certified flows as measured during the transition period by the lakefront diversion measurement system shall replace flows of the diversion accounting system established pursuant to the Decree as the flows of record.

In the event that the lakefront diversion measurement system is rejected for any of the above reasons, then the diversion measurement system required by the Decree shall continue to be the measurement system of record and the State of Illinois shall adhere to the 3,200 c.f.s. annual diversion limit as

set forth in the Decree.

5. Undertakings by the State of Illinois -- The State of Illinois will (1) with the concurrence of the Illinois legislature, when necessary, reduce discretionary diversion to a maximum annual average of 240 c.f.s. in WY 1996 and WY 1997 as long as the reduction in discretionary flows does not result in significant exceedances of water quality standards, and to 270 c.f.s. in WY 1998 through 2010, as long as the reduction in discretionary flows does not result in significant exceedances of water quality standards; (2) initiate leakage repairs at the Chicago River Controlling Works in WY 1996; (3) initiate allocation proceedings by the start of WY 1998 regarding all domestic and industrial Illinois Lake Michigan water users; (4) install AVMs in WY 1996, subject to appropriations from the Illinois General Assembly; (5) subject to appropriations from the Illinois General Assembly, initiate construction of a wall across the mouth of the Chicago River Turning Basin by December 1, 1998; (6) promptly initiate steps to reduce navigation makeup to the Metropolitan Water Reclamation District below 50 c.f.s., subject to maintaining navigation depths in accordance with the Code of Federal Regulations, 33 C.F.R. 207.420; and (7) subject to appropriations from the Illinois General Assembly, install by WY 1999 one or more pumps at the lakefront for the purpose of returning water to Lake Michigan. By WY 2000, and subject to water quality and navigation regulations, the State of Illinois will pump back to Lake Michigan not less than an annual average of 50 c.f.s., or an amount equal to the total leakage and navigational waters at Chicago for the months in which there is no discretionary flow.
6. Undertakings by the Army Corps -- Subject to Congressional direction and funding, the Army Corps will repair the lock systems at the Chicago River Controlling Works beginning in WY 1996 and continuing through WY 1999.
7. Compliance with 3,200 c.f.s Diversion Limit -- The State of Illinois accepts the diversion limit of 3,200 c.f.s. as measured by the terms set forth in the Decree.
8. Approval and Availability of Funds -- The parties recognize that completion of the undertakings described in paragraphs 5 and 6, the lakefront pump and other tasks outlined herein are subject to legislative and Congressional approvals and appropriations of funds. However, the parties need not take into account the lack of such approvals or the availability of such funds when determining, pursuant to paragraphs 4 and 5, whether Illinois has made demonstrable progress during the transition period toward compliance with this MOU and the Decree.
9. Reduction of Overage to 2,000 c.f.s.-water years by WY 2010 -- The State of Illinois shall reduce its Overage to less than 2,000 c.f.s.-water-years no later than the end of WY 2010.

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10. Reduction of Overage to 1,000 c.f.s.-water-years by WY 2015 -- The State of Illinois shall reduce its Overage to less than 1,000 c.f.s.-water-years no later than the end of WY 2015.
11. Reduction of Overage to Zero by the end of WY 2019 -- The State of Illinois shall reduce its Overage to 0 c.f.s.-water-years no later than the end of WY 2019.
12. Running Average -- Subject to adoption of the lakefront diversion measurement system and amending the Decree, the parties understand that in lieu of the 40-year running average set forth in the Decree there shall be a five-year running average of diversion that shall apply prospectively from the beginning of the transition period. The parties may study the reasonableness of, and recommend the use of, a running average for periods other than five years. Notwithstanding this paragraph and anything else in this MOU, the parties understand that any Overage existing under the Decree when the transition period begins will not be recalculated but will instead be carried forward as already accumulated under the Decree and will be first reduced and then extinguished in accordance with the preceding three paragraphs.
13. Enforcement of Water Use and Conservation Measures -- The State of Illinois shall use its regulatory and statutory powers to ensure that municipalities using water from Lake Michigan, including the City of Chicago, comply with allocation limits, unaccounted for flow requirements and conservation measures required by state law, regulation, court order, consent decree or settlement agreement.
14. Funding for Army Corps -- The parties recognize the additional financial burden that the Army Corps will assume for administering a dual measurement system during the transition period, or longer if the parties seek modification of the decree, and that the Army Corps' administration of a dual measurement system is dependent upon Congressional direction and funding. The State of Illinois will request assistance from appropriate state officials to consult with their federal representatives to assure the availability of the necessary funds.
15. No Litigation During Transition Period -- During the three-water-year transition period, no party shall commence a legal action respecting this dispute in the absence of material non-compliance with the foregoing commitments. Furthermore, this MOU does not create a right of action against any party in any forum for failure to comply with any of those commitments.

Title

State

Date