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CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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**Work Plan for the Remainder of the CELA Grant
Empowering Public Participation in Ontario Water Policy**

As you know CELA has been looking at how to best utilise the remaining funds in our grant to further our agenda of involving the Ontario public in the unprecedented law reform efforts underway to protect the Great Lakes. After considerable discussion here we feel that there may be potential to deepen understanding and build consensus on the Annex priorities in Ontario over the next months before the revisions are finalised. From now until March the ten Great Lakes jurisdictions will be negotiating the final draft taking into consideration public comment. To achieve this we are proposing to spend the remaining \$19,000.00 in this grant on the creation, maintenance, of a series of on line discussions on line site among key Ontario environmental and conservation groups. The goal of this process would be to build consensus on key expectations for the Annex.

Many of the environmental groups in Ontario who have traditionally been involved in Great Lakes Protection have not had the capacity of their U.S. counterparts to become involved in the Annex development. Only CELA was invited to participate on the Advisory Committee to the Council of Great Lakes Governors. We would have welcomed other Ontario participants both on the Advisory Committee and in developing a common position with US Groups. During the period that the Annex was being negotiated Ontario environmental and conservation groups were called upon to respond to a number of water law reform initiatives arising from the Walkerton Tragedy. These included the Province's first Safe Drinking Water Act, a Nutrient Management Act, new Planning, Municipal and Greenbelt Legislation, reforms to the Province's Water Permitting regime and the Source Protection law now under development. CELA held a series of _ meetings across Ontario in 2001 on water reforms and included information and updates on the Annex negotiations. Most groups asked to be informed when the Annex came out but felt the Ontario water law reforms took precedence.

CELA was not surprised at the distinct Canadian reaction to the Annex. Canadians have been very sensitised to the environmental implications of trade decisions that have resulted in

decisions that degrade our environment and health. Water and trade have had banner headlines since NAFTA's inception. Canadians have been responsible for organising opposition to water privatisation world-wide and are vigilant about any action that might commodify water.

Background

Important Ontario Dialogue on the Annex Continues

In Ontario the government has responded to strong public reaction to the October 18th 2004 deadline by expressing willingness to continue dialogue and accept further input from the public. To facilitate this they have struck an Annex Advisory Committee of stakeholders that will hold their first meeting December 15, 2004. CELA has been invited to be a member of that committee. The Committee is made up of senior staff from other Ministries and representatives of sectors that use Great Lakes water.

As well, Ontario has made a commitment to extend their deadline to allow in depth consultation with Ontario First Nations in a separate effort that is now underway. The Chiefs of Ontario have also agreed to participate in the other Advisory Committee discussions. CELA and others have called for First Nation and Tribal involvement in the Annex since the first drafts were released. Adequate consultation may well take additional time.

Ontario source protection legislation, expected early in early 2005, commits the Province to include Annex provisions in new regulations. As a member of the Source Protection Implementation Committee, CELA has been instrumental in ensuring that source protection and watershed plans include the Great Lakes. Original plans had excluded the Lakes. Several concepts proposed in the Great Lakes Annex are central to improving water management in Ontario. These include tracking and evaluating return flows, and identifying and entrenching best conservation practices for all sectors. The cross over between source protection and the Annex is not well appreciated by the public at this time.

New Federal Government Interventions will need to be considered

Additionally, the federal Standing Committee on Environment and Sustainable Development held hearings in November in reaction to public calls for greater federal government involvement. The final recommendations of that Committee will form the basis for the official Canadian government submission on the Annex, anticipated shortly.

Both of these activities have the potential to substantially alter positions that Canadian negotiators will take when they return to the table.

International Considerations

CELA remains dedicated to ecosystem solutions to water quality and quantity management in the Great Lakes. The work we have done to date on both components of this grant, the Great Lakes Water Quality Agreement and the Annex has increased our concerns that international solutions and commitments to taking an ecosystem approach are eroding in the Great Lakes. We intend to work hard to ensure that the Annex compact and regional agreements are given equal weight.

The International Joint Commission (IJC) has been brought into the Federal Government consideration of the Annex and it is likely the Federal government will make several requests of

the Commission as they result of the testimony of Canadian Commissioner Herb Grey. These matters will need to be openly discussed both in Canada and the U.S.

What Next

CELA feels the time is right now to distil a list of essential requirements Ontario groups would require of a Great Lakes water management regime. We propose to approach a number of key groups in Ontario to participate in an on-line dialogue on the Annex to arrive at this statement. CELA would author a series of essential items for discussion on this Message Board.

CELA would ask participants to allow us to share the outcome of these discussions with others actively working on refining their positions. In addition we may ask a number of policy experts and academics to join the discussion.

The goal of this exercise would be a collective statement of Ontario environmental group's expectations of the Annex. Should a consensus statement not be possible, CELA would retain their right to issue their own position and would encourage others to make their individual submissions. We would like to avoid having this dialogue via the media as has happened to date. This Message Board discussion would be password protected.

The issues are too complex and far ranging to reduce to sound bites.

Preliminary lists of Groups to be Approached

Ontario Nature (formally the Federation of Ontario Naturalists)

Conservation Council

Pollution Probe

Northwatch Coalition

Georgian Bay Association

Conservation Ontario

Save the Oak Ridges Moraine

World Wildlife Fund

Nature Conservancy

Canadian Nature Federation

Environmental Defence

The Chiefs of Ontario

Association of Ontario Municipalities

Grey Bruce Association for Better Planning

The Chiefs of Ontario

Preliminary list of Issues to be canvassed

- How important is it to have an international water management regime to protect the waters of the Great Lakes?
- Does the status quo afford us adequate protections?
- What kind of harmful withdrawals, diversions and consumptive uses can we expect in the future?
- Should the annex agreements address all of the recommendations of the IJC 2000 report? If not what further efforts are needed?

- Are return flow provisions an essential environmental protection or a threat by comoditizing water?
- What if any role should the IJC play?
- How should the Annex bind Ontario and Quebec?
- What changes would the Annex bring to practices in Ontario?
- Should intra-basin diversions be included in the Annex?
- The public wants conservation strengthened in the Annex how can this be accomplished?
- Can diversions be prevented in the US without an outright ban?
- How can the Annex contribute to overall improvement of the Great Lakes?

We would propose that CELA Water Campaigner Darryl Finnigan work with Researcher Sarah Miller and CELA Lawyers Paul Muldoon and Theresa McClenaghan as legal advisors on this project. Darryl has worked on a similar project to gather feedback on Ontario's Source Protection regime for the past X months.

Project Elements

Salary

CELA Water Campaigner

Rates x Time

Administration

Legal Advice

in kind donation

in kind donation

Operations

Telephone

Travel

Photocopying and printing

Total

\$19,000.00

Tasks

Contact and canvassing of the twelve groups

Preliminary meeting (may by phone)

Design and maintenance of the on-line Message Board

Research & Creation of background issue papers for discussion with other CELA Staff.

Distillation of responses into a document for use by others working on the Annex.

Timetable

Group by-in end of December

Issue work January-February

Release late February

Analysis of Impact on agreement March