



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

April 14, 2010

Mr. David Phippen
Chair, Regional Body
Policy director, Office of Governor Daniels
Indianapolis, Indiana

Mr. Ken DeBeaussaert
Chair, Compact Council
Office of the Great Lakes
Lansing, Michigan

Dear Mr. Phippen and Mr. DeBeaussaert,

Re: Comments and Concerns Regional Review Process – Diversion Exceptions

The Canadian Environmental Law Association (CELA) is a public interest environmental legal clinic that has been active in Great Lakes Charter, Annex and has been in an advisory capacity to the Council of Great Lakes Governors and to the Province of Ontario from 2002 to the present on water management initiatives that led to the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement (the Agreement) and the Great Lakes St. Lawrence River Water Resources Compact (the Compact). We have appreciated the opportunity to be part of the discussions on the draft Regional Body Procedures/Compact Guidance for Consideration of Exceptions as well as Contents of Applications for Straddling Communities, Straddling Counties and Intra-Basin Diversions exceptions.

CELA shares the concerns raised in the March 22, 2010 letter from the Alliance for the Great Lakes, Great Lakes United and the National Wildlife Federation that the Waukesha, Wisconsin, diversion proposal approved last week by the their City Council will be considered before the full implementation of all the components of the Compact and Agreement have been finalised. We are concerned that programs that are included in the Agreement and Compact will not have commenced in time to fully apply to the decisions made on current applications. These include; commencement of the improved data collection and reporting on water uses, the establishment of actual rather than estimated consumptive use data, commencement of the new science program on water management as it relates to Basin groundwater resources, climate change and

cumulative impact assessment, and the implementation and evaluation of each jurisdictions' unique diverse conservation strategies. As well, there is a lack of clarity on what constitutes an adequate conservation test for applicants.

The Agreement implementation schedule is not the same as the Compact schedule it will take longer to be in full force in the Canadian Provinces. This means another proposal now underway and undergoing an Environmental Assessment in York Region for an Intra-Basin diversion is proceeding "in the spirit of the Agreement" but without the benefit of many of its regulations and guidance in Ontario. As well Ontario has not yet released their conservation strategy. For these reasons CELA recommends that the Regional Body consider stronger interim rules and procedures for exceptions than those anticipated by the Compact and Agreement when fully implemented.

In particular, we recommend that proposals for exceptions should have additional conditions that would set out periodic reviews of their cumulative and local impacts as more information becomes available on this evolving science in the Great Lakes. These additional reviews should allow for new mitigation measures to be stipulated if deemed necessary. Consideration should be given to how these reviews are conducted, and what timetables would be appropriate for such reviews.

Ironically, both of these current proposals are extremely technically complex and challenge the timeframe for turning around application proposals that is currently anticipated in the Regional Body procedures/Compact Council Guidance. CELA joins others in the concern that, because the exceptions are in play first before the full rules, that there is a danger that these exceptions will be perceived as the rules by those who make applications after. This could stimulate resistance to the full implementation of all components of the Agreement and the Compact as they evolve and are implemented in all ten jurisdictions over the next decade.

Yours truly,

Canadian Environmental Law Association

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