

**Agreement Advisory Panel
Consultation on Agreement Implementation**

February 19, 2009

1.0 Establishing the Baseline

General – Baseline

- Does the province treat the non-consumptive baseline the same as the consumptive baseline?
- What constitutes the baseline amount when there are temporary takings? (e.g. 1 year, construction/dewatering)
- If coming off of ground water supply and onto the municipal water system, must be required to connect to municipal sewage system

What option would you recommend for setting the municipal baseline for withdrawals? For transfers? Why?

- Need to recognize that if the existing infrastructure is old, it may not have been approved through an EA process. Therefore, may need to use a mix of methods for establishing baseline.
- Need to consider on a case by case basis
- When talking capacity is it a rated capacity or actual capacity?
- PTTW is more than the rated capacity of an existing system but less than the actual capacity
- There should be a menu of options which the proponent would choose from to make determinations and then the province would review and accept or not
- Various approval options give different numbers
- Where does conservation fit into this baseline? – conservation should be applied at the baseline
- Consider a phased approach, the municipality would have to demonstrate conservation and best practices
- Conservation needs to be included in the chosen option
- Anything put into place cannot penalize proactive players who have demonstrated conservation/efficiency initiatives – need to recognize past water conservation efforts
- How formulaic is the determination of the baseline?
- There has to be rigor in the assessment for approval of the PTTW in cases with sustained excess capacity
- Municipalities have onerous approval processes to deal with so they plan long term for water needs and therefore capacity requirements are based on growth and need projections
- This process is suppose to protect groundwater therefore this process must address it so no over allocation
- Need to have a level playing field
- If have a lower baseline then less flexibility

**Is PTTW the best option for setting the non-municipal baseline for withdrawals?
For transfers? What other options could there be?**

- The choice of instruments is about public access – need to have an appeal or intervener process for the instrument selected.
- Currently, the PTTW allows for greater public access and provides for appeals; this is not the case with the Class EA
- The Lake and Rivers Improvement Act (e.g. operating plans) would be another approval tool that could be used to set the baseline amount for hydro power (section 23)
- Power industry would not want baseline to be established at “actual” water use because it is so variable, especially for the fossil-fuel and hydropower sectors.
- In power industry must look at other instruments for the baseline, at least PTTW or capacity (many OPG facilities pre-date EA requirements). Niagara facilities are subject to international treaties.
- Power industry has a bar under which they must operate (Lake and Rivers Approvals Act)
- Sector-specific delineation should be an option for setting the baseline

Do you have any comments on the possible approach to calculating the transfer amount?

- If there is return flow the baseline should be set differently than if there is no return flow
- Transfer portions should be established through sub-metering
- Is this going to capture diversions via sewage?
- Should establish a baseline for sewage diversions
- Need to use the word, “diversion”, it is way too confusing to use the word “transfer”
- The word, “diversion” is used in other legislation and has a different meaning
- Must identify that where there is a sewage transfer it is a consumptive use
- How does this approach and definition get at the issue of ecological harm?
- Right now, in the PTTW, there is no room to look at ecological harm and the possible consequences
- Estimates or methods of calculations must be the same (i.e. if sub-metering for municipality A then sub-metering for municipality B)
- As long as the user and the province are satisfied that the taking is a reasonable amount, then the method should not matter
- A menu of calculation options could be used
- Perhaps could specify different acceptable methods depending on the size of the transfer.
- If a menu of options, need to provide sufficient guidance to assist proponent in selecting/using calculation option or options.
- The Director should have the authority/discretion to require sub-metering
- Sub-metering may be very onerous – e.g. in some cases (e.g. Kingston), it may involve hundreds of pipes crossing the watershed boundary and thousands of buildings straddling the boundary.
- There is a price to accuracy, how far down is it worth driving for accuracy?
- Somehow the transfer amount has to relate back to levels of flows for ecosystem health

REF

Do you have any comments on the possible approach to related transferor implementation?

- Clarify that the user of the distributed transferred water becomes a “transferor” only if they distribute the water, not if they simply “use” it (e.g. Ducks Unlimited)

2.0 Connecting Channels

Which of the identified “waterways” should be considered as a connecting channel?

- Not discussed - however there seemed to be some agreement that the most (at least the first three) of the listed channels should be considered a connecting channel.
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If the St Lawrence cannot be considered a connecting channel, then how should Kingston’s water taking be addressed? (Kingston takes water from Lake Ontario and returns it downstream into the St. Lawrence)

- Not discussed

3.0 Transfers Options 1 and 2

What option would you recommend and why?

- Must be consistent with other jurisdictions otherwise setting up for an Appeal?
- Absolutely adopt “option 2”
- If just use upstream, “option 2”, will capture more transfers
- If just upstream, is it not less than the Agreement?
- If just upstream then Sarnia would be caught as a “transfer” even though the return point is only a few hundred meters away
- Either option will affect some takers differently
- Is it possible to apply Exception Criteria when the transfer is a short distance (e.g., Sarnia)
- Above approach (applying Exception Criteria to a set distance) is subjective
- “Option 1” seems to avoid many of the “one out” cases
- When choosing “option 1”, overlapping watersheds are created
- Start with the hydrology and develop policy from there
- Which option protects the water quantity and ecosystem health in the Upper Lakes from the standpoint of climate change?
- Hydrologically must address the way water flows, therefore must be option 2
- If “option 2”, exception criteria would not apply because same watershed
- In the decision making process, look at the transfers on a “channel” by “channel” basis
- Need a task force to review each case and provide a decision
- Task force should have representation from all jurisdictions

Are there other options which should be considered? If so, please explain.

- No suggestions at this time

3.1 Return to a Tributary Options 1, 2 and 3

What option would you recommend and why?

- Option 2 – “naturally” – must consider the natural flows
- Which one of these options leads to more re-plumbing of the Great Lakes?
- All three options hinge on the location of the application
- Has Ontario done any analysis on the implications of straddling counties
- The implications of straddling counties is worthy of rigorous analysis
- Should also examine the implications of intra-basin transfers
- How does this work for the communal irrigation system in the Niagara region? (i.e. water taken from the welland channel?)

Are there other options that should be considered? If so, please explain.

- No suggestions were made for other options

3.2 How to Apply the Exception Criteria

3.2.1 Individual Impacts:

Which option would you recommend?

- “Option2”, however, what are the “additional requirements”?
- Need range of additional requirements. Need to inform decision-making
- Currently requirements are quite onerous for municipalities
- Partial requirements, more information on return flow should be required
- Will need to review individual proposals and determine information requirements
- Speaks to the need for the province to set a ceiling on cumulative impacts
- Something similar to the Low Water Response Plan but on a Great Lakes scale
- Requirement for the proponent to determine individual impacts
- The proponent may not have the data or it is not available
- For individual impacts there needs to be a sharing of information, so that each individual does not have to start from ground zero when assessing impacts.
- Database or clearinghouse of available and current data on hydrology, ecology, return-flow (water budget), etc.

What additional requirements, if any, should be established to meet the Exception Criteria for individual impacts?

- Should be a requirement to state the consumptive use
- Water not returned, considered a potential impact to the source watershed (similar to water budgets, e.g. in flow and out flows)
- Return flow needs to be considered, if not returned then it is being consumed (e.g. water budget)

3.2.2 Cumulative Impacts:

Which option would you recommend?

- Option 2 because it would enable better understanding/integration of cumulative impacts

What additional requirements, if any, should be established to meet the Exception Criteria for cumulative impacts?

- No suggestions
- Water budgets – more information will be available (will go beyond the Agreement)
- What the Regional body's approach, e.g. Regional committee's procedures for Regional review – how Exception Criteria are met?

What should be the role of individual proponents, if any, in the provincially-led assessments of cumulative impacts?

- Proponent might not have sufficient data to undertake a cumulative impact assessment
- Individual's assessment needs to be put in the context of the cumulative impact
- Needs to be a sharing of data and information between province and all involved proponents
- Whatever ceiling is set by the province for cumulative impacts the individual assessments must be done in context of this ceiling
- Prioritization of who gets to take water has to fit with the reality of what water nature has to provide – the integrity of the ecosystem must be the priority
- Application of precautionary principle has to prevail
- Gap - needs a Tier 1 committee to deal with and share data on a Great Lakes watershed basis including consideration of climate change impacts

4.0 Exception Criteria: Conservation and Efficiency

General comments:

- When addressing conservation need to go beyond "point of use" conservation
- Grey water use for fire control (California, Colorado)
- Bench mark – transfer use must be close to benchmark
- Sector set benchmark or standards

Do you agree with the proposed principle that water conservation requirements for new or increased transfers should go beyond the Ontario Water Conservation and Efficiency Strategy?

- Yes, should go beyond
- Whatever conservation plan developed for Ontario should be enshrined in legislation
 - Incorporate regional elements and additional elements developed specifically for Ontario
- The strategy should be adequate and should be updated for "Best Practices"
- The Strategy sets the bar high but should be set higher for transfers
- Ontario's strategy should be stronger than the rest of GL Region
- Design the proper strategy & follow it (one for all takers and one for transfers)

- Mandatory requirements for transfers (e.g. must have low-flush toilets in residences)
- Slide 23 , Bullet 4 – should read “have been achieved and will be sustained”
- Consider conservation options in addition to end users, e.g. unplanned/emergency uses such as firefighting use of cisterns/water not treated.

Which options or combination of options would you recommend for demonstrating the efficient use and conservation of existing water supplies?

- No suggestions at this time

Which option or combination of options would you recommend for demonstrating that environmentally sound and economically feasible conservation measures are in place for a new or increased transfer?

- No suggestions at this time

5.0 Exception Criteria for New or Increased Transfers

General Comments and Questions:

- Schedule 1: Exceptions and Criteria for Intra-Basin Transfers, concern that Exception 2 - ii is a broad exception for the municipalities
- Are there going to be amendments to the Class EA process? – currently there are insufficient requirements and exploration in Class EA
- Alternatives are not really fully considered in a Class EA
- If Class EA – can Notice of Completion go on EBR?
- At what point can any of this be appealed?
- Option 2 – when and where would it be posted?
- Option 2 – subject to the EBR?
- Posting on the EBR of Information Notice at time of notice commencement (suggested change to the option)
- If the PTTW application is submitted, could be some issues about quantities – would not yet know the amount – means more revisions in process
- There is going to have to be a large re-education package – Class EA’s deal with small scale not Great Lakes scale?
- Engineers approaching a Class EA are not considering ecosystem protection
- For municipalities, ecosystem considerations must be stated and addressed in the development of the Class EA by knowledgeable individuals (hydrologists, biologists, etc.)
- MOE and MNR need to provide a Table of Contents of environmental and ecological studies/requirements for a Class EA and present to the AAP committee to determine if sufficient or if additions are required
- Definition of the project should consider all aspects of an intra-basin transfer in “one” project

What option would you recommend and why?

- Modified option 1- Post the Notice of Commencement for Class EA projects as information posting on the EBR. Allows for public input into the process on a

Great Lakes Watershed/ Basin level rather local level (usually done for Class EA projects).

- Require pre-consultation on the PTTW applications at the time the ESR is submitted. Still have the PTTW application completed after the Class EA.

For both options, is the Regional Body Review located appropriately in the process? If not, where and when should it occur?

- Yes, comfortable with the placement

Are there other options which should be considered? If so, please explain.

- No - just a modified option.

For Non-Municipal transfers are there other Plans or Approvals when the Exception Criteria should be met, e.g. PTTW Pre-submission consultation, Other Licences and/or Plans?

- The proponent will trigger what requirements need to be reviewed
- Yes there are other plans or approvals, need to consider and will respond later

Are there other considerations for when and how to meet the Exception Criteria, e.g. like combined approach (i.e. PTTW and Other Plans)?

- Yes there are other considerations and will respond later

Final General Comments and Questions – Exception Criteria to New and Increased Transfers:

- How rigorous is the PTTW review in terms of approval to take water based on the capacity of the watershed?
- How then, do we have regions where the withdrawals are greater than the capacity of the watershed?
- Do the approval instruments follow any particular sequence?
- There is a hierarchy for municipalities
- The Official Plan and the Master Plan are not Approval mechanisms, they are planning instruments
- When looking at watershed capacity it is different when withdrawing water for hydro power versus a water bottler. Does this point figure into the decision for the PTTW?
- Common sense has to prevail at some point because over takings from the watershed are not going to be sustainable forever

6.0 Wrap-up – Final Remarks

General comments and Questions:

- Have a slide to demonstrate what is meant by straddling counties in the U.S.
- Have a review discussion of why we have the Exception Criteria that would show some examples of Non-municipal water use transfers so the committee members have a clearer picture of some of the situations the exist and could better comment on real options and/or solutions
- Is there a chart comparing state regulations (Council Office)
- There seems like pages and pages of Exception Criteria which appear to be a bunch of loop holes to allow for approval
- What kind of project would not get approved?
- Do not see any criteria “stoppers” that say the application is not acceptable
- Would be worthwhile to do a walk-through of Wakeshaw
- Ontario needs to be looking at the “Big Picture” to provide a review of where we are headed and it should include climate change, Navigable Water Act etc.

