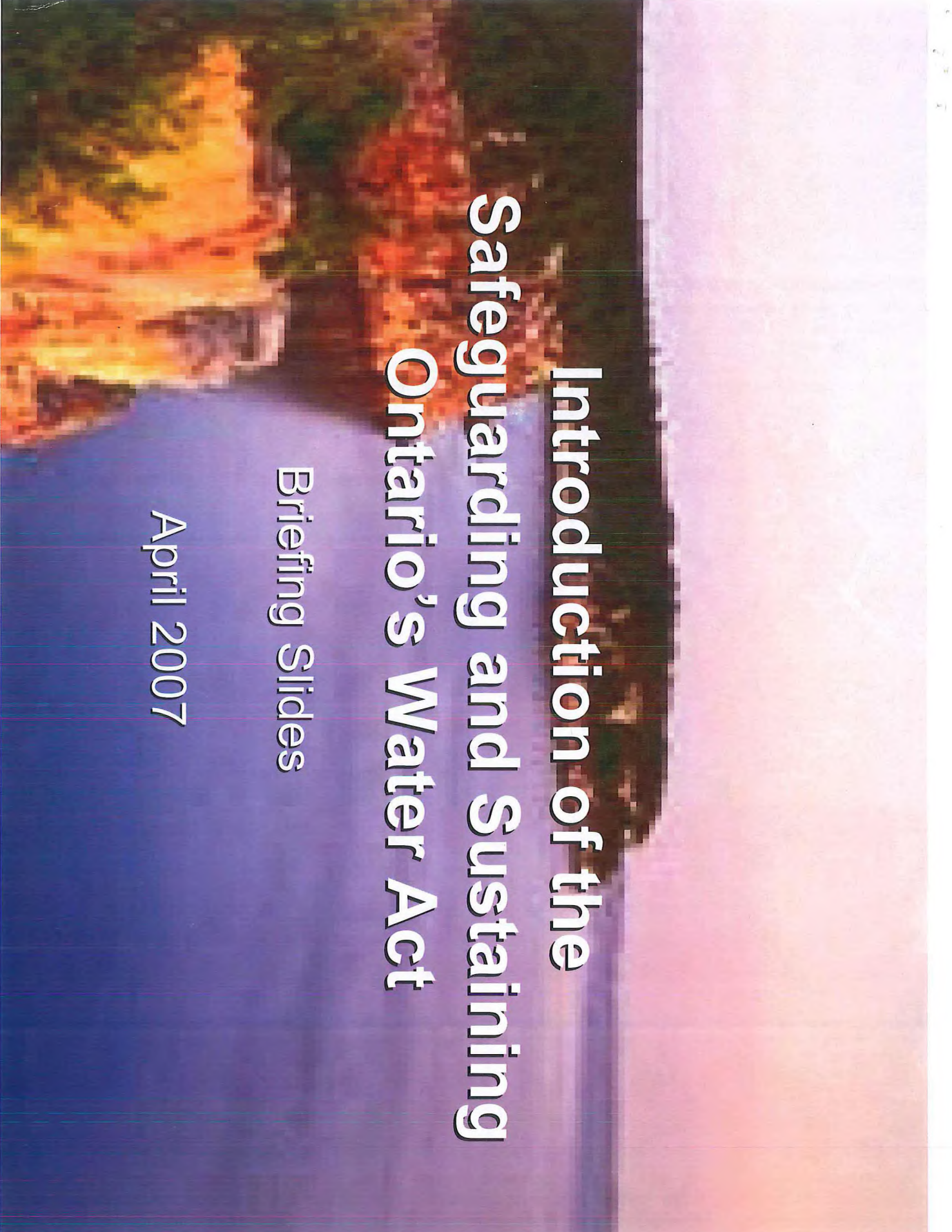




Introduction of the Safeguarding and Sustaining Ontario's Water Act

Briefing Slides

April 2007

Stronger Protections for Great Lakes and Ontario's Water Resources

- The proposed Safeguarding and Sustaining Ontario's Water Act (SSOWA) to be introduced in the Legislature April 3, 2007 would amend the *Ontario Water Resources Act* (OWRA) and other legislation.
- SSOWA proposes to strengthen the management, protection and conservation of water resources in Ontario.
- If enacted, SSOWA would implement the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, ensuring the protection and conservation of the waters of the Great Lakes-St. Lawrence River Basin.
- Legislative amendments would modernize and update provisions of the OWRA that govern and regulate water takings across Ontario.
- The proposed amendments to the OWRA would also provide authority to develop and implement water conservation charges for industrial and commercial uses. Legislative amendments would not allow domestic uses to be charged. Regulations would clarify that agricultural and hydropower production would not be charged.

Proposed OWRA Amendments

Prohibiting New or Increased Transfers from one Great-Lakes Watershed to Another – with Strictly Regulated Exceptions

- An important feature of the Agreement is its provision for a ban on the transfer of water out of the Great Lakes – St. Lawrence River Basin. Since 1999 under section 10 of the Water taking and Transfer Regulation (O. Reg. 387/04) Ontario has prohibited transfers of water out of Ontario's three water basins (Great Lakes - St. Lawrence River Basin, Nelson Basin, and Hudson Bay Basin).
- If enacted SSOWA would:
 - Place the prohibition of inter-basin transfers in legislation;
 - Place a prohibition on new or increased intra-basin transfers of 379,000 litres per day or greater from one Great Lakes watershed to another Great Lakes watershed, subject to strictly regulated exceptions;
 - Adopt in the OWRA criteria from the Agreement including the Exception Standard that must be met for proposals of new or increased intra-basin transfers of 379,000 litres per day or greater; and
 - Impose stricter rules as the volume of transfers increases, e.g. Regional Review by the 10 member Regional Body, parties of the Agreement, for a transfer of water involving greater than 19 million litres per day consumptive use.

Proposed OWRA Amendments

Prohibiting New or Increased Transfers from one Great-Lakes Watershed to Another – with Strictly Regulated Exceptions

The Exception Standard

- If enacted SSOWA would enshrine in the OWRA the Exception Standard, set out in Article 201 of the Agreement. A Permit to Take Water (PTTW or permit) applicant would be required to meet the criteria for new transfers or increased transfers in the amount of 379,000 litres per day or greater (the “threshold amount”):
 - All water transferred must be returned to the Source Watershed, less an allowance for consumptive use (Note: For transfers that do not require Regional Review, returning water to the Source Watershed is not required where it is not feasible, environmentally sound or cost effective);
 - Need for the water cannot be avoided through water conservation and efficiency measures;
 - Amount of water is limited to reasonable quantities;
 - There must be no significant cumulative adverse impact to water quantity or quality;
 - The proposal must incorporate water conservation and efficiency measures;
 - Must ensure compliance with applicable laws including inter-provincial and international agreements including the Boundary Waters Treaty of 1909, and any other treaty agreement or law that is prescribed by regulations; and
 - Additional criterion may be added by regulation to implement the findings of the cumulative impact assessment provided under article 209 of the Agreement including criteria related to climate change or other significant threats to the Great Lakes - St. Lawrence River Basin.

Proposed OWRA Amendments

Permitting Quebec and the Eight Great Lakes States to Review Ontario Decisions on Water Withdrawals and Transfers

- Under the Agreement, Ontario, Québec, and the eight Great Lake states agree to provide each other with substantially equivalent access to their courts or tribunals to challenge certain decision in relation to water takings and transfers. If enacted, SSOWA would provide a reciprocating jurisdiction with the right to appeal the decision to the Environmental Review Tribunal or to bring an application for judicial review of a decision in certain instances.

Creating Authority to Pass Regulations to Further Support Implementation of the Agreement

- If enacted SSOWA would add regulation-making authority to the OWRA. Some of the key regulation-making authorities are as follows:
 - Regulations that would implement Articles 203, 205 and 209 of the Agreement. For instance, Article 203 provides that a decision-making standard be developed and applied to water takings from the Great Lakes Basin. This regulation-making authority would allow this standard to be adopted in regulation and then applied to relevant decisions of the permit to take water Director.
 - Regulation of the transfer of sewage between Great Lakes watersheds.
 - Regulation to require the taking of conservation measures.

Proposed OWRA Amendments

Enabling Ontario to charge for water taken or used for industrial or commercial purposes

- Rationale for a water conservation charge
 - Increasing need to manage water use more wisely due to increased demand and potential impacts from climate change.
 - Costs of Ontario's water quantity management programs are significant.
 - One way to recover management costs is to require commercial and industrial water users to pay their fair share; they benefit from these programs as they rely on access to clean, abundant water supplies.
 - Charge could also encourage some users to take steps to conserve water.
- Existing charges in Ontario and other provinces
 - No charge for direct water taking/management in Ontario. Currently, only a fee for processing water taking permit applications is in place.
 - Four Canadian provinces have an annual volume-based water charge: British Columbia, Saskatchewan, Manitoba, and Nova Scotia.
- Regulation-making authority
 - Authority in the legislation would allow charges to industrial and commercial water uses (regulation would not charge hydropower production or agricultural uses).
 - Legislation would not permit charges to apply to domestic uses or to non-commercial uses (such as institutional uses, including schools, and environmental restoration uses, including wetlands creation).

Proposed OWRA Amendments

Enabling Ontario to charge for water taken or used for industrial or commercial purposes

- Consultation on a water conservation charge proposal
 - A detailed proposal for water conservation charges posted on the Environmental Bill of Rights Registry at the time the legislation is introduced.
 - The proposal document details:
 - the sectors that would be charged and those that would not;
 - proposed charge rates for sectors included in the first phase of implementation; and
 - how the charge would be implemented.
 - Feedback from consultation will be considered in developing regulations.
- Key elements of the proposal
 - A volume-based charge would apply to commercial and industrial water uses that are specified in regulation.
 - The charge would not be applied to water used for hydropower production or agriculture.
 - Charge rates would be fair across sectors and equitable within sectors and are expected to have limited financial impacts on affected companies.
 - First phase of charges would apply to highly consumptive water uses (like water bottling or beverage manufacturing), where water is taken from municipal water works or from the natural environment.
 - Other commercial and industrial uses would be charged in a future phase.

Proposed OWRA Amendments

Providing Authority to Require Water Takings that Began on or before March 29, 1961 to obtain a Permit to Take Water

- Water takings that started before March 29, 1961, currently do not require a permit unless the works that take water have been altered.
- The proposed amendments to the act would enable a regulation requiring defined historical takings to obtain a permit.
- This authority would be phased in and subject to full consultation.

Requiring a Permit to Take Water for any water taking over 50,000 litres per day, except:

- The taking of water for domestic purposes, other than by a municipal drinking water system within the meaning of the *Safe Drinking Water Act, 2002*, or by a company public utility, as long as the taking is always less than 379,000 litres/day or such lower amount as may be prescribed by regulation.
- Watering of livestock if the water taking is less than 379,000 litres per day.
- Watering of livestock and takings for domestic purposes would not be subject to water conservation charges.

Proposed OWRA Amendments

Modernize Permit to Take Water Provisions

- Clarify Director's authority to issue, amend, renew or revoke a permit.
- Clarify the authority of the Director to impose conditions in a permit including:
 - requiring water conservation and efficiency measures;
 - limiting the amount and rate at which water is taken;
 - governing the manner in which water may be taken and returned; and
 - monitoring and reporting.
- Permits may not be transferred without the written consent of the Director.
- Clarify Director's authority to require applicants to provide information.

Other Legislative Amendments and EBR postings

Other Instruments and Safe Drinking Water Act, 2002 (SDWA) Amendments

- Under the SDWA, if a municipal drinking water system takes water it must show a PTTW that authorizes the taking in order to obtain a licence under Part V.
- Amendments would require systems that transfer water to show the PTTW authorizes the transfer before obtaining a licence under Part V.
- If enacted SSOWA would give the Director the authority to amend a sewage works approval (under the OWRA) that relates to a works that returns the transferred water, or a type of approval under Part V of the SDWA, that relates to a municipal drinking water system that transfers water between Great Lakes watersheds, or any other instrument that may be prescribed by regulation.

Water Transfer Control Act

- If enacted SSOWA would repeal the *Water Transfer Control Act* which was never proclaimed into law. This Act is no longer required as a result of the provisions of the proposed Bill.

Environmental Bill of Rights (EBR) Postings

- Safeguarding and Sustaining Ontario's Water Act, 2007 posted on the EBR Registry at the time of introduction.
- A Water Conservation Charges Proposal paper posted concurrently on the EBR Registry for a 60 day comment period. If the SSOWA is enacted, the proposal would lead to developing regulations under the OWRA to support the charge.

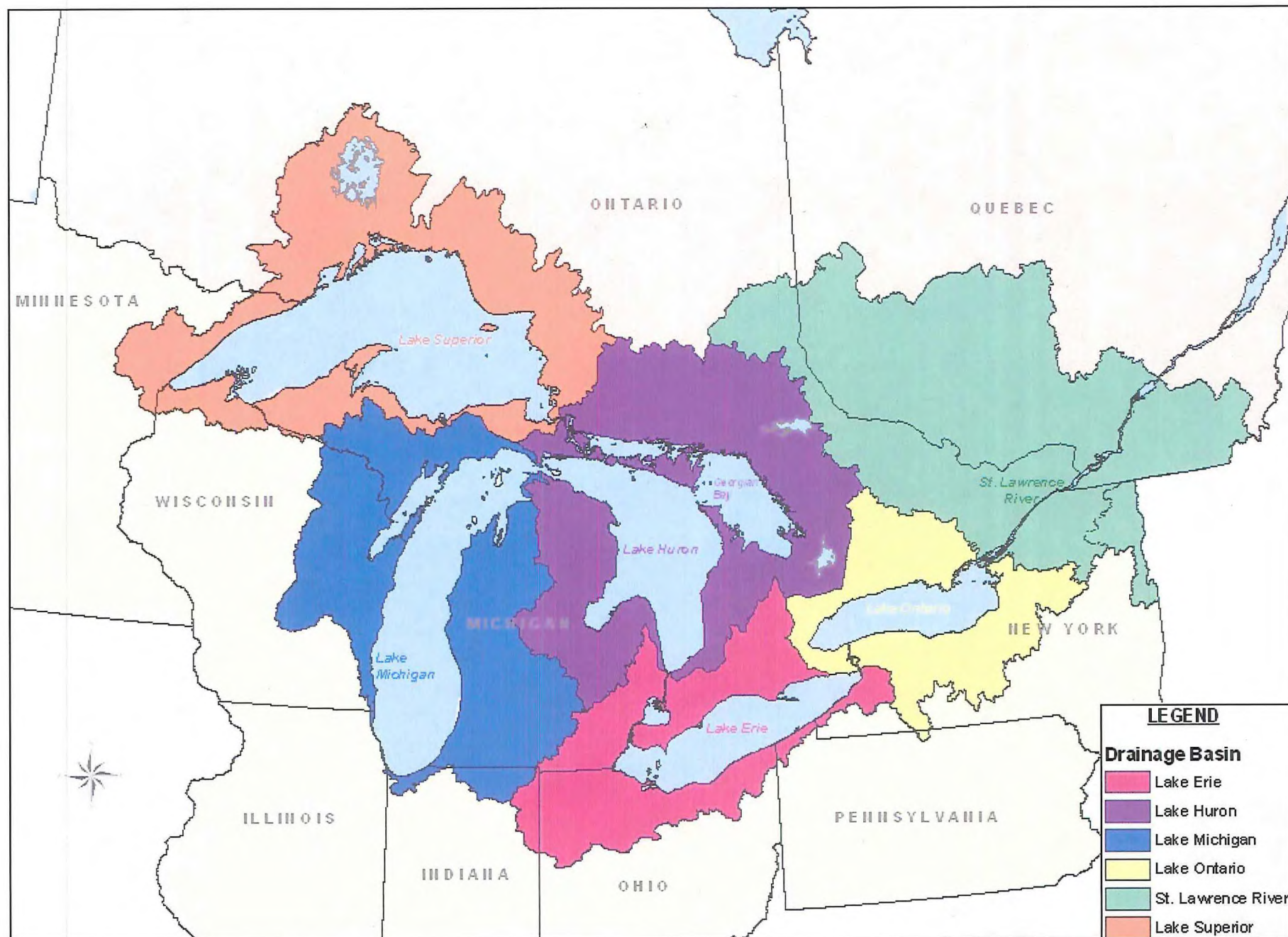
Next Steps

- Public consultation on draft legislation, water conservation charge discussion paper
- Ongoing discussion with Annex Advisory Panel, Ontario First Nations on Agreement implementation, including the development of supporting regulations, policies.
- Focused consultation with commercial and industrial sectors impacted by first phase of water conservation charge.

Appendix

Builds on Clean Water and Great Lakes Actions to Date

- Passing the *Clean Water Act* to ensure communities identify potential risks to local drinking water sources and take action to reduce or eliminate risks.
- Renewing the commitment to build on the accomplishments of the current Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem to continue to improve and protect the Great Lakes, their waters and their ecosystem.
- Launching Ontario's first biodiversity strategy to protect the province's plants and wildlife and the habitats that support them.
- Actively participating in the review of the Canada-U.S. Great Lakes Water Quality Agreement to ensure that Ontario's priorities and interests are clear to the governments of Canada and the U.S. as they consider the future of this important agreement.
- The proposed amendments to the OWRA would allow for the implementation of the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement) agreed to by the Premiers of Quebec and Ontario, and the Governors of the Great Lakes states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin) on December 13, 2005.



Great Lakes Basin

0 35 70 140 210 280 Kilometers



This map is for illustrative purposes only. Do not rely on it as a precise indicator of feature locations.
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Impetus for Action

Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement

- Renewed concerns about bulk water exports (e.g. Nova Group proposal from Lake Superior) .
- Uncertainties of Climate Change.
- Growing mid/southwest USA shortages due to unfettered urban development and potential demand/national interest in Great Lakes water.
- Shift in USA population leading over time to downward congressional representation for Great Lakes States.
- Growing/strong USA industry and agricultural lobby to minimize regulatory burden.
- Nestle constitutional challenge of current USA legislation (WRDA) regulating diversions.

Ontario Water Resources Act Amendments

Proposed amendments to the OWRA include:

- Prohibiting transfers out of the Great Lakes-St. Lawrence River Basin in legislation (currently in regulation).
- Prohibiting new or increased transfers of water from one Great-Lakes watershed to another, subject to strict exceptions.
- Permitting Quebec and the eight Great Lakes States to challenge Ontario decisions on water withdrawals and diversions from the Great Lakes Basin before Divisional Court or the Environmental Review Tribunal.
- Creating authority to pass regulations to further support implementation of the Agreement, including changes required to mitigate the effects of climate change.
- Enabling Ontario to charge for water taken or used for industrial and commercial uses through regulation following consultation (regulation would not allow a charge on agriculture or hydropower production). Domestic uses could not be charged.
- Creating authority to require certain water takings that began on or before March 29, 1961 to obtain a Permit to Take Water.
- Requiring a Permit to Take Water for any water taking over 50,000 litres per day, except for domestic use, unless provided by a municipality or company public utility, or for livestock watering.
- Clarifying and updating the types of conditions that can be imposed through Permits To Take Water to support restrictions on transfer as well as a modernized permit system.
- Providing authority to amend other types of approvals that may be relevant to proposed transfers.

Proposed OWRA Amendments

Prohibiting New or Increased Transfers from one Great-Lakes Watershed to Another – with Strictly Regulated Exceptions

Current Situation	Proposed OWRA Amendments	Rationale
<ul style="list-style-type: none">➤ Intra-basin transfers permitted, subject to same Permit to Take Water (PTTW) provisions as any other taking➤ Current Great Lakes Charter Agreement requires prior notice and consultation for new or increased transfer or consumptive use 19+ million litres/day (30 day average)	<ul style="list-style-type: none">➤ Transfers <u>less than</u> 379,000 (over 50,000 L/day) subject to PTTW requirements➤ Ban on new or increased intra-basin transfers 379,000+ L/day unless they meet exception criteria defined in legislation➤ Ban on new & increased intra-basin transfers 19+ million L/day consumptive use unless they meet exception criteria defined in legislation, transferred water returned to source and undergo Regional Review	<ul style="list-style-type: none">➤ Introduces new restrictions on intra-basin transfers consistent with the Agreement

Proposed OWRA Amendments

Prohibiting New or Increased Transfers from one Great-Lakes Watershed to Another - with Strictly Regulated Exceptions

<p>19+ Million L/Day Consumptive Use (note: threshold may be reduced by regulation)</p>	<ul style="list-style-type: none"> ➤ Meets exception criteria, including return flow to source GL watershed ➤ No feasible alternatives to transfer, including conservation ➤ Proposal undergoes Regional Review ➤ Minister to consider Declaration of Finding by Regional Body before making a decision 	
<p>379,000+ L/Day (Consumptive Use less than 19 MLD)</p>	<p><i>Municipal Drinking Water Systems:</i></p> <ul style="list-style-type: none"> ➤ Meets exception criteria, including return flow to source GL watershed 	<p><i>All Uses</i> (including Municipal Drinking Water Systems if return flow to source watershed cannot be met):</p> <ul style="list-style-type: none"> ➤ Meets exception criteria, except return flow may be to another GL watershed – if demonstrated that it is not feasible, environmentally sound or cost effective to return water to the source GL watershed ➤ No feasible, environmentally sound alternatives to transfer, including conservation ➤ Ont. gives prior notice to other GL jurisdictions
<p>50,000 L/Day to 379,000 L/Day</p>	<ul style="list-style-type: none"> ➤ Still subject to PTTW water taking requirements, but not prohibited 	

Proposed OWRA Amendments

Requiring a Permit to Take Water for any water taking over 50,000 L/day

<i>Domestic Use Exemption</i>		
Current Situation	Proposed OWRA Amendments	Rationale
<p>➤Currently a permit is not required for a water taking for a domestic purpose so long as the water taking is not by a municipality or a company public utility.</p>	<p>➤The exemption for domestic use applies for a taking of water for domestic purposes, other than by a municipal drinking water system within the meaning of the <i>Safe Drinking Water Act, 2002</i>, or by a company public utility, as long as the taking is always less than 379,000 litres/day, or such lower amount as may be prescribed by regulation.</p> <p>➤A regulation-making authority would be added to permit for the averaging of the 379,000 litres/day amount over a period of days to be specified in the regulation.</p>	<p>➤To support commitments in the Agreement to regulate diversions of 379,000 litres/day or more.</p>

Proposed OWRA Amendments

Requiring a Permit to Take Water for any water taking over 50,000 L/day

Livestock Watering Exemption

Current Situation	Proposed OWRA Amendments	Rationale
<p>➤Currently a permit is not required for a water taking to water livestock so long as the water is not taken into storage</p>	<p>➤This exemption would be replaced with a new exemption that would exempt water takings for watering livestock (where the water is not taken into storage), so long as the water taking is always less than 379,000 litres/day.</p> <p>➤A regulation-making authority would be added to permit for the averaging of the 379,000 litres/day amount over a period of days to be specified in the regulation.</p>	<p>➤To support commitments in the Agreement to regulate diversions of 379,000 litres/day or more.</p> <p>➤Note: There are no current livestock watering takings that are as high as 379,000 litres/day.</p> <p>➤Livestock watering will not be subject to water conservation charges.</p>