



Response to the Ontario Government's Proposed Regulations under the
Ontario Water Resources Act
Concerning Water Taking and Transfer.

February 15, 1999

1.0 Introduction

The Council of Canadians recognizes this important step by the Ontario Ministry of the Environment to protect the province's fresh water supply, its environment and ultimately the people of Ontario. We note with approval that in addition to helping prevent the bulk export of water, it appears the proposed regulation would have the effect of banning large-scale interbasin transfers of water within the province. Nevertheless, we have a number of concerns that we hope the Ministry will address:

2.0 Issues of concern and recommendations

2.1 The need for an Act prohibiting water transfers

That these are regulations to be made under the Ontario Water Resources Act and not a separate Act of the legislature makes them susceptible to easy revision. We feel that something as vital to the future prosperity and health of the people of Ontario merits a separate piece of legislation. We therefore recommend that there should be an Act prohibiting interbasin transfer of water in Ontario.

2.2 The definition of "basin"

The scale at which basins are defined for the purpose of this regulation is too large. For example, the proposed regulation would permit diversions of water from one region of the Great Lakes basin to another. Such diversions could have serious environmental and land-use implications. The same environmental arguments that support a prohibition of water exports – i.e. introduction of exotic species and other aquatic ecosystem effects, impacts on water tables, etc. – apply to diversions of water within the province. Furthermore, such intra-provincial diversions would undermine our credibility in calling for a prohibition of water exports.

2.3 Shared waters

How would the regulation apply to boundary waters, i.e. waters shared with other jurisdictions? It appears that the proposed regulation does little to protect bodies of water such as the Great Lakes or rivers such as the Ottawa River, which are shared between Ontario and other jurisdictions.

This issue in particular reinforces the necessity of federal legislation prohibiting water transfers and trade. Federal legislation of this kind should stem from a comprehensive national water policy and be linked to a national water treaty between all provinces. Water, due to its unique, cross-jurisdictional nature, must be protected through comprehensive national action. A national strategy aimed at protecting Canada's water would require adequately funded

programs reaching down to the municipal level. We realize in these times of fiscal sensitivity that this is an ambitious recommendation, but given the new emphasis on joint development of national programs and the absolutely essential nature of water, we call on the Government of Ontario to continue its leadership on this issue and initiate these discussions.

NAFTA itself constitutes the greatest risk to these proposed regulations because the federal government has bound each province to the actions of the other provinces with respect to trade. If some other province should begin trading water, these regulations would be of no effect and could lead to suits against the federal government amounting to hundreds of millions of dollars. In order to make these regulations worthwhile the federal government must legislate a national ban on the trade of water.

2.4 "exemptions" and hydro-electricity

The proposed regulation provides exemptions to the transfer prohibition "for water which is used to manufacture a product which is then transferred out of the basin." For the purposes of this regulation, does "product" include hydro-electricity? If so, the regulation would permit large-scale inter-basin water diversions to generate electricity for the purpose of export. In terms of environmental effects, this would amount to the same thing as exporting water. **We therefore recommend that "product" be defined to exclude hydro-electricity for the purposes of this regulation.**

2.5 Existing transfers

Section 4 (6) provides an exclusion or grandfathering of existing interbasin water transfers that do not increase the amount of water transferred beyond 1998 levels. Before any regulations are approved a list of all transfers that would be allowed under this clause must be published and evaluated.

2.6 Statement of guiding principles concerning water

Finally, these regulations need to include a statement of principles that underpin the protection of water.

They should include:

1. THAT water is a fundamental and essential public resource held in common by the people of Ontario and that the commodification of water for sale or trade is economically, environmentally and morally wrong:

- Economically, water trade is raw resource extraction that provides few jobs or economic benefits and may lead to huge, long-term environmental, economic and social costs while diverting resources from more beneficial and appropriate economic activity.
 - Environmentally, there are serious foreseeable consequences to interbasin water transfer and methods of water trade that are unacceptable in view of the long term damage that will result.
 - Morally, it is absolutely unacceptable to make the availability of this essential staple of life dependent on wealth.
2. THAT water use practice should recognize the importance of promoting sustainable communities and ecosystems ensuring safe and sufficient water for future generations of Ontarians.
 3. THAT exporting water does not promote, but would undermine efforts to develop sustainable water resource systems in regions and countries that might receive bulk water from Ontario.

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