

DRAFT

Comments on proposed changes to the Ontario Water Resources Act, Bill 198

The Canadian Environmental Law Association, Pollution Probe and the Sierra Legal Defence Fund have all been involved in Ontario's efforts to successfully negotiate the *Great Lakes ~ St. Lawrence River Basin Sustainable Water Resources Agreement* signed in December 2005 with the nine other Great Lakes jurisdictions. Since 2004 all three groups have served on an Advisory Panel with over 45 other stakeholders to the Ministry of Natural Resources, Ontario's negotiators on this Agreement. Advice from this Advisory Panel shaped the positions of the Ontario government at the negotiating table and led to a final Agreement that was far more acceptable to Ontarians than earlier drafts. The Agreement prohibits diversions and large transfers of water out of the Great Lakes Basin and sets a framework to measure and reduce our water use within the Region.

All three of these environmental groups have also endeavoured for decades to improve Ontario's own process to allocate water and have worked to get legal recognition of the need to conserve and sustain all of Ontario's water resources in order to give more resiliency to these water resources in a future prescribed by climate change.

Our groups support the proposed changes to the Ontario Water Resources Act because they are significant steps to improving our water allocation and management for sustainability for the Great Lakes and for the rest of the province. These proposed changes to the Act accomplish three things:

- They turn Ontario's undertakings as signatories to the good faith agreement *the Great Lakes ~ St. Lawrence River Basin Sustainable Water Agreement* into law. This is important as the reciprocal *Great Lakes-St. Lawrence River Basin Water Resources Compact* also signed in December 2005 by all the US States is legally binding.
- It provides the Province with the ability to charge consumptive water users for the costs of water management programs. This will assist with Ontario's capacity to carry out the numerous changes in water management that are now required in improvements to the permit to take water regime, to implement the Agreement and pending programs that will be set out by regulations flowing from this Act, and
- They modernize and update the Act to reflect recent changes and needs.

Changes to Implement the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement

Because this is an implementing piece of legislation, the proposed changes are not transparent without an understanding of the provisions of the Agreement and a side by side comparison. Inserting all aspects of the Agreement into an existing piece of legislation is challenging. Consequently it is not easily transparent how the changes relate to or enable the clauses of the Agreement. The complexity of each of these changes has led us to our first recommendation.

1. We recommend that the OWRA prescribe in the Act that a plain language Interpretive Manual be written and updated regularly to explain the intent, the provisions, implementation and timetables associated with the provisions of the Act implementing the Agreement.

We recognize that placeholders have already been put in the PTTW Manuals anticipating the need to include Agreement language. However we feel that the Agreement contains so many new obligations and concepts that far more explanation and education will be needed for its effective implementation.

The Agreement contains obligations for the Province to undertake new activities in water management. These include:

- establishing a baseline on current water use,
- tracking cumulative use of Great Lakes waters including groundwater,
- requirements to return water from large withdrawals back to the source watershed and track return flow,
- provisions that discourage transfer between one Great Lake watershed to another Great Lake watershed with some exceptions,
- a conservation program be drafted,
- the collection and sharing of new water use data and,
- development of a scientific strategy to address our knowledge gaps on such areas as the relationship of ground and surface water and the impacts of climate change and other water shortages on the integrity of the ecosystem.

The majority of the important details of these programs will be spelled out later in regulation. Our three groups are committed to continue to work through MNR's Advisory Panel and with other environmental and conservation groups to ensure that Ontario will implement the strongest water management program possible through these regulations. We trust that the Ontario government will continue to support the work of this Advisory Panel to assist in discussions on all of the forthcoming regulations.

Past practices in Ontario have allowed water allocation practices that will require Regional Review as a result of this Agreement. These include large intrabasin transfers from one Great Lake watershed to another and transfers of water allocated by permit by another party other than the permit holder. Today we recognize that there are ecological, social and financial consequences for the areas in these scenarios that are permanently deprived of water. At this point we do not know how wide spread these practices are. We do know that several municipalities are currently considering new requests for intrabasin transfers. This presents a significant challenge for the Province when they frame the regulations governing future practices. Some of these current demands could certainly be avoided if the Province had an aggressive conservation programme mandated.

2. We support the new provisions of this act that allow the Minister to require that grandfathered water users prior to the April 1961 commencement of the permit to take water system to obtain a permit for any new or increased takings. We ask that the Act make it explicit that the Director can require that the new permit be for the cumulative amount and not be limited to the increase. Giving the Minister these additional authorities will enhance our ability to track and understand our current use of water which we have not been able to do until now. This will assist in establishing the baseline required in the Agreement and assist us in understanding cumulative and adverse impacts.

3. We ask that the provisions of this Act explicitly mandate that a website be created that is publicly accessible on the Agreement Provisions and the permit to take water system Province wide. This website should include data on the baseline of water use required by the Agreement, information on consumptive use and on return flow, permits by sector, cumulative impacts and other relevant scientific information as it becomes available. This will all us to build an understanding and support for water conservation and program support.

Water conservation could result in avoidance of disputes over water, future water shortages and the need for Ontario municipalities to undergo Regional Review. As well, many of the decision-making standards with in the Agreement hinge on the determination that adequate water conservation has taken place before exceptions are allowed. However adequate water conservation programs are left to each jurisdiction to define.

Our groups are concerned because a weak and vague conservation guidance document has already been released by the Council of Great Lakes Governors for public comment. Ontario has had the distinct advantage throughout the

international negotiations on this Agreement because this Province has one of the most comprehensive and rigorous water permitting systems in the Basin. It tracks all water use over 50,000 litres the amount of water used in a medium farm operation. Only one other jurisdiction has anything comparable. It is clear other US States are still unwilling to track water use at this level. This makes it imperative for Ontario to lead by example by framing the strongest water conservation program in the region. Because Premier McGuinty is currently the Chair of the Regional Body over seeing the implementation of the Agreement and the US Compact, our leadership on setting the bar high for our conservation plan could have considerable influence on the other jurisdictions.

4. We recommend the immediate passage of this Act so that the important work of framing a conservation program in regulation can commence immediately. Early action by Ontario on a strong conservation plan could deflect future water conflicts and shortages with in our Province and influence the other Great Lakes jurisdictions to follow our lead.

The commencement of work on water conservation will also be of great benefit to the Source Protection planning and water shed water budgets mandated by the *Ontario Clean Water Act*.

The full implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Agreement cannot occur until all of the 10 Great Lakes jurisdictions have passed the agreement through their legislatures and in the US the Compact also has to pass the US Congress. While all jurisdictions have schedules to do this, only one State, Minnesota has accomplished this. It is crucial that Ontario do this so that the international aspects of the Agreement are enshrined and others will be encouraged to follow suite. Throughout this process the Ontario negotiators have felt that time is of the essence. Scans that they commissioned show that there will be a large shift of US populations and political influence to the arid southwest where the major water supply, the Ogallala aquifer is rapidly being depleted. This could lead to growing pressure to look to farther sources for water for the Sunbelt. Indeed last week it was revealed that a US think tank had released a report on their "North American Future 2025 Project" and convened a meeting in Calgary to promote that the Federal Governments of Canada, Mexico and the US have a common agenda on water consumption, water transfers, artificial diversions of fresh waters, water conservation technologies for agricultural irrigation and urban consumption. Continental water management schemes always seem to creep back into the discussion particularly when there is a regulatory vacuum. Although the Federal Government has passed amendments to the Boundary Water Treaty Act banning water export out of the boundary waters of the Great Lakes, groundwater is omitted from the definition of Boundary Waters in that 1909 Treaty. This makes it very important for Ontario to

act to pass this legislation to extend these protections to the significant groundwater portions of the Great Lakes ecosystem. It is estimated that the groundwater portion of the Great Lakes could be as large as the surface waters of Lake Michigan.

Once the Agreements are passed their implementation will be phased in over five years. We could be waiting for another seven years for the Agreement to come into full force.

Amendments to modernize the OWRA and allow for water charges

5. Our Groups supports the amendment to section 75 the *Ontario Water Resources Act* ("OWRA"), to allow the Lieutenant Governor in Council to make regulations for water charges.

We note that a number of provinces, including British Columbia, Manitoba, Nova Scotia, Newfoundland and Saskatchewan already impose a requirement that a fee must be paid for a license or a permit to withdraw water.

A recent MOE publication entitled "Water Conservation Charges Proposal" states that the primary purpose of the charge would be to recover the portion of the costs of programs required to manage water and the secondary objective is to provide financial incentives for companies to use water more efficiently. The Ministry has stated it would be taking a phased approach with the most consumptive users subject to charges first. The proposed rate for these users is \$3.71 for one million litres of water. It is highly unlikely that the proposed fee would result in water conservation given that there does not appear to have been any analysis done by MOE as to what the amount of charges should in order to motivate conservation by users. While we understand that this Bill gives the Minister authority to set charges and that those charges will be set by regulation and the subject of a separate consultation we feel it is important to raise these concerns to you today.

We are also concerned about the adequacy of funding for the MOE's and MNR's water management programmes. The Environmental Commissioner of Ontario's recent Special Report entitled "*Doing less with less*" raises serious concerns about the amount of funding for MOE. The Environmental Commissioner has remarked that this lack of a capacity of MOE to fulfill its duties is due to the significant decline in MOE's operating budget. In view of these concerns the MOE should immediately undertake a thorough and comprehensive review of the actual costs required for implementing an effective water management programme in the province. This review is essential given that the proposed amendments to the *OWRA* via Bill 198 would significantly expand its responsibilities with respect to water management in Ontario. The MOE should

then undertake the necessary expansion of its programme both in terms of budget and staff in order to fulfill its regulatory responsibilities. The Ministry should forthwith reassess the water charges for users once it has expanded its programmes to ensure that the charges accurately reflect the cost of its water management programme. We recommend that the assessment of the water charges be made initially after the water management programme has been expanded and then every three years thereafter.

5. Our Groups recommend:

- (a) The MOE needs to immediately undertake an comprehensive and thorough review of its water management programme with a view to assessing the actual costs required for implementing an effective water management programme in the province;**
- (b) The Ministry should expand the water management programme as necessary to ensure that it has the appropriate budget and staff to carry out its regulatory responsibilities; and**
- (c) The MOE should forthwith reassess the charges for water takings once it has expanded its water programme and undertake further assessments every three years thereafter.**