Sierra Club of/du Canada
ONTARIO CHAPTER

COMMENTS AND RECOMMENDATIONS REGARDING BILL 198 - SAFEGUARDING AND SUSTAINING ONTARIO'S WATER ACT, 2007

Submissions of Sierra Club of Canada to the Ministry of the Environment Regarding EBR Registry No. 010-0163

May 3, 2007

A. INTRODUCTION

This is Sierra Club of Canada's submission regarding *Bill 198 – Safeguarding and Sustaining Ontario's Water Act.* If enacted, this Bill will amend the *Ontario Water Resources Act* in order to implement the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, which was signed on December 13, 2005 by Ontario, Quebec and the eight Great Lakes states. It also creates regulation-making authority for a system of water charges.

Since 1963, the Sierra Club of Canada has played a leading role in environmental advocacy. Sierra Club of Canada is a national non-profit, volunteer organisation, with about 10,000 members, supporters and youth members all across Canada with 5 chapters in Ontario, British Columbia, the Prairie Provinces, Quebec, and Atlantic Canada. Sierra Club of Canada makes effective use of our grassroots members and volunteers, our chapter structure, and the knowledge and expertise of senior staff and strategic media and communications programmes. The protection of our freshwater resources is a high priority of the Sierra Club of Canada. Sierra Club of Canada has worked on issues relating to clean water, water quality and water conservation for forty years.

B. CONTEXT

a) The Great Lakes Are Finite, Non-Renewable Resources

It is true that the Great Lakes contain 20% of the world's total fresh surface-water supply but it is important that we realize the Great Lakes are for the most part non-renewable resources. They were carved out by ice ages and filled by glacial meltwater as the ice retreated. This is the point made in a critically important report developed by the International Joint Commission, in which it stated:

> "The waters of the Great Lakes are, for the most part, a nonrenewable resource. They are composed of numerous aquifers (groundwater) that have filled with water over the centuries, waters that flow in the tributaries of the Great Lakes, and waters that fill the lakes themselves. Although the total volume in the lakes is vast, on average less than 1 percent of the waters of the Great Lakes is renewed annually by precipitation, surface water runoff, and inflow from groundwater sources." [1]

Therefore, despite the apparent abundance of water, only a very small fraction is renewed every year by precipitation and inflow from streams and groundwater flows. If we draw an analogy to a savings account, we can consider the non-renewable portion of the Great Lakes as the principal, and the renewable 1 percent as the flow of interest we can utilize. This is a delicate balance and we must ensure withdrawals for human activities do not exceed the deposits that come from our natural climate. Otherwise, we will start drawing down the principal. Essentially, we will be mining our water the same way we mine for oil. The only difference being that there are alternatives to oil but there is nothing that can replace water.

We see the consequences of drawing down the principal in other regions of the world. The Aral Sea in Asia has been drained and decimated by overuse, diversions and pollution. It has lost 90% of its volume and is considered beyond recovery.[2] Closer to home, unsustainable agricultural practices and rapid urban development have been steadily mining the Ogallala aquifer, which supports 20% of total agricultural production in the United States. That this aquifer will be exhausted in the near future is considered inevitable and is one reason why southern U.S. states are looking north and coveting the water of the Great Lakes.[3]

Complicating this equation is climate change, which through higher evaporation rates, is predicted to reduce the renewable water supply, and increase the risk of tapping into the principal.

b) The Great Lakes-St. Lawrence River Basin Sustainable Agreement

Given this context, the threat of water diversions to southern U.S. states, or in tankers to other countries -- highlighted by the proposal by Nova Group in 1998 to export water to Asia in supertankers -- prompted the Great Lakes jurisdictions to engage in negotiations to address this threat. The result is the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (the "Agreement"), which was signed in December 2005 by Ontario, Quebec, and the eight Great Lakes states. The agreement expressly prohibits

[1] International Joint Commission, "Protection of the Waters of the Great Lakes – Final Report to the Governments of Canada and the United States" (February 2000).
[2] Peter Annin, The Great Lakes Water Wars (Island Press, 2006)
[3] Marc de Villiers, "Water: The Fate of Our Most Precious Resource" (First Mariner Books, 2001)

long-range diversions and establishes a water management framework to regulate water use within the Great Lakes-St. Lawrence River Basin. As its general purpose, the Agreement charges each jurisdiction with the "*...shared duty to protect, conserve and manage these renewable but finite Waters.*"

The final agreement was the result of four years of negotiations and three major re-drafts. The Ontario government showed significant leadership during these negotiations and this leadership resulted in the signing of a final document that was considerably stronger than the original and which was acceptable to Ontario citizens.

There is still much work to be done to implement the agreement in the basin. Each state must secure Congressional approval to make the Agreement legally enforceable in the United States through something called a "Compact". This Compact also needs federal Congressional approval. As well, there are a series of implementation stages that are staggered over a multi-year period. Currently, the only U.S. jurisdiction that has secured state Congressional approval is Minnesota.

c) Bill 198 – Ontario's Commitment to Protect and Conserve the Great Lakes

In Quebec and Ontario, the Agreement needs to be incorporated into domestic law through legislation. For Ontario, this is the purpose of Bill 198. The proposed amendments to the *Ontario Water Resources Act* (*OWRA*) contained in Bill 198 represent a general legislative framework that is designed to implement a number of aspects of the Agreement, most notably provisions relating to inter-basin diversions (diversions out of the Great-Lakes-St. Lawrence River basin) and intra-basin transfers (diversions between Great Lakes watersheds within the basin). Passage of this legislation will help build momentum behind the Agreement and hopefully encourage other states to approve and implement it.

However, the Bill also has to be right for Ontarians and the water-dependent ecosystems of the Great Lakes. For this to be the case, the Ontario government must go beyond the minimum required in the Agreement, and strengthen areas that fail to meet the general purpose of conserving and protecting the waters of the Great Lakes-St. Lawrence river basin.

In fact, there is clear authority in the Agreement itself for jurisdictions to take a stronger position. Article 202 states that the "Standard and Exception Standards are minimum standards. The Parties may implement Measures that are more restrictive than the requirements of the Agreement." The Ontario government has already shown it is willing to go beyond the letter of the Agreement in the legislative amendment that prohibits inter-basin diversions. However, to be a true leader in the region, and to protect the interests of

Ontario's citizens, there are still areas in the legislation that need strengthening, which we discuss below.

C. GENERAL COMMENTS

Note: References to sections and subsections refer to the Parliament version of the Bill, which details the actual sections of the Ontario Water Resources Act that would be amended. This is not to be confused with the sections of the Final Compendium of the Safeguarding and Sustaining Ontario's Water Act, 2007.

The legislative framework outlined in Bill 198 is generally a good one. In particular, we commend the Ontario government for elevating the ban on inter-basin diversions to the level of legislation (section 34.3).

The modernization of the *OWRA* is also long overdue and a welcome sight. Amongst other things, it grants the Lieutenant Governor in Council and Directors additional powers to improve the effectiveness of the permit to take water system and to better evaluate the impacts of existing water withdrawals.

However, we do have concerns that relate to the exceptions available for intra-basin transfers. Whereas the Bill essentially bans inter-basin diversions, it establishes a number of significant exceptions to the prohibition on intra-basin transfers. The following rationale outlines why we are concerned by these exceptions. This rationale is then followed by specific concerns with respect to the legislative language and recommendations for changes and future actions needed.

• Potential for a Series of Intra-Basin Transfers

A number of municipalities are exploring plans for intra-basin transfers, and one proposal is already on the table. The Regional Municipality of York wants to build a big pipe to divert wastewater from growing communities in the Lake Huron/Georgian Bay watershed to Lake Ontario. For Lake Huron/Georgian Bay, the impacts of the intra-basin transfer would be the same as if the water was being diverted outside the Great Lakes basin and will compound the impacts of climate change, discussed below. For Lake Ontario, concerns have been raised that it will become the dumping ground for distant communities' sewage.

York Region has told the public that it meets the exception standard, and if allowed to proceed, its diversion could set an unfortunate precedent for other intra-basin diversions in Ontario. Other municipalities in Ontario that have said they are considering or would consider diverting water out of a Great Lakes watershed include Kitchener-Waterloo,

Guelph, London and Hamilton. If York Region is allowed to proceed, this is the standard to which these municipalities will expect to be held. It could also set a regional precedent and weaken Ontario's position in the region. Great Lakes states could argue that it is hypocritical of Ontario to divert water over hundreds of kilometers between Great Lakes because its geographical advantage allows it to benefit from this loophole, while opposing the diversion plans of thirsty communities that lie just outside the basin boundary.

• Lack of Knowledge and Potential Ecological Impacts of Intra-Basin Transfers

There is little understanding within the province of the full effects of large-scale intra-basin transfers, especially those that do not return flow to the source watershed. Currently, the data necessary to accurately predict these consequences is simply not available. However, we do know that lake levels and their dependent ecologies and economies are already under severe pressure. For example, Environment Canada is now predicting a 1 to 1.5 metre drop in water levels for Lake Huron/Georgian Bay in the next 50 years due to climate change. Declining lake levels will degrade water-dependent ecosystems, drain wetlands, destroy fish, bird and wildlife habitat, and cost billions in lost shipping, hydropower generation, and industrial production. It is also easy to see how there will be increased pressures for Great Lakes water due to the depletion of groundwater resources. With longer growing seasons and more frequent drought events due to climate change more and more users will want access to Great Lakes waters. Intra-basin transfers will add to these pressures and we simply do not know the cumulative impacts they will have.

• The Precautionary Principle

We are very pleased to see incorporation of the precautionary principle in the legislation. Subsection 34.4(2) states: "The agreement referred to in subsection 1 [The Great-Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005] recognizes that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."

If ever there were a time to respect the "precautionary principle" this would surely be it. The risks to both the ecosystem and the economy are too great to play "Russian Roulette" with the hydrology of the Basin. Ontario has been a leader both in Canada and the Great Lakes basin in terms of watershed management and has further enhanced this status in recent years with amendments to the Permit to Take Water Program and the Clean Water Act. These are instruments that respect watershed boundaries and embrace the modern approach of watershed-based management. Large-scale transfers across watershed

boundaries with no consideration for the impacts of these transfers is an approach that harkens back to the era of big dams, when water managers believed they could re-engineer natural hydrological flows. It is critically important that we learn from the mistakes of the past and ensure we pursue more sustainable pathways as we move forward.

• Relationship Between Intra-Basin Transfers and Water Conservation

We have been impressed with the Ontario government's commitment to be the leader in the region on water conservation. However, if the ability to transfer large quantities of water over long distances and across watershed boundaries continues to be a viable option for municipalities, the incentive to commit to the comprehensive, long-term water conservation that is a foundation of sustainable water management will be radically diminished.

Water conservation and efficiency are widely recognized as the most sustainable means of finding 'new' water – from both ecological and economic perspectives. While most municipalities now include water efficiency programs in their management strategies, they are typically ad hoc endeavours intended to defer supply-side developments until additional water – and the finances to develop it – can be sourced. In the absence of strong legal and institutional backing, water managers are likely to stay the course with old-style, supply-side water management approaches that rely on bigger pipes and pumps rather than innovative technologies and practices to limit water demand and ecological impacts.

D. SPECIFIC CONCERNS AND RECOMMENDATIONS

a) The Meaning of "Consumptive Use" for Intra-Basin Transfers

If enacted, the subsections that deal with the exceptions to the prohibition on intra-basin transfers all refer to "the portion of the new or increased transfer amount that is lost through consumptive use" – ss.34.6(2)1, ss.34.6(2)2, ss.34.6(2)3.

Consumptive use is defined in subsection 1(6): "...if water is taken from a water basin described in subsection 34.3(1), the portion that as a result of evaporation, incorporation in a product or any other process, is not returned to that basin is lost through consumptive use." Subsection 34.3(1) defines a water basin as one of three basins - the Great Lakes-St. Lawrence River Basin, Nelson Basin, and Hudson Bay Basin. What does this mean in the context of an intra-basin transfer?

For example, if a proposal for an intra-basin transfer exceeds 19 million litres per day consumptive use, it must undergo regional review (ss.34.6(2)3) How does including the term *consumptive use* affect this threshold? If only a small percentage of the water transferred is actually consumed through evaporation, incorporation in a product, or any other purpose, it may never trigger regional review. The International Joint Commission estimates that municipalities generally consume 10% of water,[4] and if municipalities improve their conservation, which we want them to do, this figure could be even lower. Does this mean a municipality would have to transfer 190 million litres per day in order to consume the 19 million litres per day required for regional review? This would allow a municipality to divert massive quantities of water but still qualify for the exception standard in ss.34.6(2)2, which does not require return flow (discussed below). This could be devastating to the source watershed.

The critical point with intra-basin transfers is that water transferred out of one Great Lakes watershed is lost to that source watershed unless it is returned. However, the definition of consumptive use in these provisions only considers the loss of water from the Great Lakes-St. Lawrence River Basin as a whole. Therefore, it undermines the exception standard by diminishing the importance of the loss to the watershed and by allowing the threshold to expand to extremely dangerous levels.

It is also worth noting that the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement only refers to consumptive use in the context of diversions or intra-basin transfers over 19 million litres per day. There is no reference to consumptive use for exceptions to diversions or intra-basin transfers between 379,000 litres per day and 19 million litres per day. However, in Bill 198, consumptive use has been added to the exception standards for intra-basin transfers over 379,000 litres per day and less than 19 million litres per day, indicating a higher threshold than even the regional agreement contemplated.

RECOMMENDATION 1: REMOVE "CONSUMPTIVE USE" OR AMEND THE DEFINITION

We recommend either removing the term "consumptive use" from the provisions relating to intra-basin transfers or redefining consumptive use in subsection 1(6) so that any water transferred out of a Great Lakes watershed is considered to be a consumptive use of that water.

[4] International Joint Commission, "Protection of the Waters of the Great Lakes – Final Report to the Governments of Canada and the United States" (February 2000).

b) New/Increased Transfers Where Water is NOT Returned to the Source Watershed

Subsection 34.6(2) sets out three exception standards for intra-basin transfers. The first two apply to transfers that are less than 19 million litres per day consumptive use but greater than 379,000 litres per day consumptive use. The first standard (ss.34.6(2)1) applies only to municipalities and it requires water to be returned to the source watershed ("return flow"). The second standard (ss.34.6(2)2) applies to all users, including municipalities. Therefore, it is open to a municipality to choose which standard they wish to apply under, and other users can only apply under this second exception standard.

The most troubling aspect of this second standard is that it permits transfers that do not return water to the source watershed. Even if we take out the phrase "consumptive use" we are still left with diversions of up to 18,999,999 litres per day out of a Great Lakes watershed that do not require return flow. This amount is equivalent to 50 large swimming pools. This is a considerable amount of water that is being lost to the watershed every day. Given the climate change predictions, this is a loophole that seems excessively risky. As well, it leaves it open to a municipality to argue that they will divert less than 19 million litres per day out of the basin so that they can get approval to put a big pipe in. Once that pipe is in, it will make it much harder for the government to stop that municipality from exceeding 19 million litres per day. The developments will already have been approved, and may already have been built. The pressure to allow the municipality to exceed the 19 million litres per day will be very strong.

Two provisions within this second exception standard are intended to encourage municipalities to apply under the first exception standard (which requires return flow) instead of the second. The first is the need to establish that there is no feasible, environmentally sound or cost effective way in which the water can be returned to the source. Without knowing the basis on which this judgment is made, there is little to assure the Ontario public that this will provide the necessary incentive for return flow. The second is that notice must be provided to the other Parties to the Agreement. In other words, Ontario must inform Quebec and the eight Great Lakes states of a proponent's plans to transfer water. This is not a review or even a consultation process. It is simply "provide notice". This does not seem to create a strong incentive for return flow.

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RECOMMENDATION 2: REQUIRE RETURN FLOW FOR ALL INTRA-BASIN TRANSFERS

This loophole could be easily rectified in the legislation. We suggest removing ss.34.6(2)2 and making ss.34.6(2)1 applicable to all proponents, and adding to ss.34.6(2)1 the requirement to provide notice.

Exceptions

(2) Subsection (1) does not apply to the following transfers:

1. A transfer that satisfies the following criteria:

   i. The portion of the new or increased transfer amount ~~that is lost through consumptive use~~,

      A. is always less than 19 million litres, or the lower amount prescribed by the regulations, per day, or

      B. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 19 million litres, or the lower amount prescribed by the regulations, per day.

   ii. The water is taken by the operating authority of a municipal drinking-water system within the meaning of the *Safe Drinking Water Act, 2002* **or by any other person.** ~~and the system serves a major residential development within the meaning of that Act~~.

   iii. The criteria described in paragraphs 1 to 7 of subsection (3) are satisfied.

   iv. **Notice of the application for the permit or amendment has been given to the Province of Quebec, the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania in accordance with the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.**

~~2. A transfer that satisfies the following criteria:~~

~~i. The portion of the new or increased transfer amount that is lost through consumptive use,~~

~~A. is always less than 19 million litres, or the lower amount prescribed by the regulations, per day, or~~

~~B. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 19 million litres, or the lower amount prescribed by the regulations, per day.~~

~~ii. The water is taken by the operating authority of a municipal drinking-water system within the meaning of the *Safe Drinking Water Act, 2002* or by any other person.~~

iii. ~~It has been demonstrated that conservation of existing water supplies is not a feasible, environmentally sound and cost effective alternative to,~~

A. ~~the transfer, in the case of a new transfer, or~~

B. ~~the transfer of the additional amount, in the case of an increased transfer.~~

iv. ~~There are no other feasible, environmentally sound and cost effective alternatives to,~~

A. ~~the transfer, in the case of a new transfer, or~~

B. ~~the transfer of the additional amount, in the case of an increased transfer.~~

v. ~~The criterion described in paragraph 1 of subsection (3) is satisfied, or it is not feasible, environmentally sound or cost effective to satisfy that criterion.~~

vi. ~~The criteria described in paragraphs 2 to 7 of subsection (3) are satisfied.~~

vii. ~~Notice of the application for the permit or amendment has been given to the Province of Quebec, the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania in accordance with the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.~~

c) The Meaning of Return Flow

In subsection 34.6(3) there is no explanation provided as to how water should be returned to the source watershed or the quality of water that should be returned. We appreciate that some of the details surrounding return flow will need to be established through further consultation with stakeholders and elaborated in future regulations but there should at least be a minimum quality standard outlined in the legislation. Otherwise, it seems open to a municipality to take pristine water out of a different watershed and return wastewater, or water of reduced quality. There should also be a preference for return flow to the actual stream, river, lake or aquifer from which the water was removed to minimize local impacts. This preference is expressed in the definition of "Source Watershed" in the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement but is absent from Bill 198.

In addition, it is surely unfair to penalize the citizens and environment of the source watershed by allowing anything less than 100% of the amount of water taken from that source watershed to be returned.

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RECOMMENDATION 3: IMPROVE DEFINITION OF RETURN FLOW

We recommend amending subsection 34.6(3):

Criteria

(3) The criteria referred to in subparagraphs 1 iii, 2 v and vi and 3 iv of subsection (2) are:

1. The new or increased transfer amount is returned, either naturally or after use, to the same Great Lakes watershed from which it was taken, ~~except for an amount prescribed by the regulations that may be lost through consumptive use.~~ **The returned amount should be returned to the direct tributary stream watershed or aquifer catchment area from which it was withdrawn, unless it can be demonstrated that this is neither feasible, cost effective, nor environmentally sound to do so. All water returned must be at least the same quality as the water that was transferred.**

d) Transfer of Sewage

Bill 198 creates regulation-making authority to require the transfer of sewage to be treated as an intra-basin transfer (amendment to Clause 76(b) of the Act). This requirement needs to be included in the legislation now rather than later by regulation. For example, current proposals to extend the York Durham Sewer System into the Lake Huron/Georgian Bay watershed and divert water to Lake Ontario should be captured by the legislation. It is unclear whether this is the case as the legislation is currently drafted.

RECOMMENDATION 3: INCLUDE SEWAGE AS A METHOD OF INTRA-BASIN TRANSFER

We recommend amending subsection 34.6(1):

34.6 (1) A permit shall not be issued or amended under section 34.1 so as to authorize the taking of water **or wastewater** from a Great Lakes watershed if,

(a) any of the water **or wastewater** would be transferred; and

(b) the new or increased transfer amount would be the threshold amount.

d) Other Vague Terminology

Language used in the exceptions to the prohibition on intra-basin transfers is currently too vague to allow an effective assessment of proposals for intra-basin transfers. Terms such as "feasible, cost effective, environmentally sound alternative" and "amount of water is limited to reasonable quantities" require greater definition and clarification, and consideration must be given to factors such as cumulative impacts, and incremental increases in transfers. It is clear to us that proposals for intra-basin transfers cannot be effectively assessed on the basis of the current legislative provisions and will require significant strengthening and tightening in implementing regulations.

RECOMMENDATION 4: STRICT AND RIGOROUS REGULATIONS FOR INTRA-BASIN TRANSFERS

To protect the waters and water dependent natural resources of the Basin, Ontario must ensure that the standard for judging exceptions is strict and rigorous. Engagement of stakeholders with respect to the content of these regulations should be started as soon as possible.

e) Dealing with Current Uncertainty

We propose a moratorium be imposed on all intra-basin transfers from the moment the legislation is passed to the time that the relevant regulations come into force. This will allow time for new strict regulations to be drafted and the collection of data and information on the potential consequences of intra-basin transfers, including cumulative impacts and the relationship with climate change. We also note that the International Joint Commission has just begun its International Upper Great Lakes Study. As part of that work they will be looking at the water budgets of the Upper Great Lakes, which should assist the drafting process.

A precedent for this type of moratorium already exists. On December 13, 2003, the Ontario government introduced a moratorium that applied to all water takings that took water out of the watersheds of Ontario, such as water bottling operations and beverage manufacturers. The rationale given by the Minister of the Environment was remarkably similar to the current rationale for our proposal to impose a moratorium on intra-basin transfers. In the Legislative Assembly on Thursday 18 December, the Honourable Leona Dombrowsky stated: "The moratorium is designed to prevent uses that would transport millions of litres of water out of local watersheds with no consideration for the long-term effects on the environment… This moratorium will provide us with time to review and improve the process for issuing permits to take water."

RECOMMENDATION 5: AN INTERIM MORATORIUM ON INTRA-BASIN TRANSFERS

Authority for a regulation already exists under the powers granted to the Lieutenant Governor in Council by Section 76(b) of the Ontario Water Resources Act. We would also like to see regulation-making authority for an interim moratorium explicitly included in the legislation and propose that a moratorium on intra-basin transfers be imposed immediately.

f) Water Conservation

In addition to strict regulation of intra-basin transfers and effective interim measures, the next critical step for Ontario in the implementation of the Agreement is to take a leadership role in promoting water conservation and efficiency in the region. It is vital that Ontario get out in front on this issue to set a positive precedent for the other jurisdictions. Improvements in water conservation and efficiency can be made by all sectors throughout the province including the municipal, industrial, energy and agricultural sectors, as well as by the average citizen.

It is clear that voluntary conservation measures have made some difference but the province will need to work with these sectors to implement more incentive programs, to foster greater innovation in water conservation technology, and to introduce mandatory conservation measures, such as requiring municipalities to have water efficiency plans, in order to achieve consistent reductions in water demand in the future. It is worth noting that an associated benefit of reduced water demand is also reduced energy demand and a concomitant reduction in greenhouse gas emissions.

RECOMMENDATION 5: IMMEDIATELY ENGAGE WATER USE SECTORS AND STAKEHOLDERS IN A DIALOGUE ON WATER CONSERVATION

The Government of Ontario should engage water use sectors and stakeholders in an open dialogue to determine how it can best ensure consistent and effective water conservation and efficiency throughout the province. The outcome of this dialogue should be a provincial "water conservation plan" that outlines specific targets for reduced water use by all sectors, and introduces strong measures to ensure these sectors meet these targets.

g) Public Access to the Regional Body

We also wish to highlight what appears to be a significant gap in public access. A comparison between the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (the "Agreement") and the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Compact (the "Compact") reveals an unacceptable distinction. The Agreement, which is applicable to all the jurisdictions in the basin, including Ontario and Quebec, has no public access available to a regional body. Under the Dispute Resolution and Enforcement Provisions of the Compact, which only applies to the eight Great Lakes states, there is a public access provision. Article 7.3 states: "Any person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council". Whereas under the Dispute Resolution provisions of the Agreement, Article 6.4 it states: "A person who is not a Party to this Agreement may not seek dispute resolution under this Agreement".

RECOMMENDATION 6: ADDRESS THE GAP IN PUBLIC ACCESS

We encourage the Government of Ontario to address this apparent uneven public access to the respective regional bodies. Our suggestion is to create a Public Secretariat to the Regional Body that would coordinate this function, as well as, the many other opportunities for public engagement anticipated in the Agreement and in the implementing legislation.

CONCLUSION

We commend the desire shown by Ontario to play a leadership role in the region in order to achieve the objectives of the Agreement, which are "...to protect, conserve and restore the Waters of the Great Lakes-St. Lawrence River Basin." The general legislative framework is a first step in the direction of Ontario meeting these objectives. This legislative framework is generally strong but it has weaknesses, particularly in the language on intra-basin transfers. It is critical for water dependent economies and ecosystems in the province and the region that the Government of Ontario maintains its commitment to sustainable water use by addressing these weaknesses.