

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

Implementing Ontario's Agreement Commitments – Preliminary Draft for Discussion

On December 13, 2005, the premiers of Ontario and Quebec and the governors of the eight Great Lakes states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin signed the *Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement* to protect and conserve the shared waters of the Great Lakes-St. Lawrence River Basin.

Ontario has introduced legislation (Bill 198, *Safeguarding and Sustaining Ontario's Water Act*) to amend the *Ontario Water Resources Act* – which, if approved, will be the first of several steps required to fulfill its commitment to implement the Agreement. Ontario will continue to engage the Annex Advisory Panel, Ontario First Nations, stakeholders and the public before passing supporting regulations and policies.

KEY ISSUES	AGREEMENT COMMITMENTS	ONTARIO IMPLEMENTATION IF BILL 198 IS APPROVED
Ban on water diversions (Article 200)	<ul style="list-style-type: none"> Parties agree to adopt measures to prohibit new or increased water diversions (out of the Great Lakes Basin or between one Great Lake watershed and another), with regulated exceptions 	<ul style="list-style-type: none"> Ontario already bans diversions out of the Great Lakes Basin by regulation (O.Reg 387/04). Bill 198 would elevate the ban to legislation, remaining more stringent than the Agreement. Bill 198 would ban new or increased transfers between Great Lake watersheds, with regulated exceptions
Exceptions to ban on diversions (Article 201)	<ul style="list-style-type: none"> Agreement provides for the following exceptions to the ban on diversions: <ul style="list-style-type: none"> A straddling community (city or town partly inside Great Lakes Basin or straddling more than one Great Lake watershed). This applies to both inter and intra basin diversions. A straddling county (city or town in a county that straddles the Great Lakes Basin boundary). This applies to inter basin diversions only. Intra-basin transfers (between one Great Lake watershed and another). Only applies to intra basin diversions. 	<ul style="list-style-type: none"> Bill 198 would introduce exceptions to the ban on transfers between one Great Lake watershed and another (see qualifying criteria for intra-basin transfers below) Note: Bill 198 would not introduce exceptions for straddling counties (due to ban on out of basin diversions that continues)
Qualifying Criteria for Intra-Basin Transfers (Article 201, par. 2)	<ul style="list-style-type: none"> Agreement defines qualifying criteria, more stringent as volume of proposed new or increased transfer increases: <ul style="list-style-type: none"> Less than 379,000 litres/day – subject to state/ provincial management, regulation at their discretion 379,000 litres or more with a consumptive use of less than 19 million litres per day – must meet exception standard (except that water may be returned to a different Great Lake watershed in some circumstances); must demonstrate no feasible, cost effective, and environmentally sound alternative to the transfer including conservation of existing water supplies; state/province must give prior notice to other Parties 	<ul style="list-style-type: none"> Bill 198 (s. 34.5-34.8) would make qualifying criteria, more stringent as volume of proposed new or increased transfer increases: <ul style="list-style-type: none"> Less than 379,000 litres/day – subject to permit to take water in accordance with the OWRA 379,000 litres or more (municipal drinking water system) with a consumptive use of less than 19 million litres per day – must meet exception criteria, 379,000 litres or more (municipal drinking water system or other use) with a consumptive use of less than 19 million litres per day – must meet exception criteria (except that water may be returned to a different Great Lake watershed <i>if demonstrated that returning the water is not feasible, environmentally sound or cost effective</i>); must demonstrate no feasible, cost effective and environmentally sound alternative

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	<p>to the Agreement</p> <ul style="list-style-type: none"> consumptive use 19 million litres/day or more – must meet exception standard; must demonstrate no feasible, cost effective, and environmentally sound alternative to the transfer including conservation of existing water supplies; must undergo Regional Review by 10 Party Regional Body, must demonstrate no feasible alternative to the transfer 	<p>to the transfer, including conservation of existing water supplies; notice is given to Quebec, Great Lake states</p> <ul style="list-style-type: none"> consumptive use 19 million litres/day or more – must meet exception criteria, must demonstrate no feasible, cost effective and environmentally sound alternative to the transfer, including conservation of existing water supplies; application is referred to the Minister who shall ensure notice is given to the Regional Body and shall not make a decision without considering any declaration of finding issued by the Regional Body following regional review Bill 198 (75(1.2)) would provide <i>regulation-making authority to, for example, lower the 19 million litre per day threshold requiring return of water back to the source watershed, clarify terminology, define Great Lake watersheds</i> <i>*italics show more stringent provision than agreement</i>
Exception Standard (Article 201)	<ul style="list-style-type: none"> The following standard applies to all exceptions to the ban on diversions: <ol style="list-style-type: none"> Water must be returned to the source Great Lake watershed, less an allowance for consumptive use; Need for water cannot be avoided through water conservation and efficiency; Amount of water limited to reasonable quantities; No significant adverse individual or cumulative impact to water quantity, quality; Proposal incorporates water conservation and efficiency measures; Compliance with applicable laws including the Boundary Waters Treaty of 1909 	<ul style="list-style-type: none"> Bill 198 (proposed s. 34.6(3)) outlines the following criteria for proposed exceptions to the ban on intra-basin transfers: <ol style="list-style-type: none"> Water must be returned to the source Great Lake watershed, less an allowance for consumptive use; The efficient use and conservation cannot reasonably avoid the transfer; The new or increased transfer amount is reasonable; No significant adverse individual or cumulative impact to water quantity, quality Proposal incorporates water conservation and efficiency measures; Proposal complies with Boundary Waters Treaty, the International Boundary Waters Treaty Act any other treaty, agreement or law prescribed by regulations Proposal complies with any other criteria prescribed by regulations to implement Article 209 of Agreement (i.e. cumulative impact assessment) Bill 198 (75(1.2)) would provide regulation-making authority to, for example, clarify terminology, prescribe the amount that may be lost through consumptive use, introduce additional criteria to respond to the results of periodic cumulative impact assessments, including climate change effects, identify additional treaties, agreements that must be complied with, governing the manner in which quantities of water taken, transferred or returned are determined, governing the transfer of wastewater Bill 198 would also modernize the permit to take water system and permits conditions to be placed on permits that ensure that these criteria are met.
Regional Review of	<ul style="list-style-type: none"> Regional review by the 10 member Regional Body required for all 	<ul style="list-style-type: none"> Bill 198 (ss.34.1(12)(13)(14) would require that applications for proposed new or increased intra-

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Proposals (Chapters 5)	<p>diversions or transfers involving 19+ million litres/day or more</p> <ul style="list-style-type: none"> Regional review involves input from the public and Basin First Nations & Tribes, review by Great Lake jurisdictions and a declaration of finding on whether the proposal meets the exception standard 	<p>basin transfers involving a consumptive use 19 million litres per day or more be referred to the Minister who shall ensure that :</p> <ul style="list-style-type: none"> notice is given to the Regional Body in accordance with Chapter 5 of the Agreement, a decision is not made until reasonable opportunity is provided for the Regional Body to undertake regional review; and any declaration of finding issued by the Regional Body in accordance with Chapter 5 of the Agreement is considered by the Minister before a decision is made
Bulk Transfers, Bottled Water (Article 207, par. 9)	<ul style="list-style-type: none"> Water transfers in containers greater than 20 litres considered a diversion States and provinces to determine how transfers in containers 20 litres or less will be treated – allowing jurisdictions to manage as a consumptive use or impose further regulations 	<ul style="list-style-type: none"> Ontario currently regulates consumptive water uses such as bottled water under the Permit to Take Water Program and imposes restrictions on such uses in designated high use watersheds. Bulk transfers out of Ontario's three major water basins in containers greater than 20 litres are banned (O.Reg 387/04) Under Bill198 transfers of bottled water in containers bigger than 20 litres from one Great Lake watershed to another would be able to proceed only if the exception criteria (ss. 34.6) were met. Intra-basin transfers in containers 20 litres or less would continue to be regulated under the Permit to Take Water Program (exemption-ss. 34.7(7)).
Management and regulation of water withdrawals and consumptive uses (Articles 200, 206, 300)	<ul style="list-style-type: none"> State/provincial flexibility in managing and regulating withdrawals, consumptive uses based on a decision-making standard (see decision-making standard): <ul style="list-style-type: none"> States/province to define threshold for management based on environmental criteria. Default threshold set at 379,000 litres/day Proposals involving larger consumptive use subject to prior notice and comment by 10 jurisdictions 5-year phase-in of regulation Authority of Regional Body to recommend approaches to develop, enhance state/provincial programs including but not limited to thresholds for regulation, in recognition that programs will evolve Regional review of water management programs every 5 years 	<ul style="list-style-type: none"> Ontario currently regulates proposed water uses over 50,000 litres per day under the Permit to Take Water program Bill 198 (ss. 75(1.2)(1.3)) provides regulation-making authority to make regulations implementing Articles 203 (Decision-making Standard), 205 (Prior Notice and Comment), 209 (review of Standard, Exception Standard and Cumulative Impact Assessment), 305 (Water Conservation and Efficiency Program) of the Agreement for water withdrawals and consumptive uses within the Great Lakes Basin.
Decision-making Standard (Article 203)	<ul style="list-style-type: none"> Water returned to source Great Lake watershed, less a consumptive use allowance No significant individual or cumulative impacts to water quantity, quality Withdrawal incorporates water conservation Compliance with laws, agreements including the Boundary Waters Treaty 	<ul style="list-style-type: none"> Bill 198 (ss. 75(1.2)(1.3)) provides regulation-making authority to make regulations implementing Articles 203 (Decision-making Standard), 205 (Prior Notice and Comment), 209 (review of Standard, Exception Standard and Cumulative Impact Assessment), 305 (Water Conservation and Efficiency Program) of the Agreement for water withdrawals and consumptive uses within the Great Lakes Basin.

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	<ul style="list-style-type: none"> Reasonable use considering: minimizing of waste, efficient use, balance of economic social and environmental protection and other existing or planned water uses, duration degree and mitigation of impacts, and restoration of hydrologic conditions and functions 	<ul style="list-style-type: none"> Elements of the decision-making standard are already criteria considered in the granting of permits under Ontario's Permit to Take Water program
Prior Notice and Comment (Article 205)	<ul style="list-style-type: none"> Prior notice and an opportunity to comment to be granted to other Great Lakes jurisdictions for Great Lakes Basin water withdrawals involving a consumptive use 19+ million litres/day 	<ul style="list-style-type: none"> Ontario regulation currently requires that the commitments of the Great Lakes Charter, 1985 be met- including the commitment to prior notice and consultation with other Great Lakes jurisdictions on proposed new or increased consumptive water uses 19 million litres per day or more Bill 198 would grant authority to implement the prior notice and comment process for large consumptive water uses by regulation (ss. 75(1.2)(1.3))
Water conservation & water use efficiency (Articles 300, 304)	<ul style="list-style-type: none"> Environmental standard for new or increased water withdrawals and diversions requires conservation measures and conservation of existing water supplies Regional Body to develop basin-wide water conservation objectives to assist Great Lakes states, provinces in developing a water conservation program States, provinces to develop water conservation goals, objectives and a program consistent with the Basin-wide goals and objectives Basin-wide objectives and state/provincial water management and conservation programs to be reviewed every 5 years by the Regional Body 	<ul style="list-style-type: none"> Bill 198 (ss. 75(1.2)(1.3) 76(b.1)) would provide regulation-making authority to make regulations requiring the taking of measures to promote the conservation and efficient use of water and other regulations required to implement Article 304 of the Agreement (Water Conservation and Efficiency Program) Bill 198 incorporates water conservation as a criterion in the review of proposed intra-basin water transfers (s. 34. 6) Ontario is actively participating in the development of basin-wide water conservation objectives as co-chair of a Water Conservation Committee. On March 15 draft Conservation Objectives were released for public review Ontario has also established an inter-ministry Water Conservation Work Group to provide input to the regional objectives and to develop a water conservation program for the province.
Cumulative impact assessment , climate change (Article 209)	<ul style="list-style-type: none"> Cumulative impact evaluation part of environmental standards for proposed new or increased water withdrawals, diversions States and provinces shall collectively assess cumulative impacts of Basin water withdrawals at least every five years The assessment will form the basis for the review of the standard and exception standard and their application. Based on the assessment exceptions to the ban on diversions may be maintained, made more restrictive or withdrawn Commit to building science, mechanisms for cumulative impact assessment as a component of a regional science strategy 	<ul style="list-style-type: none"> Bill 198 has identified cumulative impact evaluation as one criterion in the review of proposed intra-basin transfers (ss. 34.6(3) para 4). It also provides regulation-making authority to made regulations implementing the decision-making standard for basin water withdrawals. Bill 198 would provide regulation-making authority to establish additional environmental criteria that must be met for new or increased intra-basin water transfers in response to the results of periodic cumulative impact assessments undertaken in accordance with Article 209 of the Agreement. Bill 198 would also provide regulation-making authority to make regulations implementing Article 209 in the context of basin water withdrawals. The modernized permit to take water system in Bill 198 would permit the Director to require applicants to provide information and reports that could disclose cumulative impacts and conditions to be placed on permits to address this issue.

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		<ul style="list-style-type: none"> • Ontario has established an Information and Science Work Group to identify and address gaps in information and science to better support Agreement commitments. • Ontario is providing leadership at the regional level as chair of the Regional Body in 2007. As chair Ontario has assisted in organizing a panel session focused on the Agreement's science commitments at the International Association of Great Lakes Researchers
Overarching principles of agreements (Preamble, Articles 100, 209, 500 par. 4)	<ul style="list-style-type: none"> • The Agreement supports the principles of precaution, ecosystem integrity, cumulative impact assessment, adaptive management and consideration of climate change 	<ul style="list-style-type: none"> • Bill 198 would add a purpose statement highlighting the purpose of the Act to provide for the conservation, protection, management and sustainable use of Ontario waters (ss.0.1) • Bill 198 would acknowledge the Agreement's recognition of the precautionary principle (ss.34.4); provides for the consideration of periodic cumulative impact assessment and climate change in regulating intra-basin water transfers (ss.34.6(3);
Relationship to Boundary Waters Treaty, federal governments, International Joint Commission (Preamble, Articles 201, 203, 701)	<ul style="list-style-type: none"> • The Agreement formally recognizes the roles of the Canadian and U.S. federal governments and the International Joint Commission under the Boundary Waters Treaty • Proposed water withdrawals, consumptive uses and diversions excepted from the ban must comply with applicable laws and agreements, including the Boundary Waters Treaty 	<ul style="list-style-type: none"> • Bill 198 requires compliance with the Boundary Waters Treaty and the International Boundary Waters Treaty Act for proposed intra-basin water transfers (ss.34.6(3))
First Nations consultation, dialogue, information exchange (Articles 504, 702)	<ul style="list-style-type: none"> • States, provinces must undertake appropriate consultation with First Nations in a manner suitable to the proposal and the jurisdiction's laws • The Regional Body shall provide First Nations with prior notice and an opportunity to comment on proposed diversions subject to Regional Review. Comments shall be considered before the Regional Body issues a public declaration of finding on the proposal • The Regional Body shall seek to establish mechanisms to facilitate dialogue, input and information exchange with First Nations on matters within the scope of the Agreement 	<ul style="list-style-type: none"> • Ontario has engaged in discussions across Ontario with aboriginal communities in implementing the Agreement. Ontario has assisted aboriginal representatives to attend Basin- wide meetings for aboriginal representatives. • On March 27th the Minister of Natural Resources and Union of Ontario Indians Grand Council Chief signed a Memorandum of Understanding committing both parties to work together on the implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.
Public Participation (Articles 303, 401 par. 8-12, 503)	<ul style="list-style-type: none"> • The Regional Body shall provide the public with prior notice and an opportunity to comment on proposed diversions subject to Regional Review. Comments shall be considered before the Regional Body issues a public declaration of finding on the proposal • Applications and decisions of states/provinces; and records and meetings of Regional Body shall be a 	<ul style="list-style-type: none"> • Public participation on proposed water takings is provided through the Environmental Bill of Rights, which provides for public input on proposed permits, appeals, third party appeals and leaves to appeal to the Environmental Review Tribunal • Commitments for public access to Regional Body meetings, decisions, proposals etc. will be discussed at upcoming meetings of the Regional Body

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Information and Science (Articles 301, 302)	<p>matter of public record</p> <ul style="list-style-type: none"> Each state, provinces to annually report withdrawals 379,000 litres/day and to require water users to annually report their water withdrawal, diversion, consumptive use States, provinces commit to provide leadership in development of a collaborative Science Strategy with other regional partners 	<ul style="list-style-type: none"> Annual reporting of water use already required under Ontario Water Resources Act Regulation 387/04. Some modifications may be required to enable reporting of consumptive use and water diversion information – modifications may involve regulation amendments and/or policy modifications Ontario has established an inter-ministry Information and Science Work Group to support a review of the current state of information and science in the context of the Agreement. Ontario is providing leadership at the regional level as chair of the Regional Body in 2007. As chair Ontario has assisted in organizing a panel session focused on the Agreement's science commitments at the International Association of Great Lakes Researchers Bill 198 would modernize the permit to take water system which will improve the availability of information especially in respect of transfers.
Judicial Review by other Parties to Agreement (Article 210)	<ul style="list-style-type: none"> States and provinces to adopt measures permitting the others to seek judicial review of a decision with regard to Great Lakes Basin water withdrawals, diversions and consumptive uses subject to the standard and exception standard 	<ul style="list-style-type: none"> Bill 198 would provide reciprocating Great Lake jurisdictions with standing to seek judicial review of an Ontario decision with regard to new or increased Great Lakes Basin water withdrawals, consumptive uses or intra-basin transfers or seek a hearing of the Environmental Review Tribunal, on a reciprocal basis.
Regional Oversight (Articles 400, 401, 403, Chapter 5, Chapter 6)	<ul style="list-style-type: none"> Agreement establishes a Regional Body, with representation from each Great Lake state and province, to oversee implementation, resolve disputes, ensure collaboration, review proposals subject to regional review, monitor and report on state/provincial water management, information and conservation programs, review the environmental standard and exception standard and their application, and establish basin-wide water conservation objectives 	<ul style="list-style-type: none"> Procedures for regional oversight will be developed by the 10 party Regional Body