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Environmental Law  
Association**  
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environmental  
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INSPIRING CHANGE



## **DELIVERED BY COURIER AND EMAIL**

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Premier and President of the Council  
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Hon. Bill Mauro  
Minister of Natural Resources and Forestry  
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Jason Travers  
Director – Natural Resources Conservation Policy Branch  
Ministry of Natural Resources and Forestry  
2nd Flr S, 300 Water St  
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K9J 8M5

February 23, 2016

Re: Follow up regarding Ontario process to review the City of Waukesha's application to divert water from Lake Michigan

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The City of Waukesha has applied for a diversion of Lake Michigan water under the *Great Lakes–St. Lawrence River Basin Water Resources Compact* (“Compact”). Waukesha’s diversion proposal is very significant because it is the first time that the exception standard of the Compact will be applied to a community within a straddling county. The government of Ontario is now in the process of reviewing the City of Waukesha’s application and will present its findings to the Regional Body on March 22, 2016.

The purpose of this letter is to outline our concerns regarding the process that Ontario has established to review Waukesha’s diversion proposal. We will follow up under separate cover regarding our substantive concerns with the proposal.

**Canadian Environmental Law Association**

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## **Background**

We are a group of nine public-interest organizations and individuals with longstanding expertise and interest in preserving our shared Great Lakes resources. We seek to ensure that the Compact and the corresponding *Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement* (“Agreement”) are given a robust interpretation so that they serve their intended purpose to protect, conserve and manage the Great Lakes ecosystem for future generations. The analysis of this proposal is particularly significant because it will set a precedent for all future applications under the Compact.

The impetus for the negotiation and establishment of the Compact and Agreement was Ontario’s 1998 issuance of a water-taking permit to Nova Group Ltd. without notification to other Great Lakes states and provinces. The Nova Group was proposing to export and sell Great Lakes water to water-short regions using tanker ships. After there was a strong public outcry in Canada and the United States, the Ontario government ultimately cancelled the permit. The Nova Group incident made clear that the Great Lakes states and provinces needed to create a new, collaborative process to manage diversion requests.

During the negotiations of the Agreement, Ontario took a principled leadership role. In particular, Ontario took the direct advice of its Annex Advisory Panel.<sup>1</sup> Ontario’s approach resulted in a better and stronger Agreement.

### **Ontario’s review process has been insufficient**

To date, Ontario has not established a way to incorporate the views and knowledge of Ontario residents in the decision-making process on Waukesha’s diversion proposal. Instead, Ontario held one information session for the public on February 11, 2016 which summarized the Regional Review process and Waukesha’s proposal, and allowed a brief period for questions from the public. No consultation or hearing process is contemplated that would examine the substance of the proposal.

The Ministry of Natural Resources and Forestry is relying solely on the Regional Review process to consult with the public. However, it should be noted that public comments to the Regional Body are due on March 14, 2016 and Ontario’s Technical Review is due on March 22, 2016, leaving no time for Ontario to consider and incorporate the views of the public in its analysis.

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<sup>1</sup> Canadian Environmental Law Association, “An Evaluation of the Ontario Advisory Panel Process for the Great Lakes Charter Annex Agreements”, April 2007.  
<[http://s.cela.ca/files/uploads/584\\_Rethinking\\_Annex.pdf](http://s.cela.ca/files/uploads/584_Rethinking_Annex.pdf)>

## **Ontario should hold a public hearing on the City of Waukesha's application**

We renew our request that Ontario establish a public hearing on the City of Waukesha's water diversion application. We note that the Great Lakes and St. Lawrence Cities Initiative has also called for at least one public hearing in each of the Great lakes and St. Lawrence jurisdictions.<sup>2</sup>

Many of the signatory organizations and individuals were members of the Annex Advisory Panel and were deeply involved with the negotiation of the Compact, providing input to the Ontario government both before and after the signing of the Agreement. Ontario sought out and relied on in depth input from the Annex Advisory Panel to formulate its position on the Agreement.

We are disappointed that Ontario has not continued to rely on the collaborative approach it used to negotiate the Agreement and is instead conducting a review of Waukesha's proposal without any direct input from stakeholders. Ontario's review of the proposal would be strengthened by public input at an early stage.

We also note that two states have already established public hearing processes to assist in their review of the application. Ontario should follow those examples.

Michigan's Department of Environmental Quality conducted a formal public hearing on February 9, 2016 as part of its review process. It will also be accepting public comments on the proposal until March 1, 2016. It has committed to reviewing all public comments before making a decision on the application.<sup>3</sup>

Minnesota's Department of Natural Resources will be hosting a public hearing on March 3, 2016. The Department makes clear that input gathered from the session will help the state formulate its position on the proposed project.<sup>4</sup>

## **Request for disclosure of Ontario's Technical Review of the application**

The Ontario government is conducting a Technical Review of Waukesha's proposal. However, we were informed at the information session on February 11, 2016 that the Technical Review would not be shared with the public before the March 22, 2016 deadline. The Ontario public will have no chance to review or comment on Ontario's Technical Review before its comments are due to the Regional Body on March 14, 2016.

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<sup>2</sup> Great Lakes and St. Lawrence Cities Initiative, "Resolution 2016-B Opposing the Waukesha Water Diversion Application", February 11, 2016

< <http://cdn.glslcities.org/wp-content/uploads/2015/08/GLSLCI-Board-Resolution-Waukesha-Adopted.pdf>>

<sup>3</sup> Michigan Department of Environmental Quality, "Michigan to Review Great Lakes Water Diversion Application", January 8, 2016.

< <http://www.michigan.gov/deq/0,4561,7-135--372944--,00.html>>

<sup>4</sup> Minnesota Department of Natural Resources, "Minnesota DNR to host listening session about Lake Michigan water diversion proposal", February 8, 2016.

< <http://news.dnr.state.mn.us/2016/02/08/minnesota-dnr-to-host-listening-session-about-lake-michigan-water-diversion-proposal/#more-17506>>

We ask that Ontario disclose its Technical Review well before the March 14, 2016 deadline for public comments to ensure that there is an opportunity for the public to review and comment on it. The Technical Review should be made public prior to an Ontario hearing on the application to allow the public to comment on both the Waukesha application and Ontario's assessment.

### **Request for meeting with Premier Wynne and Ministry of Natural Resources and Forest Staff**

We request a meeting to discuss our procedural concerns regarding Ontario's approach to the review of Waukesha's proposal and our substantive concerns regarding Waukesha's proposal both with Premier Wynne and with Ministry of Natural Resources and Forestry staff conducting the Technical Review of the proposal.

Waukesha's proposal to divert water from Lake Michigan will set a precedent for all future applications under the Compact. It is essential that Ontario establish a process that incorporates the views and knowledge of Ontario residents the views of the public as it comes to its decision on this proposal. We look forward to your response.

Yours truly,



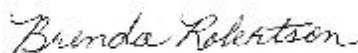
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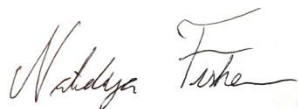
Sarah Miller  
Former Member  
Advisory Committee to the Council of Great  
Lakes Governors



John Jackson  
Citizens' Network on Waste Management

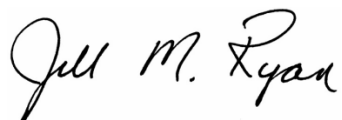


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