



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

November 18, 2003

David Naftzger
Acting Director
The Council of Great Lakes Governors
35 East Wacker Drive, Suite 1850
Chicago, Illinois 60601

Re: Comments from the Canadian Environmental Law Association

The Canadian Environmental Law Association (CELA) has contributed to the draft revisions and comments submitted by the environmental groups. We also wanted to submit these comments from our perspective representing the public in water disputes in a jurisdiction that has had a permitting system for some time.

While we recognise that a tremendous amount of work and good will have gone into resolving many complex issues in these draft documents, it is troubling that we have very little time left to design the regional review process if we are to keep to our timetable.

Process Concerns

The draft documents do not yet reflect the resolve stated at the meeting to have the Regional Body carryout the main adjudication of withdrawal applications and oversight of water management in the Great Lakes. From a bi-national perspective we were relieved that there seemed to be concurrence on this point at the meeting. However we are concerned that there has been little discussion between the Working Group and the Advisory Committee on the design of a Regional process.

In contrast there has been a lot of detail drafted on the Compact Council mandate and procedures. The lack of detail on procedures, dispute resolution, the scope and nature of the Regional review concerns us. It is still unclear where the public will have access to the process. It also seems unclear how the technical and scientific reviews of a proposal are carried out and how they are best applied to the decision making. Certainly the public will have an expectation that if a local water withdrawal is going to regional review that a transparent and rigorous process will ensue. The objective to have the Regional Body oversee data collection over time, manage consultations among jurisdictions and conduct reviews with a goal of consensus resulting in a "statement of findings" leaves us with a lot of details yet to resolve. The disparity between the detailed compact documents and the sketchy regional ones could lead decision makers updating themselves on our progress to misconstrue our intent that decision-making occur among all jurisdictions at a Regional Review. We would like some reassurance that time will be taken to focus on the details of the Regional process.

Because CELA represents people or groups involved in water disputes we can anticipate some of the needs that they will have for a new Regional process that will impact local water management and supply. The role of the public in the Regional Review will need to be clear. The public will need adequate notification of the project and a clear timetable for comments and intervention on a proposal. They may need some intervenor funding in order to attend distant meetings. To ensure transparency, the public will need access to all documentation and technical reports and comments on a proposal, including minutes of meetings on a proposed withdrawal. These public notification and involvement functions as well as information dissemination could be part of the mandate of the Secretariat to the regional review body. To avoid confusion the public will need to understand their legal rights in the courts and how these rights relate to the regional review process. As well, they will expect that their local concerns will receive consideration in a regional review. There also needs to be a mechanism to ensure that public submissions are circulated to all parties to the regional review. Will only jurisdictions be allowed to take part in the regional review? If the applicant and others are involved, many may want to be represented by lawyers or involve their own expert consultants in the process. They

may want to introduce additional materials to the regional review that have not been part of the application. All of these issues still need to be considered by the working group.

This fall CELA and Great Lakes United have been holding meetings in six locations throughout the Province. The purpose of these meetings is to inform the public of recent and pending changes in Ontario water management regimes and to solicit improved ways to respond to these changes. We are introducing the public to the Annex commitment and the pending agreement at those meetings. It is our observation that the complex concepts of consumptive use, improvement standard, return flow and trigger levels and the differences between Canada and the US systems are not yet well understood by the public. A substantial education effort will be needed. Is this best achieved by each jurisdiction or by the proposed secretariat?

Additionally, it will be important to build an understanding that the intent of the regional agreement is to increase protection of the ecosystem. The public perceive that permitting systems enable withdrawals.

Implementation Timetables

CELA is concerned that there might be a flurry of large withdrawal proposals between the time the agreement is signed and the time it is fully implemented. We think that the ten-year phase-in is too long. We fear that it could cause the whole process to collapse from lack of momentum. There needs to be a clear transition plan and a way to give the agreement immediate life. We recommend that the Regional Agreement include provisions for the interim period that will commit jurisdictions to apply the agreement perimeters and principles to withdrawal proposals after the date of signing in the summer of 2003. This would act as a deterrent and would have the advantage of entrenching new approaches sooner in consideration of withdrawals (i.e. improvement). As well it could create incentive for faster implementation.

The data collection improvements should commence immediately even if everyone is not in a position to report so that the goal of tracking cumulative use can start to have utility and take shape. Reports on use by sector should reflect why some jurisdictions or sectors cannot report

and when they will have the capacity to commence reporting. Annual reports should be submitted to each jurisdiction's legislature to build political accountability and understanding.

We are concerned that there is adequate time and opportunity allowed by the jurisdictions for the public to respond to and make comment on proposals. Local hearings maybe needed prior to matters proceeding to Regional review in order to solicit a range of local and scientific reports on impacts. It may be unrealistic to have the jurisdictional and regional reviews occur simultaneously.

Holding ourselves to a high standard

As we have stated before we feel that this process would be much stronger and viewed by other regions as rigorous if all jurisdictions were requiring permits for withdrawals at the same level. This should be at least at the lowest threshold currently in use in at basin (15,000 litres or 13,200 gallons). Doing so would strengthen our collective ecosystem approach and would promote understanding of the Great Lakes St. Lawrence River Basin as one body of water. This would also lay the groundwork for evaluating permits based on cumulative impacts. We feel that having one set of rules for those outside the basin and no uniform rules among Basin jurisdictions could be seen to be arbitrary and protectionist.

Thank you for all your hard work and efforts in bringing us all to this point. We have really benefited from being part of the process.

Yours truly,
Canadian Environmental Law Association

Sarah Miller
Co-ordinator