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Sarah Miller

Proposals to protect Great Lakes waters aren't perfect, but we can't walk away from the table, says water policy analyst and negotiator

This month, in public meetings across Ontario and Quebec, Canadians have been invited to come and defend our greatest national treasure - our water - from diversions and harmful withdrawals. These meetings may well be our last chance for decades to create binding laws to protect the Great Lakes.

Pierre Trudeau's parable of Canada-U.S. relations is apt: For years, Ontario and Quebec have been two mice in bed (a waterbed) with eight elephants, the Great Lakes states. Any jostling and their fragile mattress could spring a leak. Meantime, climate change, trade agreements and growing water shortages within and outside the Great Lakes Basin make all 10 strange bedfellows fearful of the future.

I was one of the few Canadians invited to participate on a stakeholders' advisory committee during the protracted negotiations for new legal protections. Frankly, I am terrified about the consequences of failure in this round.

It's worth noting that these negotiations have survived elections and changing governments in all 10 jurisdictions. Despite this, the negotiators have persisted in their efforts to create the first legally binding agreement since the antiquated 1909 Boundary Waters Treaty. Yes, there are potential flaws with the agreement they have come up with. But we cannot quit now.

Concern about potential drains on our fresh water resurfaced in 1998 when Ontario granted a permit to the Nova Group to export water from Lake Superior to the Orient. Diplomatic notes flew between Washington and Ottawa; the International Joint Commission (IJC) was summoned to study the protection of Great Lakes waters. Although Ontario withdrew Nova's permit, the lakes' vulnerabilities had been revealed. The IJC and the best legal advice that could be bought concurred that the Great Lakes had inadequate protections to manage and sustain the waters now and for future generations.

In June of 2001, the Great Lakes-area state governors and provincial premiers announced their intent to negotiate a legally binding annex to the Great Lakes Charter.

Since then, Ontario has tightened up its laws and now has the strongest water allocation system of all the 10 jurisdictions. It scrutinizes all withdrawal requests of more than 50,000 litres and has put a moratorium on withdrawals between watersheds. And Quebec has placed a moratorium on out-of-province diversions until it has implemented its new water policies.

But no similar new protections are yet in place in the United States.

It should be of great concern to Canadians, a quarter of whom depend on the Great Lakes for their drinking water. Since 1985, when the Great Lakes Charter (a sort of gentlemen's agreement) was signed, we have had the power to protect Great Lakes waters when U.S. claims arise. Our only (slim) hope to stop diversion proposals south of the border has been that one Great Lakes state would veto a water diversion proposal by another one under the U.S. Water Resources Development Act.

Current talks about preserving the Great Lakes, U.S. negotiators acknowledge that they're very concerned about weaknesses in the Water Resources Development Act. Many believe it may not endure a court challenge.

For one thing, they say the act covers only surface waters. That is, as it now stands, the act may not stop a groundwater diversion proposal such as the claim by Waukesha, Wisc., that it has a right to divert some of Lake Michigan's waters to feed its growing thirst, by right of the fact that some of its groundwater flows into Lake Michigan. No wonder U.S. conservationists are so eager to tighten up the act's terms.

Despite prior notice and consultation provisions in the 1985 agreement, Ontario and Quebec have not always been invited to discuss diversion proposals. Indeed, decisions on diversion proposals have been purely political. There have been no ecological protection standards in place that would give those seeking to protect the Great Lakes rational reasons to just say no.

And as North American water shortages increase, the elephant herds will search for new resources to quench their thirst.

A strong public response at the public meetings being held in Quebec and Ontario this month (today's is in Windsor, tomorrow's is in London and the last will be in Kingston on Sept. 28) can have a major impact on the outcome, as will public input before the negotiators' Oct. 18 comment deadline.

Negotiators have tried to put together a series of legally binding protections and rules that are at least as rigorous as trade regimes. Critics of these draft agreements charge that, despite the negotiators' best efforts, the new rules could lead to more diversions. But if we walk away from the table now, having no rules in place will almost certainly allow new drains on the Great Lakes. Deep-sixing this attempt to protect the lakes can only make many industrial farming operations and other water-intensive users very happy.

From my glimpses into the negotiating room, I think it's a miracle we have got this far. Constitutional and other differences have almost been insurmountable, which is why we have ended up with two distinct agreements. One is a U.S. compact that legally binds the eight state "elephants" to act together as a herd; the other is a regional agreement signed by all 10 jurisdictions that allows Ontario and Quebec to participate as two solitudes on common interests and to bind themselves by incorporating the decision-making standard into their domestic laws.

If signed by all 10 jurisdictions, the agreement sets high hurdles for diversions, with strong burden-of-proof demands. Parties seeking Great Lakes water must prove they have no reasonable alternatives. Parties who take out water are required to return water - what's known as "return-flow requirements." Such parties must prove their activities have no significant or cumulative impacts on the water system. They must show proof of water conservation, and they must seek consensus among all jurisdictions.

The agreement also requires all jurisdictions to improve their day-to-day water management, data collection and water conservation practices. And it will finally give us a way to force ourselves to relinquish the title of the world's No. 1 waster of water.

If we act like mice and run away from these negotiations, everyone - every creature - who depends on the Great Lakes ecosystem will suffer and so will future generations.

The Canadian Environmental Law Association urges concerned Canadians to keep working on these agreements. Let's strengthen them - and strengthen the protection of our shared treasure.

*Sarah Miller is a water policy researcher with the Canadian Environmental Law Association.*