

Sierra Club of Canada
The Georgian Bay Association

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Dear Kevin, Theresa and Jennifer,

Re. Proposed Solution to Manage Intra-Basin Transfers

First of all, on behalf of our groups, I would like to express our sincere gratitude for the leadership that Ontario has shown over the past three years, and the efforts and hard work undertaken by all the ministries and their staff to get to where we are today. We also applaud the desire of the government to continue playing a leadership role in the Basin to further the goals of the Great Lakes - St. Lawrence Sustainable Water Resources Agreement (the "Agreement"): "...to protect, conserve and manage these renewable but finite Waters."

Our groups are also grateful for the opportunity to participate in the Annex Advisory Panel process, which has set a new standard for stakeholder representation in the province. We recognize that all the stakeholders on the panel have a responsibility to assist the government in maintaining the ecological and economic sustainability of the waters and water dependent natural resources within the province and the region, and to help ensure Ontario shows the leadership necessary to encourage the other jurisdictions to follow a positive example.

It is this desire to assist the Ontario government in pursuit of these goals that has galvanized our groups around the issue of intra-basin transfers, which we identify as a

weakness in the current implementing measures. We appreciate the commitments offered to us by Kevin during the meeting on January 19, 2007 but also feel it is essential that the government commit to two additional measures – an interim moratorium, and a commitment to pursue alternatives to the intra-basin transfer proposed by York Region. The details of these additional measures are proposed in Section B of this letter.

A. THE RATIONALE FOR A STRONGER APPROACH AND ADDITIONAL MEASURES

1) Weakness in the Current Approach

It has become apparent that the possibility of a series of large-scale intra-basin transfers within the province is a very real one and that the current implementing measures do not adequately address this issue. This weakness threatens to minimize all of the hard work and effort of politicians and staff of the various Ministries in Ontario. It also threatens to undermine the leadership position that Ontario has carved out in the region in terms watershed management, source water protection and water conservation.

The two elements that have lead us to identify this key weakness are the legislative language currently posted on the EBR Registry and the proposed intra-basin transfer by York Region.

a) Draft Legislative Language

The current legislative language inadequately addresses large-scale intra-basin transfers. We strongly believe that, at a minimum, all transfers should be required to return flow to the source watershed. This is not the requirement under the draft legislation. In the Agreement, there are two exception provisions that can apply to intra-basin transfers, the “straddling community” exception and the “intra-basin transfer” exception. We understand that the choice was made to simplify the exceptions in the implementing legislation to avoid complication over the definition of straddling communities. Unfortunately, this has resulted in a weak exception being proposed in the draft legislation because the “straddling community” exception required return flow (even under 19 million litres per day), whereas the “intra-basin transfer” exception (under 19 million litres per day) does not.

In addition, the language in the Exception Standard is currently far 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. Thus, there is still a lot of work to be done to draft the “strict” and rigorous criteria required by the Agreement and stated in the draft legislation.

At our last meeting with you on Friday January 19th, 2007 it was made clear to us that the legislation could not be changed if we want it to pass prior to a fall election. However, it is clear to us that proposals for intra-basin transfers cannot be effectively assessed on the basis of the current legislative provisions. During that meeting, it is our belief that you recognized that the exception standard will require much strengthening and tightening through implementing regulations and that your Ministries will work with the Annex Advisory Panel and our groups to ensure this occurs. In the meantime, we propose the solution in Section B as an equitable approach to moving forward with implementation while not endangering the waters or the water-dependent resources.

b) **The York Region Proposal**

York Region is currently undergoing a Class EA review, which involves a proposal to extend the York Durham Sewer System (YDSS) to Holland Landing and Sharon in the Town of East Gwillimbury. Currently, Holland Landing and Sharon are dependent on production wells provided by York Region. These wells supply groundwater from the Lake Simcoe watershed, which is hydrologically part of the Georgian Bay and Lake Huron watershed. This well water, once used, is currently discharged through septic systems back into the Lake Simcoe watershed. The extension of the York Durham Sewer System to Holland Landing and Sharon would result in the diversion of this well water from the Lake Simcoe-Georgian Bay-Lake Huron watershed to the Lake Ontario watershed.

We are extremely concerned over:

- i) *The potential ecological impacts of this proposal, including the consequences of declining Great Lakes levels and depleting groundwater supplies.*
- ii) *The precedent that approval of the proposal would establish for other proponents of intra-basin transfers in the province.* York Region has stated that it is complying with the Agreement. However, as outlined above, the Agreement is vague with respect to a number of critical considerations around intra-basin transfers and the implementing measures require much strengthening and tightening. Therefore, it is erroneous for York Region to claim that it is meeting the requirements of the Agreement as these still have to be more fully defined. Unfortunately, until these are defined in the regulations (which could be a considerable period of time) other proponents will identify York Region's proposal as the standard they have to meet. Further, if a permit for a transfer was denied and then appealed prior to regulations coming into force, a proponent could enter York Region's proposal as evidence of the standard required and a judicial decision could be based on that evidence.

2) The Precautionary Principle

There is very little understanding within the province of the full effects of large-scale intra-basin transfers. 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. 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.

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 and we all know that once a big pipe goes in, it doesn’t come out again – it only grows in size and capacity. Ontario has been a leader both in Canada and the 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. One of these pathways is a real commitment to water conservation.

3. The Connection Between Large-Scale Transfers and Water Conservation

We have been very impressed with Ontario’s commitment to be the leader in the Basin on 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 – which the Annex agreements at least in part promise – 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.

4. An Unfortunate Precedent for the Region

Approval of the proposal would hurt Ontario's reputation as a leader in the region and could lead to an associated weakening of commitments south of the border. We have heard from our colleagues in the south that any sign of weakness around the implementation of the Agreement by Ontario would offer pro-industry associations such as the Council of Great Lakes Industries an opportunity to influence the legislatures of the Great Lakes states. An organization like CGLI is fully capable of connecting the dots from the York Region proposal to the other proposals that are waiting in the wings in Ontario, particularly when York Region is claiming it is acting in compliance with the Agreement. It is not difficult to see the potential persuasiveness of an argument that emphasizes the unfairness of Ontario's geographical advantage, which allows us to transport large quantities of water over huge distances from one Great Lake watershed to the other, while communities on the edge of the Basin are being told they cannot transport water across town. Further, it needs to be recognized that the danger now lies less in the influence of these associations over state officials or negotiators but more over the legislative bodies, which are a much harder read than the officials you talk to on a regular basis. We don't need to tell you that the Agreement and Compact are at an extremely delicate stage and this is not the time for Ontario to be showing any sign of weakness.

B. PROPOSED SOLUTION

We want to emphasize our appreciation for all the hard work you have put into the Annex process. We appreciate the commitments that Kevin made to our group in the meeting on Friday January 19th, which we understand included:

- a) A commitment to strengthen the exception standard through strict and rigorous requirements in the regulations that implement the legislation.
- b) A commitment to actively consult with the Annex Water Panel rather than environmental community in the drafting of these regulations.
- c) A commitment to an open and transparent dialogue with all potential proponents of intra-basin transfers.

But we still have a very real concern. We are prepared to support the legislation you have posted on the EBR Registry if two additional measures are taken now to ensure intra-basin transfers are effectively addressed today and in the future. These measures are a commitment to place an interim moratorium on intra-basin transfers, and a commitment to actively pursue alternatives with York Region. It is our position that both these measures would greatly assist the government in safeguarding the water and water dependent natural resources of the province and the region.

There is clear authority in the Agreement itself to take a stronger position on intra-basin transfers than is expressly stipulated. Article 202 states that the "Standard and Exception Standards are minimum standards. Intra-basin diversions are defined as diversions by the Agreements. The Parties may implement Measures that are more restrictive than the requirements of the Agreement." Moreover, from discussions with our colleagues in the south, it is our understanding that a number of Great Lakes states are exploring the idea

of strengthening certain aspects of the Agreement. For example, we have been informed that Wisconsin has expressed a desire to implement extremely progressive water conservation measures, including mandatory conservation in state legislation. We have also been informed that they are considering strengthening return flow requirements and the assessment of local ecological impacts. We are aware that Wisconsin has formed stakeholder committees, which include strong representation from environmental groups, to assist in drafting these strengthened implementation measures. There is no bad precedent that can be set from establishing stronger provisions than the Agreement. In fact, the Agreement encourages it.

1) Commitment to Place an Interim Moratorium on Intra-Basin Transfers

The rationale for a stronger approach and additional measures are set out above in Section A and that rationale supports the idea of a moratorium. More specifically, 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.

a) Legal Authority

We propose that the moratorium be imposed separately to the draft legislation through a regulation under the powers granted to the Lieutenant Governor in Council by Section 76(b) of the Ontario Water Resources Act.

b) A Precedent Exists

A precedent for this type of moratorium already exists. On December 13, 2003, the 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.”

A government media release on the same date stated the following:

“Currently, permits to take water do not fully consider the effects of the water

taking on the whole watershed. This moratorium is intended to ensure this practice does not continue while new rules are being developed.

The moratorium will provide time to review Ontario's groundwater supplies and draft new rules for water taking. Ontario will not grant new permits of this kind until there are new rules in place that will help us better [understand] our water resources."

This moratorium was a direct application of the precautionary principle. It applied to the period during which new rules were being drafted and recognized that there was too little knowledge of the long-term effects on the environment to justify the continued application of the old rules.

c) **Proposed Language**

As a suggestion for the short description language to be included in a regulation and posted on the EBR Registry, we believe the following would be appropriate:

"This regulation will establish a moratorium on new or expanding permits under the OWRA for an intra-basin transfer. An intra-basin transfer means the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake. The regulation is effective ????, 2007, and the moratorium is in duration until regulations implementing the Standard and Exception Standard under the Great-Lakes Sustainable Water Resources Agreement have come into force. While the moratorium is in place, the Ministry will be working on drafting these regulations, which will establish more precise and stringent requirements for the Standard and Exception Standard than the current legislative framework. The Ministry will also be actively collecting data and information to better understand the impacts of intra-basin transfers in Ontario and assist the assessment of any applications for permits for water takings that constitute an intra-basin transfer"

2) Commitment to Pursue Alternatives with York Region

As we have outlined above, the York Region proposal is at the very core of our concerns. It is essential that the relevant Ministries not only engage a dialogue with York Region but also actively pursue alternative options. It is our understanding that York Region is willing to invest in local sewage treatment, which would be the most sustainable solution, but that they need assistance from the provincial government, including approval of new technology, to achieve this solution. If alternatives are not pursued, the levels of Lake Simcoe-Georgian Bay-Lake Huron will be at risk, the ecology of the local area will face degradation from groundwater abstraction, and the precedent could reverberate around the entire region. There is a lot riding on finding an appropriate solution to this situation.

3) Existing Commitments

The following represent our understanding of the existing commitments made by Kevin on Friday January 24th, 2007:

- a) A commitment to strengthen the exception standard through strict and rigorous requirements in the regulations that implement the legislation.

As previously discussed, there are many vague terms in the draft legislation that require additional definition. There are also considerations that are not even mentioned such as cumulative impacts and incremental increases in transfers. To protect the waters and water dependent natural resources of the Basin, Ontario must ensure that the standard for judging exceptions is extremely strict and rigorous and impose a virtual ban on all transfers that do not return flow to the source watershed.

- b) Commitment to Actively Consult with the **Environmental Community (the AAP)**

As was identified by Ministry of Environment staff in the Annex Advisory Panel meeting of January 17th, 2007, these regulations will be entering uncharted territory and will need to account for a broad range of factors and complexities. Given the pressures on Ministry staff in terms of time and resources, we believe our groups can greatly assist in the process of drafting effective regulations around intra-basin transfers and other aspects of the Agreement and offer our support for this process.

- c) Commitment to Open and Transparent Discussions with Other Proponents

We are aware of at least three other potential proposals for intra-basin transfers, Waterloo, Hamilton and London. In order to achieve sustainable solutions that benefit the environment and the citizens of Ontario, it is critical that these proponents are engaged in open and transparent discussions with the government, the Annex Advisory Panel, and the general public.

C. SUMMARY

We would really like to be able to be in a position to support Minister Ramsay, Minister Broten, and Premier McGuinty as they move forward to implement the Annex Agreement. We believe our proposed solution offers a way around the difficulties posed by a limited timeframe and would satisfy our desire to have intra-basin transfers effectively addressed. Currently, the considerable uncertainty that surrounds the long-term ecological and economic impacts of intra-basin transfers makes it essential that Ontario moves forward extremely cautiously and bases its actions on the tenets of the precautionary principle. We appreciate the commitments made to us on Friday, January 19th, 2007 but believe an interim moratorium and the active pursuit of alternatives to the York Region proposal are also required. These additional measures would help ensure the actions taken by Ontario moving forward are grounded in the precautionary principle and also enhance Ontario's position as a leader in the Basin.

Thank you very much for your continued willingness to work with us on this matter. We hope that we can meet with you before the end of this week to discuss what we have outlined in this letter. We look forward to hearing from you.

Sincerely,

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