



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

November 25, 2008

**Submission from the Canadian Environmental Law Association
Re: Interim Technical Bulletin Intra-Basin Transfers between Great Lakes Watersheds in
Ontario**

The Canadian Environmental Law Association (CELA) has been extensively involved in concerns leading to *The Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement* since the 1985 Great Lakes Charter. CELA is very concerned that this Agreement be fully implemented as soon as possible. To this end we would urge the government to give priority to drafting the regulations required for this agreement as soon as possible as a complete package. We have concerns that interim regulations take up time and energy that would be better spent on passage and implementation of the new regulations. Public energy would best be spent consulting on draft regulations at this time. CELA would also urge the government to decouple the Agreement regulations with other measures not central to the terms of the Agreement such as the Province's continuing program to charge for water so as not to delay implementation any longer. We have concerns that interim measures have the potential to create expectations and situations that may not be compatible with the final regulations.

The risk still exists in this interim technical bulletin that approvals can be gained for sections of pipes for transfers that are under the Agreement threshold and can escape notice. Several such proposals from separate neighbouring applicants once combined can create a cumulative taking that should be subject to Agreement scrutiny. As well other incremental growth can lead to pipelines extending right up to the boundary divide between water sheds as the Alliston pipeline has. Later small pipe applications can lead to these proposals jumping the watershed divide. We are not confident that reviewers of individual proposals necessarily have sufficient information to determine that smaller proposals should be aggregated and reviewed as one large withdrawal subject to the Agreement.

As we have learned in our Annex Advisory Panel meetings, the challenge is to move the consideration of water allocation to the beginning of the Official Plan drafting rather than one of the last steps when the Plan has insurmountable momentum for growth. Adequacy and renewability of water sources should be the first determinant of growth and development. One lesson we learned during the Agreement negotiations is that we do not yet have the science we can rely on to determine water budgets yet in many parts of the Great Lakes. Agreement regulations to frame the science program and fill these information deficits need to be part of the regulatory package and well underway so our decisions are made on sound science on ground and surface water supplies, interactions and renewability in times of climate change. In many cases we cannot yet confidently determine what baseline we are currently working with.

Ontario has been a leader in the Great Lakes Region in tracking information on withdrawals lower than Agreement thresholds. While six months ago we thought we had time to consider interim measures, we are now falling behind other US jurisdictions in moving ahead with the full legislative package to reach implementation timetables because of early Congressional approval of the US Compact. For these reasons we feel it would be advisable to have a short moratorium and to bring the draft regulatory package forward for review and introduction into the next session of the legislature. For more information on this submission please contact Researcher Sarah Miller by e-mail millers@lao.on.ca or by phone 4160 960-2284 ex. 213.

Implementation of the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement

Questions regarding how Intra-Basin Transfers would be dealt with in Ontario -Some last minute thoughts from CELA

During negotiations about the Agreement the Parties preferred that each of the Parties would:

- Notify other parties of applications for large withdrawals within their boundaries,
- Would carry out the evaluations of those projects within each State or Province within a reasonable timeframe, and then pass on their findings to the Regional Body for their endorsement.

It is my understanding that our best chance as concerned public is to influence the outcome at the Provincial level. The US Compact has provisions for the US public to seek redress in the courts on a Regional Body Decision (Section 7.3 Enforcement) based on previous precedents and well established legal rights there. The Agreement does **not** have similar provisions leaving it unclear if the Ontario and Quebec public will have a role to play once something reaches the Regional Body level see the public participation section of the Agreement (Article 503) which allows public **comment** on Regional Body decisions but not guaranteed access to courts.

This makes it hugely important to ensure we direct the decisions on intra-basin as well as large withdrawals applications originating in Ontario to the process that will result in the best opportunities for public participation. To be frank the odds are not great right now with any of the options.

The Class Environmental Assessment (EA) for Water and Sewers is administered by the Municipal Engineers Association. Approvals are sought by municipalities for sections of water and sewer infrastructure or for regional systems. The process does **not** address need or alternatives and the only way the public can get adequate involvement is by requesting a bump-up to a full EA. Bump-ups are rarely granted and if they are full EAs can last for years which the other Parties to the Agreement would not likely be satisfied with. Full EAs do not guarantee the public of a hearing and the scoping of the issues in a full EA can be lacking. This has been a system for routine approvals and has meant that the PTTW will follow and be a fait accompli. Project notices are not required to be posted on the EBR. It is rare for a project to be turned down. The Class EA process only now covers public projects.

The other route being suggested would be to add new provisions to the Ontario Water Resources Act for intra-basin and large requests over Agreement trigger levels to require a more rigorous process. This would mean that applications would be posted on the EBR. The public would have the opportunity to ask for a leave to Appeal to the Environmental Review Tribunal. However the record right now only has 1/3 of the appeal requests going forward.

Under this option a new instrument would need to be created under the OWRA that would apply to the large withdrawal requests and for the requests for intra-basin diversions. This new instrument could specify appeals to the ERT, public notice as well as requirements for compliance with Source Protection Plans under the Clean Water Act. One other advantage of this option is that it would capture both public and private proposals.

Sarah Miller
February 4, 2009

Intra-basin transfer Considerations

- Agreement language & Draft Procedures manual
- Subgroup meetings and Agendas

Municipal Sector

- Municipal Case Study Intra=basin water transfers workshop February 2008
- Implementation: Intra-basin Transfer exception Criteria Dec 2008
- Draft technical bulletin exception criteria (cela & ecoJustice Responses) & range of possibility matrix Dec 2008
- Same presentation to Municipal Sector Jan 2009
- Worksheet - Exception criteria
- Establishing baseline
- Cela worksheet baseline
- Report municipal sector consultations
- Presentation to municipal sector on master plans
- Related transferor –municipal sector working group
- Intra-basin transfer of sewage municipal sector

Agricultural sector

- Proposed permit to take water and EBR posting changes agricultural sector

