



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

December 22, 2009

**Additional Comments Intra-basin Transfers, Thresholds & Connecting Channels  
December 2009 Engagement Sessions**

The Canadian Environmental Law Association (CELA) is grateful for the opportunity to comment again on the challenges that remain on unresolved issues flowing from the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement. We appreciate that you are continuing to consult on some of the issues we have previously raised. We will endeavour to keep our comments brief because we have given you in-depth responses during the consultation and EBR postings in 2009.

**Process concerns**

Because CELA has served on the Public Advisory Panel to the Council of Great Lakes Governors during the long negotiation leading up to this Agreement we have concerns and insights on how our actions now will set the course for the future implementation of the Agreement. We hope Ontario will continue to lead the Basin with the strongest protective policies and programs that will demonstrate to other jurisdictions that deeper protections are viable. This need was reinforced on December 3, 2009 when status reports were given by each jurisdiction to the Regional Body. The level and degree of implementation varied greatly among the jurisdictions. CELA urges the Ontario government to endeavour to keep pace with the timetables of the US signatories to their Compact even though Quebec has indicated that they will not have their legal framework in place until 2012. All party action triggers timetables in Canada for full implementation of the Agreement. It is important to keep the resolve in Ontario to continue to lead early in the process with action.

In the past the Annex Advisory Panel to the Ministry of Natural Resources (MNR) and the Ministry of the Environment (MoE) has been key to this resolve as CELA set out in our 2007 report to the MNR on that Panel process *Rethinking Public Consultation From the Inside Out: a Risk Worth Taking*. Bringing together diverse sectors to foster understanding of the complex international and domestic context for these decisions with a goal of building consensus has been unique to our success to date. At the December consultation we voiced our concern that this foundation is undermined when sector by sector consultation is carried out. Isolated consultation is more likely to create the polarised outcomes we are trying to overcome now. CELA recommends more multi-sectoral consultation as this goes forward.

### **The need for Integration of the Conservation Strategy into decisions made on Inter-Basin Transfers**

It is our observation that many ENGOs involved in this process are not comfortable making decisions on the Intra-Basin Transfer options without knowing how rigorous Ontario's conservation requirements will be. This strategy will determine how new applicants for water will need to address conservation. Many groups have endorsed the "no new water" policy in the Polis Institute's *H2Ontario a Blueprint for a Comprehensive Water Conservation Strategy*. It would follow that new applicants be required to find new sources of water through conservation savings.

### **Alternative approaches under consideration:**

#### **Lowering Agreement Transfer Thresholds in Ontario**

There has always been a large disparity between Agreement thresholds and the levels that Ontario has determined need to be regulated under its Permit to Take Water (PTTW) requirements. In setting up this system Ontario has determined that it is prudent to have data on all takings over 50,000 litres to protect Provincial water resources and to wisely manage use. The levels set in the Agreement and the Compact are much less protective and consequently may well not protect the Great Lakes from large withdrawals and transfers or act as a deterrent for such withdrawals. These threshold ranges are carried over from the 1985 Great Lakes Charter when the impacts of climate change on the Great Lakes were unacknowledged. Because Ontario has more water bodies to protect - four of the five Great Lakes, all of the connecting channels and a portion of the St. Lawrence River it has a bigger obligation to prevent future harm. The proximity of these water bodies means there is likely to be more opportunity for applications to come forward in Ontario for Intra-Basin transfers since they have been condoned in the past.

The challenge now is also to change this practice which is based on assumptions of unlimited supplies of freshwater in the Great Lakes. Ontario needs a threshold that is a deterrent that will drive conservation and address return flow, and set an example for the rest of the jurisdictions. Furthermore just because the scientific justification is not yet in place because the science obligations in the Agreement have not yet been addressed and historical evidence of impacts on ecosystem integrity has not been well documented, we should not delay precautionary action. Clearly we do know that new stressors on the Great Lakes ecosystem are continuously growing and complex little understood consequences are being manifested in the system. This is unlikely to change without strengthened action on all stressors including water losses to all and parts of the system.

For these reasons CELA supports setting a lower threshold. CELA appreciates that you may need a different threshold to determine the historic baseline for existing Intra-Basin transfers that will be grandfathered. However, we support a more precautionary and prohibitive threshold for new or increased intra-basin transfers because of the uncertainty of climate change. We would suggest setting a mid-range consumptive use threshold for populations in the 40,000 to 75,000 range and ensuring that threshold is periodically revisited and reviewed. CELA would also support this threshold for return

flow. This policy could have a huge educational impact on users to encourage them to consider the fate not just the volume of the waters they use.

CELA also recommends that Ontario endeavour to have the crucial scientific and information components of the Agreement addressed as soon as possible by the Regional Body.

### **Alternative Approaches for Connecting Channels and Return Flow**

CELA continues to support the alternative approach to the Agreement that each Great Lakes watershed includes only the upstream connecting channel. This is consistent with the natural hydrologic flows of the system and allows the parts of the system impacted by a proposed intra-basin transfer to be adequately assessed, scrutinised and protected. CELA supports the options put forward on **slide 15** under Upstream Connecting Channels Only.

CELA is concerned that a number of critics of the Agreement are calling it protectionist because it allows Basin residents withdrawal exceptions denied to non-Basin residents.

CELA recognizes that the Compact agreement has overridden hydrologic understanding and has redrawn the surface water boundary of the Great Lakes watershed by allowing straddling counties within the Basin to facilitate their access to these waters. In the future, this aspect of the US undertaking may well need to be reconsidered if it is challenged in the US courts or if it is contributing to significant cumulative impacts on the ecosystem. Ontario should avoid creating similar vulnerabilities that could be challenged in the future.

There is not a level playing field with harmonised rules for signatories of the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement and the US Compact. Ontario should none the less do what it can to best protect the ecosystem integrity in portions of the Great Lakes in its domain and to act for those downstream in New York and Quebec.

### **Exemptions Criteria and Scope**

CELA supports setting new criteria for exemptions for those in close proximity to an outlet of the Great Lake as set out in **slide 18** as long as they include a means to establish that there are no environmental impacts of the transfer over short distances. CELA recommends that objective criteria be developed to not only address municipal boundaries but also environmental impacts.

We look forward to the January multi-sector meeting and continuing input on these issues.

Yours truly,  
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