



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
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**Remarks to the International Joint Commission Hearings
On Water Uses in the Great Lakes Basin
Toronto Hearing, January 20, 2003**

Background

Thank you for the opportunity to speak to you tonight about the International Joint Commission three-year review of the standing reference on Protection of the Waters of the Great Lakes. My name is Sarah Miller and I am a community legal worker and water policy analyst with the Canadian Environmental Law Association (CELA). CELA has a unique mandate in Ontario. CELA is primarily funded by Legal Aid Ontario to provide legal advice and representation on environmental matters to those in need. For over 32 years CELA has also pursued a law reform mandate to improve environmental law and policy. For most of that time the organization has had a strategic focus on water quality and quantity in the Great Lakes.

CELA involvement in water sustainability issues dates back to 1984, prior to the Great Lakes Charter. At no time, since then has there been such potential for very real and tangible gains in the Great Lakes water management.

Growing water conflicts

If the International Joint Commission (IJC) is able to cast a wide enough net in this three-year evaluation, you will find many local water use conflicts exist now in the Great Lakes. Information on world water shortages has grown considerably since 2000. Numerous international agencies are investing significant resources and programs in addressing these problems. It was the need for water in Asia that fuelled the original NOVA proposal that led the governments to call for this reference. We are now seeing calls for increased allocations of the Colorado River and partitioning of water between Mexico and the United States to address growing continental water shortages. It is clear that the Great Lakes can not be complacent and dismiss these warnings and the regions role in an increasingly water short world.

The challenge of the initial IJC reference was to move the Great Lakes from its bad habit of crisis management to systemic and visionary preventative management for generations to come. This is why the progress report from the International Water Uses Review Task Force is so disturbing. It seems to imply that the Great Lakes region should revert to crisis management and insular protectionism based on the evidence of the last three years. The timing and tone of this report could not be worse.

Annex 2001

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During the past several years, CELA has participated in many components of Annex 2001 work. CELA has been on the Advisory Committee to the Great Lakes Water Management Initiative convened by the governors and premiers. CELA has also participated in the Strategic Advisory Committee to the Great Lakes Commission on a Water Resource Management Decision Support System for the Great Lakes. As well, we have worked on a Steering Committee of the Institute for Agriculture and Trade Policy project that resulted in an excellent report *Impacts of Agriculture on Water Quantity in the Great Lakes and St. Lawrence River Basin*.

Since the Annex commitment, we have worked continuously with other Great Lake environment and conservation groups in Canada and the US to provide detailed responses on the Annex process. Our latest response submitted three days ago to the Council of Great Lakes Governors was 44 pages long. Based on all of this experience, our legal research, meetings with government, discussions with our US counterparts CELA has concluded that Recommendation IV in your February 22, 2000 report is achievable. Yet, your taskforce report opines that legislation binding the States and Provinces to Annex 2001 directives is not achievable without prejudicing the federal governments of Canada or the US. However the authors offer no concrete reasons for this conclusion. From our perspective we are well on the way to achieving this. A lot of good will and tremendous effort is going into the complex challenge of binding states and provinces to common standards. Commissioner Irene Brooks will be able to attest to these efforts based on her own contributions to these efforts. The newly elected Great Lakes Governors will need time to become familiar with the efforts underway. **CELA is optimistic that the next iteration of the Water Management Working Group work will reflect this progress and recommends that your own three-year review not be completed without updating yourselves on this important work.**

The importance of the work on the Annex to the residents of the Great Lakes should not be underestimated. Right now in Ontario there is a window of opportunity to implement watershed management plans to protect the sources of our drinking water as the result of the Walkerton Inquiry. CELA is sitting on the Committee drafting this framework that includes protection of both the quantity and quality of the sources of Ontario drinking water. We have been able to cross-pollinate this effort with a lot of the good research and ideas emerging from the Annex work.

Quebec is in a similar position. They too are in the process of drafting their recent water policy framework into legislation. For the Provinces developing new legislation, and for the States that do not yet have water withdrawal licensing systems, the work underway for the annex offers tremendous tools. The Annex work on institutionalising resource improvement, tracking cumulative impacts of water withdrawals, and improving data collection on ground and surface water could greatly improve new and existing legislation. These new tools will have impacts far into the future.

Local water use problems

Because CELA is a legal clinic we get frequent requests for help from people with water use conflicts in the Province. In the past five years, these calls have escalated. People are desperate for tools to measure and evaluate the sustainability of their water supply.

They are very well informed and concerned about the impacts of climate change and water shortages. The state of the science on climate change has gone well beyond where your consultants' report puts it. Annex 2001 if implemented will result in improved groundwater mapping and knowledge in Ontario. This will lead to improved permitting and conservation of these resources.

CELA has invested a lot of time in working on the Annex 2001 because we saw that it could help resolve many problems facing communities in Ontario. For example, CELA represented the Concerned Walkerton Citizens (CWC) in both phases of the Walkerton Inquiry. Phase One investigated the failure of policy; systems and individuals to protect that community's drinking water and Phase Two the reforms needed to avoid a future tragedy. The final Inquiry recommendations included source protection measures for quantity as well as quality in the form of watershed plans. CWC and the Chippewa of Nawash, the First Nation in the area are both committed to long term solutions to water protection for the region. However they are concerned that before these protections are in place in the Walkerton area, in Bruce and Grey Counties, there are a number of pipeline proposals to move from groundwater to the Great Lakes for supplies of drinking water. Decisions on these proposals are being made on a community by community basis without knowledge of the cumulative impacts of several pipelines on near shore and aquatic ecosystems of the Great Lakes watersheds.

Many of these proposals have the potential to significantly change land use in Ontario. Pipelines are seen to be safe guards for future growth even though these areas are now low growth important agricultural areas. These pipelines are being promoted as quick solutions to water quality concerns. But what are the best long-term solutions? Often, the evaluation of the options, fail to compare the long-term costs. These include: the quality of the groundwater verses the quality of Great Lakes for drinking water, the costs of additional treatment water and maintenance of pipelines and the impacts on inland rivers and streams and fisheries receiving the additional wastewater. Arguments are made by pipeline proponents that return flows be put back into the source but once the pipeline is built, it is likely new proposals for extensions to communities outside of the watershed will emerge. This has already happened with the completed pipeline from Lake Huron to Alliston, Ontario. A new proposal has been made to extend this pipeline from the Lake Huron watershed to Bradford Ontario in the Lake Ontario - Lake Simcoe watershed. If this extension is approved, the benefits from those flows through the St. Clair, Lake Erie and Niagara River will be lost. If the Annex 2001 were implemented, these deliberations would benefit from a broader international scrutiny of ecosystem impacts.

New legislation resulting from Walkerton Inquiry, the new *Sustainable Water and Sewage Act* could result in the amalgamation of smaller drinking water systems into bigger regional systems. This could result in much larger withdrawals with much more concentrated localised impacts on the near shore and sub-watersheds of the Great Lakes. It will be critical that we have the tools being developed in the Annex to evaluate these impacts.

Non essential uses of the waters of the Great Lakes watershed are also growing rapidly. Our unscientific monitoring of the permits to take water in Ontario, during the limited time they are listed on our environmental registry, shows the largest volumes of water are being given to golf courses. The Annex will be crucial for us to be able to prioritise use in times of drought because it will result in data being cumulated. In Ontario there is inadequate oversight over all the permits given. There is also inadequate monitoring and enforcement of permits given in Ontario.

A study done several years ago by the Globe and Mail showed that the Provinces of Quebec, British Columbia and Ontario gave permits to water bottling companies for volumes far in excess of what they could actually use. Together volumes permitted were double the bottled water consumption in the US and triple the consumption in Canada. The long-term evaluative tools and sustainable policies being put forward in the Annex 2001 will help prevent these kinds of excessive and wasteful water allocations in the future.

Conclusion

Few Great Lakes residents would be surprised that your report has concluded that there is no short - term water crisis because use has dropped. The erroneous projections of the 1980's - that industry would intensify in the Great Lakes and all water demands would continue to grow exponentially for all sectors - were based on little more than surveying the sectors about their dreams. This is a lesson in just how crude our tools are to measure trends and needs. Annex 2001 will result in greatly improved data collection and ability to track changes in demands. We cannot afford to overlook the per capita over use of water in our region when compared with all other countries of the world. The proof of our purpose will be in our success in reducing this use by a third to a half (per capita) by limiting demand and by conservation.

If the IJC relies on the findings of the report of the International Water Uses Review Task Force, the Annex 2001 efforts could be curtailed prematurely. Long overdue, improved Great Lakes water management would be put at risk. **The Canadian Environmental Law Association urges the IJC to cast your net further than this report. In a letter sent January 15, 2003 we joined others to recommend that you hold additional hearings to encourage more the public participation and notice.**

We urge you to recommend that there be a continuing, standing reference on Great Lakes water use. Without a standing reference the region will be without the tools to deal with the building continental and world water crises and the inevitable water conflicts within the region. As well, we could be ill prepared to assist with the humanitarian needs for water in the future while ensuring we protect our own delicate ecosystem. It is widely accepted that 40% of the countries of the world will be facing severe water shortages by 2025.