



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

October 5, 2009

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Dear Ms. Weselan:

**Canadian Environmental Law Association Submission regarding
EBR Registry Number: 010-6350 Stewardship-Leadership-Accountability.
Managing Ontario's Water Resources for Future Generations**

Attached to this letter are the submissions of the Canadian Environmental Law Association (CELA) with regard to EBR Registry Number 010-6350. Thank you for providing us with the opportunity to comment on MoE's proposal with regards to protecting Ontario's water resources.

In addition to these comments there is an additional matter we wish to raise with the Ministries of the Environment and Natural Resources. As a member of the Great Lakes Charter Annex Advisory Panel (AAP) we are concerned that this consultation has not allowed us the further discussion we expected on strengthening Ontario's approach to intra-basin transfers as set out in the January 30th 2007 letter from then Assistant Deputy Minister Natural Resource Management Division, Kevin Wilson, a copy of which is attached.

Ontario has been a strong advocate for protecting the Great Lakes which goes well beyond what other jurisdictions have been willing to consider. We would like this leadership to continue and hope that the intra-basin transfer options are brought back to the AAP for review prior to finalisation. We appreciate that our consultations in Ontario have been more extensive than those in other Great Lake jurisdictions. However, we believe that expertise and experience of the members APP provide valuable input with regards to the issues involving the Great Lakes Basin and warrant consideration by this Panel.

Yours truly,

Sarah Miller

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Safeguarding and Sustaining Ontario's Water Resources for Future Generations

EBR Registry No. 010-6350



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CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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October 5, 2009

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I: INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

The effective management of Ontario's water resources has been central to the work of CELA since the original Great Lakes St. Lawrence Charter in 1985. CELA has had a long history with water issues both at the provincial and federal level. It has undertaken extensive research, published briefs, and conducted litigation in the field. CELA was involved in both phases of the Walkerton Inquiry and a CELA counsel was a member of the Advisory Committee for Watershed-based Source Protection Planning. A CELA staff member also served on the Advisory Committee to the Great Lakes Water Initiative of the Council of Great Lakes Governors and the Premiers of Ontario and Quebec. CELA has represented clients in relation to a number of controversial water taking permit applications. Consequently, the organization has considerable experience and insight into public concerns regarding the use of water resources in the province.

The overuse of water and increasing threats resulting from population growth, increasing consumption and climate change underscore the urgent need for action by the provincial government to protect Ontario's water resources. CELA is of the view specific concrete actions rather than general policy statements are required to ensure water security in Ontario for future generations. In particular, the MoE needs to establish a strong and effective conservation strategy in its legal and policy framework regarding the use Ontario's water resources. The framework must be grounded in targets and timetables and provide for specific goals to ensure that the province can assess and monitor its water conservation strategy.

Ontario is in a unique position in comparison to the other Great Lake jurisdictions, because four of the five Great Lakes and all of the connecting channels and the St. Lawrence River are within its boundaries. This brings the added responsibility for Ontarians to protect these watersheds from stresses to the province's water resources. Consequently, Ontario needs to demonstrate leadership among the Great Lakes jurisdictions by taking measures which go beyond provisions in the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement (the Agreement) to protect and safeguard Ontario water resources.

The purpose of this brief is to respond to EBR Registry Number 010-6350 *Stewardship – Leadership - Accountability, Safeguarding and Sustaining Ontario Water Resources for Future Generations* ("MoE proposal"). Please note that CELA has provided only general recommendations with respect to MoE's proposal regarding the water conservation and

efficiency strategy and management of intra-basin transfer which are covered on pp. 2-10 of this brief. CELA has provided both general recommendations and also provided specific responses to the questions posed in MoE's proposal in the discussion regarding new and increased transfers, the exception criteria and water charges which are addressed in pp. 10-19 of this brief.

II: SPECIFIC COMMENTS ABOUT THE MOE PROPOSAL

1. OVERVIEW OF WATER CONSERVATION AND EFFICIENCY STRATEGIES

CELA is concerned that MoE's proposal sets out only a broad range of options and has not provided a comprehensive framework for a water conservation and efficiency strategy for Ontario. Such a framework would include the identification of program priorities, a regulatory framework for conservation and efficiency and assign responsibilities to specific agencies. The framework should establish immediate and long-term goals, measurable targets and expedited deadlines for the province's conservation and efficiency strategy.

CELA has joined other groups that have endorsed *H2Ontario- a blueprint for a comprehensive water conservation strategy* prepared by Carol Maas for the POLIS Project on Ecological Governance (June 4, 2009) (the POLIS report) because this Blueprint frames the full scope of solutions that are needed. CELA recommends that the MoE review and adopt the recommendations in the POLIS report as part of its water conservation and efficiency strategy.

CELA Recommendation #1: CELA recommends that the MoE establish a comprehensive framework for a water conservation and efficiency strategy for Ontario. Such a framework would include the identification of program priorities, a regulatory framework for conservation and efficiency and assign responsibilities to specific agencies. The framework should establish immediate and long-term goals, targets and deadlines for the province's conservation and efficiency strategy.

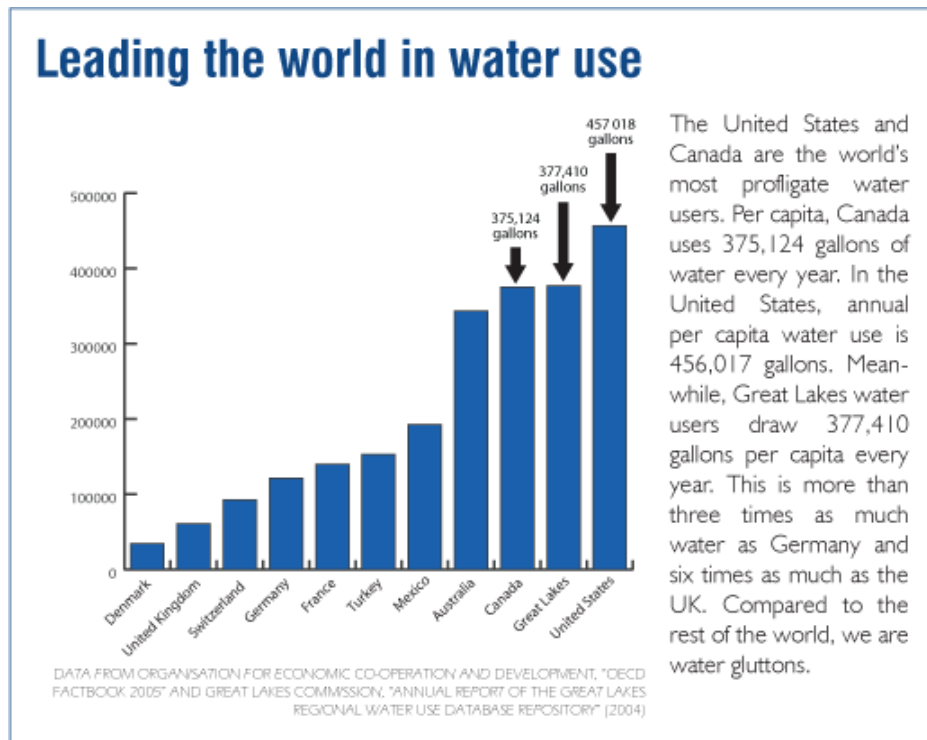
CELA Recommendation #2: CELA recommends that the MoE review and adopt the recommendations in the POLIS report as part of its water conservation and efficiency strategy.

2. CONSERVATION

CELA is strongly of the view that in order to ensure a strong and effective conservation strategy, applicants seeking new water use in Ontario should be required to justify why they cannot accommodate their new use entirely through water conservation. This

would ensure that Ontarians rely on water resources within their watershed and would ensure the effective implementation of a water conservation strategy.

Canadians, and in particular those living near the Great Lakes, are profligate water users when compared with other jurisdictions as indicated in the chart below from the Great Lakes News (Fall 2009 issue). According to scientists, the best way of ensuring the resilience of the Great Lakes ecosystem is through strong and effective conservation measures. Studies reveal that investing now in aggressive conservation measures will pay dividends in the future, for resource protection, energy savings, reduced water service, treatment and infrastructure costs. Indeed, all sectors of the economy can benefit from such measures.



CELA Recommendation # 3: CELA recommends that all applicants applying for new water use justify why they cannot accommodate their new use *entirely* through water conservation. This “No New Water Supplies” approach would force applicants to seriously consider and implement water conservation measures.

(a) Targets and Timetables

Ontario also needs to set water conservation targets in regulations pursuant to the *Ontario Water Resources Act* and create tools to measure and monitor progress. In addition, Ontario should review all of its regulatory programs for consistency with its water conservation goals and objectives and assess their ability to reach established

targets within specific timelines. We note that Ontario is currently still implementing policies and plans that run counter to the stated objectives of MoE's proposal. Policy decisions such as the 2006 Growth in Ontario plans for the Golden Horseshoe, for example, permit growth in areas that have been identified as having a shortage of water. Furthermore, several controversial decisions such as the Simcoe Growth Plan and the Upper York Sewage Solutions EA Terms of Reference are at odds with MoE's proposal to ensure the long-term sustainability of water resources in the province. It is CELA's position that in areas of the province that have been identified as having inadequate water supply to support growth, Ontario should curtail future development as part of its water conservation and efficiency strategy.

CELA Recommendation # 4: CELA recommends that all sectors, subsectors and individuals within watersheds should be required to reduce their water use to reach established targets within specific regulatory timelines. Flexibility and choice to achieve those goals by a wide range of conservation and efficiency initiatives should be encouraged.

CELA notes that the Exception Standard criteria under Article 201 in the Agreement uses very broad language such as such as "reasonably avoided" (Article 201, Section 4 a), "reasonable" (Article 201, Section 4 b), "no significant individual or cumulative adverse impacts" (Article 201, Section 4 d), and "Environmentally Sound and Economically Feasible Water Conservation Measures" (Article 201, Section 4 e). The wording of the Exception Standard criteria requires clarification and further technical guidance to ensure consistent implementation by regulators.

The "Economic Feasibility Water Conservation Measures" required under Article 201, (Section 4 e), should take into consideration the risks and costs associated with failing to conserve water as opposed to focusing solely on short-term financial considerations. This would ensure that the protection and wise use of water is given primary consideration and ensure the sustainability and well being of our communities and economy.

CELA Recommendation # 5: CELA recommends the government provide further clarity and guidance with regard to the application of the Exception Standard criteria in Article 201 in the Agreement.

CELA Recommendation # 6: CELA recommends that the "Economically Feasible Water Conservation Measures" under Article 201 take into consideration the risks and costs of not conserving water as opposed to focusing solely on short-term financial considerations.

(b) Assistance to Low- Income Ontarians

A water conservation and efficiency strategy for Ontario should provide for equitable access to conservation programs and savings to ensure that low-income Ontarians have

water for their health and well-being. The strategy should be designed to avoid creating hardship on vulnerable communities. CELA is very concerned that none of our previous suggestions with respect to this issue have been addressed in the MoE proposal. Please see CELA's submission to the Great Lakes Team and Annex Advisory Panel dated March 12, 2009. We would be pleased to meet with your staff to discuss the problem of providing equitable and accessible programs for low-income Ontarians and discuss possible solutions to prevent water poverty in the province.

CELA Recommendation # 7: CELA recommends that a water conservation and efficiency strategy for Ontario should consider equitable access to conservation programs and savings to ensure that low-income Ontarians have water for their health and well being. The strategy should be designed to avoid creating hardship on vulnerable communities.

We have appended to our submission a scan of all of the conservation options presented in your paper's Appendix and have noted the options which CELA supports. **See the Appendix (Attachment A). Please include the responses in this Appendix in your tabulations of responses to this proposal.**

3. OVERVIEW OF THE MANAGEMENT OF INTRA-BASIN TRANSFERS

CELA recommends that Ontario's primary objective with respect to the management of intra-basin transfer should be to discourage and prevent new intra-basin diversions and transfers. This precautionary approach is consistent with the Statements of Environmental Values in Ontario's *Environmental Bill of Rights*. Unfortunately, MoE's proposal fails to explicitly establish such an approach and instead simply provides for a broad range of options to identify and regulate intra-basin transfers. CELA is of the view that the establishment and implementation of a rigorous conservation strategy will significantly decrease the demand for intra-basin transfer. Furthermore a significant amount of water savings could be achieved and any new uses could be drawn from and limited to the reserves created by conservation.

New water management options must aim not to cause any further harm to water resources, either directly, indirectly or on a cumulative basis. While Ontario has shown leadership in the past in opposing large withdrawals and diversions from the Great Lakes by other jurisdictions as well as in the negotiations leading up to the Agreement, the province has also historically encouraged engineered solutions to supply water in Ontario. This has led to the redistribution of water through pipelines to communities with little regard for watershed boundaries and the long-term viability of Ontario's water resources. These practices need to fundamentally shift to sustainable practices that ensure that water is kept within watershed boundaries and promote efficient water use and conservation.

CELA Recommendation # 8: CELA recommends that Ontario should explicitly state in its legal and policy framework that its primary objective is to prevent new intra-basin diversions and transfers.

(a) Defining the Great Lakes Watersheds

The MoE Proposal states on page 24 that “accurate mapping of the Great Lakes watershed boundaries is needed so that water users and the province can identify where the intra-basin transfer may be taking place.” In order to supply these maps, MoE is proposing to use the most “current, provincially adopted Great Lakes watersheds mapping.

CELA strongly supports the use of mapping which will provide the best available information. In this regard, CELA recommends that Figure 3, the Map of Great Lakes-St Lawrence Watersheds that shows the five Great Lakes watersheds as they are referenced under the *Ontario Water Resources Act* continue to be used to define Intra-Basin Transfers. This map is based on sound science and our current understanding of the Great Lakes. Each connecting channel’s natural flow downstream determines the Great Lake watershed of which they are a part.

CELA Recommendation # 9: CELA recommends that Figure 3, the Map of Great Lakes-St Lawrence Watersheds that shows the five Great Lakes watersheds as they are referenced under the *Ontario Water Resources Act* continue to be used to define Intra-Basin Transfers.

(b) Connecting Channels

The MoE proposal on page 24 also states that “[c]onsistent with Article 207 of the Agreement, [MoE] is proposing to have a new regulation stating that a connecting channel be considered part of both the upstream and downstream Great Lake watersheds for the purpose of identifying new or increased intra-basin transfers.” The reason for this is to address situations where communities take water from a Great Lake and discharge it to a downstream connecting channel. The regulation would clarify that such uses are not considered transfers.”

CELA is strongly opposed to the MoE’s proposed definition of “connecting channels.” We note that Ontario strenuously objected when the U.S. states introduced the “straddling counties” provisions at the eleventh hour in the negotiations on the Agreement because this redrew the boundaries for the Basin for political expediency and did not reflect sound science. Consequently, it is not appropriate for the province to be now proposing and redefining certain intra-basin transfers as standard withdrawals that will not trigger the protective exception criteria. We are concerned that this

proposal paper does not adequately identify the implications and potential outcomes of the proposed change in definition of the term “connecting channels.”

CELA recommends that Ontario instruct their members in the Regional Body to immediately commence efforts to amend the definition of “connecting channels” under Article 207 of the Agreement. This article now sets out that: “The watershed of each Great Lake shall include its upstream and its downstream connecting channels.” According to this definition, most proposals for transfers in Ontario would no longer be defined as intra-basin transfers and would escape regulatory scrutiny and avoid the special conditions applicable to these proposals. Many areas of the Great Lakes system that have been subject to the regulatory requirements for intra-basin transfers will very likely suffer ecosystem damage as a result of reduced flows. Regulators, however, would not be required to assess the upstream and downstream ecological impacts resulting from intra-basin transfers. MoE’s proposed definition would also thwart the province’s efforts to accurately assess existing transfers in order to define the baseline of water takings in Ontario.

CELA Recommendation # 10: CELA recommends that Ontario instruct their members in the Regional Body to immediately commence efforts to amend the definition of “connecting channels” under Article 207 of the Agreement. CELA does not support MoE’s proposed definition of “connecting channels” as it will result in most intra-basin transfers escaping regulatory scrutiny.

(c) Establishing the Baseline

(i) Withdrawals

We recognize that the province is using the definition of watershed discussed above to help determine the initial baseline of current water takings for withdrawals, municipal transfers, non-municipal transfers and consumptive uses. This is necessary for this one time exercise to uncover transfers that have gone undetected to date. Nonetheless, we do not support the use of this definition for new proposals due to its potential to create new harm for the reasons set out above.

CELA is also concerned about the lack of information about the impacts of reduced flows on the Great Lakes system or parts of it. We have been concerned that the requirements in the Article 302 of the Agreement regarding the need for a scientific basis for sound water management decision-making have not formed part of the consultation on implementing the Agreement. Moreover, there has not been any in-depth discussion of the information gaps which have prevented the development of an effective water conservation and efficiency strategy for Ontario.

CELA Recommendation #11: CELA recommends that in order to minimize harm, return flow conditions, less allowances for consumptive uses should apply to all transfer proposals in the province. The permit to take water requirements should

be revised to include these conditions. We propose that the threshold for return flow be applicable to all permit holders over 50,000 litres.

CELA Recommendation # 12: CELA recommends that there be legal requirements in Ontario to return all water withdrawn as close as possible downstream to the source of the taking.

CELA Recommendation # 13: CELA recommends that the province commit resources to collect and apply scientific information to accurately assess the impacts of intra-basin transfers and diversions.

(ii) Municipal transfers

It is difficult to evaluate at this point how many pre-approvals there have been for municipal transfers in Environmental Assessments until the baseline inventory is completed. CELA is concerned that sizable allocations and expectations for future capacity that will be revealed once that data have been collected. CELA recommends that should this be the case, the province will provide a mechanism to impose conservation strategies on these municipalities' historic approvals. The province needs to establish a method to assess the accuracy of municipal estimates of future needs, and to ensure that permits do not continue to be given for excess capacity that are never utilized. This is common practice and applicants for permits continue to ask for and are granted new capacity in permit renewals when they have not utilized the full capacity of their previous permit. This was the case, for example, with the recent Guelph Nestle Waters Canada's application for a permit to take water.

CELA recommends that all of Ontario's data from permits to take water from the Great Lakes Basin Watershed be reported to the Regional Body, even though much of that information is below the thresholds specified in the Agreement. This will provide an accurate understanding of water withdrawal in the Great Lakes Basin and its impact on the ecosystem. Unfortunately, the Advisory Group to the Council of Great Lakes Governors on data and information collection is recommending the status quo for the immediate future. This means that data will be collected in accordance with the requirements set out in the 1985 Great Lakes Charter and averaged for each lake. This practice, however, will not provide accurate information on water use in the Great Lakes or allow the province to monitor trends and prepare and maintain long-term water demand forecasts.

CELA Recommendation # 14: CELA recommends that the MoE not issue permits to take water to municipalities well in excess of their current and future needs. All municipalities seeking a permit to take water should also have a conservation strategy in place prior to the issuance of the permits to take water.

CELA Recommendation # 15: CELA recommends MoE report data from permits to take water from the Great Lakes Basin Watershed to the Regional Body even though much of that information is below the thresholds specified in the Agreement. This will provide an accurate understanding of water withdrawal in the Great Lakes Basin and its impact on the ecosystem.

(d) Use of Consumptive Coefficients

The MoE proposal states on page 25 that the province is proposing to get input from water users to develop a table of generalized consumptive use coefficients for various water-using sectors and to apply these coefficients to the baseline withdrawal volumes.

CELA recommends that Ontario should not rely on generalized consumptive use coefficients and instead require reporting on actual use by all permit holders. This will provide the most accurate data on water use in the province and allow the MoE to identify best practices. All permit holders should, therefore, be required to report on consumptive use by assessing the actual water taken, consumed and returned. The MoE should also require cradle to grave water audits for all permit holders as soon as possible. In addition, the MoE should research cost effective meters and other devices that could aid in these water audits.

CELA Recommendation # 16: CELA recommends that all permit holders be required to report on consumptive use by assessing the actual water taken, consumed and returned. The MoE should also require cradle to grave water audits for all permit holders as soon as possible. In addition, the MoE should research cost effective meters and other devices that could aid in these water audits.

(e) Regional Review

MoE proposal fails to specify clearly where the public can intervene in the process particularly after a proposal goes to Regional Review. CELA is of the view, based on our experience during the negotiations regarding the Agreement, that there will be no opportunity for public involvement once a proposal is forwarded for Regional Review.

CELA Recommendation # 17: CELA recommends that because there is no provision in the Agreement for public involvement in Regional Review, the province of Ontario continue to retain and utilize its Annex Advisory Panel or a similar Body to formulate Ontario's position on applications subject to Regional Review.

(f) Regulating New or Increased Transfers

Ontario generally proposes to regulate new or increased intra-basin transfers (IBTs) by applying the Article 201 "exception criteria" during municipal Master Plan exercises, the

Municipal Class EA process for individual water or wastewater projects, and site-specific approvals related to IBTs (i.e., Permits to Take Water (PTTW) and Certificates of Approval (C of As)).

For municipal IBT's, it is proposed that the Ministry of Natural Resources (MNR) and Ministry of the Environment (MOE) will review and comment upon how the exception criteria are being addressed in the Master Plan and/or Class EA project planning exercises. If the exception criteria are satisfactorily addressed, then the MOE Director may issue the requisite PTTW and/or C of A, subject to Regional Review (if required), and subject to appropriate terms/conditions.

For non-municipal IBTs, it is proposed that the exception criteria will be applied during applicable to existing permitting requirements (i.e., PTTW), although it must be noted that given notable exceptions under the OWRA in relation to water-taking, not all non-municipal water-takings require a PTTW..

Ontario is also contemplating the creation of a new OWRA regulation that will permit other Great Lakes jurisdictions to seek judicial review, or to appeal a PTTW to the Environmental Review Tribunal (ERT).

In CELA's view, the underlying problem with Ontario's proposal is that it attempts to utilize the province's existing legislative and regulatory framework, but does not acknowledge or remedy the well-documented problems with the current regime.

In addition, it is unclear how Ontario's proposal will be integrated with substantially similar exercises occurring under the *Clean Water Act* (CWA) in relation to the identification, evaluation and mitigation of significant threats to the quantity of drinking water sources.

(i) Problems with Master Plans

The Proposal Paper itself notes (p.29) that only "some" municipalities use the Municipal Class EA framework for developing infrastructure Master Plans. CELA's concern is that many Master Plans are not being developed under the auspices of the *Environmental Assessment* (EA Act).

The significant disconnect between Master Plans and Class EA project planning was highlighted by Ontario's Environmental Commissioner in his 2007-08 Annual Report, as follows:

Municipalities are expected to consult with the public on Master Plans, but Master Plans do not require approval under the EAA – only specific projects within a Master Plan are subject to EA. Thus, in spite of the warning against piecemealing and the encouragement to think long-range, the approach tends to lead to fragmented decision-making. For example, the York Durham Sewer System was assessed as 14 different Class EA projects, despite broad regional implications;

the construction phase alone has required a massive dewatering effort, removing vast amounts of water from aquifers in York Region (page 42).

The Environment Minister's EA Advisory Panel's Report (2005) also called for better integration of municipal planning and EA requirements, and specifically recommended that appropriate means should be developed to coordinate municipal master plans (i.e. infrastructure) with the EA program (Recommendation 41).

In CELA's view, until these and other fundamental concerns are addressed, trying to force fit the IBT exception criteria into municipal Master Plans is unlikely to be successful as long as Master Plans remain outside of EA Act coverage.

(ii) Problems with Municipal Class EA

Like other Class EAs, the Municipal Class EA was originally intended to streamline planning, documentary and consultation requirements for routine municipal projects with minimal/predictable impacts that are generally amenable to mitigation measures.

Thus, CELA strongly submits that IBTs do not properly belong within the MCEA (either as a Schedule B or C project), and should instead trigger individual EA requirements under Part II of the EA Act. The 1996 amendments to the EA Act (i.e. scoping of Terms of Reference/EAs) are available to ensure that individual EAs for IBTs can move along in a timely, efficient and fair manner.

It should be further recalled that in their reports noted above, the Environmental Commissioner and the EA Advisory Panel have identified a number of serious problems with current Class EA procedures (i.e. disputes over project classification; questionable compliance with consultation/documentary requirements; lack of a "credible bump up" mechanism; the vexing problem of cumulative effects; inadequate consideration of "need" and "alternatives to", etc.).

CELA Recommendation # 18: IBTs should not be included within the Municipal Class Environmental Assessment (either as a Schedule B or C project), and should instead trigger individual EA requirements under Part II of the EA Act.

(iii) Public Notice/Comment/Appeal Problems

Section 32 of the EBR provides an "exception" to the public participation provisions of Part II of the *Environmental Bill of Rights* (EBR). In particular, if a permit or licence is issued to implement an undertaking that has been approved (or exempted) under the EA Act, then there is no legal requirement to post notice on the EBR Registry or to solicit public comments, and residents cannot seek leave to appeal such approvals to the ERT.

Accordingly, if a municipality applies for an IBT-related PTTW or C of A after the completion of Class EA planning, CELA reasonably anticipates that the MOE will argue that the section 32 "EA exception" is applicable. If this position is correct, then interested or potentially affected members of the public are not legally entitled to public

notice/comment/appeal under the EBR. It should be further noted that there is considerable support for revoking/revising section 32 of the EBR in various ECO reports and the EA Advisory Panel Report.

In addition, it is unclear how Ontario intends to sidestep this section 32 problem when it proposes to allow other Great Lakes jurisdictions to appeal PTTW decisions to the ERT. In CELA's, as a matter of fairness and good public policy, a similar regulation must be enacted to allow residents to appeal directly to the ERT if they are concerned about the issuance of the permit, or the adequacy of conditions attached to it.

In short, if other Great Lakes jurisdictions will be permitted to appeal directly to the ERT without satisfying a leave test, then a corresponding right to appeal should be provided to Ontario residents. As a precedent for this approach, CELA notes that there is an automatic right of appeal to the ERT in relation to the MOE's recently created "Renewable Energy Permit", and the leave test under section 38 of the EBR is not applicable to such appeals.

CELA Recommendation # 19: Ontario must undertake statutory and/or regulatory amendments to enable Ontario residents to appeal to the Environmental Review Tribunal (ERT) if they are concerned about the issuance of an IBT-related PTTW or C of A, or the adequacy of any terms and conditions attached to such approvals. More specifically, Ontarians should have an automatic right to appeal any permit to take water applications involving a proposed withdrawal, consumptive use or transfer under the Agreement, in the same way as other Great Lakes jurisdictions will be entitled to appeal such proposals to the ERT.

(iv) Integration with Source Protection Planning

Ontario has recently released a regulation under the CWA that prescribes 21 drinking water threats, including "activities that take water from an aquifer or surface water body without returning the water taken to the same aquifer or water body" (O.Reg.287/07, section 1.1). Thus, if a Source Protection Committee (SPC) finds that a quantity threat is significant, then various tools are available when the SPC drafts policies for the Source Protection Plan (i.e. amend PTTWs; prohibit the activity; require revisions to Official Plans/zoning by-laws; require risk management plans, etc.).

Ontario's Proposal Paper is unclear how the CWA process will overlap or be integrated with IBT management via municipal Master Plans, Class EAs, or provincial permits. Moreover, CELA submits that the need to properly manage IBTs gives the MOE further justification for fully and immediately utilizing the various Great Lakes provisions under the CWA (i.e. creation of a Great Lakes advisory committee, prescribing Great Lakes targets/policies, etc.). For example, the advisory committee could be established and be used as the mechanism for reviewing and responding to proposed IBTs in other jurisdictions, as well as examining proposed IBTs within Ontario.

CELA Recommendation # 20: Ontario must clarify how the proposed management of IBTs will overlap or be integrated with the Source Protection Planning process currently underway in Ontario and Ontario must fully and immediately exercise its discretionary powers under the CWA in relation to Great Lakes matters.

In the event that CELA's foregoing recommendations are not adopted by Ontario, then CELA makes the following alternative recommendation in relation to the management of IBTs:

CELA Recommendation # 21: In the alternative, should Ontario elect to proceed with its current proposal for managing IBTs, then, at a minimum, the province must take all necessary steps to ensure that:

- (a) Municipal Master Plans themselves are caught by the EA Act in order to achieve proper integration between long-range municipal infrastructure plans and site-specific IBT-related projects being processed under the Municipal Class EA;**
- (b) improvements to the Municipal Class EA (as recommended by the Environmental Commissioner and the EA Advisory Panel) are publicly developed and undertaken forthwith in order to improve consultation opportunities, strengthen documentary requirements, ensure appropriate consideration of "need" and "alternatives to", create better issue resolution procedures, and provide a meaningful "bump up" mechanism to address unresolved stakeholder concerns about proposed IBTs; and**
- (c) section 32 of the EBR ("EA exception to public participation") is made inapplicable to IBT-related approvals (i.e. PTTWs or C of As) to ensure such approvals are fully subject to the public notice, comment and third-party appeal provisions of Part II of the EBR.**

CELA's further submissions are described below in our answers to the specific questions posed by the Proposal Paper regarding IBTs.

As noted above, CELA strongly recommends that in all cases, municipal (and non-municipal) IBTs should be subject to individual EAs, rather than be left to the vagaries of Master Plans or Municipal Class EA planning exercises where applicable.

4. CELA'S RESPONSE TO MOE'S QUESTIONS REGARDING THE EXCEPTION CRITERIA AND NEW OR INCREASED TRANSFERS

Question # 5. What suggestions do you have to make sure the Exception Criteria are considered early in the process for non-municipal users?

As noted above, CELA is recommending that municipal IBTs should trigger an individual EA. We see no reason in principle why non-municipal IBTs should be subject to less rigorous planning or consultation requirements. Accordingly, consideration should be given to promulgating a regulation under the EA Act that designates all IBTs (whether public or private) under the Agreement as undertakings to which Part II of the Act applies, and that specifically requires proponents to demonstrate, among other things, that their proposed IBTs satisfy the Exception Criteria.

Question # 6. What do you think should be taken into account when developing guidance on how to apply the Exception Criteria?

The definition of “efficient use and conservation of existing water” must be clearly defined and ensure rigorous efficiency and conservation measures have been applied. For example, before any Exception Criteria are granted, the majority of an established set of best management practices pertaining to water conservation and efficiency should be implemented, as evidenced by a third party water audit.

Question # 7. Please comment on the approach the province is considering with respect to return flow (i.e., whether water returned to the tributary of a connecting channel meets the return flow exception criterion)?

The definition of “watershed” must NOT include the downstream connecting channel for the purpose of identifying new or increased intra-basin transfers, thus keeping with the scientific definition of a watershed.

In all cases of water taking, flows should return to the basin from which they were taken, downstream and as close as possible to the water-taking point. Existing exceptions may be grandfathered.

Question # 8. What other comments or suggestions do you have about the proposed approach for regulating new or increased transfers?

CELA’s position and recommendations on the proposed approach is described above.

5. OVERVIEW OF PROPOSAL FOR WATER CHARGES

The MoE is proposing to move forward with imposing water charges to medium and low consumptive water takers.

In 2007, the MoE implemented a charge for Phase 1 commercial and industrial users through Ontario Regulation 450/07. The regulation provides that the charges are to go into effect this year. The regulation imposed a charge of \$3.71 per million litres of water used for commercial and industrial users for high consumptive water users in Phase 1.

The charge proposed in Phase 2 for medium water consumptive water takers will be \$0.86 per million litres and \$0.06 million litres for low consumptive water takers.

6. CELA'S GENERAL COMMENTS ON WATER CHARGES

CELA supports the MoE proposal to move forward with Phase 2 and implement charges for medium and low consumptive water users, subject to our comments below.

CELA supports the four guiding principles for developing a water charge framework and has considered and applied these principles in responding to the MoE's questions regarding the implementation of Phase 2. The guiding principles are as follows:

- To ensure that those who create the need for and commercially benefit from water management programs contribute to the administrative costs of delivering those programs.
- To be affordable and equitable. The charge should not impose a significant financial burden on affected companies and should treat similar companies the same.
- To be administratively efficient. The charge should be easy to administer; and finally.
- To promote more efficient water use by commercial and industrial water users. The charge should signal there are costs associated with water management and may suggest water's inherent value.

CELA has considered these principles in responding to the MoE's questions regarding water charges as set out below.

CELA Recommendation # 22: CELA supports MoE's proposal to move forward with Phase 2 and implement charges for medium and low consumptive water users, subject to CELA's comments below.

7. CELA'S RESPONSE TO MOE'S QUESTIONS REGARDING WATER CHARGES

Question # 1. What issues or concerns do you have if any about implementing Phase 2?

The concerns CELA has with respect to moving forward with Phase 2 are the same ones that CELA raised with respect to water charges for Phase 1. CELA is of the view that it is unlikely that the amount which is proposed to be charged for medium and low consumptive users will promote the objectives set out in the guiding principles namely the user pay principle and the promotion of more efficient water users by commercial and industrial water users.

The Environmental Commissioner of Ontario's ("ECO") Annual Report released last year raised similar concerns in relation to the charge proposed for Phase 1. The ECO report states that the water taking charge for Phase I would not "meaningfully promote the conservation, protection or wise management of Ontario's waters," despite the fact that this purpose is explicitly stated by the *OWRA*." The ECO's Annual Report further states:

...the very low charge rate of \$3.71 per million litres of water is unlikely to create any real economic incentive for conservation – just a penny will buy almost three cubic meters of water. Nor is it likely that the new charge will result in any new or expanded water management programs.

Moreover, even accepting that the sole purpose of the charge is to defray some administrative costs, the ECO believes that the scope of the programs notionally covered by the charge is far too limited. The water taking charge should reflect the real proportionate costs of what the government truly is (or should be) spending on all water quantity programs that relate to the charged sectors (including the costs of programme operated by partners, such as conservation authorities). Accordingly, the ECO encourages the ministry, during its first review of this charge, to itemize the actual costs of the programme including in this regulatory framework, and to establish a fee that is both substantial and proportionate to the true administrative costs related to the charged sectors. This should also help to encourage water conservation as well.

The above comments made by ECO are equally applicable to Phase 2. It is unlikely that the amount of the charge will promote the conservation, protection or the wise management of Ontario's waters.

CELA recommends that the MoE undertake a review of its actual costs of its water management programs as they relate to water quantity and water quality issues and to assess the charges which are proportionate to the actual costs related to operate these programs. In assessing its costs, the MoE also needs to consider other programs which are operated by its partners such as conservation authorities. In the long term the MoE should also consider expanding its water management programs to ensure it becomes a robust regulatory programme and take steps to increase its water charges accordingly.

CELA Recommendation # 23: CELA recommends that the MoE undertake a review of its actual costs of its water management program as they relates to water quantity and water quality issues and to assess the charges which are proportionate to the actual costs related to operate these programs. In assessing its costs, the MoE also needs to consider other programs which are operated by its partners such as conservation authorities. In the long term the MoE should also consider expanding its water management programs to ensure it becomes a robust regulatory programme and take steps to increase its water charges accordingly.

Question # 2. What issues or concerns do you have (if any) about allowing a water user to apply for a change in the charge rate on the basis of the facility's consumptive water use is not typical for its sector?

CELA supports in principle the proposal for allowing a water user to apply for a change in the charge rate on the basis that the facility's consumptive water use is not typical for the sector. This approach is consistent with the user pay principle and would promote conservation of water. However, there must be transparency and an opportunity for public input before a change is made to the charge rate for a facility.

CELA Recommendation # 24: CELA supports in principle the proposal for allowing a water user to apply for a change in charge rate on the basis that the facility's consumptive water user. However, there should be transparency and an opportunity for public input before a change is made to the charge rate for the facility.

Question # 3. Which approach do you support (Option 1, 2 or 3) for changing the administration of the charge for industrial and commercial water users on municipal supply? Why? Do you have any other suggestions?

Currently, under Phase 1 the Ministry charges commercial and industrial water users on municipal or communal supply directly. MoE relies on data that municipalities are required to provide annually on their commercial and industrial water users.

Municipalities have expressed a concern that there are numerous challenges to this approach. It seems that the information is difficult and costly for municipalities to collect and organize and send to the Ministry in the required format.

MoE is proposing a number of options

- Make minor amendments to the current municipal reporting requirements to reduce number of records municipalities have to submit
- Require industrial and commercial water users taking water from municipal supply to report annual water taking to MoE and require municipalities to provide only an annual update of new accounts where the water taking exceeds the threshold set by MoE 9e.g 7.3 million litres per year; or
- Charge municipalities directly for the portion of their water taking used by commercial and industrial users.

CELA supports option 2 because this would ensure that records regarding industrial and commercial water users are kept in a central location as opposed to being distributed amongst municipalities across the province. CELA recommends that the MoE establish a central electronic data base and input all the information related to water takings in the province. The information should be accessible to MoE staff as well to the general public.

This would ensure that the MoE has accurate and up-to- date information regarding water takings in the province and also enable the MoE to analyze trends in consumption patterns within sectors and whether sectors are successfully implementing water conservation measures.

CELA Recommendation # 25: CELA supports option 2 as this would ensure that records regarding industrial and commercial users are kept in a central location as opposed to being distributed amongst municipalities across the province.

CELA Recommendation # 26: CELA recommends that the MoE establish a central electronic data base and input all the information related to water takings in the province. The information should also be made accessible to the general public.

Question # 4. Do you have any other comments or suggestions about the proposed approach for moving forward with Phase 2 charges for commercial and industrial water takings?

CELA supports the MoE in moving forward with Phase 2 charges for medium and low consumptive water takers subject to the comments provided above. We would like to reiterate our previous recommendation that the MoE undertake a review of the actual costs of its water management programs (as it relates to water quantity and water quality) and assess charges which are proportionate to the actual costs related to operate these programs. In assessing its costs the MoE also needs to consider other programs which are operated by its partners such as conservation authorities. In the long term the MoE should expand its water management programs to ensure it becomes a robust regulatory program and take steps to increase its water charges accordingly.

CELA Recommendation # 27: CELA recommends the MoE move forward with Phase 2 charges for medium and low consumptive water takers. However, over MoE needs to undertake a review of the actual costs of its water management programs (as it relates to water quantity and water quality) and assess chargers which are proportionate to the actual costs related to operating these programs. In assessing its costs the MoE also needs to consider other programs operated by its partners such as conservation authorities.

CELA Recommendation # 28: CELA recommends that in the long term the MoE expand its water management program to ensure it becomes a robust regulatory program and take steps to increase its water charges accordingly.

III. CONCLUSION

CELA strongly support the development and implementation of a water conservation and efficiency strategy in Ontario. There is an urgent need for the province to move expeditiously to address the increasing ecological stress placed on the province's water

resources as well as the dwindling water supply. CELA believes that leadership by the province is essential in ensuring a fundamental shift from a culture of profligate water consumption towards a long term sustainable water use for the benefit of future generations of Ontarians.

The MoE proposal marks an important initiative by the government to address many current challenges in protecting and conserving the province's water resources. However, Ontario needs to move beyond identifying broad options on managing its water resources towards establishing clear timetables with specific conservation targets across all sectors. In addition, the province needs to commit immediately to implementing a "No New Water Supplies" strategy by requiring that all new demands for water be met through water savings achieved through effective conservation measures. These steps would be the foundation of an effective water conservation and efficiency strategy for Ontario.

IV. SUMMARY OF CELA'S RECOMMENDATIONS

- 1. CELA Recommendation # 1: CELA recommends that the MoE establish a comprehensive framework for a water conservation and efficiency strategy for Ontario. Such a framework would include the identification of program priorities, a regulatory framework for conservation and efficiency and assign responsibilities to specific agencies. The framework should establish immediate and long-term goal for the province's conservation and efficiency strategy.**
- 2. CELA Recommendation # 2: CELA recommends that the MoE review and adopt the recommendations in the POLIS report as part of its water conservation and efficiency strategy.**
- 3. CELA Recommendation # 3: CELA recommends that all applicants for new water use justify why they cannot accommodate their new use *entirely* through water conservation. This "No New Water Supplies" approach would force applicants to seriously consider and implement water conservation measures.**
- 4. CELA Recommendation # 4: CELA recommends that all sectors, subsectors and individuals within watersheds should be required to reduce their water use to reach established targets within specific timelines. Flexibility and choice to achieve those goals by a wide range of conservation and efficiency initiatives should be encouraged.**
- 5. CELA Recommendation # 5: CELA recommends the government provide further clarity and guidance with regard to the application of the Exception Standard criteria in Article 201 in the Agreement.**
- 6. CELA Recommendation # 6: CELA recommends that the "Economically Feasible Water Conservation Measures" under Article 201 take into consideration**

the risks and costs of not conserving water as opposed to focusing solely on short-term financial considerations.

7. CELA Recommendation # 7: CELA recommends that a water conservation and efficiency strategy for Ontario should consider equitable access to conservation programs and savings to ensure that low-income Ontarians have water for their health and well being. The strategy should be designed to avoid creating hardship on vulnerable communities.

8. CELA Recommendation # 8: CELA recommends that the Ontario should explicitly state in its legal and policy framework that its primary objective is to prevent new intra-basin diversions and transfers.

9. CELA Recommendation # 9: CELA recommends that Figure 3, the Map of Great Lakes-St Lawrence Watersheds that shows the five Great Lakes watersheds as they are referenced under the *Ontario Water Resources Act* continue to be used to define Intra-Basin Transfers.

10. CELA Recommendation # 10: CELA recommends that Ontario instruct their members in the Regional Body to immediately commence efforts to amend the definition of “connecting channels” under Article 207 of the Agreement. CELA does not support MoE’s proposed definition of “connecting channels” as it will result in most intra-basin transfers escaping regulatory scrutiny.

11. CELA Recommendation # 11: CELA recommends that to minimise harm that return flow conditions, less allowances for consumptive uses, should apply to all transfer proposals in the province. The permit to take water requirements should be revised to include these conditions. We propose that the threshold for return flow be applicable to all permit holders over 50,000 litres.

12. CELA Recommendation # 12: CELA recommends that there be requirements in Ontario to return all water withdrawn as close as possible downstream to the source of the taking.

13. CELA Recommendation # 13: CELA recommends that the province commit resources to collect and apply scientific information to accurately assess the impacts of intra-basin transfers and diversions.

14. CELA Recommendation # 14: CELA recommends that the MoE not issue permits to take water to municipalities well in excess of their current and future needs. All municipalities seeking a permit to take water should also have a conservation strategy in place prior to the issuance of the permits to take water.

15. CELA Recommendation # 15: CELA recommends MoE report data from permits to take water from the Great Lakes Basin Watershed to the Regional Body even though much of that information is below the thresholds specified in

the Agreement. This will provide an accurate understanding of water withdrawal in the Great Lakes Basin and its impact on the ecosystem.

16. CELA Recommendation # 16: CELA recommends that all permit holders be required to report on consumptive use by assessing the actual water taken, consumed and returned. The MoE should also require cradle to grave water audits for all permit holders as soon as possible. In addition, the MoE should research cost effective meters and other devices that could aid in these water audits.

17. CELA Recommendation # 17: CELA recommends that because there is no provision in the Agreement for public involvement in Regional Review, the province of Ontario continue to retain and utilise their Annex Advisory Panel or a similar Body to formulate Ontario's position on applications subject to Regional Review.

18. CELA Recommendation # 18: IBTs should not be included within the Municipal Class Environmental Assessment (either as a Schedule B or C project), and should instead trigger individual EA requirements under Part II of the EA Act.

19. CELA Recommendation # 19: Ontario must undertake statutory and/or regulatory amendments to enable Ontario residents to appeal to the Environmental Review Tribunal (ERT) if they are concerned about the issuance of an IBT-related PTTW or C of A, or the adequacy of any terms and conditions attached to such approvals. More specifically, Ontarians should have an automatic right to appeal any permit to take water applications involving a proposed withdrawal, consumptive use or transfer under the Agreement, in the same way as other Great Lakes jurisdictions will be entitled to appeal such proposals to the ERT.

20. CELA Recommendation # 20: Ontario must clarify how the proposed management of IBTs will overlap or be integrated with the Source Protection Planning process currently underway in Ontario and Ontario must fully and immediately exercise its discretionary powers under the CWA in relation to Great Lakes matter.

21. CELA Recommendation # 21: In the alternative, should Ontario elect to proceed with its current proposal for managing IBTs, then, at a minimum, the province must take all necessary steps to ensure that:

- (a) Municipal Master Plans themselves are caught by the EA Act in order to achieve proper integration between long-range municipal infrastructure plans and site-specific IBT-related projects being processed under the Municipal Class EA;**
- (b) improvements to the Municipal Class EA (as recommended by the Environmental Commissioner and the EA Advisory Panel) are publicly**

developed and undertaken forthwith in order to improve consultation opportunities, strengthen documentary requirements, ensure appropriate consideration of “need” and “alternatives to”, create better issue resolution procedures, and provide a meaningful “bump up” mechanism to address unresolved stakeholder concerns about proposed IBTs; and

- (c) section 32 of the EBR (“EA exception to public participation”) is made inapplicable to IBT-related approvals (i.e. PTTWs or C of As) to ensure such approvals are fully subject to the public notice, comment and third-party appeal provisions of Part II of the EBR.**

22. CELA Recommendation # 22: CELA supports MoE’s proposal to move forward with Phase 2 and implement charges for medium and low consumptive water users, subject to CELA’s comments below.

23. CELA Recommendation # 23: CELA recommends that the MoE undertake a review of its actual costs of its water management program as they relates to water quantity and water quality issues and to assess the charges which are proportionate to the actual costs related to operate these programs. In assessing its costs, the MoE also needs to consider other programs which are operated by its partners such as conservation authorities. In the long term the MoE should also consider expanding its water management programs to ensure it becomes a robust regulatory programme and take steps to increase its water charges accordingly.

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28. CELA Recommendation # 28: CELA recommends that in the long term the MoE expand its water management program to ensure it becomes a robust regulatory program and take steps to increase its water charges accordingly.

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APPENDIX
OF THE CANADIAN
ENVIRONMENTAL LAW
ASSOCIATION'S PREFERRED
OPTIONS ..

Options for What Ontario Could Include in Its Water Conservation and Efficiency Strategy

Table 1: Summary of Options for Targets

Type of Target	Options
1. Province-wide	<ul style="list-style-type: none"> ✓ a. Set province-wide targets ✓ b. Set watershed-based targets <i>subwatershed</i> c. Do not set any province-wide or watershed-based targets
2. Sector-wide	<ul style="list-style-type: none"> ✓ a. Set targets for each sector b. Do not set targets for any sector
3. Individual Water User Targets	<ul style="list-style-type: none"> ✓ a. All Permit To Take Water holders could establish individual targets <i>as well as residents.</i> b. All high-volume water users above a specified threshold could establish individual targets c. Municipalities and businesses in water-stressed areas could establish targets d. Do not set any individual water use targets

Table 2: A menu of possible actions for an Ontario Water Conservation and Efficiency Strategy

<p>Actions Ontario Could Take to Achieve Objective 1: Guide programs toward long-term sustainable water use including taking ecosystem needs for water into account</p>	
<p>1A Implement water conservation and efficiency plans</p> <ul style="list-style-type: none"> ▪ ✓ Water conservation and efficiency plans and/or water use audits could be done within certain geographic areas (e.g. stressed watersheds), within specific sectors (e.g. municipalities, industries, government institutions), and/or by certain Permit To Take Water holders. ▪ Development or implementation of water conservation and efficiency plans and/or water use audits could be phased in over time based on water supply conditions, financial capacity and/or technical capacity of the water user. <i>The Province should provide support to those with</i> ▪ ✓ Water conservation and efficiency plans and/or water use audits could be prepared internally or by a third party. ▪ Plans and/or audits could be formally approved by the province, a third party, or have no formal approval requirement. ▪ ✓ Plans and/or audits could be site-specific and take into account the economic, operational and environmental conditions of individual operations. Specific content would need to be identified, along with target dates. ▪ Once in place, the plans and/or audits could be evaluated and updated regularly (e.g., every 10 <i>18.5</i> years, on renewal of the Permit To Take Water) or, be a one-time only requirement (no evaluation or updating). ▪ ✓ The province and water-use sectors could work collaboratively to develop guidelines for preparing plans and/or audits; and/or ▪ ✓ Water conservation and efficiency plans and/or water use audits could be a condition of any provincial grant funding. 	
<p>1B Work towards long-term water availability planning and water use demand forecasting such as on a provincial, Great Lake and/or watershed basis.</p> <ul style="list-style-type: none"> ▪ Forecasting could be phased in to deal with <i>prioritized</i> priority areas (e.g., water-stressed sub-watersheds) and improve understanding about long-term water availability and demand (including cumulative impacts; climate change, etc.); and/or ▪ ✓ Incorporate water conservation and efficiency into integrated watershed-based water, wastewater and stormwater planning. 	
<p>Actions Ontario Could Take to Achieve Objective 2: Adopt and implement supply and demand management to promote efficient use and conservation of water resources.</p>	
<p>2A Develop provincial regulatory measures.</p> <ul style="list-style-type: none"> ▪ ✓ Enhance the Permit To Take Water program so that permit holders report on their water conservation and efficiency achievements. ▪ ✓ Continue to develop and update provincial water efficiency standards under the Ontario Building Code and the proposed <i>Green Energy and Green Economy Act</i>. This may include: Ontario adopting water efficiency standards for water-using products and updating existing standards (e.g., toilets), adopting new water efficiency standards for water-using products (e.g., rain sensors on residential and commercial landscape automatic irrigation systems), and/or reviewing water efficiency standards every five years. ▪ ✓ Support a water efficiency labelling system for water-consuming products (e.g., like the U.S. Environmental Protection Agency's partnership program, <i>WaterSense</i>); and/or consider water conservation and efficiency when acquiring goods and services and/or making capital investments, 	

such as constructing new provincial facilities.

2B Promote municipal initiatives such as volume-based pricing and full cost recovery.

- ✓ **Minimizing water wasting on municipal systems.** Municipalities could be required/encouraged to adopt water conservation by-laws that minimize wastage of drinking water (e.g., irrigating lawns when it is raining). In conjunction with municipal organizations, the province could develop model municipal water conservation by-laws.
- ✓ **Metering municipally-supplied customers (not private wells).** Municipalities could be required/encouraged to meter new and existing developments (including multi-unit buildings, with phased-in metering of existing developments); and/or
- **Municipal water rate pricing rates and structures.** Municipalities could be required/encouraged to have a pricing structure which:
 - charges all water users the full cost of providing water and wastewater services ~~and/or~~
 - encourages water conservation (e.g., inclining block rates).

2C Encourage leak detection and repair for Permit To Take Water holders and waters users on the municipal system.

- ✓ Encourage Permit To Take Water holders and water users on municipal water systems to identify and repair leaks using cost-effective, economical and environmentally sound methods. The province and sectors could work collaboratively to develop and provide information to water users on how best to do this.

2D Identify and develop financial incentives for cost-effective water conservation initiatives and technologies.

- Water conservation and efficiency measures should generally be self-financing (i.e., technical measures should pay for themselves within the life expectancy of the equipment or materials).
- Currently, water conservation and efficiency measures are funded through water users, municipal water utility rates or development charges, and provincial funding (e.g. infrastructure grants). Funding is generally based on business case analysis, to identify measures that are cost effective and environmentally sound.
- There could be opportunities to continue and/or expand the way water conservation and efficiency initiatives are financed.
- *Some rural and remote water systems will never be self-financing. Develop ways to subsidize these systems.*

Actions Ontario Could Take to Achieve Objective 3: Improve monitoring and standardize data reporting among state and provincial water conservation and efficiency programs.

3A Establish methodologies for calculating water conservation and water efficiency performance indicators and conduct benchmarking for some or all sectors.

- ✓ Methodologies could be developed for either all ~~or some~~ sectors, with their participation.

3B Include standard water consumption information on municipal consumer water bills (e.g., like electricity bills).

- ✓ The province could specify the information that must be on the bill; and/or
- Model consumer water bills could be developed.

3C Put measures in place to monitor, account for and report on municipal water loss.
 ✓ The province could encourage/require municipal drinking water system owners to measure and monitor water loss and provide guidance to municipal drinking water system owners on how to calculate water loss; and/or
 Municipal drinking water system owners could be required to report annually on water loss to municipal councils, the public and the Ministry of the Environment. *also measure loss through wastewater STP's.*

3D Track and report Ontario's progress with, and the effectiveness of, its water conservation and efficiency program.
 ✓ The province would report annually on its water conservation and efficiency program progress.
 ✓ The province would conduct a five-year review of its water conservation goals, objectives and programs.
 ✓ The province would report to the public and the Great Lakes Regional Body; and/or
 ✓ The province could make information, including Ontario trends in the efficient and sustainable use of water, readily available to the public and share the information with other jurisdictions.
create an accessible database to Ontarians for this info.

3E Connect with other jurisdictions when developing water conservation and efficiency performance indicators, benchmarks, monitoring and reporting requirements, etc.

Actions Ontario Could Take to Achieve Objective 4: Develop science, technology and research

4A Support water conservation technologies and practices.
 ✓ Support research to identify the potential for water conservation and efficiency in sectors and the associated business case.
 ✓ Encourage and support organizations to identify research priorities for water conservation and efficiency technologies and practices as the basis for developing the best management practices for sectors and/or water conservation and efficiency plans.
 ✓ Support research, development, testing and commercialization of modified, new and innovative water efficient technologies and approaches.
 ✓ Support research to identify linkages between water and energy conservation and promote innovative technologies that save both water and energy.
 ✓ Monitor and evaluate the technical and economic performance of water efficient technologies.
 ✓ Work with other parties to evaluate technologies.
 ✓ Develop guidance for new, innovative technologies and practices like rainwater harvesting and grey water use; and/or
 ✓ Establish mechanisms for organizations to collaborate on research efforts and to share information and insight into cost-effective, available technologies, across sectors and with other jurisdictions.
Develop guidance on conservation - recharge of groundwater

4B Develop water conservation and efficiency standards or guidelines.
 ✓ Research potential water conservation and efficiency standards to support the development of made-in-Ontario codes and standards.
 ✓ Support research to identify water-use needs for residential and commercial landscape irrigation; and/or
 ✓ Develop guidelines for designing water efficient residential and commercial landscaping, soil characteristics, etc. that could be included in municipal development standards.
storm water detention ponds



4C Research environmental needs and linkages between water quantity and water quality.

- ✓ Support research on the ecological need for water to ensure watershed health and resiliency.
- ✓ Support research on the development of water conservation and efficiency technologies and practices that maintain and enhance natural water sources like green infrastructure that capture and use storm water onsite.
- ✓ Support research to gain a better understanding of the linkages between water quantity and water quality, in the context of water conservation and efficiency; and/or
- ✓ Support research to get a better understanding of the links that water conservation and efficiency have to climate change mitigation and adaptation. *soon*

4D Increase our understanding about how Ontarians' value and use water

- Support social science research to understand and influence human behaviour and attitudes about water use.

4E Increase awareness and involve traditional knowledge and practices of Aboriginal people of Ontario

- ✓ Develop relationships and programs to integrate Aboriginal traditional knowledge and practices about water's importance and its sustainable use.
- Support research about traditional names of rivers and lakes and look for opportunities to promote their usage; and/or
- ✓ Promote the Mother Earth Water Walk, its messages, and promote similar initiatives in communities.

Actions Ontario Could Take to Achieve Objective 5: Develop education programs and information sharing for all water users.

5A Launch a public education and awareness campaign.

- ✓ The province could lead a social marketing campaign with consistent messages and materials that municipalities and others could customize. The campaign could focus on increasing public awareness and understanding of the value of water (including its intrinsic value), getting rid of the myth of limitless abundance and instilling responsible water use. The campaign could include focused messaging for youth, elders, and acknowledge the traditional role of Aboriginal women, which is to care for water.
- ✓ Household water audits could be promoted (integrated with energy audits, where possible) to help people take control of and make changes in their water use; and/or *these should be integrated into energy audit.*
- ✓ Stakeholders in water conservation and efficiency could participate in communicating conservation messages.

5B Enhance school curriculum.

- ✓ Develop primary, secondary and post-secondary school curriculum and provide supporting educational materials, including information about the traditional knowledge and practices of Aboriginal people related to water.
- ✓ Provide educational materials for organizations working with children; and/or
- ✓ Continue provincial support for activities like Children's Water Festivals and Children's Water Education Councils and extend these activities to Aboriginal communities.

5C Build capacity and skills within companies and organizations.

- ✓ Develop and promote new and/or update existing best management practices. *in accessible web site*
- ✓ Provide sector-specific expertise (e.g., extension services).



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Ministry of Natural Resources Ministère des Richesses naturelles

January 30th, 2007

To Members of the Great Lakes Charter Annex Advisory Panel

I want to thank those of you who attended the recent meeting of the Great Lakes Annex Advisory Panel on January 17th, 2007 and for raising some very important policy considerations with regard to Ontario's implementation of the Annex Agreement. I would also like to take this opportunity to confirm several commitments that were made at the meeting. These commitments relate to the on-going role of the Panel, the next steps in the process to implement the Agreement and a number of associated matters.

When the Panel met I indicated that it is our intent to have the Panel continue to provide input and expertise as Ontario moves forward to implement the Agreement. While some members expressed concern that the protections negotiated and agreed upon were not strong enough, I also heard from many others that Ontario should take advantage of the small window we have to seek approval of a legislative package that would set the framework for implementing the current Agreement signed in December of 2005. We recognized that a new policy decision to go beyond the current Agreement would involve substantive dialogue and debate and require the necessary time to carry out such a process. Such delays may impair our current successes, reduce our momentum and ultimately, reflect poorly on the leadership that Ontario has provided to the other Basin jurisdictions. I am confident that we have the opportunity to introduce a flexible legislative framework that is capable of growing and responding to the needs of the Province.

At the Panel meeting some members requested that the government put in place a moratorium on intra-basin transfers, pending passage of the legislation. While I appreciate the attempt to find a solution to the concerns raised at this meeting I am unable to commit to a moratorium at this time. Like the request that there be no intra-basin transfers permitted under the legislation, this action would be considered a new policy direction requiring substantial policy development, consultation, government approvals and a regulation to be made by the Lieutenant Governor in Council. It is not possible to pursue the proposal and still meet the deadlines necessary to get our enabling legislation passed this year.

However, we are prepared to engage the Panel in early dialogue of interim measures, including discussion around the request that we consider an interim moratorium on intra-basin transfer, as the legislative framework proceeds. This proposed framework, with its new requirements for intra-basin transfers, provides an improved vehicle to address these matters in a more

comprehensive manner. I can confirm that both MNR and MOE Minister's offices are comfortable with this approach.

I would like to offer the following additional commitments, which I am prepared to recommend to government:

- To seek greater flexibility in the legislation such that return flow to the source Great Lake watershed is required for intra-basin transfers 19+ million litres per day, or a lesser amount prescribed by regulation. Before such a regulation could be passed, further work would be done and consultation with the Advisory Panel and others would be conducted to determine the appropriate threshold level.
- To provide regulation-making flexibility to introduce additional criteria to control intra-basin transfers, in response to the periodic cumulative impact assessments required under the Agreement (i.e. Article 209).
- To provide regulation-making flexibility such that terminology related to the intra-basin transfer criteria can be fleshed out by regulation (e.g. "cumulative adverse impacts").

In addition to the foregoing, we remain committed to having the Panel engaged with other implementation efforts including water conservation programs and our science and research strategy. From our discussions it was also clear that we need to gather and share more information about potential water transfers that are on the near horizon. To this end, I shall endeavor to work with our municipal partners to bring such proposals before the Panel for their information and consideration. These efforts will complement any formal review requirements that may be necessary (e.g. environmental assessment) and will help all of us understand how best the Agreement may be implemented in Ontario. Additionally, the Ministry of the Environment will commit to work with the York Region representative on the Panel to provide the most current information on the plans on servicing in York Region and to discuss its implications with respect to the Agreement.

Given our current urgency to move the proposed legislative framework forward, it is important for you to let me know whether you are prepared to support us moving ahead on this basis so that I may decide how to recommend to government that they proceed. I would appreciate your comments by February 5th, 2007.

The Great Lakes Annex Advisory Panel is an unprecedented approach to citizen involvement that helped Ontario negotiate an Agreement that, when implemented, will substantially improve the levels of protection across the Great Lakes Basin. With your help, we can ensure that this is a platform to build upon for the future protection of this globally significant resource. I look forward to continuing to work with you on this important task.

Yours truly,

Kevin J. Wilson
Assistant Deputy Minister
Natural Resource Management Division

cc: Robert P. Taylor, Director, Lands & Waters Branch
Rob Messervey, Manager, Water Resources Section
Sharon Bailey, Director, Land and Water Policy Branch, Ministry of the Environment