

Another Opinion on Protecting the Great Lakes  
Submitted by: Sarah Miller  
Canadian Environmental Law Association

This week and next caring Canadians will be turning out to defend our greatest national treasure, our water from diversions and large harmful withdrawals. This series of meetings this month in Ontario and Quebec communities, may well be our last chance for decades to enshrine long over due protections for the Great Lakes into binding laws.

In a reenactment of former Prime Minister Pierre Elliot Trudeau's parable of Canada US relations, Ontario and Quebec have for the past three years been two mice in a waterbed with eight young elephants, the Great Lake States. Any amount of jostling and their fragile mattress could well spring a leak. Bogeymen lurking under the bed taking the form of climate change, trade agreements and growing water shortages within and outside the Great Lakes Basin make all ten strange bedfellows frightened to get out of the bed they have made for themselves.

I was one of the few Canadians invited to participate on an Advisory Committee of stakeholders to the jurisdictions during this protracted negotiation and I am frankly terrified about the consequences of failure in this round. It is notable that these negotiations have survived elections and changing governments in all ten jurisdictions. Despite this, negotiators have persisted in efforts to have the first legally binding agreement since the 1909 Boundary Waters Treaty.

After Ontario granted a permit to the Nova Group to export water from Lake Superior to the Orient in 1998, diplomatic notes flew between Washington and Ottawa. The International Joint Commission (IJC) was summoned to study the protection of Great Lakes Waters. Ontario withdrew the permit but the best legal advice that could be bought and the IJC concurred that the Great Lakes had inadequate protections to manage and sustain the waters now and for future generations. In June 2001, the Great Lakes Governors and Premiers responded by announcing their intent to negotiate a legally binding Annex to the Great Lakes Charter. Since then Ontario responded by tightening up their laws and now has the strongest water allocation system of all the ten jurisdictions. It scrutinizes all withdrawal requests over 50,000 liters and puts a moratorium on withdrawals between watersheds. Quebec has placed a moratorium on diversions out of Province until they have implemented their new water policies. However, no similar new protections are yet in place in the US. This should be a great concern to Canadians a quarter of whom depend on the Great Lakes for their drinking water.

Since 1985 when the gentleman's agreement, the Great Lakes Charter, was signed, Canadians have had only one thin hope to stopping diversion proposals and that was to convince a Great Lake State to veto it under their Water Resources Development Act. US negotiators around the table are very concerned about WRDA weaknesses. Many feel it may not endure a court challenge and point out it only covers surface waters and cannot be used to stop a groundwater diversion proposal. Despite prior notice and consultation provisions, Ontario and Quebec have not always been invited to discuss diversion proposals since 1985. All decisions on diversion proposals have been purely political. There have been no ecological protections standards in place to give our region rational reasons to just say no. As North American water shortages increase sooner or

later the elephant herds will go in search of new supplies. Will the Canadian mice only get the crumbs that drop under the table or will they have a place at the table with a briefcase full of new tools? The public reaction at these public meetings and input up to the October 18<sup>th</sup> comment deadline will determine this.

Negotiators have tried to put together a series of legally binding protections and rules that are at least as rigorous as Trade regimes. Critics of these draft agreements feel that these rules could also lead to saying yes to diversions. Having no rules will most certainly allow many new straws to be put into the Great Lakes and make many industrial, huge farming operations and other water intensive users very happy. By focusing on our fears of being in bed with the elephants, are we denying ourselves some of the blankets we need to protect ourselves?

From my glimpses into the negotiating room, I think it is a miracle we have gotten so far. The constitutional and other differences have almost been insurmountable. At the end of the day that is why we have two distinct agreements. One is a US Compact that legally binds the elephant tribe to act together as a herd and a regional agreement that allow Ontario and Quebec to participate as two solitudes on common interests and to bind themselves by incorporating the decision-making standard into their domestic laws. This Agreement signed by all jurisdictions sets some high hurdles which many think applicants for Great Lakes water will never be able to clear. These include heavy burdens of proof: no reasonable alternatives, return flow requirements, no significant or cumulative impacts, water conservation, improvements and consensus among all jurisdictions. Just as importantly, it requires all jurisdictions to improve their day to day water management, data collection and water conservation practices. Finally a way to force ourselves to relinquish the title of number one world water wasters.

Are Ontario and Quebec going to start to stake our claims and turn the bed we are in with our US neighbours to the south from a leaky waterbed to at least a trundle bed where every one has their territory and rights? If we continue to be mice running away squeaking "no" over their shoulders, all of the other creatures that depend on the delicate web of the ecosystem will suffer, as will future generations of residents they will condemn to a nightmare of continuing crisis management. The Canadian Environmental Law Association urges other concerned Canadians to work to strengthen these agreements and the protection of our shared treasure.

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