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Ministry: Environment

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NOTICE OF PROPOSAL FOR ACT

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Proposal Title:

Proposed Legislative Amendments to the Ontario Water Resources Act

Short Description:

The Ministry of the Environment is proposing to amend the Ontario Water Resources Act (OWRA) to implement the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement). This includes proposed changes to modernize section 34 of the OWRA to assist in the implementation of the Agreement.

BACKGROUND

**GREAT LAKES - ST. LAWRENCE RIVER BASIN SUSTAINABLE
WATER RESOURCES AGREEMENT**

On December 13, 2005, Premier McGuinty joined the Premier of Québec and the Governors of the eight Great Lake states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin) in signing the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement.

The Agreement details how the states and provinces will manage, protect and conserve the waters of the Great Lakes - St. Lawrence River Basin (Basin) and provides a framework to enact laws protecting the Basin in each Great Lake jurisdiction.

Under the Agreement the parties agreed to:

- Conserve, protect and manage the waters of the Great Lakes Basin in a co-operative manner.
- Implement a ban on new and increased diversions out of the Basin or from one Great Lake watershed to another (with strictly regulated exceptions).
- Strengthen water conservation and efficiency of water use through regional goals and objectives and programs in each jurisdiction.
- Strengthen the scientific basis for sound water management through a collaborative science strategy with regional partners.
- Create a Regional Body to oversee the implementation of the Agreement. The Regional Body is made up of representatives from each state and province that is a party to the Agreement. Premier McGuinty became the chair of the Regional Body on December 13, 2006 and will maintain this role for one year. The Regional Body will be responsible for conducting Regional Reviews of significant water use proposals by other jurisdictions and issuing a Declaration of Finding on whether the proposal meets a new environmental standard. The Regional Body will also review the water management and conservation programs of Great Lakes states and provinces.
- Ensure public and First Nation ability to comment to the Regional Body on significant proposed water takings and to have those comments considered before the Regional Body issues a declaration of finding.
- Manage Basin water uses based on an environmental standard.

To implement the Agreement, each province and state will pass or modify laws, policies and programs that put in place the new protections for Great Lakes Basin waters. In order to implement the Agreement in Ontario, the Province is proposing to amend the Ontario Water Resources Act (OWRA), as well as proposing to make consequential amendments to the Water Taking and Transfer Regulation (O. Reg. 387/04), under the OWRA.

MODERNIZATION OF SECTION 34 OF THE OWRA

Ontario also proposes to amend s.34 of the OWRA to provide a more modern basis on which Permits to Take Water (PTTW) are issued. This initiative is consistent with the Agreement's provisions to improve management of waters in the Basin and to increase knowledge and information in respect of their use.

The Permit to Take Water (PTTW) program has undergone considerable changes in the past 10 years. These changes include the Water Taking and Transfer Regulation, which first came into force in 1999 and was amended in

2004, and the update of the PTTW's policies for managing water takings, as reflected in the revised the Permit to Take Water Manual (2005). Amendments to section 34 of the OWRA are proposed which reflect these recent policy and regulatory changes as well as complement the Agreement for the protection and sustainable management of water.

PROPOSED AMENDMENTS TO THE ONTARIO WATER RESOURCES ACT

The following outlines the key components of the proposed amendments to the Ontario Water Resources Act.

1. Definitions.

New terms to be introduced into legislation, including the following: "consumptive use", "declaration of finding", "Great Lake watershed", "municipal drinking water system", "Regional Body", and "Regional Review".

- For example, consumptive use refers to the portion of a water taking that is lost or otherwise not returned to the Great Lakes Basin, including the St. Lawrence River and connecting channels, due to evaporation, incorporation into products or other processes.

2. Purpose.

Currently, there is a purpose clause located at the beginning of O. Reg. 387/04. It is proposed that this purpose statement would be elevated to the OWRA. The purpose statement would indicate that the purpose of this Act is to provide for the conservation, protection, management and sustainable use of Ontario's waters for the long-term environmental, social and economic well-being of Ontario. This purpose is consistent with the purpose of the Agreement.

3. Reference to the Great Lakes –St. Lawrence River Basin Sustainable Water Resources Agreement.

Add a statement about the importance of the Agreement.

4. Prohibition of Inter-Basin Diversions.

Under section 10 of the O. Reg. 387/04, Ontario has, since 1999, banned inter-basin diversions, transfers of water out of Ontario's three water basins (Great Lakes-St. Lawrence Basin, Nelson Basin and Hudson Bay Basin). The proposed amendments to the OWRA would place that prohibition in legislation. Ontario's inter-basin prohibition is stricter than the Agreement's inter-basin prohibition.

The existing exceptions to the prohibition in O. Reg. 387/04 for inter-basin transfers would continue, such as:

- historical inter-basin transfers which commenced prior to January 1, 1998,

provided that the amount of water transferred out of a water basin does not exceed the highest amount of water transferred out of the water basin by the undertaking in any year after December 31, 1960 and before January 1, 1998.

- the order of the Lieutenant Governor in Council dated October 12, 1913 respecting the Greater Winnipeg Water District.
- water in containers of 20 litres or less.
- water necessary for the operation of a vehicle or vessel in which the water is being transported, including water that is for the use of the people or livestock in the vehicle or vessel.
- water incorporated in products, such as beer or canned fruit.

In addition, there would be a new exception to the inter-basin prohibition for firefighting purposes to be consistent with the existing exception in the OWRA from the requirement for a permit for firefighting.

5. Prohibition of Intra-Basin Diversions.

Place a prohibition on the diversion of water of 379,000 litres per day or greater from one Great Lake watershed to another Great Lake watershed, unless the applicant meets certain strict criteria, which includes the Exception Standard, and is granted a PTTW.

All exceptions for inter-basin transfers listed in paragraph 4 above also apply to intra-basin transfers.

6. Exception to the Prohibition of Intra-Basin Diversions.

Include the following exceptions to the prohibition for intra-basin diversions, as per the Agreement:

- i) 379,000 litres/day or greater and less than 19 million litres/day consumptive use

PTTW applicants for new or increased intra-basin diversions of 379,000 litres per day or greater and less than 19 million litres per day consumptive use would be subject to new requirements under the OWRA, as described below:

- (a) must meet the Exception Standard and ensure that water withdrawn is returned to the source Great Lake watershed, less an allowance for consumptive use, if the taking is for a municipal drinking water system;

or,

- (b) must meet the Exception Standard, except that the water withdrawn (less the consumptive use) may be returned to another Great Lake watershed rather than the source watershed, provided that the applicant provides information to the Director demonstrating that there is no feasible, cost effective,

environmentally sound alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies. Ontario must provide notice to the other Parties to the Agreement prior to the Director making any decision with respect to the proposal. These requirements will apply if the taking is for a municipal drinking water system (if they cannot meet the provisions in (a) above) or another use.

ii) 19 million litres per day or greater consumptive use

Proposals for new or increased intra-basin diversions involving a consumptive use of 19 million litres per day or greater would be subject to the following new requirements under the OWRA:

The water withdrawn shall be returned to the source Great Lake watershed and the applicant must provide information to the Minister demonstrating that there is no feasible, cost effective, environmentally sound alternative to the water withdrawal. The applicant must also provide information to the Minister to demonstrate the proposal satisfies the Exception Standard. Before the Minister makes a decision whether or not to approve the proposal, the proposal shall undergo regional review by the Regional Body and the Minister shall consider any declaration of finding made by the Regional Body following regional review before a decision is made to issue the permit.

7. The Exception Standard.

Adopt the Exception Standard, as per the Agreement, which set out six criteria that must be met by PTTW applicants for proposals of new and increased intra-basin diversions of 379,000 litres per day or greater:

- Need for the water cannot be avoided through water conservation.
- Amount of water is limited to reasonable quantities.
- All water withdrawn must be returned to the Source Watershed (less an allowance for consumptive use).
- There must be no significant adverse impact to water quantity or quality.
- The proposal must incorporate water conservation measures.
- Must ensure compliance with all applicable laws (all levels of government as well as the Boundary Waters Treaty of 1909).

8. Judicial Review.

Add a clause to provide Québec and the eight Great Lake states standing to seek judicial review in respect of Ontario decisions by the Director or Minister in relation to water withdrawals, and diversions subject to the provisions of the Agreement.

9. Regulation-Making Authority.

Add regulation-making authority as needed to make other implementing regulations in the future. For example, matters such as the definition of Great Lake watershed, calculations for consumptive use coefficients, water

conservation and efficiency, and in-basin standards (standard for takings where water is used within the Basin).

10. Modernization of section 34 of the OWRA.

To support commitments in the Agreement, the proposed OWRA amendments would amend the existing exemption for watering of livestock and domestic use that are currently in the OWRA to require a PTTW for the following:

- watering of livestock of 379,000 litres/day or greater
- domestic use of 379,000 litres/day or greater

Currently, under section 34 of the OWRA, water takings that commenced on or before March 29, 1961 are not required to obtain a Permit to Take Water. The proposed amendments to the OWRA will provide the Lieutenant Governor in Council (LGIC) with authority to make a regulation to require these historical water takings to obtain a PTTW in a manner that will be consistent with water management and information gathering across the ten Great Lake jurisdictions.

The exercise of this authority would be subject to transition provisions. Grandfathered historical water takings would not be required to obtain a permit unless the LGIC exercises the proposed regulation-making authority. Under the EBR, the Ministry is required to consult on any proposed regulation under the OWRA before it is made by the LGIC. It is during the EBR consultation period that stakeholders who would be affected by the proposed regulation are given an opportunity to comment on the proposal. Under the EBR, the Ministry must then take any comments submitted during the posting period into consideration before proceeding to implement a proposal.

Also, to ensure a clear and consistent approach in implementing the Agreement, the following OWRA amendments are being proposed to improve the effectiveness of the PTTW program and to clarify and update existing statutory authorities in relation to the PTTW program.

- Clarify the Director's authority to require an application in a manner and form approved by the Director, including conducting tests.
- If a PTTW expires and a person applies for renewal of PTTW 90 days before the expiry of an existing PTTW (or other time specified by the Director), the PTTW that has expired would be allowed to continue until the Director makes a determination on the application. The PTTW would only be allowed to continue for a period of up to one year, if the Director does not renew within that period; after which time the PTTW would expire.
- Clarify the authority of the Director to impose conditions in a permit as the Director considers necessary for the purposes of the OWRA, including conditions relating to (a) limits on the amount of water the person may take, the

manner in which water may be taken, and the manner in which water may be returned, including the quality of the water returned, (b) the monitoring and reporting on water quantity or quality, and (c) water conservation measures.

- A PTTW cannot be transferred to another person without the written consent of the Director.
- Clarify the Director's authority to require a permit for an individual water withdrawal in cases where the legislation has exempted the water withdrawal from this requirement.
- Regulation-making authority to clarify that a PTTW is required for certain types of takings, for example the storage or diversion or withdrawal of any waters.
- Allow a provincial officer to issue an order to any person who is withdrawing water to monitor and report to the provincial officer on the amount of water the person is withdrawing, if the person is withdrawing water with a pump that has a capacity that exceeds 50,000 litres per day.
- Update s.34 for legal consistency. If changes are made as described above, other OWRA provisions may need to be updated to maintain consistent language.

11. Water Transfer Control Act.

Rescind the Water Transfer Control Act which was never proclaimed into law. This act is no longer required as a result of the proposals in this posting.

Purpose of the Proposal:

The purpose of this posting is to advise the public that the Province is fulfilling its commitment to implement the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement by amending the Ontario Water Resources Act (OWRA); and provide an opportunity for the public to comment on the proposed amendments to the OWRA.

Other Relevant Information:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER CONSERVATION AND EFFICIENCY INITIATIVE

Pursuant to the goals established in the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement) that was signed on December 13, 2005, the Great Lakes Governors and Premiers are developing regional water conservation and efficiency objectives. These objectives are intended to be broad, overarching concepts which will provide context for

further state and provincial action that will be more specific in nature.

The process for developing the regional water conservation and efficiency objectives is intended to be open and transparent. Regional stakeholders have been asked to provide technical information, make recommendations and foster communication with interested organizations and individuals. Representatives of Tribes and First Nations have also been engaged and asked to share their experience and traditional knowledge. It is expected that the Great Lakes-St. Lawrence River Water Resources Regional Body will seek public comments on the draft regional water conservation and efficiency objectives in the spring 2007.

Once finalized and adopted by the Great Lakes-St. Lawrence River Water Resources Regional Body by December 13, 2007, the regional goals and objectives will then be used to inform the development of state and provincial water conservation and efficiency goals and objectives and water conservation programs that may be voluntary, mandatory, or a combination of measures. As provided for in the Agreement, each state and province will annually assess its programs in meeting its goals and objectives. Additionally, the regional objectives, as well as state and provincial reports, will be reviewed by the Regional Body every five years.

The proposed amendments to the OWRA will provide the Lieutenant Governor in Council (LGIC) with authority to make a regulation for water conservation and efficiency of water use in the future. Under the EBR, the Ministry is required to consult on any proposed regulation under the OWRA before it is made by the LGIC. It is during the EBR consultation period that stakeholders who would be affected by the proposed regulation are given an opportunity to comment on the proposal. Under the EBR, the Ministry must then take any comments submitted during the posting period into consideration before proceeding to implement a proposal.

Comments should be directed to the following Contact Person:

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Additional material in support of this notice is available by clicking the following hyperlink(s):

<http://www.mnr.gov.on.ca/MNR/water/greatlakes/Agreement.pdf>
http://www.e-laws.gov.on.ca/DBLaws/Regs/English/040387_e.htm

<http://www.mnr.gov.on.ca/mnr/water/greatlakes/index.html>

<http://www.ene.gov.on.ca/envregistry/023323ep.htm>

All comments will be considered as part of the decision-making by the Ministry if they:

- a. are submitted in writing;**
- b. reference the EBR Registry number; and**
- c. are received by the Contact person within the specified comment period.**

Please Note: No acknowledgment or individual response will be provided to those who comment. All comments and submissions received will become part of the public record.

