

Proposed Safeguarding and Sustaining Ontario's Water Act

Stronger Protection for the Great Lakes and Ontario's Water Resources

Information about Bill 198

The McGuinty government has introduced Bill 198 to strengthen the management, protection and conservation of the Great Lakes and all Ontario's water resources. The proposed legislation would implement the historic Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, signed by Ontario, Quebec and the eight Great Lakes U.S. states on December 13, 2005.

Ontario's existing ban on transfers of water out of the Great Lakes-St. Lawrence River, Nelson and Hudson Bay basins, which is now in regulation would be enshrined in the Ontario Water Resources Act. The Bill, if passed, would also prohibit new or increased transfers of water from one Great Lake watershed to another, subject to strictly regulated exceptions.

Bill 198 would also enable the province to start charging commercial and industrial users for the water they take and use. Revenue would be used to cover a portion of the province's costs of managing water resources.

There is a lot of interest in exactly what Bill 198 would do and what it would not do. Here are some facts.

Proposed requirements for intra-basin transfers

Currently Ontario regulates water withdrawals that are over 50,000 litres per day — with limited exceptions— and prohibits transfers out of the province's three major water basins, including the Great Lakes Basin. Yet Ontario lacks the legal authority to regulate water transfers from one Great Lake watershed to another within the Great Lakes Basin (intra-basin transfers).

Bill 198 would provide this authority and the tools needed to regulate new or increased intra-basin water transfers in a comprehensive manner, implementing commitments of the Agreement, including:

- Prohibiting new or increased intra-basin transfers of 379,000 litres/day or more, subject to strictly regulated exceptions;
- Adopting the Exception Standard criteria from the Agreement that must be met



before a proposed new or increased transfer may be approved;

- Imposing stricter rules as the volume of the transfer increased. For instance, a new or increased transfer of water between Great Lake watersheds involving a consumptive use of 19 million litres per day or more would require the return of water back to the source watershed and approval by the Minister following review by the ten member Regional Body, parties to the Agreement;
- Ensuring that the restrictions on new or increased transfers are not circumvented by applicants who try to beat the system by making multiple applications for transfers that just fall under the 19 million litre per day threshold.

Proposed new or increased transfers would not be approved unless the following Exception Standard criteria are met:

- The water transferred will be returned to the source Great Lake watershed (with an allowance for consumptive use) – smaller proposals may be excepted if returning the water is not feasible, environmentally sound or cost effective;
- The need for the water cannot be avoided through water conservation and efficient use;
- The amount of water is limited to reasonable quantities;
- There will be no significant individual or cumulative adverse impacts to water quantity or quality;
- The proposal incorporates water conservation and efficiency measures;
- The proposal complies with applicable laws including the Boundary Waters Treaty of 1909; and
- Additional criteria are met – such criteria may be added by regulation to address the findings of periodic cumulative impact assessments, including consideration of climate change effects.

Under the Agreement, it is anticipated that a decision-making standard will be developed and

applied to water withdrawals from the Great Lakes Basin. The Bill provides the necessary regulation-making authority so that these new decision-making standards can be implemented by regulation.

Responding to Ontario's Annex Advisory Panel

The government actively engaged its stakeholder Advisory Panel in developing the proposed legislation and has responded to requests by some members for stronger restrictions on transfers between the five Great Lakes watersheds in a number of ways.

The draft legislation was modified to provide regulation making authority to strengthen intra-basin transfer controls. For example, the 19 million litre per day threshold for requiring return of water to the source Great Lake watershed may be reduced by regulation. Additional environmental criteria to respond to cumulative impacts and climate change effects could be added by regulation.

Impact on Water Needs of Growth Plan Cities

Bill 198 would require municipalities to meet new environmental criteria if they are seeking approval for a new or increased transfer of water over 379,000 litres per day from one Great Lake watershed and another. Stricter rules, such as the need to return the water to the source Great Lake watershed, would apply to large transfers.

A municipal sector working group has been established to discuss municipal long term water servicing in the context of the Agreement and Bill 198 requirements.

Ontario would also continue to actively engage the Annex Advisory Panel as it develops the regulations and policies needed to implement Bill 198, should it be enacted.

Great Lakes water levels

Fluctuations in Great Lakes water levels are influenced by many factors including precipitation, surface water runoff and evaporation. Levels have been monitored for over 100 years and current levels are not below the normal variation witnessed in the Great Lakes over this time period.

The uncertain effect of climate change on Great Lakes waters was one of the forces driving the need for the Agreement. Ontario pushed hard to include recognition of climate change and the need for precaution in the Agreement – and succeeded.

Bill 198 would carry this commitment forward by establishing authority to introduce additional environmental criteria to further restrict intra-basin water transfers in response to cumulative impacts and climate change considerations.

Climate Change

Our changing climate has heightened the need for more precautionary and adaptive measures. The possible threats of climate change to Great Lakes Basin waters are addressed by both the Agreement and Bill 198.

The Agreement contains provisions to amend the environmental standards for water withdrawals and transfers to reflect advancements in science, information and knowledge, including the assessment of cumulative impacts of withdrawals, transfers and consumptive uses of basin waters.

The assessment of cumulative impacts is to be done every five years, when certain threshold levels for incremental water loss are reached or at the request of one or more of the parties to the Agreement.

As part of the assessment of cumulative impacts, the Agreement stipulates that the assessment of cumulative impacts shall give, “substantive consideration to climate change or other significant threats to Basin waters and take into account the current state of scientific knowledge, or uncertainty ...” (Article 209(4)(b))

Bill 198 carries this Agreement policy forward. It states that transfers would be implemented so that they comply with any criteria prescribed for the purposes of implementing the Agreement, including criteria related to climate change.

Cumulative Impacts

Bill 198 would better protect and conserve Great Lakes Basin waters by committing to consider cumulative impacts as part of the criteria in

evaluating whether to approve proposed intra-basin transfers and water takings.

These provisions are consistent with the Agreement and build on measures already in place in Ontario to address the cumulative impacts of water takings

Consideration of cumulative impacts is one of the key principles that guide the Ministry of the Environment in assessing applications for permits to take water. The ministry considers issues relating to water availability, including the impact of water takings on water balance and sustainable aquifer yield.

Water use has been calculated and classified as high, medium or low in every watershed in Ontario. New or increased water takings for high consumptive uses (e.g., beverage manufacturing, vegetable canning, ready-mix concrete manufacturing) are already not permitted in watersheds classified as ‘high use’.

Bill 198 would enshrine in the Ontario Water Resources Act the Exception Standard criteria for evaluating proposed new or increased intra-basin transfers set out in the Agreement. In accordance with the standard cumulative adverse impacts would have to be considered before a transfer could be approved.

Bill 198 also provides for regulation making authority to respond to changes in the basin by adding additional environmental criteria based on the findings of periodic, basin-wide assessments of cumulative impacts under the Agreement, including consideration of climate change effects.

It would also ensure that the restrictions on new or increased intra-basin transfers are not circumvented by applicants make multiple applications for transfers that just fall under the 19 million litre per day threshold requiring the return of water back to the source Great Lake watershed.

The Bill would provide authority to make regulations that could require an applicant to meet similar decision-making standard criteria for proposed water takings in the Great Lakes Basin.

This standard, like the exception standard built into the proposed legislation for transfers, includes a parallel consideration of cumulative adverse impacts for new or increased takings.

Encouraging conservation

The Agreement commits the Great Lakes states and provinces to:

1. collectively develop water conservation objectives for the Great Lakes Basin;
2. implement a water conservation program in each jurisdiction; and
3. include water conservation in the environmental standards used to manage water uses and regulate transfers.

Bill 198 would enable the development and implementation of a water conservation program through new regulation-making authority.

The Bill would also promote conservation by requiring proponents to meet stringent new environmental criteria before being permitted to carry out a new or increased transfer of water between Great Lakes watersheds. For instance, a proponent would have to show that the proposal incorporates feasible, environmentally sound and cost effective water conservation measures.

The Bill would also strengthen the ability of the permit to take water program to promote conservation by expressly authorizing a permit to include conditions that require conservation measures be taken. Conditions could also require that conservation audits be conducted to determine if water is being used efficiently. These types of conditions are already being included in permits, but the Bill would help confirm this authority, so that the province can implement its Agreement commitments.

Consumptive Use

Consumptive use is the portion of a water taking that is lost or not returned to a water basin due to evaporation, incorporation into products or crops, consumption by livestock or humans, or other processes. This portion varies for different types of water uses.

The Bill incorporates the definition of consumptive use from the Agreement and can draw on further

research in this area by providing authority to make regulations. In this way, the method for determining how much water may be lost through consumptive use for a particular sector, as set out in regulations, can evolve over time and take advantage of research in this area.

The definition of consumptive use from the Agreement is a well known definition. It is consistent with the February 2000 International Joint Commission Report. The concept has been widely used since the 1980s by the Great Lakes Commission and referenced in the annual reports of the Great Lakes Regional Water Use Database.

To assist in estimating consumptive use in the Great Lakes Basin, standards have been defined for calculating consumptive use in each sector, based on work of the Great Lakes Commission, the United States Geological Survey, individual jurisdictions and other research. The standards used for different sectors vary among the jurisdictions.

Great Lakes jurisdictions agree that further research is needed to support commonly accepted standards across the basin and to help water users estimate their consumptive use of water. In Ontario, this work has been identified as a priority activity for an inter-ministry Information and Science Work Group set up to support Agreement implementation.

Proposed Water Charges

Water in Ontario is a resource held in common. But it is the provincial government's responsibility to ensure that water is managed so that it is sustained and protected into the future. As demand for water grows, there is an increasing need to manage and use water more wisely. The costs of Ontario's water quantity management programs are significant.

Many commercial and industrial users benefit from these efforts as they rely on access to clean, abundant water supplies. There is no charge for direct water taking in Ontario. One way to recover management costs is to require commercial and industrial users to pay their fair share. A charge would also encourage companies to take steps to conserve water.

This is the first time that there would be a provincial charge for water use in Ontario. Extensive public consultations were held in 2004 on the basic principles of a charge and some considerations for designing a charge.

As a first step, an administrative fee was implemented in April 2005, making water takers pay for the costs of reviewing water taking permit applications and issuing permits. But this fee does not cover the costs of the programs necessary to ensure water is managed sustainably.

The government is now proposing to enable regulatory charges for water and is returning to stakeholders with a detailed proposal for water conservation charges.

For more information

The details on this information sheet are provided for information only. For further details, please refer to the legislation.

For further information visit the Ministry of the Environment's web site at www.ene.gov.on.ca or contact:

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Or for further information about the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement and its implementation visit the Ministry of Natural Resources web site at www.mnr.gov.on.ca/mnr/water/greatlakes/