



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

June 15, 1998

The Honourable Norm Sterling
Ontario Minister of the Environment
135 St. Clair Avenue West
15th floor
Toronto, Ontario
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Dear Minister Sterling,

Re: Ontario Actions on Water Export

The Canadian Environmental Law Association (CELA) has been involved in water quantity, allocation and conservation issues for over two decades in Ontario. A good deal of our activity has been focused on the Great Lakes Region. This work led to the 1997 publication of the report, *The Fate of the Great Lakes: Sustaining or Draining the Sweetwater Seas?* with the international coalition Great Lakes United. This report (attached) chronicles the history of the management of Great Lakes water resources, identifies new stresses challenging traditional water management, and makes recommendations to governments for ecosystem actions for a long term sustainable water strategy.

Recent international concerns raised by the granting of the Lake Superior water export permit have once again put a number of challenges in front of Ontario. The potential exists to either advance protection of the province's water resources in an ecologically, socially and economically sustainable manner, or make those resources more vulnerable to opportunistic proposals and continuing crisis management and reaction.

Also appended is our formal response on the revocation of the permit and to your Ministry's new Surface Water Transfers Policy. As our submissions note, the *Ontario Water Resources Act* (OWRA) never anticipated export and sale of large volumes of surface water by tanker. Consequently, your new Surface Water Transfers Policy, established under the OWRA, is far too narrow and limited to provide the protection needed to sustain over one fifth of the world's fresh water resources into the next millennium when global water crises are predicted.

The recent furore over water export and use has given rise to actions by a number of governments and agencies in the next six months, including:

on July 24th, the Great Lakes Governors and Premiers will be asked to consider new initiatives to protect Great Lakes waters;

the likely pursuit by the US government of further Great Lakes protections in Congress and a strengthening of their *Water Resources Development Act*;

the likelihood of a formal reference to the International Joint Commission (IJC) from the US and Canadian governments to consider the export issue before the winter of this year; and

consultation this summer by the federal government with Ontario Premier, Mike Harris and other Premiers on a review of the 1985 federal water policy (within the framework of the recently signed harmonization agreement). The federal government hopes to fast-track its considerations of water exports in order to introduce legislation in the fall.

Your role in upcoming discussions will be crucial to the future of the Great Lakes. Indeed, you alone are in a position to ensure that the special protection this unique ecosystem requires will result from these discussions. Your role is especially urgent since Quebec is now actively studying the potential of water export from the north shore of the St. Lawrence River.

Please respond as to what position Ontario will be bringing to these important deliberations.

You have stated that you do not support water exports. However, Ontario's water management framework remains inadequate to prohibit exports. Unenforceable policy is not enough. Furthermore, authority over water allocation in Ontario is seriously fragmented between your Ministry and the Ministry of Natural Resources.

Ontario's record in protecting water resources has taken two distinct and contradictory paths. While the Province has shown some leadership in water protection with in international Great Lakes initiatives, domestically it has retreated repeatedly from sustainable water practices. The following chronology demonstrates this confusion.

Chronology of Action and Inaction

✓ Premier Bill Davis sponsored the first conference on water quantity in the Great Lakes in the early 1980s.

✓ Premier David Peterson took a strong role in negotiations leading up to the signing the *Great Lakes Charter* in 1985. The Ministry of Natural Resources committed substantial resources to the data collection system that flowed from the Charter and routinely published reports on progress under the Charter.

Regrettably, Ontario never enshrined the Provisions of the *Great Lakes Charter* in law, as some other Great Lakes jurisdictions did.

✓ Throughout the late 1980s, Ontario continued to be a strong advocate for the Great Lakes by defeating several large U.S. proposals to divert water from the US side. Ontario was also instrumental in ensuring special provisions were placed on other water withdrawal proposals requiring no net loss of water from the Great Lakes.

In 1989, following the debate on the Canada-US Free Trade Agreement, Ontario passed but failed to ever proclaim the *Ontario Water Transfer Act*.

In 1991, the Ontario Ministry of Natural Resources put considerable resources into a Province-wide broad-based consultation on "A Water Efficiency Strategy for Ontario". The strategy was never implemented.

✓ The Ontario Clean Water Agency was created as a Crown corporation and given a mandate to make Ontario water and wastewater plants self-sustaining and to carry out water conservation.

✓ In the early 1990's various Ontario Ministries began to espouse watershed management principles and the broad consultation undertaken through "New Planning for Ontario" considered how to enshrine these principles in reformed planning policies and practices.

In 1995, your government's "omnibus bill" eliminated the *Public Utilities Act* requirement for a public referendum on the sale of public utilities.

In 1996, your government severely weakened both the strength of, and ability to implement, groundwater protection policies under the *Planning Act*.

In 1996, your Bill 107, dismantled the Ontario Clean Water Agency (OCWA) transferring all its facilities to the municipalities where they were located regardless of municipal ability to take on these new responsibilities. Despite the majority opinion of submissions to the public hearings on the Bill, no amendments were considered that would regulate the private water business in Ontario or keep water in public ownership and control.

In 1996, concern was expressed by Great Lakes interests and jurisdictions about proposals in Ontario to transfer water by pipeline from Georgian Bay to the Lake Ontario Basin without an environmental assessment of impacts to the Great Lakes and connecting channels.

In 1997 Ontario's Minister responsible for Privatization was asked to look at privatizing the remaining management function for the OCWA facilities.

✓ 1997 opinion poll indicates that over 70% of Ontarians surveyed want Ontario's water to remain in the non-profit, public domain (repeating similarly high results from a 1996 poll);

Despite mounting evidence throughout the 1990s projecting diminished water resources caused by climate change, continuing growth in Ontarian's per capita use of water, projections of large population growth, and the fast-growing global market for water, no new water protection initiatives have been undertaken.

In April of 1998, the controversial permit was issued to the Nova Group with explanations that the Ministry of Environment had no choice but to permit the tanker withdrawal of water from Lake Superior, but had no jurisdiction over the export and sale of the water to Asia.

Several weeks later that permit was revoked by exercising Ministerial authority under the

Ontario Water Resources Act. An alternative Surface Water Transfers Policy was posted to the for comment.

CELA's submissions on this new policy are attached. In it we ask the Province to consider promulgating a *Sustainable Water Act*. This Act is needed to give Ontario protections enjoyed by Great Lakes residents in the US Great Lakes States.

As this sad chronology demonstrates, sustaining our water resources will require a comprehensive legal and policy framework and practices which can be sustained over time and not be subject to the whims of changing governments.

Other jurisdictions, the media and the public have all voiced concerns that the Ontario of today is offering up the Great Lakes and any other waters to the highest bidder. Over the next several months, you have an unprecedented opportunity to restore Ontario's leadership and level of commitment commensurate with the fresh water resources with which our Province has been blessed. Clearly, many changes need to be made fast:

- . A system needs to be put in place to measure and track all current water withdrawals, diversions and consumptive uses on all Provincial watersheds.

- . Methods have to be devised to save and conserve water in Ontario and project the needs of future Ontarians for water.

- . A new *Sustainable Water Act* needs to be in place to guide and integrate future policies, programmes and practices. Altering old laws never intended for these complex water use and allocation challenges will not be adequate.

As this chronology, CELA comments on your new policy and our report indicate, there is no lack of wisdom and resources on a sustainable water use strategy. All that is lacking is the will to legislate. We would be very willing to meet with you and your staff to assist with the task of framing a *Sustainable Water Act*. CELA would be willing to help involve the public in these crucial deliberations.

Ontario's future health and economic, social, cultural and ecological well-being are wholly dependent on its water resources. Please restore Ontario's leadership in protecting our most essential resource.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Sarah Miller

Coordinator