



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

**Remarks to the March 18, 1999 International Joint Commission Hearing on
Consumptive Uses, Diversions & Bulk Exports of Great Lakes Water
Toronto, Ontario**

The Canadian Environmental Law Association (CELA) has a long history of work on issues impacting Great Lakes water quality and quantity. Our organization has written on water and trade, advocated for improved federal, provincial and municipal laws policies and practices for the protection and conservation of water for over two decades. CELA has commented on many of the proposals to withdraw water from the Great Lakes over the last two decades. Last December, CELA was granted party status to intervene in the Ontario Environmental Appeal Board Hearing on the NOVA Group's appeal of the withdrawal of the permit to export water by tanker from Lake Superior to Asia. Our Director, Paul Muldoon will be attending your hearing in Sault Ste. Marie next Monday to speak about that experience.

It has been our objective to focus our work in coalitions with others to **prevent** future harm and conflict caused by depleted water supplies. Part of this work is embodied in the 1997 report, The Fate of the Great Lakes - Sustaining or Draining the Sweetwater Seas? which we published with Great Lakes United. Recently, we are focusing our efforts in Canada with others to found a Common Front on Water which is mounting a national Water Campaign to protect and sustain water as a public trust.

In the very short time I have I would like to speak to a few of the recommendations of the 1997 report which could assist you in resolving the complex issues you are considering and raise some challenges which I feel you must address to insure that this reference is the last one ever needed on this issue. CELA will be making much more in - depth written submissions to you.

The main recommendation of our report calls upon jurisdictions in the Great Lakes to take global leadership by implementing a sustainable water strategy for the 20% of the world's freshwater in Great Lakes. This strategy must be comprehensive and apply to **all** sectors using Basin waters. A target of a **50%**

per capita reduction by 2005 is, we think, realistic and would bring our use in line with many European countries. It is unsustainable to continue to double our use of water every two decades as we have throughout this century.

The primary principle of a sustainable water strategy should be to protect the ecological integrity of water within their natural boundaries. The damaging consequences of large-scale diversions and withdrawals are well documented. Biodiversity and remediation of the Great Lakes cannot be compromised further.

A comprehensive sustainable water strategy for the Great Lakes must include all tributaries and groundwater within the watershed. While there should be over all consistency throughout the Great Lakes, sub-watersheds plans will be needed. It will be your challenge to determine best to foster watershed protections.

While there are huge gaps in our understanding of cumulative impacts of withdrawals we should not wait on science to act to conserve water. While we do need to collect data on all withdrawals by all methods we cannot afford to wait for the decades it might take to identify trends. We need conservation targets now.

Climate change understanding is growing each year. We need protocol to change targets for use of Great Lakes waters based on this information.

There has been much said about the use of economic instruments to achieve conservation objectives. The marketplace will not solve our world water crises or our regional or local ones. Access to water should be equitable to all. You will failed in your reference if you do not examine some of the fast growing inequities and changes brought about by the entry of the private sector into water management and sale globally and within our region. A study of what has happened in the last five years in Ontario would be elucidating.

Since we wrote this report there has been profound changes in Great Lakes institutions. Devolution of responsibilities, downsizing, defunding and deregulation have weakened Great Lakes protection programs. Authority for many water use decisions now rest with cash-strapped municipalities who traditionally have not been active participants in Great Lakes ecosystem gatherings. Many of these municipalities have private partners in water management and their arrangements are not accountable to the public. The lines

of authority between public and private and between jurisdictions are far less clear than they were five years ago.

Another concern is the growing disparity of rights of residents that has developed across the Great Lakes. First Nations have not been asked to be part of the Reference Study Teams. They need to be given a place at the table. There are fewer tools in Canada to protect Great Lakes water. Indeed, we would not be here today if our government didn't need to buy time to try to piece together accords with each of the provinces on water export. Our American counterparts have to understand how trade agreements are compromising Canada's ability to achieve comparable protections which they have in *The Water Resources Development Act*. Great Lakes States and the IJC will need to support Canadians rights to act first to protect ecological integrity of our side of the ecosystem before trade obligations.

One other troubling aspect of your reference is the variety of circumstances you will be encountering as you move west from the Great Lakes to consider other boundary water issues. Not all solutions will fit all boundary waters. Western water regimes are very different from the ecosystem culture built in the Great Lakes. The new Harmonization Accord in Canada requires harmonized regulations among the Provinces. The Great Lakes is still a unique ecosystem which may not be adequately protected by regimes for protecting single tributaries. This ecosystem needs special treatment.

The International Joint Commission has to consider the political climate and its own place and mandate within a rapidly changing world. To remain a force in the Great Lakes the Commission should be using all its powers aggressively to ensure that governments act on the outcome of this reference so that it is not the third report in 15 years on water quantity which was ignored once the crisis of the day has dissipated.

Submitted by:
Sarah Miller
Coordinator
Canadian Environmental Law Association