

Sierra Club of Canada
The Georgian Bay Association
Friends of the Earth
Canadian Institute of Environmental Law and Policy
Great Lakes United
John Jackson
Federation of Ontario Cottagers' Associations
Canadian Federation of University Women – Ontario Council
Lake Ontario Waterkeeper

November 17, 2006

Kevin Wilson
Assistant Deputy Minister
Natural Resource Management Division
Room 6540 Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1W3

Dear Kevin,

Re. Implementing Legislation to Manage Intra-Basin Transfers

The need to write this letter has emerged from a growing concern within the environmental community that the passage of legislative amendments to implement provisions on intra-basin transfers is stalling. The provisions relating to intra-basin transfers are critically important to the objectives of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (the “Agreement”):

“To act together to protect, conserve and restore the Waters of the Great Lakes—St. Lawrence River Basin because current lack of scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem.” (Article 100, para.1a)

We are increasingly concerned by an apparent delay in the drafting of these amendments. We note the following indicators of delay:

- In the “Proposed Framework for Implementation” (dated August 22, 2006), discussed with the Annex Advisory Panel (the “AAP”) on August 24, 2006, it is stated that Draft Phase 1 amendments to legislation, regulation and policy were to be ready by September/October 2006.
- At the face-to-face meeting of the AAP on September 27, 2006, Ministry of Natural Resources (“MNR”) staff informed the AAP that draft amendments to legislation and

regulations would be complete and available to be shared with the Panel in fall/winter 2006.

- An AAP meeting to discuss draft amendments to legislation and regulations was arranged for November 9th, 2006 but was later cancelled.
- The focus of the agenda for the November 20th meeting is on water conservation, and not a discussion around draft amendments to legislation and regulation.

Any intra-basin transfers that are allowed to proceed during the gap between signature of the Agreement and the passage of implementing legislation/regulations have the potential to cause lasting impacts to the Basin's ecosystem and contravene the spirit of the Agreement. We are very worried that if legislative and regulatory amendments are not before Cabinet very soon and do not get first reading before Christmas recess then they will not get passed prior to the next election. As well as having to go through second and third reading, the regulations will have to be posted on the Environmental Bill of Rights ("EBR") website for at least 60 days.

Consequences of Foregoing Formal Review of Proposed Intra-Basin Transfers

The need to pass legislative and regulatory amendments is particularly pressing given the three proposals by York Region to extend the York Durham Sewer System (YDSS) to service the communities of Holland Landing, Sharon and East Gwillimbury. Clearly, these plans to divert Lake Simcoe water south to Lake Ontario would effectuate intra-basin transfers. *Prima facie*, the Agreement prohibits intra-basin transfers. The onus is on the applicant to establish that it falls into one of the exception categories under Article 201. We assert that this onus can only be discharged under a formal review in accordance with legislation or regulations implementing the Agreement. If York Region's proposed transfers are allowed to proceed without a formal review, a number of serious consequences will flow, including:

1) Ecological Consequences

Lake Michigan/Huron/Georgian Bay water levels have remained near record low levels for the past six years. The plans proposed by York Region will result in small but measurable annual lowering of water levels in this body of water. These proposals are already subject to review by the International Joint Commission under the authority provided in Article VIII of the Boundary Waters Treaty. The impact of the proposals on water levels could have serious ecological consequences. For example, MNR have been able to relate low water levels to the loss of wetland habitat and the decline in Georgian Bay's Northern Pike populations. Further lowering of water levels could have severe impacts for the lake's ecosystem. To allow the proposals to proceed without a formal review would clearly violate the spirit of the Agreement, which charges signatories with the "...shared duty to protect, conserve and manage these renewable but finite Waters."

A central tenet of the Agreement is the requirement for applicants to pursue alternatives to new supplies. We believe that York Region has alternatives available including pursuing effective conservation of existing supplies and returning treated sewage water to Lake

Simcoe. We do not believe that York Region is currently committed to pursuing these alternatives. A formal review under the Agreement would require the Region to demonstrate that they have made this commitment.

2) Local Precedent

If York Region is allowed to move ahead with its proposals without complying with legislation implementing the Agreement, this will set an unfortunate precedent for other Regions and municipalities. This precedent combined with a failure to implement legislative and regulatory amendments before the next election could open the floodgates to a rush of proposals for intra-basin transfers from other rapidly growing communities within Ontario. The cumulative impacts of a series of intra-basin transfers would be potentially devastating for the Basin's ecosystem.

3) Regional Precedent

Arguably, Ontario has a geographical advantage over the Great Lakes states in terms of the size of its population within the Basin and the relatively small population outside the Basin. As a result of this geographical advantage, the pressure for "inter-basin" diversions is not as great when compared with other signatories to the Agreement. This advantage is not lost on the other jurisdictions. If Ontario allows the transfer of water between Great Lakes watersheds within its territory without subjecting those proposals to formal review, it opens up an argument that it becomes fair for states to forego inter-basin diversion reviews and supply Basin water to communities lying outside the Basin. This is a position that Ontario has opposed but its influence in these matters will be nullified if it is perceived by the other jurisdictions as failing on intra-basin transfers. This is a challenging time for the implementation of the Agreement and the passage of the Great Lakes-St. Lawrence River Basin Water Resources Compact ("Compact") in the Great Lakes states. The emergence of such a regional precedent would certainly destabilize the collaborative relationship built among the Basin's constitutive jurisdictions, and would jeopardize the effective implementation of both the Agreement and the U.S. Compact.

4) Ontario's Leadership Capacity

Ontario has expressed its desire to be a leader in the implementation of the Agreement. Its intention to set an example for other jurisdictions will be irreparably undermined if the province allows intra-basin transfers to proceed before it is able to pass amending legislative or regulatory instruments. We are grateful for the substantial efforts that Ontario took in getting the Agreement to its current state and the efforts it has taken to place itself in a leadership role in the implementation of the Agreement. Ontario will soon take over as Chair of the Regional Review Body for implementation of the Annex Agreement, and is currently co-chairing the Regional Conservation Committee. This time period is a great opportunity for Ontario to influence and guide the implementation process throughout the Basin to further the goals and principles of the Agreement. It would be a great pity if this opportunity were lost due to a failure of leadership on intra-basin transfers.

Recommended Actions

We would like to be able to be in a position to applaud Minister Ramsay and Premier McGuinty as they move forward to implement the Annex Agreement. Consequently, Ontario should ensure that the passage of legislation and regulations implementing the Agreement's provisions on intra-basin transfers becomes its highest priority. We recommend the following actions:

- Ontario must ensure that amendments to legislation and regulation are passed before the next election.
- In the meantime, Ontario should place an immediate moratorium on all proposals that could constitute an intra-basin transfer.

To help facilitate speedy passage of these amendments, we suggest the following process:

- Legislation implementing intra-basin transfers should be a more fulsome agenda item for the November 20th AAP conference call.
- Draft amendments to legislation and regulations should be shared with the AAP before the meeting that follows the meeting on November 20th.
- A face-to-face meeting to discuss the draft amendments should be held early December.

We look forward to discussing this issue further on the next AAP conference call.

Yours truly,



Timothy Morris
Water Campaigner
Sierra Club of Canada



Mary Muter
VP, Chair, Environment Committee,
Georgian Bay Association



Christine Elwell
Senior Campaigner
Friends of the Earth Canada



Maureen Carter-Whitney
Research Director
Canadian Institute of Environmental Law and
Policy

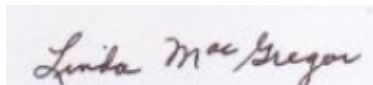


Derek Stack
Executive Director
Great Lakes United

John Jackson



Terry Rees
Executive Director
Federation of Ontario Cottagers' Associations



Linda MacGregor
President
Canadian Federation of University Women-
Ontario Council



Mark Mattson
President & Waterkeeper
Lake Ontario Waterkeeper