



Canadian Federation of University Women
ONTARIO COUNCIL

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RE: EBR 012-1607 Regulatory proposal to support implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement

Dear Mr. Luong,

The Ontario Council of the Canadian Federation of University Women (CFUW OC) appreciates the opportunity to comment on this Regulatory proposal.

CFUW OC, as a participating member of the Great Lakes Advisory Panel since its inception in 2004, has closely followed the development of this policy to protect the Great Lakes. The Government of Ontario has made historic steps toward the protection of the waters of the Great Lakes in recent years - by negotiating and signing the Great Lakes Charter Annex Agreement (2005) and by enacting the Safeguarding and Sustaining Ontario's Waters Act. (2006).

CFUW OC has been very proud of the strong principled stand Ontario took throughout the negotiations of the Great Lakes Charter Annex Agreement, and the strong leadership position Ontario assumed throughout. We strongly supported the development of the legislation to implement the Agreement in Ontario - the Safeguarding and Sustaining Ontario's Waters Act (SSOWA).

CFUW OC is anxious to see this Regulation – the final piece of legislative policy needed to complete Ontario's commitments made under the Agreement and the SSOW Act – completed now and enacted at last.

However, we would strongly urge you to reconsider your proposal to accept a redefinition of the watersheds of each Great Lake to include the downstream connecting channel for the purpose of identifying and regulating Intra-Basin Transfers.

This proposal to include the downstream connecting channel is a proposal to accept a political rather than a scientific definition of a watershed, one which would be based on the actual hydrology of the Lakes. It contradicts everything your government has stood for and fought for throughout the past ten years of negotiations and consultation.

Regulatory proposal to support implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement

Comments on the Proposal itself:

1. The **map** which is used in the Proposal to illustrate the watersheds of the Great Lakes, (Figure 1: Great Lakes – St. Lawrence River Basin Watersheds) **clearly shows that the Watershed of each lake is composed of the upstream connecting channel only. The downstream connecting channel is shown as part of the watershed of the next (lower) Great Lake. The same delineation between watersheds is given in the US EPA watershed maps. These maps are correct - based on the hydrology of the water system within the Great Lakes Basin. It is this delineation of a watershed upon which all decisions regarding their protection and sustainability should be made.**

2. The proposal acknowledges that managing intra-basin transfers is a complex issue for Ontario in light of Ontario's geography and patterns of growth because Ontario borders four of the five Great Lakes and the St. Lawrence River and has more kilometres of intra-basin watershed boundaries than all the other jurisdictions combined.

Because of this, Ontario must also acknowledge that it has a greater potential to affect/upset the integrity and sustainability of each Great Lake and that subsequently it has a greater responsibility than other jurisdictions to enact strong regulations to properly protect each of them.

3. Connecting channels: The Agreement defines the watershed of each Great Lake to include its upstream and downstream connecting channels.

Why would the Ontario government have accepted this change to the definition of watershed in the Agreement?

- **There are Municipalities whose boundaries straddle the junction between one of the Great Lakes and a downstream connecting channel. The intake for their water system is situated in the Lake, but treated effluent is released downstream - still within the Municipal boundary, but into the downstream connecting channel. The government recognized that it would be very expensive to require those Municipalities to retrofit their infrastructure in order to return treated water back to the source Lake as the Act requires.**
- **When the straddling communities return treated water, it re-enters the system only a short distance downstream. There was an assumption made that, in this situation, returning the water to the downstream channel would not unduly disrupt the overall ecological flow or resources of the Lake. So the government allowed language into the Annex Agreement that accepted the downstream channel as part of the watershed in order to accommodate this situation.**

In that instance it doesn't seem too unreasonable to accept that this usage should not be deemed IBT.

Why then has the inclusion of the downstream channel in the definition of a watershed for identifying IBT's become such a critical issue?

- **There are in Ontario some Municipalities which pipe water a longer distance from a Lake to service their community, and they don't want the expense of having to pipe their treated wastewater back to the source Lake, as the Act requires, finding it more economical to release it into a downstream channel (or even a tributary of a downstream channel).**
- **For example, the City of London pipes water from Grand Bend on Lake Huron – a distance of approximately 47 km - for use in their Municipality. After use, rather than returning the treated water back into the Lake Huron watershed (the "source watershed"), they release it into the Thames River, which flows into Lake St. Clair, and then flows into the St. Clair River and Lake Erie. Because Lake St. Clair is part of the downstream channel between Lake Huron and Lake Erie, the MOE redefinition would characterize that return of water as a return to the Lake Huron watershed, even though the water obviously is no longer part of the Lake Huron water inventory, but is flowing into the Lake Erie watershed instead. If this proposal to include the downstream channel to meet the requirements of Return Flow to the Source Watershed is accepted, then this withdrawal of water would no longer be assessed as an IBT – and withdrawals could be increased – even doubled – with no provincial oversight or monitoring under the Agreement.**

Thus the whole aim of the principle of the prohibition of IBT's – so central to the Agreement - and the carefully crafted rules for strict Exception Criteria that were developed to accommodate exceptional circumstances – will count for naught. De-facto IBT's will be allowed to go forward unmonitored and without having to comply with any of the conservation & usage restrictions that the Agreement was designed to protect against.

This is not an issue that relates to the London system alone. The decision and the precedent it would set would have serious potential implications for the future. As the groundwater beneath the most heavily populated areas of Southern Ontario becomes more stressed and compromised - by increased demand through increasing development, by pollution, and by Climate Change - there will be increasing pressure to pipe more water from the Great Lakes to serve Municipalities outside the watershed of the source Lake through Intra-Basin Transfers. If this proposed redefinition of watershed is allowed to become law in Ontario, there will no longer be an obligation to sustain the resources of the source Lake by returning the treated water after use to the Lake's hydrological watershed.

The proposed redefinition of watershed included in the Agreement is dishonest. Because it is broad and open-ended - not limited to the specific situation of straddling communities, it would give Municipalities the legal right to return water and treated effluent to a water system which would not in fact be a part of the source watershed - to drain rather than sustain Lake levels.

Instead, CFUW Ontario Council recommends:

- Grandfather the existing Municipal systems that straddle the Lake/Channel divide. It might also be possible to designate a specific distance between intake and outflow pipes within an individual municipality/ community that could be used to avoid an IBT label.
- Grandfather the existing systems that pipe water through Intra-Basin Transfers over a distance and to a municipality outside the source lake watershed – and which do not return the water after use to the source watershed for the water they are currently using. This would avoid the potential costs to Municipalities of retrofitting their current water delivery systems which are dependent on the Intra-Basin Transfers of water for their Municipal supply - without the necessity of redefining the watershed to include the downstream connecting channel.

And then, going forward, ensure that all future requests for new and/or increased Intra-Basin Transfers adhere to the prohibition provisions in the SSOWA with requests for exceptions tied to meaningful Return Flow requirements contained in the Exception Criteria, and to specific provisions in the new Conservation Strategy - provisions that would lead to reduced water usage and waste - with a requirement that these be completed before an application would be considered.

4. The Proposal points out that “other jurisdictions use this definition to implement the Agreement.” **Other jurisdictions have a less stringent control on water taking levels as well – but Ontario has shown leadership and integrity and has not changed their regulations to adapt to the levels used by other jurisdictions. CFUW OC applauds this decision. Ontario has instead retained a different more stringent level of control – without concern that it might put users in our jurisdiction at a disadvantage.**

CFUW Ontario Council urges the government of Ontario to apply this same principled stance, as was originally promised by MOE Minister John Gerretsen, to a definition of the watershed which aligns with scientific and hydraulic reality and which better protects the integrity and sustainability of each of our lakes – a definition which includes the upstream connecting channel only.

5. This Proposal states that in signing the Agreement, the Parties committed to several undertakings – among them:

1. Ban new or increased transfers of water out of the Great Lakes–St. Lawrence River Basin with strictly regulated exceptions. **CFUW OC applauds the fact that Ontario has banned out-of-basin transfers since 1999.**
2. Develop and implement water conservation and efficiency goals, objectives, and programs in each jurisdiction, based on Basin-wide goals and objectives. **We strongly supported and participated in the**

development of Ontario’s water conservation and efficiency goals and objectives. And we appreciate the steps taken by the government to put programs in place to reflect and enable these goals.

3. Strengthen information and science related to Great Lakes water and water use to support sound decision-making. **The decision to bow to political pressure regarding the redefinition of the true scientific/hydraulic reality of a watershed - which is proposed - is a denial both of science and of sound decision-making.**

4. The Proposal asserts Ontario’s undertaking to “manage water takings based on the provisions outlined in the Agreement.” But it goes on to point out that “Ontario’s existing Permit to Take Water program generally meets or exceeds the standards of the Agreement.” This document outlines proposed regulatory amendments that would “fully align” Ontario’s program with the provisions of the Agreement. **As we have stated above, CFUW OC applauds the fact that Ontario has not cut or adjusted our standards when it comes to PTTW regulations to make them “fully align” with those of the other jurisdictions – a clear demonstration of leadership and integrity. It is vital to keep the same high scientific & environmental standards in defining a watershed for recognizing and regulating IBT’s.**

5. The Proposed Regulation states an intent to Regulate new or increased transfers of water from one Great Lake watershed to another (intra-basin transfers) based on the standards of the Agreement. Ontario passed legislation in 2007 to enable the regulation of intra-basin transfers under the Agreement. This document outlines proposed regulatory amendments that would implement the regulatory requirements for intra-basin transfers.

Unfortunately, by allowing the political and unscientific definition of the downstream connecting channel to identify a watershed, this Proposal undercuts any pretensions the Agreement has for prohibition and careful regulation of IBT’s to sustain the integrity of each Great Lake. Instead of having to meet the Exception Criteria of the Agreement, it is inevitable that future IBT’s would go forward unopposed and unmonitored through this technicality. It is disingenuous to pretend otherwise.

The Agreement states that the watershed of each Great Lake shall include its upstream and downstream connecting channels. Other jurisdictions have used this definition to implement their programs. Subsection 75 (1.4) of the Ontario Water Resources Act specifies that a regulation may describe the Great Lakes watersheds so that they overlap to include the upstream and downstream connecting channels of each Great Lake. **This change was made to the Act in 2007 – after the signing of the Agreement – but before the public consultations raised the issue of the potential impact of accepting this revised definition. It was made before the promise of the Minister of the Environment John Gerretsen that - although Ontario “could” redefine the watershed under the terms of the Agreement – that it “would not”. Rather, he said, Ontario would retain the scientific/hydrologic definition which better protected the integrity and sustainability of each Great Lake.**

Ontario is proposing to align with the best practices of other jurisdictions and describe the Great Lakes watersheds so that they overlap to include both the upstream and the downstream connecting channels

of each Great Lake. Specifically, for the purposes of identifying intra-basin transfers, the St. Mary's River would be considered part of both the Lake Superior watershed and the Lake Huron watershed; the St. Clair River, Lake St. Clair, and the Detroit River would be considered part of both the Lake Huron watershed and the Lake Erie watershed; and the Niagara River would be considered part of both the Lake Erie watershed and the Lake Ontario watershed. **This is not "best practice". Dictionaries define Best Practice as "a set of guidelines, ethics or ideas that represent the best course of action"; "a method or technique that has consistently shown results superior to those achieved with other means"; the practice that "not only delivers superior results but also considers [long term] sustainability and ongoing development of approach."** This redefinition of a watershed is not "best practice". It is doublespeak - a political compromise which allows jurisdictions a loophole to avoid compliance with the intent of the Agreement whenever it is deemed by them to be inconvenient to comply by allowing de-facto IBT's to escape the requirement to meet the Exception Criteria.

CFUW Ontario Council asks the Government of Ontario to consider: Why does it matter if the definition of watershed is changed to include the downstream connecting channel?

- It sets a dangerous precedent for water management within the Great Lakes Basin - with the potential to affect the sustainability of water resources not only in the present day but into the future.
- It undercuts and potentially undoes the intended protection of the integrity of each Lake - by sanctioning the return of water taken from a Lake to a channel which drains away from the Lake.
- It contradicts Ontario's obligation under the Act to use the best scientific knowledge in the development of Policy.
- It contradicts Ontario's undertaking to watershed-based policy development by accepting a policy that does not respect the hydrology of the Lake system.
- It contradicts Ontario's determination from the Discussion Paper Healthy Lakes Healthy Ontario to dispel the "myth of Abundance" about the water resources in the Great Lakes Basin.
- It ignores the information presented in the Report of the Expert Panel "Adapting to Climate Change" (Dec 19, 09) warning that Climate Change would cause lower water levels in the four lower Lakes.
- And it ignores the advice of the Expert Panel on Climate Change that stressed that hydrology be the basis for policy development in the Great Lakes Basin.

CFUW Ontario Council urges the Government of Ontario to ensure that the Regulation now proposed is modified to eliminate the inclusion of the downstream connecting channel as part of the definition of the watershed of each Great Lake.

CFUW Ontario Council would also like to comment on the results of the cumulative effect assessment. While it is good to learn that to date there is not apparent measurable cumulative damage being done

to lake levels by human at this time, we look to the potential effects of policy into the future – especially when that future must face the effects of Climate Change and the effects of increased population, development and demand for our finite supply of water resources.

The main findings of the cumulative effect assessment, as stated, are that:

- the impact of water takings and transfers are small relative to natural inflows to the lakes (e.g., precipitation, watershed runoff, and flows from upstream lakes) and other outputs from the lakes (e.g., human consumptive uses of water are about one percent of water lost from the Basin through evaporation); **CFUW Ontario Council is concerned there is no mention of the need to prepare for the impacts of Climate Change. Ontario is not addressing the need to protect our lakes going forward in the need to adapt to Climate Change in the face of growing population and development. In normal conditions, scientists put the current renewal rate of waters in the Great Lakes at less than 1%. Has Climate Change and increasing demand been taken into account when predicting how this will change water loss and renewal?**
- overall, more water is diverted into the Basin (i.e., from diversions into Lake Superior from the Hudson Bay Basin for the Ogoki and Long Lac hydroelectric projects) than the total combined amount of water withdrawn or transferred out of the Great Lakes – St. Lawrence River Basin; **CFUW Ontario Council is concerned that this rationale sounds very much like the “Myth of Abundance” - which is one of the main elements that the Conservation Strategy, enacted by the government of Ontario, tried to dispel. The government message here is definitely NOT consistent. What of the increased loss to the upper Lakes caused by increased flow through erosion and widening/deepening channels?**

and

- the specific contribution made by water takings and transfers to Great Lake water level changes, apart from natural variability, is uncertain given the complex hydrology, the variability of water uses over time and geographic area, and other factors. **CFUW Ontario Council appreciated the fact that the Precautionary Principle was made a part of the language of the Agreement. However the uncertainty described here seems to be used as a reason not to worry about water takings – instead of a call to act to protect with more caution.**

The parties will use the results of the periodic cumulative impact assessments to inform the review and possible changes to criteria for managing water takings and transfers and Basin-wide water conservation and efficiency goals and objectives under the Agreement.

CFUW Ontario Council appreciates the fact that there is a protocol in place to effect ongoing monitoring and review of the effectiveness of present criteria, but we also recognize that it is much harder to undo bad legislation/regulation and its results than it is to put in place good legislation/regulation in the first place.

The Government has recognized the vital importance of the waters of the Great Lake to the economy and sustainable way of life for its citizens for generations to come. CFUW Ontario Council urges the government of Ontario not to lose this opportunity to protect this vital resource for the future.

CFUW Ontario Council is composed of 54 clubs within Ontario, comprised of members living in urban and rural areas across Ontario. We are non-partisan, nonsectarian, a voluntary, self-funded, non-governmental organization. Our members are active in public affairs, advocating on public education, justice, health and environmental issues as well as the status of women and human rights. Ontario Council is part of the Canadian Federation of University Women which is the largest affiliate of the International Federation of University Women.

Sincerely

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