



Comments on: July 19, 2004 Draft
Great Lakes Basin Sustainable Water Resources
Agreement

Lands and Water Branch
Ontario Ministry of Natural Resources

October 15, 2004

By the

Ontario Council
Canadian Federation of University Women

Submitted by

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**Comments by The Ontario Council of the Canadian Federation of University Women on
the July 19, 2004 Draft of the Great Lakes Basin Water Resources Agreement, October 15, 2004**

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Subject:

**Comments on the July 19, 2004 Draft of the Great Lakes Basin Sustainable Water Resources Agreement
by the Ontario Council of the Canadian Federation of University Women**

The Ontario Council of the Canadian Federation of University Women (CFUW Ontario Council) welcomes the opportunity to comment July 19, 2004 Draft of the Great Lakes Basin Sustainable Water Resources Agreement

CFUW Ontario Council commends the governments of Ontario, Quebec, Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania and New York for their cooperative initiative to establish a Agreements to “protect, conserve, restore, improve and effectively and efficiently manage the Waters and Water Dependent Resources of the Great Lakes Basin”.

CFUW has, over many years, developed a body of policy which impact on Water, addressing such issues as the Export of Bulk Water, Prohibition of Inter-basin Diversions, the Status of Water under NAFTA, Drinking Water Standards, Marine Development, Water Pollution, Preservation of Wetlands, Acid Rain, Resource Depletion and Safe Waste Disposal. (Some pertinent CFUW policies on water appended, Appendix A)

The 6,000 members of CFUW Ontario Council in 58 communities in all the regions of Ontario (list appended) have made Water and all policies surrounding this life-sustaining resource their priority. CFUW Ontario Council has recently commented on the Proposed Amendments to the Ontario Water Taking and Transfer Regulations , O.Reg 285/99 as well as on the Proposed Ontario Drinking Water Source Protection Act. CFUW Ontario Council also supports the NGO Ontario Source Water Protection Statement of Expectations.

In 2001, CFUW established a policy that:

- declared that water, being a non-renewable natural resource of paramount importance, belongs to the...public and its use must be regulated in the public interest;
- requested that government adopt and implement a sustainable and prudent water management policy to respond to long-term regional needs with due regard to the ecosystem and hydro-geological reality; and
- requested that government promote conservation and more efficient use of surface water and groundwater

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CFUW Ontario Council commends the fact that the Great Lakes Contract will be binding to the governments of the eight States. In order to fulfill the spirit of the Agreements, the Contract must be linked to the Agreement, and the provinces of Ontario and Quebec must legally bind themselves to respect the terms of the Agreements as well.

CFUW Ontario Council recommends that

Article 102 be amended:

- 1. To include specific language in which all parties who are signatories to the Agreements agree that the provisions of the Agreement will be binding in their own jurisdictions and that they will enact the necessary laws within their own jurisdiction to make it so.**
- 2. To delineate the important role of the International Joint Commission as part of the Implementation Agreement**

Past governments in both the United States and Canada have recognized the importance of water as a Public Trust in their laws, treaties and court decisions from as far back as 1892. The Great Lakes Charter of 1985 states that: "The water resources of the Great Lakes basin are precious public resources, shared and held in trust."

CFUW Ontario Council commends the words in the Preamble to the draft Agreement which mirror this understanding in stating that: "The Waters of the Great Lakes Basin are a shared public treasure and the States and Provinces as stewards have a shared duty to protect and manage these renewable but finite Waters" and that "protecting, conserving, restoring and improving these Waters is the foundation of Water Resource Management in the Great Lakes Basin."

The fourth clause of the Preamble, however, introduces a new and potentially competing priority, when it states: "There is a need for the States and Provinces to balance economic development, social development and environmental protection as interdependent and mutually reinforcing pillars of sustainable development." While no one would question that all three are important components of sustainable development, the Implementation Agreement must include specific language that clearly determines precedence when the demands of two or more of these competing interests conflict. And increasingly there WILL be strong conflicting demands for the use of the water:

- demands for water to generate profits for private enterprise,
- water to fuel urban growth,
- water to compensate for unsustainable water management practices in the past which have led to water shortages.

The proposal in the draft Agreement Appendix B for the exemption of municipalities within 12 miles of the Great Lakes Basin boundaries is a case in point, and a dangerous precedent.

As "stewards" of this resource, it is vital that the governments of each State and Province reaffirm in the Implementation Agreement that the first priority and responsibility in making any

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decision affecting the waters of the Great Lakes Basin is to uphold the principle of Water as a Public Trust, to maintain the integrity of the waters of the Great Lakes Basin, and to protect the human and ecological health of the Great Lakes Basin for present and future generations.

Without a strong and explicitly worded commitment to the principle of water as a Public Trust, the Implementation Agreement will become what many of its critics have charged – a means to circumvent current limitations on water-taking by the private sector. In the words of the American writer Harold Percy, “Great problems arise when stewards begin to act as if the things entrusted to them belong to them.”

Therefore:

CFUW Ontario Council recommends that

1. **Paragraph One of the Preamble** be amended to add the phrase “in the public interest”, so that the clause would read: “The Waters of the Great Lakes Basin are a shared public treasure and the States and Provinces as stewards have a shared duty to protect and manage these renewable but finite Waters in the public interest.”
2. **Paragraph Three of the Preamble** be amended to add the phrase “in the public interest”, so that the clause would read: “protecting, conserving, restoring and improving these Waters in the public interest is the foundation of Water Resource Management in the Great Lakes Basin
3. **Paragraph Four of the Preamble** be amended to read: “There is a need for the States and Provinces to balance economic development, social development and environmental protection as interdependent and mutually reinforcing pillars of sustainable development, recognizing that in any case of competing or conflicting demands, the need for environmental protection must always take precedence.”
4. **Article 100:1a)** be amended to add the phrase “in the public interest” after the word “Basin”; so Article 100:1a) would read: “protect, conserve, restore, improve and efficiently and effectively manage the Waters and the Water Dependant resources of the Great Lakes Basin in the public interest under appropriate arrangements for intergovernmental consultation and cooperation.”
5. **Article 100:1c)** be amended to add the phrase “respects the principle that water is a public trust” after the word “that”; so Article 100:1c) would read: to create a cooperative arrangement for water withdrawal that respects the principle that water is a public trust, is simple ... etc.
6. **Article 200:1** be amended to add the phrase “in the public interest” to read: “the Decision Making Standard.....Great Lakes Basin in the public interest.”
7. **Article 300:1** be amended to add the phrase “in the public interest” to read: The Great Lakes States ... Great Lakes Basin in the public interest.”

Justice Dennis O'Connor, in The Report of the Government of Ontario Walkerton Inquiry, Part Two: A Strategy for Safe Drinking Water (May 2002), recommended the establishment of a "water budget" to ensure the ecological health of a watershed. Justice O'Connor stressed the importance of watershed planning and the establishment of a "water budget" for each watershed, which would establish water availability within the watershed, and set sustainable limits for water withdrawal from the watershed. He proposed that all water withdrawals above a certain level be identified, including municipal intakes. And he recommended that wherever the total annual amount of water withdrawn exceeded the water budget, negotiations be held among the water takers to bring the total back within the limits of the established budget.

CFUW Ontario Council commends the Government of Ontario for its recent commitment to act on the recommendations of the Walkerton Inquiry by bringing forward a plan for the legislation of province-wide watershed planning, tougher rules and sanctions for polluters, more stringent laws for water taking and a focus on conservation of water resources.

Article 301 of the draft Agreement which defines "capacity" goes some way toward establishing this concept of a "water budget" for the watersheds of the Great Lakes Basin. CFUW Ontario Council commends the detailed plan for the collection of data and the establishment of a Great Lakes Water Use Data Base Repository so that applications for new or additional withdrawal permits can be based on comprehensive and accurate data. There is currently an uneven level of data collection and reporting among the various jurisdictions, and a need for consistent actual measurement (not one based on model calculations) to understand current uses and takings of water in the Great Lakes Basin. Agricultural use and irrigation tend not to be well reported. There is also a need for more scientific study of the impact of the current state of water takings on water quality and quantity and on the ecology of the Great Lakes Basin, and of the potential effects of climate change on the natural renewal of the waters through factors such as changes to the amount of rainfall, ice cover, evaporation rates of surface water, etc .

But a plan for establishing a water budget or capacity is no good unless it includes a plan to live within that budget. Although there is provision for regular review, there is no implicit wording in the proposed Agreement which would make the water budget binding or forbid water-taking or diversion which would exceed the established capacity of any given region in the Great Lakes Basin.

Although in the Preamble, Water is defined as a "renewable" resource, the fact is that only one per cent of the water in the Great Lake Basin is renewed each year. It is also a fact that there has been a decline in water levels and water flow in the Great Lakes Basin from 1970 to 2003 due to increased consumptive use of the waters. This clearly cannot continue without harm to the ecological health of the waters in the Great Lakes Basin, and to the future viability of the communities that surround it.

It is imperative, therefore, that a Water Budget be set, using the best available scientific information, and accurate data from each of the jurisdictions involved, to establish a cap or upper limit on the volume of water that is available for diversion, withdrawal or consumptive use out of the Great Lakes Basin each year. The establishment of a water budget would also provide a means to monitor and protect against the impact of the many smaller volume uses

and diversions of basin water that would not otherwise trigger a response through the provisions of the Agreement.

CFUW Ontario Council recommends that

Article 301 be amended to add:

- 7. Using the above information, the Parties shall work together to establish a binding Water Budget which will set a hard cap to limit water taking for each region of the watershed.**
- 8. If the water taking and diversions in any location are found to exceed the limit set and have not been offset through improved conservation measures, the Parties shall establish a plan, by revoking, renegotiating or resetting limits on previously issued permits, to bring the total back within the binding limit established.**

The decision to approve any application for diversion, withdrawal or consumptive use of water must be based on the principle of “no net loss”. Such a decision must not be vulnerable to political pressure or to commercial demands for a lowering of restrictions to serve private gain at the expense of public interest. One has only to look at the tragic and dying remains of the Aral Sea in Central Russia to understand where that short-sighted thinking can lead. The fourth-largest inland sea 57 metres above sea level in 1960, it had shrunk to one quarter of its size, with the huge southern portion only 30.5 metres above sea level with water 2.4 times as salty as sea water by 2002. According to the study done in 2002, the southern portion is now estimated to become almost completely dry within 15 years. The associated effects on the climate, health and arability of the surrounding lands are immense. And the effects of those water management decisions in the 1960’s and 70’s to support the cotton industry are now irreversible.

In Appendix A of the draft Great Lakes Agreement – the Decision Making Standard - the language used in Part D of each of the five sections speaks of “no significant individual or cumulative adverse impact” on the quality or quantity of water. The word “significant” is a very imprecise designation. Even, in Appendix B where the Physical, Chemical and Biological Criteria are listed, they are still defined by the words “significant change”. The imprecision in the word “significant” risks the challenge of vulnerability to political and/or commercial pressure for a bending of the rules. It risks bringing the waters of the Great Lakes Basin to the brink of viability. It risks, as well, the spectre of many lawsuits challenging the upper limits of how “significant” an adverse effect really is.

This will serve neither the interests of the public nor the ecological health of the Great Lakes Basin. The Standard should be based on the criteria of “no net loss”.

CFUW Ontario Council recommends that

- 1. The Standard be based on the criteria of “no net loss”. The word “significant” be deleted and the words “no net loss” be added, so that the Standard will read “that will result in no net loss and have no individual or cumulative adverse impact ...etc”.**

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2. **Section 100:1.g be reworded, deleting the words “or minimize significant” to read: “to prevent adverse impacts of Withdrawals...etc.”**

CFUW Ontario Council commends the emphasis on Conservation measures throughout the Agreements. Conservation of our water resources is an important issue. Municipal and corporate water systems are often aging and/or inefficient. Incentives are needed to encourage the repair of leaks and the upgrading of inefficient systems and infrastructure, and to encourage planning that places a premium on efficient use of water resources. Once the data on the Great Lakes Basin water capacity is collated and compared with the data on total current water withdrawals and flow returns, it is very probable that the recapture of water that is currently being wasted or inefficiently used will provide the greatest potential source, in fact probably the ONLY potential source, of water supply for new or increased withdrawal applications in the future.

CFUW Ontario Council recommends that

Article 302 be strengthened and amended to read:

- **The Parties shall encourage the implementation of programs...etc.**
- **The Parties shall agree that new requests for water diversion leading to consumptive use must be offset by water conserved through other measures.**

The ability of the States and Provinces to monitor the rate at which water is being used will be a crucial factor in the success of the implementation of this agreement, and of its credibility. By extending the averaging period for withdrawals in Section 201 to 120 days, there is an increased risk of intentional or unintentional abuse in exceeding withdrawal limits, with the associated potential for increased harm to the environment.

CFUW Ontario Council recommends that

- **The averaging period specified by the phrase “in any 120 day period” be changed to read “in any 30 day period”.**

The members of CFUW Ontario Council expect that the final negotiations and accession to the Great Lakes Basin Sustainable Water Agreement and the Great Lakes Basin Water Resources Compact will be a step to ensure that the natural resources and beauty of Great Lakes will be there to use and enjoy for our children and grandchildren in Ontario and Quebec as well as in all the United States Great Lake States

CFUW Ontario Council is made up of approximately 6000 women university graduates from all the regions of Ontario. We are totally member - funded. Our members live in 58 Ontario communities, in big urban areas as well as in rural and northern towns. We are non - partisan and non- sectarian. When voting on policy each of our clubs has one vote so that the voice of members from Thunder Bay and Renfrew and St. Thomas have the same weight as those from the Toronto and Ottawa areas. This results in well-balanced policies that may be embraced by most Ontarians.

We are business women, scientists, teachers, university professors, nurses and physicians, seed specialists and engineers, farm women and artists and accountants, wives, daughters, mothers and grandmothers. All put their skills and education at the service of their community, and work

- § in all public affairs
- § for a high standard in public education,
- § for the improvement of the Status of Women in Ontario, and
- § to ensure Human Rights in the Province.

We are not a charitable fund raising organisation. Our clubs in Ontario, nevertheless, award more than \$200,000 annually in scholarships and bursaries to students in all the regions of our province as well as to charitable and cultural causes.

We are part of the Canadian Federation of University Women (CFUW) and have links to the International Federation of University Women (IFUW)

Respectfully submitted by,

Edeltraud Neal
President
Ontario Council Canadian Federation of University Women

- cc.
- Ontario Minister of Natural Resources
- Council of Great Lakes Governors

Appendix A

SOME CANADIAN FEDERATION OF UNIVERSITY WOMEN POLICY ON WATER

1993 Canadian Water

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the Government of Canada to pass and enforce a Canada Water Preservation Act which will prohibit further diversion of water between drainage basins and which will ensure Canada sovereignty over its domestic water resources; and

RESOLVED, That CFUW urge the Government of Canada to resolve immediately the uncertainty surrounding the water-trade issue through the execution of a separate and binding joint diplomatic agreement, ratified by both the US Congress and the Canadian Parliament, which ensures that nothing in the Canada-US Free Trade Agreement shall apply to Canada's water resource in other than bottled form.

2000 Canadian Water

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada and the provincial and territorial governments to take all measures necessary to ensure that large-scale freshwater commercial exports carried out by any means do not take place.

2001 Canadian Water

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the federal, provincial and territorial governments of Canada to protect our water resources and specifically to declare that water, being a non-renewable natural resource of paramount importance, belongs to the Canadian public and its use must be regulated in the long-term public interest;

RESOLVED, That CFUW urge the federal, provincial and territorial governments to adopt and implement a sustainable and prudent water management policy to respond to long-term regional needs with due regard to the ecosystem and hydrogeological reality; and

RESOLVED, That CFUW urge the federal, provincial and territorial governments to promote conservation and more efficient use of surface water and groundwater at individual, local, provincial, territorial, national and international levels.

1988 Drinking Water Quality

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada, to enact legislation which would establish substantive and procedural laws in order to:

1. set rigorous quality standards for ground and surface drinking water which would be updated frequently to reflect current research and increased technology; and develop strict standardized inspection, testing and enforcement procedures to uphold these standards;
2. fund research into the identification and removal of substances in the drinking water which may be harmful to human health and distribute the results of such research to the provincial and territorial authorities responsible for administering water quality legislation;
3. provide user protection by:
 - a) requiring immediate public notification of instances of water contamination and ensuring an adequate supply of safe water either by decontamination or the provision of alternate sources; and
 - b) requiring the inclusion of safe water provisions in Emergency Planning Canada and promoting emergency planning schemes at other government levels.

1989 “Our Common Future”

RESOLVED, That national federations and associations (of the International Federation of University Women) be encouraged to take action in their respective countries, and where possible, to encourage joint participation with IFUW affiliates in neighbouring countries to prevent further deterioration of our global environment by working to implement the recommendations of the Report of the World Commission on Environment and Development, "Our Common Future", (Brundtland Report) presented to the UN General Assembly in October 1987.

1990 Preservation of Wetlands

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the Government of Canada to:

1. establish a standard system of evaluation of wetlands, in co-operation with the provincial and territorial governments in order to identify wetlands which it is agreed are worthy of preservation and statutory protection. (specially significant);
2. increase its support of research on wetlands;
3. increase its efforts to make the Canadian public aware of the vital importance of wetlands; and

RESOLVED, That CFUW urge their provincial and territorial governments to:

1.
 - a) establish a system of evaluation for wetlands consistent with the national system, and to pass legislation to protect and monitor those wetlands which have been identified as specially significant;
 - b) increase their support of research on wetlands;
 - c) increase their efforts to make the public aware of the vital importance of wetlands; and to

2.
 - a) be alert to any proposed development in areas where there are wetlands which might be degraded or lost; and
 - b) b) urge the relevant planning boards, municipal councils and like authorities at the local level to have evaluations done in order to preserve significant wetlands.

1995 **Sustainability**

RESOLVED, That national federations and associations (of the International Federation of University Women) should:

1. urge their respective legislative bodies to incorporate the protection of the environment as an overall goal into their basic laws;
2. help raise a general awareness of the necessity of protecting the environment, in particular by expounding the consequences of resource depletion, the degradation of natural systems, the dangers of pollution and the destruction of fragile ecosystems;
3. promote the education of girls and boys of all ages in science, technology and disciplines relating to the natural environment; and
4. encourage governments to promote the development of sustainable and ecologically sound consumption and production patterns including ecologically safe waste disposal, the re-use and recycling of resources, the reduction of air pollutants, the careful management of energy sources and the use of environmentally sound technologies.

Appendix B



Ontario Council of The Canadian Federation of University Women Club Locations

| | | |
|-----------------------|------------------------|--------------------|
| Ajax - Pickering | Kitchener - Waterloo | Ottawa |
| Aurora - Newmarket | Leaside - East York | Owen Sound & Area |
| Barrie & District | London | Perth |
| Belleville & District | Markham- Unionville | Peterborough |
| Brampton | Milton & District | Renfrew & District |
| Brantford | Mississagua | Sarnia Lambton |
| Brockville & District | Muskoka | Saugeen |
| Burlington | Nepean | Scarborough |
| Cambridge | Niagara Falls | Southport |
| Chatham -Kent | Norfolk | St. Catharines |
| Cornwall & District | North Bay | Stratford |
| Etobicoke | North Toronto | Sudbury |
| Georgetown | North York | Thunder Bay |
| Grimsby | Northumberland | Toronto |
| Guelph | Oakville | Vaughan |
| Haliburton Highlands | Orangeville & District | Weston & District |
| Hamilton | Orillia | Windsor |
| Kanata | Orleans | |
| Kincardine | Oshawa & District | |