



## **POSITION STATEMENT ON DIVERSIONS AND BULK REMOVAL OF WATER FROM THE GREAT LAKES BASIN**

### **INTRODUCTION**

The Muskoka Watershed Council has, for the past seven years, researched, evaluated documented, and published a widely regarded report card on the health of the three watersheds in the District Municipality of Muskoka. The Muskoka Watershed Council has advocated strongly with municipal, provincial and federal agencies on issues such as lake water quality, invading species, habitat fragmentation and sustainable planning and economic development policy.

While our focus has been primarily on the health of the environment within the lakes and rivers in the three basins that drain into Georgian Bay, we also recognize that Muskoka's watersheds are a very significant part of the much larger Great Lakes watershed. We also recognize that sustaining and improving the health of the watersheds in Muskoka contributes directly to sustaining and improving the health of the Great Lakes.

This position statement by the Muskoka Watershed Council addresses one of the most critical issues facing the future health of the Great Lakes - diversions and bulk export of water.

### **BACKGROUND**

Over the past seven year period, 2001-2007, the levels of Georgian Bay have declined, some would say dramatically. Agencies and interest groups that monitor lake levels in the Great Lakes have indicated that the long term fluctuations remain within norms, that the changes are due to the impact of global warming and increased losses to evaporation, or that dredging of the St. Clair River is the root cause of this decline. While these may seem contradictory, all these reasons are probably valid.

At the same time as the Great Lakes are experiencing significant declines, the issue of bulk water export has again re-entered the public debate as part of a broader discussion of North American economic security. Over the past fifty years, the notion of diverting large volumes of water from one basin into another has been proposed in both Canada and the United States. Initially these proposals focused on movement of diverted water through canals and rivers from the Canadian west to the US south west. Other proposals, including some from Canadians, have promoted the diversion of water from the James Bay/Hudson Bay basin, into the Great Lakes basin, and again southward into the US. Most recently, proposals have focused on the movement of fresh water by bulk transport (tanker) from the BC coast and from the Great Lakes.

Concerns about all of these proposals have prompted federal and provincial/state authorities on both sides of the Canada-US border to respond by both researching the potential environmental and economic implications of such proposals and developing policy and legislative tools to prevent or control future proposals.

In September 2007 the Munk Center - Water Program released a series of papers dealing with water security, climate change and water export. In February of 2008, the Munk Center released a paper promoting model draft national legislation to protect against water diversions and bulk water export titled 'A Model Act to Preserve Canada's Water', and in May 2008 held a workshop with federal MPs and staff to discuss the model draft legislation. It is this draft national legislation that is the focus of this proposed MWC policy position.

## **MUSKOKA WATERSHED COUNCIL POSITION**

The Muskoka Watershed Council believes strongly that the health of Muskoka's watersheds and the health of the Great Lakes watersheds are inextricably linked and that it must take a position on the issues of bulk water exports and diversions at this time.

The position statement takes its lead from 'A Model Act to Preserve Canada's Water' prepared by the Water Issues Center at the Munk Center for International Relations, University of Toronto, and will:

- Address key questions raised by the model legislation, including
  - Need for Legislation in Canada
  - Structure of Legislation in Canada
  - Jurisdiction of Legislation in Canada
  - Province-State Solutions
  - International Legislation
- Address Muskoka's interests and concerns impacted by possible future bulk water withdrawals or diversions out of the Great Lakes Basin, and
- Identify the Muskoka Watershed Council position on the issues.

### ***The Need for Legislation in Canada***

**The Muskoka Watershed Council supports enactment of legislation to prevent further diversion or bulk removal of water out of the Great Lakes Basin.**

The International Joint Commission (IJC) has recognized the threat of diversions, consumptive uses and bulk water withdrawal from the Great Lakes Basin in several studies dating back to the mid 1980s. In its 2000 report on Protection of the Waters of the Great Lakes, the IJC concluded that:

*"Removal of water from the Basin reduces the resilience of the system and its capacity to cope with future, unpredictable stresses and, that it is not possible at this time to identify with any confidence all the adverse consequences so that these consequences can be mitigated."*

In many parts of Canada, water resources are already under stress from urbanization, over allocation, point and non point sources of pollution and invasive species. Furthermore, while we do not know what the full effect of climate change on our water resources will be over the next few decades, there is a widespread consensus that climate change will only serve to increase the stresses on our water resources.

As noted by the IJC, the lack of information about combined impacts of urbanization within the basin, uncertainty about the magnitude of impacts of climate change on the Great Lakes Basin and our ability to mitigate unintended impacts requires caution with respect to any consideration of bulk water exports.

### ***The Structure of Legislation in Canada***

**The Muskoka Watershed Council supports the use of a watershed ecosystem approach to structuring legislation to protect against further diversion or bulk water removal from the Great Lakes Basin.**

While there are a number of ways in which governments could structure the legislative protection of water resources from diversions or bulk water basin removals, i.e. political boundaries such as national, provincial or municipal boundaries, the only one that makes sense environmentally and politically is a basin or watershed ecosystem approach. While some basins exist completely within the boundary of Canada, others, such as the Great Lakes, share a basin that is divided politically between Canada and the United States.

Our rejection of the political boundary approach only, however, is rooted even more strongly in the violation of basin or watershed ecosystem integrity that would almost certainly follow from significant inter-basin transfers of water, whether these take place entirely within Canada or across the international boundary.

There is a long history in both Canada and Ontario for the use of watersheds as the fundamental basis for the management and control of water resources. Canada and the provinces of Quebec and Ontario jointly manage the Ottawa River through basin-based legislation. In the 1940's the concept of watershed-based conservation authorities emerged in Ontario as a viable and scientifically defensible basis for flooding and erosion control and, subsequently, as the basis for water quality and quantity management in the 1960s.

The District of Muskoka Council, in co-founding the Muskoka Watershed Council, has applied this watershed principle in its desire to define and develop solutions to integrated water management within the District.

### ***Respecting Jurisdictional Responsibilities in Canada***

**The Muskoka Watershed Council supports enactment of integrated legislation to protect against further diversion or bulk water removal by all three Orders of Government in Canada.**

Canadian approaches to water and land management should always respect the appropriate responsibilities of the existing different orders of government. This entails recognizing linkages and hierarchy among the existing Federal, Provincial and Municipal orders of governments as managers of their resource endowments.

Any legislation that addresses diversions or bulk water removal should therefore begin with the objective of maximizing the protection of all water resources by having each order of government legislate against diversion and bulk water withdrawals and to build into the management framework redundancies that will act as fail-safe devices in the event that one of the other orders fails to act.

This is particularly important in the Great Lakes Basin, given the threats posed by climate change, environmental contaminants and invasive species – all of which extend beyond municipal and provincial boundaries. There is a clear role for the Federal, Provincial and Municipal orders of government in the protection of Canada’s water resources.

### ***Provincial-State Solutions***

**The Muskoka Watershed Council supports the use of political accords and agreements, such as the Great Lakes Charter, to support the intent of and increase the effectiveness of other legislation preventing further diversion and bulk removal of water from the Great Lakes Basin.**

In 1985, the Premiers and Governors of Ontario and Quebec and the eight Great Lakes states - Illinois, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin, signed the *Great Lakes Charter: Principles for Management of the Great Lakes Water Resources*.

The Charter was a good faith, political accord and agreement to protect and conserve the waters of the Great Lakes Basin. Through the Charter, the Great Lakes states and provinces developed a plan for water management, information sharing on water withdrawals and consumptive uses and consulted with each other on proposals for diversion or withdrawals of water.

In 2001, renewed concerns about proposals for bulk export of water led the provinces and states to develop a supplementary agreement know as the *Great Lakes Charter Annex*. This agreement recognized the federal responsibility for international agreements and the role of the IJC, and committed each of the eight states and two provinces to work out binding agreements on bulk water within three years. In December of 2005, the Province of Ontario enacted legislation that put in place two separate agreements: a good faith agreement among the ten jurisdictions; and a binding agreement among the 8 US states.

While not perfect, the Charter agreements reinforce the existing framework of legislation for water resource protection and provide ongoing, non-partisan political and policy support for the long term intentions of all jurisdictions within the basin. Ontario has already passed strict laws banning diversions out of the provinces three major basins - the Hudson Bay, Nelson and Great Lakes Basin, along with regulation of water withdrawals. Through the negotiation of these agreements, Ontario sought similar protection by all Great Lake jurisdictions.

### ***International Jurisdiction***

**The Muskoka Watershed Council supports legislation that supports and strengthens the role of the International Joint Commission in preventing further diversion and/or bulk removal of water from the Great Lakes Basin.**

Protecting the waters of the Great Lakes Basin was recognized by Canada and the United States through the passage into legislation by each Country in 1908 of the *Boundary Waters Protection Act*. This Act established the International Joint Commission (IJC) as an agency, jointly run by Canada and the United States, to manage and protect water resources along our shared border, most notably within the Great Lakes Basin.

The IJC has authority over boundary waters and any diversion or withdrawal from boundary waters must be approved by the IJC. However, this power does not extend to include tributaries to boundary waters. Those areas are the responsibility of the various states and provinces along the Canada-US border. It is critically important that the Province-State agreements, such as the Great Lakes Charter, are supported by legislation approved by all eight State legislatures and the U.S. Congress.

The Great Lakes-St Lawrence River Basin includes the areas draining into the Great Lakes or the St. Lawrence River. As much as 10 percent of the world's fresh water may be contained within this basin. Much of this storage is a legacy from the most recent ice age, and not renewable, as total annual runoff into the basin is approximately 1% of the total volume of water in the basin.

The Muskoka Watershed Council believes that protection of this limited resource is essential to maintaining watershed health.