



May 16, 2007

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Jennifer McKay
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Re: EBR Registry 010-0063 Draft 2007 Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem (COA); and *Canada Gazette* Part I notice (March 17, 2007)

Dear Ms. O'Neill and Ms. McKay

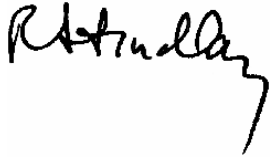
Pollution Probe supports the Governments of Canada and Ontario in its renewal of a new *Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem (COA)*. We view development of a three-year COA as appropriate given the uncertain state of binational Great Lakes governance and the *Great Lakes Water Quality Agreement (GLWQA)* that is presently in flux. We also see a renewed COA as having an important strategic role in influencing the vision, direction and goals of a new GLWQA, as it has historically. There is an exciting opportunity to have a new COA that is a forward-looking leadership document at the same time that it is practical, accountable, adaptable and relevant to the people of Ontario.

Recently, Pollution Probe had the opportunity to participate in a series of roundtable meetings and public forums in five communities around the Great Lakes. We were struck by the enthusiasm for a new approach to stewardship and management of the Great Lakes. We were in touch with over 400 people representing Great Lakes experts as well as the general public. These people understand the importance of the Great Lakes and its crucial role in the economic, social and environmental well-being of this region.

Attached please find Pollution Probe's comments and recommendations regarding a new COA. Our recommendations focus on the areas in which we have knowledge and expertise. We intend that they will be useful and constructive.

Pollution Probe looks forward to working with the Governments of Canada and Ontario, and with citizens, their businesses and organisations, to make the Great Lakes sustainable.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Findlay". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Rick Findlay
Director, Water Programme
Pollution Probe
rfindlay@pollutionprobe.org

Submission by Pollution Probe Regarding Renewal of the *Canada-Ontario Agreement (COA)*

Background on Pollution Probe

Pollution Probe is a non-profit charitable organization that works with all sectors of society to protect health by promoting clean air and clean water. Established in 1969, Pollution Probe is supported by an active donor base of approximately 6,000 donors. Our mandate is to define environmental problems through research; promote understanding through education; and press for practical solutions through advocacy.

Our approach is to not point out problems without pointing out solutions. Working in partnership with industry, governments and communities, Pollution Probe offers innovative and practical policy-oriented solutions to air and water pollution issues and we seek to support measures that will assist in providing a clean, safe and healthy environment.

Pollution Probe's Ongoing Commitment to the Great Lakes

With support from the International Joint Commission and The Joyce Foundation Pollution Probe released Phase I, Phase II and Phase III of *Recommendations on the Review of the 1987 Canada-United States Great Lakes Water Quality Agreement (GLWQA)* in September 2003, October 2003 and April 2004 respectively. These reports examined the applicability of the GLWQA with respect to current status and emerging threats, alternative approaches, scope of issues addressed and governance dimensions through examination of the Great Lakes as well as case studies from around the world.

Though the Great Lakes are a unique resource of tremendous value to both Canada and the United States there are many water systems around the world that are shared across national boundaries. With this realisation in mind in 2002 Pollution Probe organised a conference entitled *Managing Shared Waters*. Attended by over 440 delegates from 38 countries the conference brought together a tremendous amount of expertise on the subject of managing shared waters. Through the course of the conference it became clear that, though there are a plethora of organisations engaged on Great Lakes issues, they are doing so in an often un-coordinated manner. There was need to provide a new forum for dialogue between various high-level decision makers to better align their individual efforts.

To that end in 2003 Pollution Probe brought together experts from both Canada and the U.S. and formed an institution that would become known as the Great Lakes Futures Roundtable (GLFRT). An on-going initiative, this roundtable has provided key decision makers from all sectors with a non-attributed forum where they can speak frankly and share their perspectives and concerns with one another. This weaving of interests has resulted in, among other things, a Vision for the future of the Great Lakes. The GLFRT

Vision is made freely available in whole or in part to any agency that sees value in it. It has been picked up, adapted and adopted a number of times and undergoes continued refinement by the roundtable. A copy is attached to this submission and we urge its consideration in development of the COA and its annexes.

From November 2006 to January 2007, Pollution Probe joined forces with the Environmental Commissioner of Ontario and embarked on a five-city consultation series around the Great Lakes. Holding both daytime invited roundtables and evening public forums in Kingston, Windsor, Hamilton, Thunder Bay and Toronto we heard the thoughts, perspectives and concerns of over 400 people from all sectors of society. The synthesis of this information with previous and ongoing efforts forms the basis for many of these comments.

This series of Ontario Great Lakes Roundtables has been drawn on extensively to provide comment on the first COA draft as well as the more recent EBR posting of Bill 198, the *Safeguarding and Sustaining Ontario's Water Act (2007)*. Most recently we participated in the draft 2007 COA information session offered by Environment Canada and the Ontario Ministry of the Environment in Toronto on April 17, 2007.

General Comments on the Framework of the Agreement

There is much to be encouraged by in the proposed vision, principles, content and direction of this new Agreement. The new set of principles presented in this Agreement work together to describe a new direction for the *Canada-Ontario Agreement* as well as a commitment to look beyond restoration toward protection, prevention and enhancement of the Great Lakes. We appreciate the recognition of the vital role the Great Lakes Basin plays in sustaining the physical, social and economic life of Canada and the need for a shared vision of a healthy, prosperous and sustainable Great Lakes Basin Ecosystem. We support the recognition of the commitment to work together with other jurisdictions in pursuit of this vision using collaborative arrangements and collective action among all people and organisations with an interest in the basin. Well done.

Article III

Alongside numerous revisions to Article III the appearance of two new principles, *(d) Communication*; and, *(h) Net Gain* are particularly welcome. Among the stated purposes for adopting the *Principle of Communication* is “to encourage collaborative and individual action and stewardship”. It is worth recognising the relevance of principle *(a), Accountability*, to the development of a stewardship ethic. Clear, effective communication of goals, results and commitments, tied to accountability, will do much for public confidence in the process reinforcing their willingness to become more involved directly.

While the renewed commitment to public education, as indicated by the *Principle of Communication*, is important, the principle as stated describes a one-way communication; the informing of the public. This may be inconsistent with the clear tack this COA has taken towards more distributed and inclusive forms of governance. Accordingly, aligning

this principle better with principle (c), *Collaboration and Cooperation*, through wording that provides opportunity for civil society to express its interests and inform goal setting, planning and other COA activities, the “meaningful opportunities” identified in the *Collaboration and Cooperation* principle may be more effectively delivered. This will serve the objective of building an engaged and energised public through identifiable valuation of stakeholder perspectives and recognition of stakeholder rights. Such ownership and empowerment will contribute substantially to the conservation ethic sought by education and communication programmes, and therefore be of benefit to the primary objectives of COA and the Great Lakes Water Quality Agreement.

Recommendation 1 - Adjust wording of Article III 1.d - Communication, to make provision for two-way communication between the public and their government regarding the importance of, and challenges faced by the Great Lakes. For example: “ensure effective methods are used to engage the public in an ongoing two-way dialogue on the importance of the Great Lakes...etc....”

Regarding Principle (h), Pollution Probe is very supportive of the inclusion of a Net Gain principle in the new proposed COA. In order to achieve development in the Great Lakes basin that is “sustainable” we will need to actually seek a net gain or improvement in the ecological assets of the basin. Given the well documented, widespread and serious decline in the state of many of those ecological assets, even a “no net loss” approach will no longer assure us that we will be able to support a sustainable future. The Great Lakes basin needs a Net Gain standard for decisions about new activities or developments and whether they should go ahead, as well as for restoration activities where priorities need to be set in terms of where restoration should take place first.

The Net Gain principle is ideally applied on a local watershed (or source water protection region) basis where adopting a policy goal of seeking a “Net Gain” in ecological services can capitalise on one of the advantages of taking a “bottom-up” watershed-based, ecosystem approach to measuring, monitoring and managing water.

The Net Gain principle says that a proposed development, activity or change happening in a watershed should proceed only if the proponent or responsible authority can be satisfied that the activity or change would result in an improvement or a net gain in terms of the ecological services already available in the watershed.

It implies that you need to measure the relevant ecological services and seek to increase or improve them. It also implies that if you need to take action to restore (and improve) ecological services you will likely want to do that using the most cost effective methods possible. The two goals suggested (maximize environmental benefits) and (minimize environmental costs) are not zero-sum, mutually exclusive activities as could be implied by the wording proposed. This wording does not quite reflect the logic of the Net Gain concept and there is a better way to express this principle, we feel.

The wording should be adjusted to reflect this difference.

Recommendation 2 - Change wording of Article III 1.h to “Net Gain – proposed development and management actions should proceed only if the proponent or responsible authority can be satisfied that the activity or change would result in an improvement or a net gain in ecological services. The Principle can also be used to help assure that the ecological benefits are maximised and achieved in the most cost effective manner.

Article IV to Article VII

Pollution Probe would like to acknowledge what is seen as a positive shift in the Agreement’s management structure in this COA. The creation of an Annex Implementation Committee, which works at arm’s length from the Management Committee to implement the Annexes, will bring improved transparency to the activities carried out under the Agreement, resulting in a higher level of accountability and associated benefits. Moreover, the division of roles, as written, is sensible and should lead naturally to each committee “cross-checking” the other. It is hoped that the shared commitment to the mandate of improved horizontal integration through coordination with other departments, ministries and agencies, will be found to be strong.

Perspectives on Governance

While much of the Framework of the Agreement was found to be both positive and progressive, we feel it would be greatly strengthened through formally recognising the new direction for Great Lakes governance that is apparent throughout much of this COA (especially in Annex 3). Furthermore, we feel this presents a clear opportunity for the *Canada-Ontario Agreement* to once again take a significant step forward by offering more meaningful and appropriate roles to all sectors of society, as a means of realising our shared aspirations for the Great Lakes.

While this COA appears to be pursuing more inclusive and distributed governance, this pursuit has been found to be either buried or tentative. Pollution Probe notes and appreciates that significant efforts have been made to “mainstream” the principles of collaborative and cooperative implementation with the broader Great Lakes Community, however, as adhering to these ideas will affect the achievability of all Annexes, the capacity of the Agreement to meet its stated objectives will be measurably improved by bringing the Great Lakes Community forward into the Framework of the Agreement.

The important role of community stakeholders and industry has yet to fully achieve its potential. We encourage the exploration of new institutions to help achieve broader sustainability goals. Through the Pollution Probe/Environmental Commissioner of Ontario roundtables and public forums, held around the Great Lakes, the opportunity for dialogue was highly appreciated. People are interested and keen to express themselves. In addition, there a palpable sense that this interest is not yet being adequately incorporated into decision making by federal and provincial levels of government. People are interested in broader Great Lakes sustainability discussions and appreciated the

opportunity to express their views and offer suggestions as part of a planning process. Incorporating a broad array of stakeholder perspectives into the decision making framework can enhance the efficacy of Great Lakes management efforts across the board, while grounding the Agreement within constituencies around the lakes.

Furthermore, grounding Great Lakes decision making within communities through meaningful collaboration and communication will serve to not only nurture broad appreciation and interest in the welfare of the lakes. It will build a coalition of support behind decision makers, helping to de-risk actions taken and bring political energy to the Great Lakes. Put another way adopting a distributed governance model can be seen as an investment, where the interest accrued by government will be trust, support, innovation and well-guided next steps.

A key opportunity to engage the Great Lakes Community within the Framework of the Agreement is in Article II, clause 1. It is stated that, “the purpose of this Agreement is to restore, protect and conserve the Great Lakes Basin Ecosystem in order to assist in achieving the vision of a healthy, prosperous and sustainable Basin Ecosystem for present and future generations”. This is a very appropriate vision and one that begs an ongoing dialogue with citizens in order to detail and define the vision, and to bring it to life by helping it become the basis of a shared agenda for action. Governments have a leadership role to play but they are not and should not be solely responsible for the restoration, protection and management of the Great Lakes, nor do other stakeholders have a mere right to be involved. They have a fundamental vested interest and a duty to become partners in this shared Great Lakes enterprise. As such the Great Lakes Community should be involved in defining this vision, with the associated engagement being done in an ongoing way.

The following two recommendations serve to support this specific point: a detailed agenda, based on the vision and crafted through working in collaboration with the Great Lakes Community in an ongoing way, will bring both grounding and guidance to actions and direction of this and future COAs.

Recommendation 3 - Under Article I, bring forward the definition for *Great Lakes Community* from Annex 3, i.e. “including federal and provincial agencies, Aboriginal communities, municipalities, conservation authorities, agriculture, industrial and other business sectors, non-governmental organisations, academia and residents.”

Recommendation 4 - Adjust the wording in Article II, clause 1, to call for the development of a detailed vision through an ongoing process of engagement with the Great Lakes Community.

Both the proposed Agreement and the Annexes can be amended by consent of the Parties after which they are committed to conducting public consultations while negotiating these amendments. This process could be opened up through the same mechanisms

employed to engage the Great Lakes Community with the defining and refining of a COA Vision. Information and perspectives that have relevance to the actions and direction of the Agreement will inevitably come forward during this participatory process and should have visible influence on the amendment process. This will serve to further grow and strengthen an engaged, empowered Great Lakes Community who, through their involvement, is able to connect with a heightened sense of responsibility for the lakes, and build a powerful and personal conservation ethic.

Recommendation 5 - Adjust Article IV, clause 4 and Article XI, clause 1, to open the amendment processes, for the Annexes and the Agreement respectively, to the Great Lakes Community.

Comments on the Annexes of the Agreement

The transformation of Annex 3 is found to be very positive on the whole. There is a clear commitment to the development of an engaged Great Lakes Community, and recognition of the vital role they have to play in the restoration, protection, conservation and enhancement of the Great Lakes Basin.

The strong commitments made in Annex 1 toward delisting the four specific AOCs of Nipigon Bay, Jackfish Bay, Wheatley Harbour and St. Lawrence River (Cornwall) will further energise the Great Lakes Community through providing visible change and grounds for celebration. The importance of success to maintaining the momentum of a social movement is fundamental.

Of all the challenges facing the Great Lakes those connected to climate change are possibly the least well defined and carry the heaviest consequences. From lowering lake levels affecting shorelines and shipping, to increased combined sewer overflow events and the possible migration of aquatic invasive species into new territories, current global climate change scenarios point to the vulnerability of the Great Lakes to potentially serious impacts from changing temperature, precipitation and weather regimes.

In the current climate change context, the language of climate change has advanced considerably. There has been a clear separation of mitigation and adaptation, with vulnerability being commonly seen as a function of exposure and adaptive capacity.

In Annex 3, Goal 5, the preamble to the Results states that the Parties need to identify changes and assess impacts. It then goes on to identify limitations on the ability to be predictive and finishes by stating that mitigation efforts are beyond the scope of the Agreement. Nowhere is there mention of the vital need to build adaptive capacity. We have to begin discussing the risks and how these affect adaptation choices. This Goal needs to be redressed with respect to adaptation, which is completely within the purview of the Agreement.

In Result 5.1 there is a clear example of where the language used can be updated to significant effect. It states, “Canada and Ontario will: b) Increase understanding ... of the impacts on and vulnerabilities of the Great Lakes including biodiversity, natural resources, water assets, human health and safety, the economy and infrastructure”. Here “vulnerabilities” should be removed in favour of “exposure”, making room for the introduction of adaptation measures. We are not helpless and entirely at the mercy of climate change, forced to wait on the sidelines and manage the impacts of climate change as is suggested later in Result 5.1.

The need to seek opportunities for adaptation is key to moving the Great Lakes Community from a fundamentally reactive position to a proactive planning position where preparatory measures can be taken to reduce vulnerability to the impacts of climate change. Accepting that mitigation is a wholly separate issue, adaptation is about taking action and spending a little now to avoid much larger investment later on.

Making this shift will bring positive benefits to how other portions of this and future COAs are managed. For instance there has been significant attention paid to the impact of wastewater on the Great Lakes and the need for infrastructure improvements. What we know about the effects of climate change on Ontario is that we can expect more extreme weather events, and expect them more often. This has an obvious impact on combined sewer overflows and stormwater management. As such adaptive measures should be considered here, such as the promotion of onsite stormwater management, a common practice in other jurisdictions, and “mainstreaming” climate change into stormwater and wastewater planning decisions (for further background on the concept of “mainstreaming” please see the Pollution Probe white paper, “Mainstreaming Climate Change in Drinking Water Source Protection Planning in Ontario”, available from our website at www.pollutionprobe.org/Reports/mainstreaming_climate_change_swp.pdf).

Recommendation 6 - Incorporate adaptation language into Annex 3, Goal 5

At the Toronto information session the point was made that some areas such as Brampton and others managed by the Credit Valley Conservation Authority, which were not originally listed as an AOC, are currently experiencing equivalent water quality issues and conditions resulting directly from population pressures.

With demographic projections suggesting an expected population growth of between three and six million people in southern Ontario over the coming decades, population growth will pressure and impact land use planning, agricultural areas, wildlife conservation, shorelines, watersheds, water supply and treatment systems. This reality needs to be recognised by this and future COAs.

Recommendation 7 – Incorporate anticipatory language to account for population pressures

Referring back to the Purpose of the Agreement as identified in Article II, the *Canada-Ontario Agreement* has a vision of a “healthy, prosperous and sustainable Basin Ecosystem for present and future generations.” Similar aspirations have been made by other recent pieces of provincial legislation, specifically, the *Safeguarding and Sustaining Ontario’s Water Act 2007* (SSOWA). These are expressed through its parallel commitment to “protect, conserve, restore, improve and efficiently and effectively manage the Waters and Water Dependent Natural Resources of the Basin”, and commitment to cumulative effects assessments. These two pieces of legislation have much in common and much to gain from close coordination.

Sustainable management of the Great Lakes cannot be achieved through implementation of COA in isolation. In the Framework, this is acknowledged in Article VI, clause 2.d, and Article VII, clause 3.d, where integration with other departments, ministries and agencies is discussed. It is hinted at in Article V where the Parties agree to “create opportunities for others to contribute to achieving the vision of the Agreement.” The only formal reference to the SSOWA is in Annex 3, Goal 1, Result 1.3.d, where it connects with the SSOWA through reference to its parent agreement, the *Great Lakes St Lawrence River Basin Sustainable Water Resources Agreement* (GLSLRBSWRA), on the fostering of sustainable water use and conservation. In Annex 4 there may be some connection implicit in the act of data sharing among governments, organizations and Basin residents, however a dedication to coordination is not a clear objective.

Where COA and the GLSLRBSWRA ostensibly manage water quality and quantity respectively, their efforts should be closely connected in a formal way to enable efficient pursuit of the stated objectives of restoration, protection, conservation and improvement. This can be achieved through such mechanisms as ecosystem approaches and cumulative effects assessments, neither of which is possible where water quality and water quantity are unconnected. It would be ideal to see the connection between COA and the GLSLRBSWRA made upfront in the Framework of the Agreement. However, as a minimum, it should be raised in the Annexes where applicable, especially with regard to access to and sharing of data and information.

Recommendation 8 - Formally align the *Canada-Ontario Agreement* with legislation extending from the *Great Lakes St Lawrence River Basin Sustainable Water Resources Agreement*

Finally, on the subject of data sharing, Annex 4 sets a goal of improved discovery and sharing of data and information in the Great Lakes Basin Ecosystem, and follows this up with Result 3, “Increased sharing of data and information among governments, organisations and Basin residents.” The level of public access is not defined beyond reference to the Binational Executive Committee Monitoring Inventory. While this inventory does itemise data sets and monitoring activity, it is not a source of readily accessible data. Pollution Probe considers ready availability of data and information as being essential to the efforts of this COA to develop an informed, engaged and energised Great Lakes Community, and strongly suggests that the importance of access to public

data and information by the public be brought into the wording of Result 3. To further entrench the Great Lakes Community in the management and stewardship of the lakes, COA may consider the incorporation of Community Based Management (CBM) into its array of tools. CBM programmes across the country have demonstrated the ability to generate high levels of public engagement, with associated growth of a shared stewardship ethic, however data collected through CBM must be seen as impacting decision making in order to sustain interest. Accordingly, standard methods for sampling and data generation must be provided to support CBM programmes in order to ensure that data collected by the community is usable by decision makers.

Recommendation 9 – Adjust wording of Annex 4, Result 3, to reflect the importance of readily available data and information to the efforts of this COA to develop an informed, engaged and energised Great Lakes Community.