UPDATE ON GREAT LAKES ACTIVITIES IN ONTARIO

Prepared for:

Hon. Dave Levac
Speaker, Legislative Assembly
of Ontario
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Prepared by:

Andrew McNaught
Research Officer
Legislative Library and Research Services

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INTRODUCTION

This paper was prepared for the Speaker of the Legislative Assembly of Ontario, who will be making a presentation on recent Great Lakes activities in Ontario to the Great Lakes Legislative Review Webinar on April 28, 2016.

RECENT LEGISLATIVE INITIATIVES

Bill 66 (the Great Lakes Protection Act, 2015)

- In October 2015 the Ontario Legislature passed Bill 66, the Great Lakes Protection Act, 2015. A key provision of the Bill requires the Minister of the Environment and Climate Change to maintain Ontario’s Great Lakes Strategy and to update it every six years.

- Adopted in 2012, the Great Lakes Strategy is a roadmap for how the provincial government will employ a variety of tools and resources, and for collaborating with the broader Great Lakes community to ensure the Great Lakes waters remain usable for drinking, swimming, and fishing.¹

- Other key features of Bill 66 include
  - a provision enabling the Minister, in consultation with other governments and stakeholders, to set targets relating to the Great Lakes–St. Lawrence River Basin, including targets to assist in the reduction of algae blooms and to prevent the loss of wetlands; and
  - the creation of the Great Lakes Guardians’ Council, composed of ministers, municipal representatives, First Nations and Métis representatives, and scientists, with a mandate to identify priorities for actions to achieve the Bill’s objectives. (The Council held its first meeting in March of this year.²)

Bill 37 (the Invasive Species Act, 2015)

- Ontario has more invasive species than any other province or territory. An invasive species of particular concern is the Asian carp. Although

¹ Ontario is currently implementing actions set out in the Great Lakes Strategy that focus on a range of areas, including climate change adaptation, First Nations and community engagement, the development of effective agricultural best management practices, biodiversity protection, and combating invasive species; see Ministry of the Environment and Climate Change, Ontario’s Great Lakes Strategy 2016 Progress Report (updated March 22, 2016). Note: All websites referenced in this paper were accessed on April 11, 2016.

not yet established in Lake Ontario, five Asian carp were reportedly caught in the Toronto area last summer.3

- In November 2015 Ontario passed Bill 37, the Invasive Species Act, 2015. When the Act takes effect in November of 2016, Ontario will become the first jurisdiction in Canada with a stand-alone invasive species statute.

- Bill 37 employs a risk-based approach that considers a full range of threats, costs, and benefits to the environment, society, and the economy, and will establish a legislative framework for prevention, rapid response, and, where possible, eradication of invasive species.

**Regulations Implementing the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement**

- In 2005 Ontario, Quebec and the eight Great Lakes states signed The Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement. The main purpose of the Agreement is to regulate transfers of water out of the Great Lakes Basin.

- Consistent with other Great Lakes jurisdictions, Ontario has introduced further measures to implement the Agreement by regulating intra-basin transfers—that is, the movement of water from one Great Lake watershed to another.

- Effective January 1, 2015, Ontario has put in place all regulatory measures needed to meet its commitments under the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement.4

**Private Members’ Bills**

- Two Private Members’ Bills currently before the Ontario Legislature address separate issues relating to the Great Lakes.

- **Bill 75** would enact the Microbead Elimination and Monitoring Act, 2015. Microbeads are the non-biodegradable plastic particles of less than one millimetre that are added to consumer products to help exfoliate skin or clean teeth. When these particles enter rivers and lakes, they are ingested by various organisms, and are therefore a growing environmental concern. Canadian and US wastewater treatment systems would need expensive upgrades to filter these small particles. Accordingly, Bill 75 would prohibit the manufacture of

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3 Adam Carter, “Dreaded Asian Carp the target of new Ontario lab,” CBC.ca (July 7, 2014); and “3 more Asian carp found in Toronto.” CBC News (September 3, 2015).

4 Environmental Registry, Regulation Decision Notice: Regulatory amendments to support implementation of the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement, decision posted November 27, 2014.
microbeads and the addition of microbeads to cosmetics, soaps or similar products.\(^5\)

- **Bill 118** would enact the *Great Lakes Shoreline Right of Passage Act, 2015*. In contrast with the United States, where a legal principle known as the Public Trust Doctrine ensures public access to the shoreline of the Great Lakes, the situation in Ontario is legally uncertain. Bill 118 would establish a public right of passage along the northern shoreline of the Great Lakes.\(^6\)

**ONGOING INITIATIVES AND ISSUES**

**Canada–U.S. Great Lakes Water Quality Agreement**

- As amended in 1987, the *Canada–U.S. Great Lakes Water Quality Agreement* identifies 43 Areas of Concern (AOCs), 12 of which are Canadian locations. AOCs are places where the environment has been harmed, resulting in problems that include beach closures, loss of fish and wildlife habitat, restrictions on fish consumption, and contaminated drinking water.

- Ontario continues to work with the federal government to implement remedial action plans on the Canadian side of the Great Lakes Basin. To date, three AOCs have been remediated and removed from the list and two AOCs are in recovery. The long-term goal is to de-list the remaining AOCs by 2025.\(^7\)

**Blue-Green Algae**

- In cooperation with other Great Lakes jurisdictions, Ontario is pursuing several initiatives to reduce the nutrients that contribute to the growth of blue-green algae. Scientists in Ontario have identified phosphorous as the nutrient from this side of the Great Lakes that is mainly responsible for algae growth.\(^8\)

- In 2015 the Ontario and federal governments announced the Great Lakes Agricultural Stewardship Initiative, targeted at the Lake Erie basin and the southeast shores of Lake Huron. Under this Initiative the two governments will invest $4 million annually over four years to

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\(^5\) Bill 75, the *Microbead Elimination and Monitoring Act, 2015*, 1\(^{st}\) Sess., 41\(^{st}\) Leg., 2015 (Second Reading March 12, 2015), introduced by Marie-France Lalonde, MPP.

\(^6\) Bill 118, the *Great Lakes Shoreline Right of Passage Act, 2015*, 1\(^{st}\) Sess., 41\(^{st}\) Leg., 2015 (Second Reading September 17, 2015), introduced by Wayne Gates, MPP.

\(^7\) Environment Canada, “*Great Lakes Areas of Concern*,” April 30, 2015; and *Ontario’s Great Lakes Strategy 2016 Progress Report*.

help farmers improve soil health and promote environmental stewardship.\(^9\)

- In June 2015 Ontario signed the *Western Basin of Lake Erie Collaborative Agreement* with Ohio and Michigan, under which the three jurisdictions agreed to reduce the amount of phosphorous going into Lake Erie by 40% over 10 years, with an interim goal of a 20% reduction from 2008 levels by 2020.\(^10\)

- In September 2015 Ontario, together with the Lake Erie states of Ohio, Michigan, New York, and Pennsylvania, released a *Joint Action Plan* for reducing nutrient loadings to Lake Erie. Ontario’s commitments under the Plan to address excessive nutrients and algal blooms will be incorporated into and implemented through the *Domestic Action Plan for Lake Erie* being developed by Ontario and the Canadian government.\(^11\)

### City of Waukesha Water Diversion

- In 2010 the City of Waukesha, Wisconsin became the first community straddling the Great Lakes Basin to request an exemption from the prohibition against the diversion of water out of the Basin.\(^12\) (The prohibition is contained in the *Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement* signed by Ontario, Quebec, and the eight Great Lakes states in 2005.)\(^13\)

- Under the proposal, Waukesha would divert up to 38 million litres (10 million gallons) per day from Lake Michigan in order to address concerns about the quantity and quality of the City’s ground water supply. Treated water would be returned to the lake.\(^14\)

- Waukesha’s application made the news earlier this year when the Wisconsin Department of Natural Resources referred the matter for further review and approval by the Regional Body established under the 2005 international agreement.\(^15\)

- As a member of the Regional Body, Ontario participated in the regional review process. Ontario’s technical assessment of the Waukesha application identified several deficiencies that, in the

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\(^11\) Ibid.

\(^12\) Wisconsin Department of Natural Resources, “*Waukesha, Wisconsin Diversion Application*” (January 2016).

\(^13\) Under the terms of the Agreement, a community that straddles a county within the Great Lakes Basin may be eligible for a diversion of water if certain criteria are met.

\(^14\) Wisconsin Department of Natural Resources, “*Waukesha, Wisconsin Diversion Application.*”

\(^15\) Debora Van Brenk, “*Critique opposes U.S. community’s request to draw water from Great Lakes watershed,*” *St Thomas Times Journal* (April 1, 2016).
Province’s view, render the proposal ineligible for an exemption from
the ban on water diversions.\textsuperscript{16}

- Among other concerns, Ontario questions whether Waukesha
  qualifies—geographically—as a straddling county, and says that
  Wisconsin’s technical review of the application did not adequately
  assess the potential cumulative effects of the proposed water diversion
  on Great Lakes water quantity.

- From Ontario’s perspective, approving the Waukesha application
  would set a dangerous precedent. Specifically, an approval might
  encourage further applications for water diversions from communities
  outside of the Great Lakes Basin, diversions that could have a long-
  term impact on Great Lakes water quality and volume.\textsuperscript{17}

\textsuperscript{16} \textit{Letter} from Ministry of Natural Resources and Forestry (Ontario) to Deputy Director,
Conference of Great Lakes and St. Lawrence Governors and Premiers (undated).
\textsuperscript{17} A meeting of Great Lakes states and provinces to discuss the Waukesha proposal is scheduled
for April 21, 2016 in Chicago. The proposal requires the unanimous consent of the eight Great
Lakes states; Ontario and Quebec have a right to comment but not to vote; see Van Brench,
“Critique opposes U.S. community’s request to draw water from Great Lakes watershed.”