



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 27

(2009, chapter 21)

**An Act to affirm the collective nature of
water resources and provide for increased
water resource protection**

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Passed 11 June 2009

Assented to 12 June 2009

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EXPLANATORY NOTES

The object of this Act is, firstly, to confirm the legal status of water: both surface water and groundwater are a collective resource that is part of the common heritage of the Québec nation. It recognizes the right of every natural person to have access to safe drinking water and sets out certain principles, including the duty to prevent damage to water resources and repair any such damage. A civil action is created that will allow the Attorney General to require the reparation of any ecological damage to water resources through such measures as restoration to the original state and payment of financial compensation.

This Act also defines water governance rules that are based on concerted, integrated management within the hydrologic units designated by the Minister of Sustainable Development, Environment and Parks, including the St. Lawrence River Basin, and take into account the principles of sustainable development. It sets out the conditions under which water master plans and the integrated management plan for the St. Lawrence are to be developed and updated.

As well, this Act establishes a new water withdrawal authorization scheme that increases water resource protection. The new scheme recognizes the need to give priority to satisfying the needs of the population but also to reconcile ecosystem needs and the needs of economic activities. Except as otherwise determined, the term of water withdrawal authorizations is 10 years. The Minister and the Government are empowered to order the limitation or cessation of a water withdrawal that presents a serious risk for public health or aquatic ecosystems, without compensation from the State.

This Act also provides for the implementation in Québec of the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement. It prohibits the transfer out of the St. Lawrence River Basin of water withdrawn from the Basin, except as set out in this Act. In addition, new or increased water withdrawals from the Basin are to be subjected to new rules for the reinforcement of water resource protection and management, under the conditions defined by this Act.

This Act incorporates into the Environment Quality Act the prohibition provided in the Water Resources Preservation Act against transferring water out of Québec. Moreover, it makes the lifting of that prohibition by the Government, for any reason in the public interest, subject to public consultation.

Lastly, it sets out transitional measures applicable to existing water withdrawals.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting administrative justice (R.S.Q., chapter J-3);
- Environment Quality Act (R.S.Q., chapter Q-2).

LEGISLATION REPEALED BY THIS ACT:

- Water Resources Preservation Act (R.S.Q., chapter P-18.1).

Bill 27

AN ACT TO AFFIRM THE COLLECTIVE NATURE OF WATER RESOURCES AND PROVIDE FOR INCREASED WATER RESOURCE PROTECTION

AS water is indispensable to life and is a vulnerable and exhaustible resource;

AS water resources are part of the common heritage of the Québec nation, and it is important to preserve water and improve water management to meet the needs of present and future generations;

AS water is for everyone's use and must be accessible in the quantity and quality required to meet every individual's essential needs;

AS the State, as custodian of the interests of the nation in water resources, must be vested with the powers required to protect and manage those resources;

AS the funds required for water governance must be made available to the State through such measures as the establishment of royalties for water, management, use and sanitation;

AS, on 13 December 2005, Québec, Ontario and eight U.S. Great Lake states signed the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement, which was approved by the National Assembly on 30 November 2006, and it is important to amend the Environment Quality Act to ensure the implementation of the Agreement;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

WATER, A COLLECTIVE RESOURCE

1. Being of vital interest, both surface water and groundwater, in their natural state, are resources that are part of the common heritage of the Québec nation.

As set out in article 913 of the Civil Code, their use is common to all and they may not be appropriated except under the conditions defined by that article.

2. Under the conditions and within the limits defined by the law, it is the right of every natural person to have access to water that is safe for drinking, cooking and personal hygiene.

3. The protection, restoration, improvement and management of water resources are of general interest and further sustainable development.

The Minister of Sustainable Development, Environment and Parks may take action to promote public access to the St. Lawrence River and other bodies of water or watercourses, particularly to allow any person to travel on them in accordance with the conditions set out in article 920 of the Civil Code.

DIVISION II

PRINCIPLES

§1. — *User pays principle*

4. The costs related to water resource use, including protection, restoration, improvement and management costs, are to be borne by users under the conditions defined by law and on the basis of environmental, social and economic consequences and the polluter pays principle.

§2. — *Prevention principle*

5. Every person has a duty, under the conditions defined by law, to prevent or at least limit the damage the person may cause to water resources and to thus join in the effort to protect water resources.

§3. — *Reparation principle*

6. Every person must repair the damage the person causes to water resources, under the conditions defined by law.

§4. — *Principles of transparency and participation*

7. Under the conditions and within the limits defined by law, every person has a right of access to any information on water resources that is held by public authorities and a right to participate in public decision-making that affects those resources.

DIVISION III

ACTION FOR DAMAGE TO WATER RESOURCES

8. If damage to water resources, including impairment of their physical, chemical or biological properties, ecological functions or quantitative status, is caused by a person or through a person's fault or illegal act, the Attorney

General may institute an action against that person, in the name of the State as custodian of the interests of the nation in water resources, with a view to obtaining one or more of the following:

- (1) restoration of the water resources to their original state or a state similar to their original state;
- (2) reparation through compensatory measures;
- (3) reparation by payment of compensation in a lump sum or otherwise.

For the purposes of this section, “original state” means the state of the water resources and of their ecological functions as it would have existed had the damage not occurred, determined on the basis of the best available information.

The obligation to make reparation for damage to water resources or their ecological functions caused through the fault or illegal act of two or more persons is solidary.

9. For the purposes of an action for damage to water resources, the Government may make regulations determining

- (1) the conditions applicable to restoration to the original state or a state similar to the original state and to reparation through compensatory measures; and

- (2) the elements to be considered and the scales or methods to be used in assessing or determining damage to water resources, including impairments of the ecological functions performed by water for the benefit of other natural resources and the public, and in determining the compensation payable for such damage.

10. Compensation obtained as a result of an action brought under this division is to be paid into the Green Fund established by section 15.1 of the Act respecting the Ministère du Développement durable, de l’Environnement et des Parcs (R.S.Q., chapter M-30.001) to finance water governance measures, including water protection and development measures and measures to ensure there is an adequate quality and quantity of water in a sustainable development perspective.

11. An action for damage to water resources is prescribed 10 years after the date on which the Minister becomes aware of the damage.

DIVISION IV

WATER GOVERNANCE

12. In this division, “the St. Lawrence” means, in addition to the St. Lawrence River, the St. Lawrence Estuary and the Gulf of St. Lawrence.

13. Water resource management in the hydrologic units designated under subparagraph 2 of the first paragraph of section 14 must be based on a concerted, integrated strategy, particularly in the hydrologic unit of outstanding significance that is the St. Lawrence.

This integrated, concerted management must reflect sustainable development principles such as those set out in section 6 of the Sustainable Development Act (R.S.Q., chapter D-8.1.1).

14. For the purposes of section 13, the Minister of Sustainable Development, Environment and Parks may

(1) establish major directions for concerted, integrated water resource management;

(2) identify and describe hydrologic units, including watersheds, sub-watersheds and groups of watersheds, for all or part of the territory of Québec on the basis of such criteria as

(a) the area of the hydrologic units;

(b) the territorial limits of Québec, the administrative regions or the regional county municipalities, as the case may be;

(c) the population density;

(d) the past co-operation, cohesion and harmony between the various users and stakeholders; and

(e) the environmental, social and economic homogeneity of development activities;

(3) for each of the hydrologic units referred to in subparagraph 2 that the Minister specifies, provide, on the conditions determined by the Minister and subject to subparagraph 4, either

(a) for the creation of a body whose mission is to develop and update a water master plan and facilitate and monitor its implementation, ensuring balanced representation, within that body, of users and of stakeholders from such sectors as the government, Native, municipal, economic, environmental, agricultural and community sectors, or

(b) in exceptional circumstances, for the designation of a body to pursue that mission in conjunction with users and stakeholders;

(4) for the St. Lawrence hydrologic unit, provide on the conditions determined by the Minister or agreed between the Minister and any government authority concerned,

(a) for the establishment of governance mechanisms to ensure, for all or part of the St. Lawrence, co-operation between users and stakeholders in various sectors, and the planning and harmonization of measures for the protection and efficient use of water resources and water-dependent natural resources; and

(b) for the creation or designation, as the main component of these governance mechanisms, of a body to develop and update an integrated management plan for the St. Lawrence and to promote and monitor its implementation, ensuring balanced representation, within the body, of users and stakeholders in various sectors;

(5) prescribe rules governing the operation and financing of a body created or designated under subparagraph 3 or 4 and of governance mechanisms established under subparagraph 4;

(6) specify the elements that must be dealt with in a water master plan or an integrated management plan for all or part of the St. Lawrence, including the state of waters and water-dependent natural resources, the identification of water uses and an assessment of their effects, an inventory of zones of ecological interest and of ecologically fragile or degraded zones, measures to protect and restore the qualitative or quantitative status of waters, and an evaluation of the economic and financial means required to implement the plan; and

(7) determine conditions for developing, updating and monitoring the implementation of a water master plan or an integrated management plan for all or part of the St. Lawrence, such as informing the public and enlisting its participation, obtaining the Minister's approval of the plan, and submitting status reports to the Minister on the plan's implementation.

When creating or designating a body under this section, the Minister must publish, particularly in the region concerned and in any appropriate manner, a notice identifying the body and containing a brief description of its mission.

15. After approving a water master plan or an integrated management plan for all or part of the St. Lawrence, the Minister must publish, particularly in the region concerned and in any appropriate manner, a notice announcing the approval and mentioning where the plan may be consulted or a copy obtained.

The Minister must also send a copy of the plan to all government departments and bodies and to the regional county municipalities, metropolitan communities and local municipalities whose territory is situated, in whole or in part, in the hydrologic unit to which the plan applies so they will take the plan into consideration when exercising their powers and duties under the law in the water sector or any other sector affecting water.

DIVISION V

BUREAU DES CONNAISSANCES SUR L'EAU

16. A water knowledge branch to be known as the Bureau des connaissances sur l'eau is established within the Ministère du Développement durable, de l'Environnement et des Parcs.

The Bureau's mission is to set up, and ensure the technical coordination of, an information system for the collection of data on water resources, aquatic ecosystems and water uses in the hydrologic units referred to in subparagraph 2 of the first paragraph of section 14, and to conserve and disseminate the data, with a view to supporting learning requirements in the water sector and providing the public with the most complete, reliable and up-to-date information possible.

The municipalities and Native communities and every department, body, educational or research institution or group whose mission, functions or activities relate in whole or in part to the water sector may, by invitation or at their request, be associated with the development of the information system.

17. Not later than (*insert the date occurring five years after the date of coming into force of this section*) and every five years after that, the Bureau must send the Minister a report on the state of water resources and aquatic ecosystems.

The report is to be made available to the public within 30 days after it is sent to the Minister.

DIVISION VI

AMENDING PROVISIONS

ENVIRONMENT QUALITY ACT

18. The heading of Division V of Chapter I of the Environment Quality Act (R.S.Q., chapter Q-2) is replaced by the following heading:

“WATER RESOURCE PROTECTION AND MANAGEMENT”.

19. The Act is amended by inserting the following after the heading of Division V of Chapter I:

“31.74. In this division, “water withdrawal” or “withdrawal” means the taking of surface water or groundwater by any means. Water withdrawals by means of the following works are excluded from that definition except for the purposes of sections 31.85 and 31.86 and subdivisions 2 and 3:

- (1) works used for the impounding of water;
- (2) works used for the diversion of water to produce hydroelectric power; and
- (3) other works used for the production of hydroelectric power.

“§1. — Withdrawal of surface water or groundwater

“31.75. Withdrawals are subject to the authorization of the Minister or, in the cases prescribed by a regulation made under section 31.9, of the Government.

However, the following withdrawals are exempted from authorization:

- (1) a withdrawal with a maximum flow rate of less than 75,000 litres per day, unless
 - (a) it is intended to supply water to the number of persons the Government determines by regulation;
 - (b) the water is to be sold or distributed as spring water or mineral water or used as such in the manufacture, preservation or processing of products within the meaning of the Food Products Act (chapter P-29); or
 - (c) the water is withdrawn from the St. Lawrence River Basin to be transferred out of the Basin in accordance with subdivision 2;
- (2) a temporary, non-recurring withdrawal for emergency-response, humanitarian or civil protection purposes; and
- (3) any other withdrawal determined by regulation of the Government.

“31.76. The Minister’s power of authorization under this subdivision must be exercised so as to ensure the protection of water resources, particularly by fostering sustainable, equitable and efficient management of the resources in light of the precautionary principle and the effects of climate change.

In addition, every decision in the exercise of the Minister’s power of authorization must give priority to satisfying public health, sanitation, civil protection and drinking water supply needs. Every such decision must also aim to reconcile

- (1) the protection needs of aquatic ecosystems; and
- (2) the needs of agriculture, aquaculture, industry, energy production and other human activities, including recreation and tourism.

“31.77. When making a decision in the exercise of powers under this subdivision, the Minister shall take into account, in addition to specifically environmental impacts, the consequences of the withdrawal under consideration

- (1) for the water use rights of other persons or municipalities in the short, medium and long terms;
- (2) for the availability and distribution of water resources, with a view to satisfying or reconciling current and future needs of different water uses;
- (3) for the foreseeable development of rural and urban areas, particularly as regards the objectives of the land use planning and development plan of any regional county municipality or metropolitan community affected by the withdrawal, and for the balance that must be maintained between different water uses; and
- (4) for the economic development of a region or municipality.

The Minister shall also take into account any observations received from the public with respect to the water withdrawal under consideration.

“31.78. Sections 31.76 and 31.77, with the necessary modifications, apply to the Government when it exercises its power of authorization under sections 31.5 and 31.6 with respect to a water withdrawal that is subject to the environmental assessment procedure provided for in Division IV.1.

In addition, if it considers it necessary for greater protection of the environment, including aquatic ecosystems and wetlands, the Government may, when authorizing such a water withdrawal, prescribe requirements different from those prescribed by regulation of the Government.

A water withdrawal authorized by the Government is exempted from the authorization of the Minister required under section 31.75.

“31.79. When issuing, renewing or amending a water withdrawal authorization, the Minister may, after considering the elements listed in section 31.77, prescribe any condition, restriction or prohibition the Minister considers appropriate for the purposes mentioned in section 31.76. The condition, restriction or prohibition may be different from what is prescribed by regulation of the Government if the Minister considers it necessary for greater protection of the environment, including aquatic ecosystems and wetlands.

The Minister may also refuse to issue or renew an authorization, or, on the Minister's own initiative, modify the conditions to which it is subject, in order to serve the public interest.

However, the person concerned must be given prior notice of the Minister's intended decision under the first or second paragraph, including reasons, and an opportunity to present observations.

“31.80. A condition, restriction or prohibition imposed under section 31.79 may concern

(1) the withdrawal site and the quantity of water that may be withdrawn as well as the quantity and quality of the water that must be returned to the environment after use;

(2) the facilities, works or work related to the withdrawal;

(3) the use of the water withdrawn;

(4) measures to prevent, limit or remedy environmental damage;

(5) the control and monitoring of the effects of the withdrawal on the environment;

(6) measures to ensure the conservation and efficient use of the water withdrawn and to reduce the quantity of water consumed, lost or not returned to the environment after use, taking into account, among other things, the best economically feasible practices or economically available technologies and the particularities of the equipment, facilities and processes involved;

(7) measures to prevent, limit or remedy interference with the water use rights of other persons or municipalities; and

(8) the reports that must be made to the Minister setting out, among other things, the actual or potential impacts of the withdrawal or consumptive use of the water, and the results produced by the measures prescribed under paragraphs 6 and 7.

“31.81. The term of a water withdrawal authorization issued by the Minister is 10 years.

However, the Minister may issue or renew an authorization for a shorter or longer term to serve the public interest or in the cases prescribed by regulation of the Government. If the Minister decides on a term shorter than 10 years, the person concerned must be given prior notice of the Minister's intended decision, including reasons, and an opportunity to present observations.

This section does not apply to a water withdrawal authorization for the supply of drinking water to a waterworks system operated by a municipality.

“31.82. In addition to the information that must be sent to the Minister under a regulation of the Government, the Minister may require a person applying for the issue, renewal or amendment of a water withdrawal authorization to provide any additional study or expert evaluation the Minister considers necessary to make a decision.

“31.83. The holder of a water withdrawal authorization must inform the Minister as soon as possible of any change that affects the information or documents provided when the authorization was issued, renewed or amended, rendering them inaccurate or incomplete.

The holder must similarly inform the Minister of the permanent cessation of a water withdrawal, and comply with any measures the Minister imposes to prevent or remedy environmental damage or interference with the rights of other users. Such a cessation entails the authorization’s revocation by operation of law unless the Minister maintains the authorization in force at the holder’s request for the period and on the conditions the Minister determines.

“31.84. All water withdrawal authorizations are transferable. A transferee must, however, inform the Minister of the transfer within 30 days after it is made.

“31.85. If, based on new or additional information that becomes available after a water withdrawal authorization is issued under this Act or any other Act or following a reassessment of existing information on the basis of new or additional scientific knowledge, the Minister is of the opinion that the water withdrawal presents a serious risk for public health or aquatic ecosystems, the Minister may order the cessation or limitation of the water withdrawal, on the conditions specified, for a period of not over 30 days.

However, in the case of a water withdrawal authorized by the Minister, the order may also permanently modify the conditions to which the authorization is subject or direct that the withdrawal cease permanently.

The person concerned must be given prior notice of the Minister’s intended order, including reasons, and an opportunity to present observations. However, in urgent circumstances, the Minister is exempted from these prior obligations and the person concerned may, within the time specified, present observations for a review of the order.

The information on which the Minister’s order is based must be made available to the public.

An order issued under this section entails no compensation from the State and prevails over any inconsistent provision of an Act, by-law, regulation or order in council.

“31.86. On a recommendation of the Minister based on information described in the first paragraph of section 31.85, the Government may

(1) modify, for the period specified or permanently, the conditions under which a water withdrawal authorized under an Act or order is to be made; or

(2) direct that the withdrawal cease for the period specified or permanently.

An order of the Government under this section entails no compensation from the State.

“31.87. The facilities, works and work required for water withdrawals authorized by the Government or the Minister under this subdivision are exempted from the application of section 22.

“§2. — Special provisions applicable to water withdrawals from the St. Lawrence River Basin

“31.88. The purpose of this subdivision is to ensure the implementation in Québec of the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement (the “Agreement”) entered into on 13 December 2005 by Québec and Ontario and the U.S. states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin.

This subdivision and the regulations under it are to be construed in a manner consistent with the Agreement.

The text of the Agreement is to be published in the *Gazette officielle du Québec*.

“31.89. For the purposes of this subdivision,

“**consumptive use**” means that portion of water withdrawn or impounded from the St. Lawrence River Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into a product, or other processes;

“**St. Lawrence River Basin**” or “**Basin**” means the part of Québec in which all waters flow towards the St. Lawrence River upstream from Trois-Rivières, excluding the Saint-Maurice river watershed and the Bécancour river, and which is described on the map shown in Schedule 0.A and any other paper or electronic map the Minister may prepare to determine its boundaries more precisely.

Paper maps showing the boundaries of the Basin prepared by the Minister under this subdivision are to be published in the *Gazette officielle du Québec*. Electronic ones are to be made available to the public in the manner determined by the Minister.

“31.90. No water withdrawn from the St. Lawrence River Basin may be transferred out of the Basin, except as set out below and in section 31.91.

This prohibition does not apply to water withdrawals, from the outset made for purposes of transfer out of the Basin, that were authorized before *(insert the date of coming into force of this section)* or, if not authorized, were lawfully commenced before that date. Unless it is increased under the conditions defined by sections 31.91 to 31.93, the quantity of water derived from such a withdrawal must not, however, exceed the quantity authorized at that date or, if there is no authorization or the authorization does not determine a maximum quantity, the capacity of the withdrawal system at that date.

Nor does this prohibition apply to water withdrawn

(1) to be marketed for human consumption, if packaged within the Basin in containers of 20 litres or less;

(2) to be used within the Basin in the manufacture, preservation or processing of products;

(3) to supply vehicles, including vessels and aircraft, whether for the needs of persons or animals being transported or for ballast or other needs related to the operation of the vehicles; or

(4) for humanitarian, civil protection or emergency-response purposes provided the withdrawal is temporary and non-recurrent.

“31.91. In addition to the conditions prescribed by sections 31.92 and 31.93 and those the Government or the Minister may prescribe under other provisions of this Act, a transfer out of the St. Lawrence River Basin resulting from a new withdrawal from the Basin, or an increased transfer out of the Basin resulting from such a withdrawal or a withdrawal existing on *(insert the date of coming into force of section 31.90)*, may be authorized under the following conditions:

(1) all water transferred out of the Basin is intended to supply a waterworks system serving all or part of the population of a local municipality whose territory is either

(a) partly within the Basin; or

(b) both wholly outside the Basin and wholly within a regional county municipality whose territory is partly within the Basin; and

(2) all water transferred out of the Basin is to be returned to the Basin, with preference to the direct St. Lawrence River tributary stream watershed from which it was withdrawn, if applicable, less an allowance for consumptive use. No water from outside the Basin may be added to complete the quantity of water returned to the Basin unless

(a) it is part of a water supply or waste water treatment system that combines water from inside and outside the Basin;

(b) it is treated to meet applicable water quality or discharge standards and to prevent the introduction of invasive species into the Basin; and

(c) it maximizes the portion of water from within the Basin and minimizes the portion from outside the Basin.

For the purposes of this section, “new withdrawal” means any water withdrawal authorized after (*insert the date of coming into force of section 31.90*).

The Minister shall publish in the *Gazette officielle du Québec* a list of the local municipalities and regional county municipalities whose territory is partly within the Basin for the purposes of subparagraphs *a* and *b* of subparagraph 1 of the first paragraph.

“31.92. If it involves an average of 379,000 litres or more per day, or a lesser quantity determined by regulation of the Government, that is intended to supply a waterworks system serving a municipality described in subparagraph *a* of subparagraph 1 of the first paragraph of section 31.91, a transfer out of the St. Lawrence River Basin resulting from a new or increased water withdrawal described in that section may be authorized only if it meets the following conditions:

(1) the transfer cannot be reasonably avoided or diminished through the conservation and efficient use of existing water supplies;

(2) the quantity of water to be transferred is reasonable having regard to the water’s intended use;

(3) the transfer would result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources of the Basin; and

(4) the transfer is subject to water conservation measures determined by regulation of the Government, or by the Minister under other provisions of this Act.

If a transfer out of the Basin under the first paragraph would result in a consumptive use of an average of 19 million litres or more per day, it is also subject to review by the Great Lakes–St. Lawrence River Water Resources Regional Body established by the Agreement.

“31.93. A transfer out of the St. Lawrence River Basin resulting from a new or increased water withdrawal described in section 31.91 that is intended to supply a waterworks system serving a municipality described in subparagraph *b* of subparagraph 1 of the first paragraph of that section may be authorized only if it meets the conditions set out below and the conditions prescribed in subparagraphs 1 to 4 of the first paragraph of section 31.92:

(1) there is no water supply alternative within the watershed in which the local municipality concerned is situated that is reasonably accessible and able to satisfy its drinking water needs;

(2) the quantity of water transferred will not endanger the integrity of the Basin ecosystem; and

(3) the transfer was reviewed by the Great Lakes–St. Lawrence River Water Resources Regional Body.

“31.94. If, under section 31.92 or 31.93, an application for authorization is subject to review by the Great Lakes–St. Lawrence River Water Resources Regional Body, the Minister must, after so informing the applicant,

(1) notify the Regional Body and each of the parties to the Agreement;

(2) send the Regional Body the application record containing all the documents or information provided by the applicant as well as the Minister’s opinion on the compliance of the application with the conditions prescribed by sections 31.91 to 31.93 and those set out in the Agreement; and

(3) at the request of the Regional Body or one of the parties to the Agreement, provide any additional document or information the Regional Board or the party may consider necessary for review of the application for authorization.

The Minister must also inform the public that the application for authorization is subject to review by the Regional Body.

After reviewing the application for authorization as set out in the Agreement and its own rules of procedure, the Regional Body shall issue a declaration on the compliance of the application with the conditions set out in the Agreement. The declaration is sent to the Minister and made available to the public in the manner the Regional Body determines.

In making a decision with respect to the application for authorization, the Minister or the Government, as the case may be, shall take into account the Regional Body’s declaration.

“31.95. If it involves an average quantity or consumptive use of 379,000 litres or more per day or a quantity or consumptive use determined by regulation of the Government and is not for transfer out of the St. Lawrence River Basin, a new withdrawal from the Basin, an increase in a new withdrawal or an increase in a withdrawal existing on (*insert the date of coming into force of this section*) may be authorized only if it meets the conditions set out below and the conditions prescribed by the Government or the Minister under other provisions of this Act:

(1) all water withdrawn is to be returned to the Basin, with preference to the direct St. Lawrence River tributary stream watershed from which it was derived, if applicable, less an allowance for consumptive use;

(2) the quantity of water withdrawn or consumed would result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters of the Basin or on water-dependent natural resources in the Basin;

(3) the withdrawal or consumptive use is subject to water conservation measures determined by regulation of the Government, or by the Minister under other provisions of this Act; and

(4) the quantity of water withdrawn or consumed is reasonable having regard, among other things, to

(a) the water's intended use;

(b) the measures implemented for the conservation and efficient use of water, including water from existing water supplies;

(c) the balance between economic, social and environmental development;

(d) the foreseeable impacts on the environment and on other uses, and the measures for avoidance or mitigation of such impacts; and

(e) the supply potential of the water source and other interconnected water sources.

For the purposes of this section, "new withdrawal" means any water withdrawal authorized after (*insert the date of coming into force of this section*).

This section does not apply to water withdrawn for the purposes mentioned in subparagraphs 3 and 4 of the third paragraph of section 31.90.

"31.96. In order to determine whether an application for authorization for an increased water withdrawal from the St. Lawrence River Basin is subject to the requirements of section 31.92 or 31.95 in light of the quantity of water withdrawn or consumed that it involves, any quantity of water withdrawn or consumed under an authorization granted for the same withdrawal during the 10 years preceding the application must be included.

"31.97. If an application for authorization pertains to a water withdrawal described in section 31.95 that involves an average consumptive use of 19 million litres or more per day, the Minister must, after informing the applicant, give each party to the Agreement a notice of the application and an opportunity to present observations.

The Minister shall provide a response to each party to the Agreement that has presented observations.

“31.98. Even if an application for authorization that pertains to a water transfer out of the St. Lawrence River Basin described in section 31.91 or 31.92 or to a water withdrawal described in section 31.95 or 31.97 is not, under those sections, subject to review by the Great Lakes–St. Lawrence River Water Resources Regional Body, simple notice of the application may be given to the Regional Body by the Minister, or the application may be reviewed by the Regional Body if

- (1) the Minister considers it appropriate and so requests; or
- (2) a majority of the members of the Regional Body are of the opinion that such a review is warranted owing to the application’s significance for the parties to the Agreement or to its potentially precedent-setting nature.

Section 31.94 applies to such a review, which, however, is to be undertaken only after consulting the applicant.

“31.99. The Minister must notify to the Great Lakes–St. Lawrence River Water Resources Regional Body and to each of the parties to the Agreement, by registered or certified mail, every decision of the Minister or the Government with respect to an application for authorization that has been reviewed by the Regional Body.

The Minister must also notify to each of the parties to the Agreement every decision with respect to an application for authorization concerning a water transfer out of the Basin described in section 31.92 or a new or increased water withdrawal described in section 31.95.

“31.100. A party to the Agreement may, in accordance with article 33 of the Code of Civil Procedure (chapter C-25), contest a decision of the Government referred to in section 31.99 before the Superior Court for non-compliance with the Agreement, subject to the following provisions:

- (1) the proceeding must be brought before the court of the place where the person concerned is domiciled or the main offices of the municipality concerned are located, as the case may be, within 30 days of notification of the decision; and
- (2) the party bringing the proceeding is dispensed from giving security as required by article 65 of that Code.

A party to the Agreement may contest a decision of the Minister referred to in section 31.99 before the Administrative Tribunal of Québec for non-compliance with the Agreement, within 30 days after notification of the decision. Sections 98.1 to 100 apply, with the necessary modifications.

“31.101. The Minister may implement water conservation and efficiency programs that are based on the objectives set by the Great Lakes–St. Lawrence River Water Resources Regional Body in order to

- (1) improve the waters and water-dependent natural resources of the Great Lakes–St. Lawrence River Basin;
- (2) protect and restore the hydrologic and ecosystem integrity of that basin;
- (3) retain the quantity of surface water and groundwater;
- (4) ensure sustainable use of the waters; and
- (5) promote the efficient use of water.

The objects of these programs are to include

- (1) promoting the sustainable management of all withdrawals from the Basin, particularly new or increased withdrawals described in section 31.95 that involve an average quantity or consumptive use of 379,000 litres or more per day or a quantity or consumptive use determined by regulation of the Government;
- (2) ensuring the enforcement of sections 31.91 to 31.95, which set conditions applicable to water transfers out of the Basin and new or increased withdrawals from the Basin; and
- (3) making sure that measures prescribed or recommended for all Basin water users to ensure water conservation and efficiency are regularly reviewed and updated to adjust to the actual and potential impacts of the cumulative effects of past, present and reasonably foreseeable future withdrawals and consumptive uses and of climate change on the Basin ecosystem.

The Minister shall annually assess the results achieved under the programs implemented under this section. On *(insert the date occurring 12 months after the date of coming into force of this section)* and every five years after that, the Minister shall send the Regional Body a report describing the programs and their results.

“31.102. The Minister must conduct an assessment of the cumulative impacts of water withdrawals and consumptive uses in the St. Lawrence River Basin on the Basin ecosystem, particularly on the waters and water-dependent natural resources of the Basin, in accordance with the requirements of the Agreement. The assessment must be conducted in coordination with the assessments that the other parties to the Agreement are required to conduct within the Great Lakes–St. Lawrence River Basin.

The assessment must evaluate the application of the prevention principle and the precautionary principle as well as the effects of past and reasonably foreseeable future withdrawals and consumptive uses, the effects of climate change and any other factor that may significantly damage the Basin's aquatic ecosystems.

The assessment prescribed by this section must be done every five years. It must also be done each time the incremental losses to the Great Lakes–St. Lawrence River Basin reach an average of 190 million litres per day in excess of the quantity at the time of the last assessment, or each time one or more of the parties to the Agreement so request.

“31.103. The Minister shall make public each of the assessments conducted under sections 31.101 and 31.102 and invite members of the public to present observations in writing on what actions should be taken to maintain or reinforce water resource protection, management or restoration within the St. Lawrence River Basin, including observations on whether to review legislative, regulatory or other measures and the water conservation and efficiency programs established to implement the Agreement in Québec.

After considering observations received from members of the public, the Minister shall make public the actions that the Minister or the Government intends to take in response to the assessment.

“31.104. The Government may, by regulation, prescribe any measure it considers necessary for the carrying out of this subdivision and the Agreement.

In particular, the Government may make regulations

(1) defining terms contained in sections 31.88 to 31.103 that are not defined;

(2) prescribing the average quantities or consumptive uses per day in excess of which the conditions prescribed in sections 31.92 and 31.95 are applicable to water transfers out of the Basin or to new or increased withdrawals or consumptive uses within the Basin; and

(3) specifying the manner in which quantities of water are to be determined for the purposes of sections 31.92 to 31.97, particularly the manner of calculating average quantities of water transferred out of the Basin, withdrawn or consumed per day in a given period.

“§3. — Prohibition against water transfers out of Québec

“31.105. As of 21 October 1999, no water withdrawn in Québec may be transferred out of Québec.

However, subject to subdivision 2, this prohibition does not apply to water withdrawn

- (1) to serve in the production of hydroelectric power;
- (2) to be marketed for human consumption, if packaged in Québec in containers of 20 litres or less;
- (3) to supply drinking water to establishments, institutions or dwellings situated in a boundary area; or
- (4) to supply vehicles, including vessels and aircraft, whether for the needs of persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

“31.106. The Government may, for emergency-response or humanitarian reasons or any other reason considered to be in the public interest, lift the prohibition set out in section 31.105 and allow the transfer of water out of Québec, subject to section 31.107 and to subdivision 2 and the other provisions of this Act that set out conditions for the authorization of water withdrawals.

The prohibition may be lifted in relation to one specific case or several cases.

The Government’s decision must state why the prohibition is being lifted.

“31.107. The lifting of the prohibition set out in section 31.106 for any reason in the public interest is subject to public consultation, of which notice must be given by the Minister, particularly in the region concerned and in any appropriate manner, at least 30 days in advance.

The notice must contain a brief description of the planned water transfer out of Québec, the reason for it, the places where the public may consult or obtain information on the planned transfer, including its impact on the environment and on other users, and the particulars of the consultation as determined by the Minister.

“31.108. Not later than 31 December 2011 and every five years after that, the Minister must submit to the Government a report on the carrying out of this subdivision and the advisability of maintaining it in force or amending it.

The report is tabled in the National Assembly within 15 days after the report is submitted or, if the Assembly is not sitting, within 15 days of resumption.

“§4. — *Waterworks, sewers and water treatment*”.

20. Section 32 of the Act is amended by replacing “a water supply intake or” in the first paragraph by “install”.

21. The Act is amended by inserting the following before section 46:

“§5. — *Regulatory powers*”.

22. Section 46 of the Act is amended

(1) by replacing “regulate the tapping of groundwater according to” in paragraph *s* by “regulate withdrawals of surface water or groundwater, in particular on the basis of”;

(2) by replacing subparagraphs 1 and 2 of paragraph *s* by the following subparagraphs:

“(1) determine, for the purposes of paragraph 1 of section 31.75, the number of persons to whom water is supplied in excess of which the withdrawal for that purpose is subject to the authorization of the Minister despite the withdrawal’s maximum flow rate of less than 75,000 litres per day;

“(2) in the cases and under the conditions specified, exempt water withdrawals from the application of all or some of the provisions of subdivision 1 or the regulations under this paragraph;

“(2.1) in the cases and under the conditions specified, subject water withdrawals that are exempted from the authorization of the Minister to the issue of a permit by the municipality in which the withdrawal site is located;

“(2.2) prohibit, in all or part of Québec, water withdrawals intended to satisfy the water needs of one or more classes of use specified in the regulations and provide that such a prohibition has effect even with respect to applications for authorization made before the prohibition came into force and not yet decided by the Minister or the Government;

“(2.3) determine, for the purposes of subdivisions 1 and 2, the cases in and conditions under which two or more existing or planned water withdrawals are deemed to constitute a single withdrawal owing to the hydrologic interconnection of the waters concerned, the distance between the withdrawal sites or the intended use of the water;

“(2.4) prescribe standards respecting the quantity and quality of the surface water or groundwater that may be withdrawn or that must be returned to the environment after use and the conditions of such return, the use of the water withdrawn and the preservation of aquatic ecosystems and wetlands;

“(2.5) prescribe standards respecting the installation and maintenance of equipment or devices for determining the quantity and quality of the water withdrawn or returned to the environment;

“(2.6) determine the measures or plans that the holder of a water withdrawal authorization must implement to ensure the conservation and efficient use of the water withdrawn, and prescribe how such a holder must report to the Minister on the results obtained;

“(2.7) prescribe water allocation rules that reconcile the needs or interests of the various classes of users;”;

(3) by replacing “water collection” in subparagraphs 3 and 3.1 of paragraph *s* by “water withdrawal”;

(4) by replacing subparagraph 4 of paragraph *s* by the following subparagraph:

“(4) prescribe what documents and information a person making or planning to make a water withdrawal must send the Minister, including studies or reports on the actual or potential individual or cumulative impacts of the withdrawal or planned withdrawal on the environment, other users and public health, and how they are to be sent, and determine what documents or information is public and must be made available to the public;”.

23. Section 96 of the Act is amended by adding the following paragraphs at the end:

“Any condition, restriction or prohibition imposed by the Minister under section 31.79, 31.80 or 31.81 when issuing, renewing or amending a water withdrawal authorization may also be contested by the municipality or person concerned before the Tribunal.

However, when assessing the facts or the law, the Tribunal may not substitute its assessment of the public interest for that made by the Minister in making a decision under section 31.79 or 31.81.”

24. Section 106 of the Act is amended by inserting “31.84,” before “68,” in the first paragraph.

25. Section 106.1 of the Act is amended by adding the following subparagraphs at the end of the second paragraph:

“(f) makes a water withdrawal without the authorization of the Government or the Minister, as the case may be, in contravention of Division IV.1 or section 31.75; or

“(g) contravenes the prohibition against water transfers prescribed by section 31.90 or 31.105.”

26. The Act is amended by inserting the following section after section 112:

“112.0.1. Penal proceedings for the contravention of a provision of a regulation made under this Act that is enforceable by a municipality may be brought by the municipality if the offence is committed in its territory. Such proceedings are brought before the competent municipal court, if any.

Any fine imposed as a result of the proceedings belongs to the municipality.

The costs awarded in relation to proceedings instituted before a municipal court belong to the municipality under the jurisdiction of that court, except the part of the costs remitted to another prosecuting party by the collector under article 345.2 of the Code of Penal Procedure (chapter C-25.1) and the costs paid to the defendant or imposed on the prosecuting municipality under article 223 of that Code.”

27. Section 117 of the Act is amended by inserting the following paragraph after the first paragraph:

“A person who considers that his right to access to water that is safe for drinking, cooking and personal hygiene is compromised by a water withdrawal may also request the Minister to make an inquiry.”

28. Section 118.3.2 of the Act is amended by inserting “31.85,” after “31.49,” in paragraph 1.

29. Section 118.5 of the Act is amended

(1) by inserting “31.75,” after “31.6,” in subparagraph *a* of the first paragraph;

(2) by inserting the following subparagraph after subparagraph *n* of the first paragraph:

“(n.1) all studies or expert evaluations and all reports required under this Act or the regulations for the purpose of determining the impact of a withdrawal or planned withdrawal of water on the environment, other users or public health;”.

30. The Act is amended by inserting Schedule 0.A, appearing at the end of this Act, before Schedule A.

ACT RESPECTING ADMINISTRATIVE JUSTICE

31. Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by replacing “section 96” in paragraph 3 by “sections 31.100 and 96”.

DIVISION VII

REPEALING PROVISION

32. The Water Resources Preservation Act (R.S.Q., chapter P-18.1) is repealed.

DIVISION VIII

TRANSITIONAL PROVISIONS

33. Water withdrawal authorizations issued by the Minister of Sustainable Development, Environment and Parks before (*insert the date of coming into force of this section*) under section 32 of the Environment Quality Act (R.S.Q., chapter Q-2) or any other provision of that Act or the regulations are, as of that date, deemed to have been issued under new section 31.75 of that Act.

Consequently, unless they specify a shorter term and subject to the last paragraph of section 31.81 of that Act and to any regulation of the Government providing for a longer term, such authorizations are valid for 10 years as of the date mentioned above and are renewable.

The second paragraph is also applicable, with the necessary modifications, to water withdrawal authorizations issued by the Government before (*insert the date of coming into force of this section*) under section 31.5 or 31.6 of that Act.

34. Water withdrawals that are being lawfully made on (*insert the date of coming into force of this section*) and for which no authorization has been issued under the Environment Quality Act may continue under the same conditions for 10 years following that date, or for a longer period corresponding to the term set by regulation of the Government for authorizations to which such water withdrawals would be subject under the new provisions of that Act. On the expiry of that period, however, continuation of the withdrawals is subject to an authorization issued in accordance with those new provisions.

However, water withdrawals being made by a municipality on (*insert the date of coming into force of this section*) to supply a waterworks system operated by the municipality may continue after the expiry of the period mentioned in the first paragraph without the authorization of the Minister.

Water withdrawals referred to in the first or second paragraph may not be increased without an authorization issued in accordance with the new provisions mentioned above.

35. A regulation of the Government is to be made not later than (*insert the date occurring five years after the date of coming into force of this section*) to set the time limits, prior to the expiry of the period mentioned in section 33 or 34, within which persons who are making water withdrawals covered by either of those sections are required to apply to the Minister for an authorization or an authorization renewal for those withdrawals. The time limits may vary according to such factors as the quantity of water withdrawn and the intended use of the water.

Section 109.1 of the Environment Quality Act, with the necessary modifications, applies for the purpose of determining the applicable penalties in the case of the contravention of a provision of a regulation made under this section.

36. The contravention of section 34 makes the offender liable to the penalties prescribed by section 106.1 of the Environment Quality Act.

37. The first paragraph of section 109.1.1 and sections 109.1.2, 109.2, 110, 110.1, 112, 114 and 115 of the Environment Quality Act, with the necessary modifications, apply to a contravention of section 34 or a regulation made under section 35.

38. The application of sections 33 and 34 entails no compensation from the State even if it shortens the period during which the water withdrawals concerned may continue.

DIVISION IX

FINAL PROVISIONS

39. This Act applies to the Government, government departments, and bodies that are mandataries of the State.

40. The Minister of Sustainable Development, Environment and Parks is responsible for the administration of this Act.

41. The provisions of this Act come into force on the date or dates to be set by the Government, except paragraph 1 of section 22, subparagraph 2.5 of paragraph *s* of section 46 of the Environment Quality Act, enacted by paragraph 2 of section 22, and paragraph 4 of section 22, which come into force on 12 June 2009.

MAP SHOWING THE PART OF QUÉBEC COMPRISED WITHIN THE ST. LAWRENCE RIVER BASIN AND COVERED BY THE GREAT LAKES — ST. LAWRENCE RIVER BASIN SUSTAINABLE WATER RESOURCES AGREEMENT





