



Coalition for  
Equitable  
Water Flow

June 19, 2008

Matthew Henley  
Legislative Assistant  
Office of Barry Devolin, MP  
Haliburton – Kawartha Lakes – Brock

Matthew:

Further to your e-mail correspondence of June 6<sup>th</sup> the Coalition for Equitable Water Flow would appreciate it if you can provide the attached views to each member of the committee studying the Navigable Waters Protection Act as well as to the Minister of Transportation.

Sincerely,

Bonnie Fleischaker, Chair

**Comments from the Coalition for Equitable Water Flow  
To the Standing Committee on Transport, Infrastructure and Communities  
Regarding proposed revisions to the Navigable Waters Protection Act.**

---

The Coalition for Equitable Water Flow TSW (CEWF) was formed in August 2006 to represent the interest and concern of residential shoreline property owners on the Reservoir and Flow-Through (RAFT) lakes within the Haliburton sector of the Trent Watershed.

The CEWF has the participation of 39 of the 41 reservoir lakes and 11 of the 20 flow-through lakes in the region, representing approximately 40,000 Ontario taxpayers.

In 2007 we participated in the panel-led process reviewing the future of the Trent-Severn Waterway (TSW) and were heartened that the Panel's Report "It's All About the Water" recognized the need for the management of water at the watershed level. In particular we support the recommendation to create a Trent-Severn Heritage Region and an Independent Water Management Agency.

In our submission to the Panel we made reference to the importance of navigation as a fundamental Canadian right. We therefore urge the committee to ensure that your actions do nothing to diminish the common law right of navigation, our Canadian heritage, or protection of the environment. Here's what we said:

*All waterfront residents throughout the Trent-Severn watersheds, including those on the RAFT lakes depend on their rights to navigate the waterways adjacent to their homes, and exercise their riparian rights to the flow of the river in many cases. It is the ability to exercise navigational and riparian rights that led current owners to purchase properties in these lakes in the first place, and which in turn fuels local businesses and economies.*

*The public right to navigate in the RAFT lakes is impeded, however, by the current water management regime in the TSW which does not adequately balance navigational rights in the TSW itself with those exercised in the RAFT lakes. This inadequate and un-integrated water management is leading to escalating problems in the RAFT lakes, including navigational hazards, property damage and the decreased ability of riparian owners to use the flow of the water for domestic purposes.*

*There is one paramount concern, however, which is legally unambiguous even without clarification by the courts or legislature; namely, the public right of navigation which is an ancient and fundamental element of the common law, and takes precedence over other public and private rights (including power generation and water taking for industrial purposes). It prevents anyone including the Crown, from making use of a river or waterway in a manner that interferes with navigation.*

Recently we have been given to understand that the proposed revisions to the Navigable Waters protection Act will in fact mean that any and all of our waterways are unprotected from commercial development unless they are specifically nominated for protection. This is the very opposite of the current situation.

We further understand that the definition of navigable water is to be restricted to waterways capable of handling vessels having a minimum draft of one metre. This in a country whose heritage of exploration and development was dependent on the canoe! Even today, the draft of typical power-vessels used by waterfront residents is less than a third of the proposed minimum for a navigable waterway and the proposed changes to the Act will potentially disenfranchise a significant proportion of waterfront property owners who are deemed to make use of 'minor waters'.

In addition we are concerned that the proposed changes would reduce the need for environmental impact assessments in a variety of circumstances, including 'minor' waterways that are deemed suitable only for small vessel travel and projects involving dams, bridges and causeways.

Thus it appears that some of the 'most at-risk' areas of our watershed environment, especially headwater and flow-through rivers and lakes, will be exempt from an important level of environmental protection.

In conclusion the CEWF believes that to diminish the common law right of public navigation is to diminish our Canadian heritage. Similarly, it is important to consider impacts on navigation as part of a robust environmental assessment process for development taking place on or adjacent to ALL waterways both major and 'minor'. Our view is that the Navigable Waters Protection Act needs to be strengthened not weakened: yet it would appear that the proposed changes amount to removing the word 'Protection' from the Act.

One last point, from our perspective the consultations on the proposed changes appear to have been hasty and incomplete. A more fulsome public consultation is called for.