

MEMORANDUM

Eels Lake is one of the largest reservoir lakes in the Trent-Waterway System (the “TSWS”), and is also a Lake Trout Lake. We experience a vertical water drop of some 8.5 ft. from May 24 through to Thanksgiving. Historically prior to 2006, water levels remained high and stable during the summer vacation period of July – August with nominal 1 – 2 log drawn downs prior to July 1st, plus accelerated reductions of 2 – 3 logs after the Labour Day Weekend.

1. Who are we?

- Eels Lake encompasses some 400 seasonal and residential properties plus 2 commercial operators. This committee was created by the ELCA and includes two full time residential property owners plus three seasonal cottagers. This group of five has approximately 200 accumulative years of family history on Eels Lake and therefore we are committed to this cause.
- Eels Lake has two dams which are referred to as the East Dam and the West (control) Dam. The West control dam has 12 stop logs, each being approximately one foot high. Since the 1960’s, only the top eight stop-logs have been used to control Eels Lake water levels. Typically, when the lake is at a high water mark in the spring, these eight logs are in the dam. The eight logs are removed between July and October to lower the lake eight feet where it is kept for the winter. These eight logs are replaced in late winter to capture the spring runoff and to raise the lake to its normal high water level.

2. Why are we here?

- It is all about the water, its preservation, quality, storage and protection.

3. The role of the reservoir lakes

- All stakeholders, including reservoir lakes which directly support and serve the TSWS should be treated as equal partners with other commercial and residential users of the system, which is not considered, currently, by Parks Canada to fall within its operating mandate notwithstanding its own stated policy guidelines dealing with its responsibilities in the operation of the TSWS (see 7 below).
- Safe navigation and public safety, often quoted by Parks Canada employees in response to reservoir lake stakeholders as being of paramount concern in operating the canal lock system, are as equally important to seasonal and permanent residents of the 44 reservoir lakes serving the TSWS just as they are to our neighbours on Stoney Lake, Clear Lake and other lakes in the lower portion of the Trent-Severn Watershed.

Unsafe Conditions on Eels Lake

Fall 2006

- As described in the Ecoplans Study on the Past, Present and Future of the TSW (the “**Ecoplans Report**”), during the, fall 2006, dam repairs were carried out on Eels Lake without prior communication to Eels Lake stakeholders. It states that the water manager indicated that he was able to maintain water levels to those experienced in 2001 until late November. This is a complete fabrication and in no way correct as can be confirmed by my fellow committee members or any of the other Eels Lake residential property owners. Lake levels were drawn down so early and to such an extent that weed growth and excessive vegetation not seen before on Eels Lake surfaced during the summer, resulting in the closing of the cottage season 45 days earlier than normal because of navigation issues, adversely affecting commercial operators and cottagers alike. According to the Ecoplans Report, the attitude of Parks Canada staff communicated to Eels Lake stakeholders was that the TSW could take, whenever it wished and without notice to

those persons and business operators affected, water drawdown from Eels Lake at any time to maintain the lower portion of the Kawarthas for navigation.

The West Dam Repair activity in our view significantly and adversely affected the Lake Trout Spawn in 2006. This did not appear in the Ecoplans Report and occurred when the temporary cofferdam broke three separate times after Thanksgiving. This was during the Lake Trout spawn and unfortunately exposed the eggs/fry as a result of the water level drop. The Panel therefore should examine or request that Parks Canada review the operational and management procedures in place for the TSWS relative to the Fisheries Act to ensure it strictly observes and respects said Act. Whatever programs are in place, they certainly do not appear to be effective if they do exist. Also as Lake Trout are an endangered species, it is also protected under the Canadian Species At Risk legislation, and management policies again need to be reviewed to ensure that the TSWS respects said legislation.

Operational and management breaches of these two significant pieces of legislation do carry monetary and legal consequences, and Parks Canada and/or the TSW are not immune.

Spring 2007

- A. In the Fall, 2006, during repairs to the westerly dam at Eels Lake, eight logs were removed from the east dam by temporary employees of Parks Canada from Correctional Services. Unfortunately, these inexperienced individuals and the employee of Parks Canada supervising them forgot to replace the logs following repairs to the west dam. Logs were removed from the east dam to divert runoff to the east dam during the repairs to the west dam. The result, similar but even worse than 2006, was an initial and significant drawdown of water levels such that the high water mark in May which would normally apply on Eels Lake was never reached. A permanent resident of Eels Lake contacted the Parks Canada representative responsible for the work who categorically and incorrectly stated that the logs had been replaced in the easterly dam. As the resident of Eels Lake resides within the vicinity of both dams, he reported his physical observations again to Parks Canada, and the representative reluctantly backed down from his stated position and subsequently arranged to install some of the logs that had been removed.

Accordingly, water was squandered at the control dam because the logs had been removed from the easterly dam and not replaced. On June 20, 2007, the lake level was approximately 20 inches lower than the normal high water level. On June 21st, the TSW removed 3 stop logs. The remaining 5 stop logs were removed on August 14th. The TSWS replaced 2 stop logs on August 24th. By August 24th, the lake level had dropped at least five and one half feet below the normal high water mark in the Spring.

- B. Further repairs were scheduled by Parks Canada with its contractor to repair the second (easterly) dam at Eels Lake. As shown on the photographs (in our power point presentation), substantial water is sifting through this dam at an alarming and significant water runoff rate. The east dam is liable to break open at any time causing considerable damage to seasonal and permanent residents of Eels Lake, Eels Creek and the Town of Apsley. The Eels Lake Marina was asked to have its barge available in the Fall on a specified day to allow the contractor to access the easterly dam. Without notice or explanation, the contractor advised the Marina that the work had been cancelled by Parks Canada, and that there was no indication as to whether and when the work would be rescheduled.

Summer 2007

- C. In addition to the careless release of water stored in Eels Lake in the Spring, 2007, described in A. above, which action has clearly impacted adversely upon the quality of the lake*, including excessive weed growth and a detrimental impact upon fishing stock, Parks Canada, without warning or notice to stakeholders,

including the two commercial operators on Eels Lake upon whom over 100 cottagers rely for safe passage to their water access cottages, removed five logs from the dam on or about August 14, 2007, suddenly dropping the lake level approximately two and one-half feet for a total aggregate drop of five and one-half feet from the normal high water mark (not achieved in both Spring 2006 and 2007) causing resulting damage to docks, boats and water systems on Eels Lake. Normally, only one log is removed at a time. Within ten days, as noted above, the water level had dropped two and a half feet. During the third week in August, our association received numerous reports of water pump burnouts plus damages to boats, motors and docks as a result of the rapid water level drop. Also, a report was received from the owner/operator of the Marvel Rapids Golf Course south and east of Eels Lake of the water overflowing Eels Creek into the golf course lands, and we also received a report from a permanent resident on Eels Creek near Highway 28 that their property had been flooded. Ten days after removing the 5 logs, Parks Canada replaced two logs without notice or explanation of any kind; however, the damage had been done. Flooding of this magnitude has not occurred before, in our view, within the past sixty plus years, even during the early spring overflow period.

* See photographs shown as part of our power point presentation.

- These careless and, as described in A. above, gross negligent acts, coupled with an inappropriate (‘don’t bother us, you have no status’) attitude expressed consistently by representatives of Parks Canada in 2006 and again in 2007, have impacted adversely upon the ecological quality of our lake, including excessive weed growth, initial and current significant drops in the water level impacting adversely upon fish stock, and the removal of navigable, safe passage to over 100 water access cottages and by other boat operators. Water levels on Eels Lake in mid-August (as shown in the photographs accompanying our power point presentation) are at Thanksgiving weekend levels, i.e., at least 2 feet below normal.
- The Homestead is a camp ground/grocery store/boat launch commercial operation located at the north end of Eels Lake, and Eels Lake Marina is located at the mid-point of the lake. If The Homestead and/or Eels Lake Marina are no longer able to operate economically because of the unilaterally and poorly implemented decisions of Parks Canada staff during the past two years, then over 100 cottagers on Eels Lake will have no means of obtaining navigable and safer access by boat to reach their cottages (which are not served by road access).

4. *The Environmental Bill of Rights, 1993*

- In addition to the statutes described in the Ecoplans Report, we draw to your attention the Environmental Bill of Rights, 1993, Section 120 of which states that “this Act binds the Crown”, i.e., Parks Canada.
- Subsection 119(2) states, that notwithstanding reservations contained in the *Proceedings Against the Crown Act*, *the Environmental Bill of Rights does not relieve the Crown of liability in respect of a tort (wrong doing, including negligent acts) committed by any agent or servant of the Crown...and the Crown is liable... for any such tort notwithstanding the former Act.*
- Section 103 – “*No person who has suffered or who may suffer a direct economic loss or direct personal injury as a result of a public nuisance that has caused harm to the environment shall be barred from bringing an action without the consent of the Attorney General in respect of the loss of injury only because the person has suffered or may suffer direct economic loss or direct personal injury of the same kind or to the same degree as other persons.*”
- Water is a precious natural resource. It should not be squandered by anyone. Parks Canada is the custodian and steward of the Trent-Severn Waterway System. Its conduct and actions during the past two years have damaged the ecology and environment of Eels Lake. Parks Canada is simply wrong in stating or believing that its operation of the

TSWS in a manner that has adversely affected the quality of our lake is not reviewable by anyone.

5. Why do we have an Environmental Bill of Rights Act?

The purpose of this legislation stated therein, is as follows:

- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.

While the government, i.e., in this context Parks Canada, has the primary responsibility for achieving this goal in the operation of the TSWS, “the people (affected) should have means to ensure that it is achieved in an effective, timely, open and fair manner.”

- The people of Ontario (included stakeholders in the TSWS) recognize the inherent value of the natural environment and have a right to a healthy environment. The definition of “environment” includes “water”.
- Public agencies, including Parks Canada, who mismanage the water management system, including the squandering of water by their careless acts without notice to stakeholders in the TSWS can and will be made to account for their actions, including damaged property and (potential) personal injury, if necessary, by legal proceedings for negligence and breach of their statutory duties in respect of which Parks Canada is not immune, contrary to the current assumptions expressed by Parks Canada representatives, including the TSW water control manager for our section of the watershed. The Species At Risk Legislation and Fisheries Act are also possible avenues of recourse for this negligence, if required.
- In 1995, the Federal Cabinet produced a directive whereby Strategic Environmental Assessments were to be conducted by all departments for planned programs and policies. This document needs to be reviewed by Sr. Parks Canada Management and by the panel in light of the raised concerns of not only our committee but also of all the other presenters to ensure that this document is in place, is adequate, and is being followed by the TSW. From this vantage, it does not appear that the environment is of concern to the TSW administrative authorities, as detailed above.

6. Solutions

- We endorse and support the submissions of the CEWF of which the Eels Lake Cottagers Association is a member, including the concept of a ‘TSW Control Board’, i.e., putting into place checks and balances in place with input and feedback from stakeholders on the Board so as to be involved with one another in understanding the needs of other stakeholders as well as assisting Parks Canada in carrying out its started policy guidelines.
- We support John Doomernik’s presentation this afternoon and, in particular, his suggestion that there be a moratorium on the expansion of water use in the TSWS until an environmental study has been conducted, including a moratorium on increasing the number of dams to support hydro electric power generation. Currently, no one knows how much water is being used, how much is needed to support industrial, commercial, governmental, seasonal and permanent residential usage. Without this knowledge, how can anyone propose that we take more water out of the system which translates into significant drawdown of water from the reservoir lakes?
- As set forth in the Ecoplans Report, with respect to water flow/level decision making, the decision-maker should be in touch with all of the client groups, i.e., the stakeholders, and have a mechanism for receiving comments from stakeholders in factoring these into decisions within a clear and publicly articulated (and followed) policy framework. Currently, stakeholders in the lower watershed, where the fluctuation of water level is approximately six inches during the season, may assume, incorrectly, that there is no end to the availability of water from the reservoir lakes, not realizing the impact upon their neighbours.

- Water flow/level decision making by the TSW must be responsible, flexible, adaptive and accountable. Stakeholders are not adversaries with one another and they need not be adversaries with the TSW, i.e., they are partners in providing the requisite information and feedback on and prior to making water flow/level decision making.
- A control board would assist stakeholders throughout the TSWS to balance what may be perceived, at first blush, to be conflicting interests. Enhanced attention and beneficial results through communication on the control board to common ecological issues, including preservation of fish stock, weed control and water quality, as well as navigational, safe access through the canal system and to water access properties throughout the TSWS, (including the reservoir lakes), should result from stakeholder participation on the board, leading to better and more consistent water management decisions being made by employees of Park Canada that are critical to the future success of the TSW.
- We understand, in an average size lock within the TSW canal system, that approximately 1.4 million litres of water flow through the system each time the water level is dropped in the lock to facilitate boat traffic. Recognizing the significant number of locks and changeovers during the boating season, if this water volume were diverted and contained in a reservoir tank system on site to be maintained by the canal lock master (with a view to better maintaining water levels throughout the TSWS), higher water levels could be preserved on a more consistent basis and to much later date in the boating season.
- We also support the suggestion of other stakeholders who have questioned whether there would be any significant, adverse impact upon boat owners/operators within the canal system if the draft was reduced below the current six foot level by one to one and a half feet. A nominal percentage of boat users, i.e., a very few keel boats, would be adversely affected by a one foot drop from the current six foot level of draft in comparison to the significant benefit in the maintenance of reasonably predictable water levels in all lakes within the TSWS.
- It may be appropriate to consider whether the TSW should consider shutting down the waterway canal system somewhat earlier, i.e., perhaps a week earlier, due to lower water levels in the system, including extreme drought conditions this past boating season.
- According to Bill Sproat, a member of our committee and a permanent resident of Eels Lake residing close to the east/ west dams on Eels Lake, the TSW staff only starts to put the logs back in for spring run-off at the beginning of March. There is no apparent reason why the logs cannot be put back in the first week in February to better capture spring runoff, especially where rain is not prevalent to refill Eels Lake in late March, April and May.

7. It's time for a change in attitude

- The current attitude of Parks Canada employees in communicated responses to members of our association, including the commercial operators serving cottagers and permanent homes on Eels Lake, must be changed in order to conform, both legally and practically, with the stated policy objectives of Parks Canada in 2000, which include protecting public safety throughout the watershed, maintaining the integrity of the TSW, including maintaining and repairing, without delay, water management structures in conjunction with consistent and predictable management of water levels within the TSWS as a whole. During the past two years, as described earlier in this submission, this has not been happening on Eels Lake and, we suspect, on other reservoir lakes within the TSWS.
- The TSW flow control engineer for our area advised George Clark, President of the ECLA, that there is no obligation upon the TSW to advise shoreline cottagers on “feeder” lakes when water is being lowered for TSW purposes. The engineer further stated to Mr. Clark that the TSW will take water from the reservoir lakes whenever they need it, and the TSW will take more than 8 logs out if they feel it is needed, and they will remove logs from the second control dam to increase water flow whenever they choose to do so.

- During 30 of the past 32 years that my wife and I have been cottagers on Eels Lake, Parks Canada has conducted, on Eels Lake, a successful and predictable water management program. However, since the retirement of Bruce Kitchen, the previous water control manager for our area, significant damage has occurred to the ecology and quality of Eels Lake as an organism and as a significant contributor, in terms of water flow, to other lakes within the TSWS.
- Effective water management control by Parks Canada involves both ‘art and science’ in addition to effective (prior) communication of significant water management decisions to all stakeholders. Stakeholder feedback can be both positive and helpful to Parks Canada.

8. Federal funding – first, fix it, then promote it

- Before you improve it, including spending money on advertising the TSWS, fix it. As you might suspect, what we mean by “fix it” is not limited to long overdue repairs to the water management infrastructure throughout the TSWS. The term “fix it” also applies to the training of Parks Canada employees so that they understand, more fully, their legal responsibilities to the people of Ontario and also the consequences of their current narrowly focused mandate which does anything but balance conflicting interests and exacerbates public safety and the navigable use of lakes within the TSWS.

Closing Remarks