PRELIMINARY COMMENTS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION REGARDING ONTARIO'S

WHITE PAPER ON WATERSHED-BASED SOURCE PROTECTION PLANNING

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Introduction

- CELA has worked on water protection issues since its inception in 1970. Among other things, CELA represented the Concerned Walkerton Citizens at Parts I and II of the Walkerton Inquiry. CELA also served on the Source Protection Advisory Committee that prepared the *Final Report – Protecting Ontario's Drinking Water: Toward a Watershed-Based Source Protection Planning Framework* (April 2003);

- at the present time, CELA is a member of the province's Implementation Committee for Watershed-Based Source Protection, the Nutrient Management Advisory Committee, and the Advisory Committee to the Great Lakes Water Management Initiative. Many of CELA's water-related reports, briefs and factsheets are available at www.cela.ca;

- Ontario's source water protection legislation must entrench a planning process that is open, accessible, traceable and accountable. Among other things, this means that the legislative framework must clearly define roles/responsibilities, specify timeframes/deadlines, and establish provincial standards/requirements to direct the planning process. All essential aspects of the planning process should be reflected in legislation, with further details to be prescribed by implementing regulations, policies and guidelines;

- CELA generally supports the planning process described in the *White Paper on Watershed-based Source Protection Planning* (MOE, February 2004), but submits that the process requires certain revisions in order to become more effective, efficient, and equitable, as described below. CELA further notes that the *White Paper* contains less prescriptive detail than the 2003 Report of the Source Protection Advisory Committee. Therefore, to the extent that the *White Paper* recommendations are vague, ambiguous or ill-defined, CELA prefers and adopts the relevant recommendations of the 2003 Report of the Source Protection Advisory Committee;

- these are CELA's preliminary comments on the *White Paper*, which have been organized under the following headings:

    1. Guiding Principles
    2. Composition/Mandate of Planning Bodies
    3. Public/Agency Consultation
    4. Plan Development/Content
    5. Ministerial Approval of Plans
    6. Appeals
    7. Water Taking Permits
    8. Financing Source Protection Planning
    9. Outstanding Issues

10. Conclusions

1. Guiding Principles

- the source water protection legislation should state that its overall purposes are to:

  (a) promote human health by protecting the quality and quantity of current and future sources of drinking water;
  (b) facilitate ecosystem-based watershed management and ensure sustainable water uses; and
  (c) integrate source water protection plans with other environmental and land use decision-making processes;

- the legislation should further provide that these general purposes includes the following objectives:

  (a) undertaking an ecosystem approach to identify and protect sources of drinking water against degradation or depletion;
  (b) conserving and restoring natural resources and ecological processes that are directly or indirectly related to drinking water quality and quantity;
  (c) identifying and mitigating threats to drinking water sources, and ensuring that where there are serious threats to drinking water sources, lack of full scientific certainty shall not be used as a reason for avoiding or postponing mitigation measures;
  (d) reducing, preventing or eliminating the discharge of contaminants into the environment that may pose a drinking water health hazard; and
  (e) ensuring meaningful public participation in the development and implementation of source water protection plans;

- the legislation must bind the Crown, and must include a paramountcy clause indicating that despite any other general or special Act, the source water protection legislation shall prevail in cases of conflict. However, rather than simply relying upon a paramountcy clause to resolve conflicts on a case-by-case basis, the Ontario government should systematically review, and where necessary revise, its other environmental and land use planning statutes to ensure consistency with the source water protection regime;

- the legislation should include a mandatory provision for a formal/public review of the legislation by a special or general committee of the Ontario Legislature. This review should be commenced no later than three years after the legislation comes into force. The purpose of the review is to examine the strengths/weaknesses of the legislation after three years' worth of experience, and to identify opportunities to strengthen or improve the Act. Among other things, the legislative review should consider annual reports by the Environmental Commissioner of Ontario regarding the status and implementation of source water protection plans. In this regard, Part III of the *Environmental Bill of Rights* should be amended to expressly direct the Environmental Commissioner to monitor, review and report annually upon the status and implementation of source water protection plans;

2. Composition/Mandate of Planning Bodies

Conservation Authorities

- CELA supports the use of Conservation Authorities ("CA's") as the lead agencies that are primarily responsible for drafting source water protection plans. However, the *Conservation Authorities Act* should be formally reviewed and revised to ensure that CA's have express legal authority and appropriate provincial direction/madate for drafting and implementing source water protection plans within their respective jurisdictions;

- the source water protection legislation should designate existing CA's as being responsible for the development and implementation of source water protection plans in accordance with the Act. In areas where no CA's exist (i.e. Crown land), the Minister of the Environment should be empowered to designate other ministries, municipalities, agencies or entities as being responsible for developing and implementing source water protection plans;

- the Minister should be empowered to delineate, amend or merge CA boundaries (or to enter into administrative agreements with one or more CA's) to ensure that source protection planning is carried out or coordinated on an appropriate watershed basis, and to facilitate the pooling of expertise, resources, and information between CA's;

- the legislation must impose a mandatory duty upon the Minister to provide funding to CA's (or other designated entities) at a level that is sufficient to enable these bodies to complete their first source water protection plans;

Source Protection Planning Board

- once the appropriate CA is designated under the legislation, the CA must be required by law to formally establish its Source Protection Planning Board (SPPB) within a prescribed timeframe. In the normal course, the SPPB would be the CA's board of directors, and the legislation should make it mandatory for all municipalities to be represented on the CA board of directors;

- the functions and duties of the SPPB should be specified in the legislation, and should include the following matters:

  (a) reviewing and approving the work of the Source Protection Planning Committee (SPPC);
  (b) ensuring compliance with statutory and regulatory requirements regarding drinking water source protection;
  (c) submitting the source protection plan to the Minister for approval;
  (d) implementing approved plans in conjunction with other public officials;
  (e) monitoring, reporting and updating the plan; and
  (f) undertaking public education and outreach programs regarding source protection;

Source Protection Planning Committee

- the CA should be required by law to establish the SPPC within a prescribed timeframe. The legislation should specify that the SPPC shall not exceed 18 persons, and shall, at a minimum, include fair and balanced representation from public health agencies, conservation groups, First Nations, federal/provincial/municipal officials, the public at large, and other interested stakeholders. The chair of the SPPC shall be appointed by the Minister upon the recommendation of the CA;

- the SPPC must be adequately resourced and have access to scientific/technical expertise in order to properly review/consider the detailed reports, records and other information being generated within the planning process;

- the actual size of the SPPC is secondary to the overall objective of ensuring that public input is received and acted upon in a manner that is satisfactory to all participants. The SPPC process must be manageable and result in timely decision-making. To facilitate public input, it may be desirable to empower the SPPC to establish "break out" processes (or sub-committees) that report back to the SPPC on defined issues;

- the selection process for SPPC members must be open and transparent. One option is for the SPPB to identify sectors within the watershed that require representation, and to seek public feedback on the identified sectors. Thereafter, the SPPB could ask each sector to select its own representative, but with an agreed upon process that allows for additional nominations before the sector picks its representative;

- alternatively, the SPPB could invite applications from interested sectors/stakeholders. Applications could be reviewed by a selection committee of community leaders who will not be sitting on the SPPC. Applicants should identify the sector they wish to represent, and applications will be considered on the basis of criteria adopted by the SPPB at the outset of the selection process;

- the legislation shall specify the SPPC's functions and duties, which should include the following matters:

  (a) preparing terms of reference for the drinking water source protection plan;
  (b) coordinating the collection and analysis of technical data and mapping information;
  (c) establish task-oriented sub-committees or working groups as may be required;
  (d) ensuring ongoing consultation with the public and interested agencies; and
  (e) preparing the draft plan with full public input and forwarding it to the SPPB for adoption**;**

3. Public/Agency Consultation

- the legislation should require meaningful public/agency notice and comment opportunities at each significant step of the planning process (i.e. terms of reference; assessment reports; plan development; submission to the Minister for approval; appeal period, etc.). Public input will be particularly important at the critical stages of developing the source water protection plan;

- the legislation should specify that notifying the public should, at a minimum, include posting timely notices on the EBR Registry, but must also include other means such as media releases, newspaper inserts or advertisements, newsletters, mailouts, and the CA, municipal and/or MOE website(s), as described below;

- the legislation (and regulations) should prescribe the form and content of public notices, and the types of consultation techniques (i.e. public meetings, open houses, focus groups, workshops, etc.) that should be employed to disseminate information and to solicit public/agency input;

- the legislation should specify the comment period for each step of the planning process, depending upon its significance (i.e. 30 days for terms of reference, 90 days for the proposed plan, etc.);

- indicia of meaningful public consultation during source water protection planning include:

  (a) people who have an interest in participating feel that they were able to participate to their satisfaction;
  (b) people feel that their input was heard and reflected in the final result;
  (c) people understand the final result and how it was achieved;
  (d) people have timely access to all information/points of view being considered in the process;
  (e) people have access to peer review of technical studies;
  (f) barriers to participation are eliminated by appropriate timing of meetings, provision of funding to facilitate participation, etc.;
  (g) accurate records of proceedings (and public input) are prepared and circulated/available;
  (h) both web-based and paper options for following/engaging the process are available;
  (i) people clearly understand the process and the end-product, as well as time lines; and
  (j) time lines and promised processes are met, and plain language explanations of technical matters are provided at key points;

- for source protection planning to succeed, all sectors must be involved in the process, and must understand and accept the plan. The best way to get broad participation/acceptance is to ensure that people understand the implications of the final product. A variety of outreach approaches (i.e. media, community groups, educators and public meetings) will be needed to explain the process;

- there should be opportunities for self-identification for involvement, as well as mechanisms for targeted/invited participation to ensure that all relevant interests are represented within the planning process. Ideally, all water users, planners, decision makers, and persons whose actions affect water resources should be included at the various levels/stages of plan development;

- the public consultation aspect of the planning process must seek to avoid or overcome traditional barriers to public participation, such as: over-extended community groups;

perception that public input will not matter; fears that process is "hi-jacked" by strong interests or experts; or failure to integrate technical investigations with community education efforts;

- the overall intent of the source water protection planning process is to ensure that: (i) the resulting plan meets provincial watershed source protection planning standards; (ii) the plan can and will be implemented; (iii) the communities within the watershed "own" the plan and are committed to it; and (iv) the participants accept the result even if some issues were not resolved as they had recommended;

4. Plan Development/Content

Step 1: Terms of Reference

- the legislation should specify that the first step of the planning process is the development of terms of reference by the SPPC. Once approved by the Minister, the terms of reference shall govern the development of the source water protection plan. However, the Minister should be empowered to amend or vary approved terms of reference in light of changed circumstances, new information, or technological developments**;**

- the legislation (and regulations) should prescribe the form and content of the terms of reference, which, at a minimum, should include:

  (a) workplan to identify and mitigate immediate threats to sources of drinking water;
  (b) timeframe and technical requirements for preparing the source water assessment and drafting the source water protection plan;
  (c) the proposed public notice/comment program and dispute resolution process;
  (d) procedural requirements regarding the establishment of sub-committees or working groups; and
  (e) key decision milestones, and the criteria to be used when evaluating options, assessing risks, and making decisions in the source water protection planning process;

- the legislation shall require meaningful public notice/comment opportunities on the proposed terms of reference prior to their submission to the SPPB for adoption. The public should also be entitled to make submissions to the Minister prior to his/her decision to approve (or amend and approve) the terms of reference. There should be no appeal rights in relation to the terms of reference.

Step 2: Assessment Report

- the legislation should specify that the second step of the planning process is the preparation and submission of a watershed-specific assessment report, which is developed by the SPPC in accordance with the approved terms of reference (including public consultation requirements);

- the legislation (and regulations) should prescribe the form and content of the assessment report, which, at a minimum, should address all matters described in Recommendation 31 of the Final Report of the Source Protection Advisory Committee. Such matters include (but are not limited to):

  (a) mapping/hydrogeological information on current/future sources of drinking water;
  (b) water use/demand analysis;
  (c) water quality data for surface water and groundwater;
  (d) inventory of "high risk" facilities/activities (including significant takings) that are or may be sources of drinking water contamination or depletion;
  (e) evaluation of the vulnerability of drinking water sources to degradation or depletion; and
  (f) description of regulatory and non-regulatory tools to address threats to source water (i.e. restricting land use/development within wellhead protection zones or surface water intake zones, etc.).

- the draft assessment report should be forwarded by the SPPC to the SPPB for review and adoption (subject to public notice/comment). Once adopted, the assessment report should be sent by the SPPB to the Minister for review and approval, and the public should be entitled to make submissions to the Minister prior to his/her decision on the assessment report;

- the legislation should require the CA SPPBs to submit their initial assessment reports to the Minister no later than two years after the legislation comes into force. The Minister should be empowered to approve (or amend and approve) the assessment report, and to extend this two-year timeframe where necessary or appropriate. There should be no appeal rights in relation to the assessment report;

- the legislation should impose an ongoing duty upon the SPPB to periodically review and update the approved assessment report (i.e. at least once every five years) to ensure that it remains current and reliable;

Step 3: Source Water Protection Plan

- the legislation should require the SPPB to ensure that the source water protection plan is completed within the timeframe prescribed by the approved terms of reference. The Minister should be empowered to amend the terms of reference to extend this deadline if warranted;

- where the SPPB fails or refuses to complete the plan by the prescribed deadline, the legislation should empower the Minister to either: (a) go to the civil courts to seek injunctive relief to address the non-compliance; or (b) draft the plan itself, order the SPPB to implement the plan, and issue a cost-recovery order to recoup MOE costs incurred in drafting the plan;

- the legislation (and regulations) should prescribe the form and content of source water protection plans, which, at a mimium, should address the following matters:

  (a) goals, objectives and targets of the plan;

(b) technical information such as: water budget, land use/natural heritage maps, hydrogeological modelling, inventory of significant water-takings, listing of point/non-point sources of drinking water contaminants, etc.;
(c) ranking of threats to drinking water sources, especially in vulnerable or sensitive areas;
(d) timing and content of mitigation measures to address immediate and long-term threats to sources of drinking water;
(e) timing and content of remedial measures to restore water quality or quantity;
(f) summary of concerns/issues raised by the public/agencies, and a written response thereto;
(g) monitoring/reporting plan, including benchmarks or indicators for assessing the effectiveness of the plan; and
(h) schedule for reviewing, updating and renewing the plan.

- the draft source water protection plan should be forwarded by the SPPC to the SPPB for review and adoption (subject to public notice/comment). Once adopted, the plan should be submitted to the Minister for review and approval.

- the legislation should specifically require the SPPC to hold timely, well-advertised public meetings to review and discuss initial (and successive) drafts of the source water protection plan before it is formally forwarded to the SPPB for review/adoption;

- the legislation should specify that the term of plan approval shall not exceed ten years, and should require the SPPB to formally review/revise the plan (with full public input) and re-submit the updated plan for approval by the Minister prior to the expiry of the previous plan;

5. Ministerial Approval of Plan

- the legislation should empower the Minister to approve (or amend and approve) the plan in whole or in part (with or without conditions);

- when deciding whether to approve the plan, the legislation should require the Minister to consider: the purposes of the Act; the approved terms of reference; the approved assessment report; and comments received from the public/agencies;

- prior to the Minister's decision, notice of the proposed plan should be posted on the EBR Registry for a minimum of 90 days;

6. Appeals

- the legislation should enable any interested person to appeal the Minister's decision (in whole or in part) to the Environmental Review Tribunal (ERT). "Interest" means that the person is directly affected by the plan, or submitted comments during the development of the plan;

- the appeal period should be 20 days from the date of the Minister's decision. The legislation should specify that the grounds for the appeal are that the plan:

(a) fundamentally fails to conform with the Act or regulations;
(b) was prepared in contravention of the approved terms of reference (including public consultation requirements); or
(c) inadequately addresses the threats or risks to source water described in the approved assessment report;

- the legislation should specify that the matter before the ERT is a hearing de novo, and the ERT should be empowered to make any order that the Minister could have made in relation to the proposed plan;

- the parties in the ERT hearing are the appellant, the Minister, the SPPB, and any other person permitted by the ERT to intervene in the proceeding. The ERT should be empowered to awad costs, and should be authorized to dispose of the appeal without a hearing in exceptional circumstances (i.e. undue delay by appellant, failure to comply with ERT directions, etc.).

- the legislation should create a limited right of appeal from the ERT decision to the Divisional Court on questions of law, and to the Ontario Cabinet on matters other than questions of law;

7. Water Taking Permits

- there must be an explicit legislative linkage between source water protection planning and the permit to take water ("PTTW") program. Source water protection plans should be the "engine" that drives or governs the PTTW program, and decisions to issue PTTWs must be consistent with such plans. The MOE should also integrate the PTTW programme with the source water protection plan programme so that there is a single lead agency which is responsibile for ensuring that water use in the Province of Ontario is carried out sustainably;

- source water protection plans should also include pre-determined "triggers" or indicators of drought/low water conditions in a watershed or sub-watershed that warrant mitigative or remedial measures by MOE (i.e. amendment or revocation of PTTWs). In addition, to safeguard against over-allocation of surface water resources, source protection plans should establish minimum flows/levels beyond which there will be no further water allocation via PTTWs. The minimum flow requirement should take into account normal seasonal variations in flows and should be incorporated into terms and conditions of PTTWs. PTTWs should also include monitoring requirements to ensure that minimum flow requirements are recorded and maintained. If monitoring results indicate that minimum flow requirements are being exceeded, the PTTW should require that the taking be decreased or stopped**;**

- the MOE should prepare/consider water budgets for all watersheds and sub-watersheds, and all consumptive and non-consumptive uses in a watershed or sub-watershed should be identified. MOE decisions regarding PTTWs must consider the direct/indirect/cumulative impacts of proposed takings in the context of other removals of water (i.e. consumption, evaporation, transportation, etc.) within the watershed;

- source water protection plans should include a comprehensive water allocation plan for the watershed or sub-watershed, which should be subject to a periodic review and revision. It should also include information about current and planned uses of water in the watershed or sub-watershed as well as estimates of future capacity of uses within the watershed or sub-watershed. Section 3 of Ontario Regulation 285/99 states that a Director who is considering an application for a PTTW may consider "existing and planned livestock uses of water, existing and planned municipal water supply and sewage disposal uses of water, existing and planned agricultural uses of water, and existing and planned domestic uses of water." However, the MOE does not currently have a database, which would allow the Director to readily access information about current and planned uses. Therefore, the MOE should develop and maintain a database on existing and planned uses in a watershed or sub-watershed so that the Director can take into consideration the factors set out in section 3 of Regulation 285/99 when considering an application for a PTTW. The database should also be readily accessible to other government ministries and public agencies which will be reviewing applications for PTTWs, as described below;

- PTTWs should be subject to meaningful public notice/comment (including proposed terms/conditions), and actual notice should be provided to CA's, municipalities, and all persons interested in, or potentially affected by, the proposed taking. PTTWs should be issued only after MOE has considered public/agency input, and has determined that the proposed taking will not adversely affect current and planned management/uses of water within a watershed (i.e. for fish/wildlife, tourism or farming purposes). The MOE should make the application for a PTTW, as well as all supporting documents (including experts' reports), available to the public at the initial stage of the application process. The proposed amendments to Regulation 285/99 contemplate that in certain instances, the Director can require the proponent to undertake broader public consultation beyond simply providing notice. If these amendments are adopted, the MOE should prepare a guidance manual for proponents on how to undertake meaningful public consultations. Where an application will be contentious (e.g. a large-scale taking, or a taking near an ecologically significant area), proponents should be required to submit a stakeholder consultation plan for approval by MoE outlining how they intend to undertake public consultation;

- the PTTW process should be structured to ensure more rigorous scrutiny of proposed takings that: (i) remove water from the watershed (i.e. water bottling); (ii) facilitate evaporative losses (i.e. summer irrigation); or (iii) divert/move significant amounts of water within the watershed (i.e. deep aquifer withdrawals that ultimately return/move some water to surface watercourses). Therefore, it may be appropriate for the PTTW program to distinguish between types of permit applications (i.e. on the basis of type/volume/nature of taking, characteristics of local area/watershed, existence of other current/planned takings in the vicinity, etc.). Thus, an application to simply take/impound water could be subject to less rigorous review than a large-scale export proposal;

- proposed takings in or near wellhead protection/surface water intake zones (or vulnerable/sensitive areas as delineated by the SPPC) should also be subject to a higher level of regulatory scrutiny/control. In addition, water takings in vulnerable/sensitive areas should

be considered as a “threat” for the purposes of identifying hazards to source water and developing interim/permanent measures to address such hazards;

- all holders of PTTWs should be required to adopt plans for water conservation, the details of which should be included as terms/conditions in the permit (i.e. provisions requiring the permit holder to engage qualified consultants to prepare/submit water audits which make facility-specific recommendations for water conservation/efficiency). All applicants for PTTWs should provide detailed information as to their use/need for water, and no permits should be issued unless a scientific/technical assessment (i.e. seasonal and multi-year data) demonstrates that the proposed taking is a sustainable use;

- MOE should prepare and distribute to its staff an updated policy/procedures manual that, at a minimum: (i) clearly explains the permitting process; (ii) describes public/agency consultation requirements; (iii) identifies documentary requirements/evaluation criteria; and (iv) provides guidance on how the ecosystem approach/precautionary principle are be applied in the permitting process;

- MOE should establish/maintain a publicly accessible web site that posts/updates information about water takings, including, at a minimum: (i) the source of the taking (i.e. groundwater or surface water); (ii) the location of the taking; (iii) purpose of the taking; (iv) whether the taking is consumptive or non-consumptive; (v) the amount of taking, including the hours of taking and the maximum taking per day; (vi) the purpose of the taking (communal water, irrigation, etc.); (vii) the applicant's need for the taking and the planned use of the taking; (viii) the water budget in the watershed or sub-watershed; (ix) cumulative takings in the watershed or sub-watershed; and (x) the permit expiry or cancellation date;

- the *Ontario Water Resources Act* should be amended to empower the Director to impose a water-taking prohibitions for prescribed timeframes in areas designated as ecologically sensitive or facing serious water quantity/quality issues. In addition, the Act should establish explicit goals/targets for water conservation/efficiency (i.e. reduce per capita use of water in Ontario by 30% within 5 years), which should be reflected in PTTW decision-making;

- MOE should immediately halt the issuance of "phased” or “grand-fathered” PTTWs. No PTTW’s should be issued where the proposed taking conflicts with an approved source water protection plan, or interferes with existing municipal or domestic takings. Similarly, the MOE should amend and/or revoke PTTWs that currently authorize permit holders to take more water than they actually use;

- PTTWs should have fixed terms and clear expiry dates (i.e. annual renewals not to exceed maximum of five years). PTTWs should be revocable (without damages) where: (i) the taking interferes with other water uses; (ii) the taking impairs ecosystem function; or (iii) water shortages/drought conditions exist in the area of the taking. PTTWs should contain conditions that define when drought/low water conditions exist (i.e. upon notice by the Director), and that require appropriate/prescribed response by the permit holder (i.e. decrease/stop the water taking until further notice by MOE);

- MOE must ensure a high level of protection of ecosystem function/processes (i.e. specified range of temperature for water discharges, specified range of base flow for surface water streams, protection of optimum conditions needed to sustain aquatic and water-dependent species, etc.);

- MOE must impose PTTW terms/conditions that require permit holders to provide data to the province in a standardized model/format in order to quantify actual takings by location/ day/month/year. "Guesstimates" of water taking quantities are not acceptable – proponents must collect/report actual usage. The province should accumulate/track this data by sector, and should store such data in a publicly accessible (internet) data base, together with a layer of analysis. This will require greater resources for provincial data collection/analysis. The new monitoring/reporting requirements in the PPTW program should be phased in forthwith, with immediate emphasis upon sectors/proponents that take/remove water from vulnerable/sensitive areas, or areas experiencing drought/low water conditions;

- the new PTTW rules/restrictions should apply to all sectors, and the *Ontario Water Resources Act* should be amended to specify that PTTW requirements apply to large-scale domestic takings and takings by intensive livestock operations;

- the new PTTW regime must be consistent with Annex 2001 (i.e. no adverse impact, return flow to be close to site of taking, resource improvement to be undertaken in prescribed circumstances, and monitoring/analysis of cumulative impacts). There should be a strong statutory prohibition against diverting water from one watershed to another. Where appropriate, aquifer recharge should be required rather than discharge to surface water;

8. Financing Source Protection Planning

- there are several categories of costs that will arise in source water protection planning. For example, there are the costs of developing the plans themselves. As recommended in the Final Report of the Source Protection Advisory Committee, the province should fund the first round of source water protection plans;

- after the initial plan development, there will be ongoing planning costs (i.e. implementation of the plan, monitoring of the plan's effectiveness, and revising the plan if required). These ongoing planning/implementation costs should have sustainable, long term funding that the responsible parties can predict and rely upon with a high degree of certainty;

- in part, funding for source protection could be derived from the beneficiaries of source protection planning. "User pay" principles are included in *Sustainable Water and Sewage Systems Act*, which was amended to include source protection costs. This means that some costs can be recovered through municipal rates and other funding instruments for water and sewer systems;

- another significant aspect of "user pay" involves water takers, who currently do not pay for the actual water taken under PTTWs. A nominal levy per litre of water taken could help

finance source water planning/implementation, including capital works for managing or protecting water resources;

- source protection funding could also be derived from activities that may affect water resources. For example, the "polluter pay" principle was noted by Justice O'Connor as a potential basis for funding source protection planning (i.e. levies on certificates of approval for emissions to water, provided that such levies are directed to source protection planning/implementation);

- in any event, the above-noted planning/implementation costs must not be subject to the vagaries/uncertainty of the annual provincial budget exercise. Many new and innovative funding mechanisms have been utilized in other jurisdictions, and these initiatives should be carefully reviewed for possible finetuning/adoption in Ontario;

- CELA advocates use of levies on water takings and all other available municipal and provincial tools to ensure that robust planning and thorough implementation will occur across Ontario. With respect to the agricultural sector, CELA notes that while some capital expenditures may ultimately be passed on to consumers in food prices, many other capital works on farms should be covered from other source protection revenues. Clearly, Ontarians cannot continue to insist on both cheap food and environmental protection without looking at how we pay for both;

9. Outstanding Issues

Level of Protection

- for vulnerable areas/sensitive water resources, ground water should be protected at a level that meets Ontario's current drinking water quality standards, and surface water should be protected at a level that meets the Provincial Water Quality Objectives;

- threat assessment exercises and risk management decisions (i.e. what will be done to protect water resources from the threats) must be reasonably consistent across the province;

Ensuring Consistent Decision-Making

- the drinking water source protection framework must specify which statutory decisions shall be consistent with source protection plans. Health protection should be the main criterion for determining which decisions must be consistent with source protection plans;

- Justice O'Connor's list of statutory decisions relevant to source protection should be used as the starting point for identifying provincial and municipal decisions that must be consistent with source protection plans (i.e. land use planning decisions, certificates of approval for emissions to air or water, approvals for biosolids application to land, water taking permits, etc.);

- prescribing decisions that shall be consistent with source protection plans will have to consider the matrix of risk management strategies that the framework outlined (i.e. most protective municipal/provincial decisions are required for new uses in the most vulnerable areas, and for existing uses in the most vulnerable areas);

Need for Municipal Notice/Involvement

- there is ongoing concern among municipalities regarding inadequate notice and involvement in provincial decision-making that affects lands and resources within municipal boundaries (i.e. contaminant emissions, water takings, biosolids applications, etc.);

- in addition, municipalities may acquire new notice/comment opportunities (i.e.the proposed new water taking regulation);

- source protection plans will require explicit status in municipal land use plans, and even govern some aspects of those plans;

- all provincial decision-making must respect the source protection plans that are developed by communities and approved by the MOE;

First Nations

- First Nations must be provided meaningful opportunities to influence source water protection decisions within the entire watershed (including adjoining municipalities);

- the resource issues/constraints facing First Nations must be resolved in order to facilitate their participation in source water protection planning;

10. Conclusions

- Ontarians need watershed-based source water protection planning and implementation across the province. All essential components of source water protection planning should be entrenched in a comprehensive legislative framework;

- Justice O'Connor's 22 recommendations on source protection were among the most fundamental of all of his recommendations arising from the Walkerton Inquiry. In a multi-barrier approach for ensuring drinking water safety, source protection is the first (and arguably most important) measure to be undertaken;

- the legislative framework for source water protection must be developed and enacted as soon as possible by the Ontario Legislature. In addition, Ontario must ensure that all public authorities involved in the source water protection regime (i.e. MOE, OMAFRA, CA's, municipalities, etc.) are adequately funded to develop, review and implement source water protection plans.