



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

June 23, 2000

Mr. Doug Galt,
Chair, Water Resources Management Committee
C/o Ministry of Natural Resources
300 Water Street,
Peterborough, ON
K9J 8M5

**Re: Water Resource Management Committee
Development of Long Term Water Strategic Policy Framework for Ontario**

Dear Mr. Galt:

Thank you for the opportunity to make a submission to the Water Resource Management Committee at its meeting on June 14, 2000 in Peterborough, as well as the opportunity to make written submissions.

I am providing our comments in writing as presented on June 14, 2000. Since the presentations that day were, by design, meant to be kept very brief, this written summary is also quite brief without the depth, research and rationale that lies behind these principles.

I also mentioned in our submission that CELA is developing model legislation, namely an *Act to Protect, Conserve, Restore and Enhance Ontario Waters*. As I mentioned to Mr. Running in discussion following the submissions, we are in the process of circulating the model Act for peer review to a wide variety of professionals, ranging from highly recognized water and hydrogeological academics to the professional staff of some small and large municipalities. There has been a considerable amount of interest in this work that CELA is doing, and we expect the peer review comments to be very useful, but also potentially quite significant. Unfortunately, our timing is just out of synch with your Committee's deadline for written submissions. This work will not be available, however until early next month. Therefore we are going to limit our comments at this time to the principles that underlie the work we are doing, and will forward the model bill following receipt of comments and the resulting revisions. We hope that your committee as well as the Ministers of Natural Resources and Environment will have an opportunity to find our work in this respect to be useful and productive, even though the detailed approach will only be forwarded in the next few weeks, rather than by today's date.

The principles upon which CELA advocates a long-term water strategy for Ontario be based are set out in the following comments. We note that neither these comments nor the model bill that we have been working on encompass the recently highlighted issue of drinking water, other than that water quality protection in ground and surface waters can only help in ultimate protection of drinking water. CELA has a long history of work on drinking water issues and has provided other submissions in other contexts on that subject in particular.

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PRINCIPLES FOR LONG TERM PROTECTION, CONSERVATION, RESTORATION AND ENHANCEMENT OF ONTARIO WATERS:

1) UNDERLYING PRINCIPLES

The work that CELA is doing in developing model water legislation includes the following systemic and underlying principles, which we advocate must underlie any approach to protection of Ontario's water systems:

- The approach must be ecosystem based
- It must follow the precautionary principle
- Measures and decisions must be specific & targeted; and be measurable
- In many cases, the onus of proof for the right to use or access water resources must be upon those whose use or actions could cause harm to those resources
- The connections between ground water and surface water systems and interaction with climate change must be incorporated into the long term strategy
- A basic premise must be that water systems are finite
- The long term strategy must recognize the interconnection between watersheds
- Room to grow for development purposes (commercial or residential) must be achieved through conservation savings
- Planning must encompass climate change risks
- Development and major water users must be appropriately located given the constraints of the water systems
- Municipal water protection responsibilities and tools must be enhanced
- Cumulative effects of water users and strategies must be assessed
- Water supplies and water takings must be, for the most part, interruptible
- Water quality protection must be as important as water quantity protection
- The need for data, monitoring, establishment of targets and mandated feed-back actions in response to monitoring must be entrenched in the long term approach to protecting Ontario's water resources.
- Legislation must be effectively enforceable.

2) PREVENTION

In order to assure the long term prevention of harm to Ontario waters, including loss of quantity, loss of functions, and loss of quality, CELA submits that important elements of a preventive approach would include:

- No large scale diversions of water within or between watersheds
- The necessity to keep water within its watershed (other than as ecosystems naturally circulate water beyond watersheds)
- Protection and planning on a watershed basis, where a watershed is defined at the river scale
- Linkage of land use development and water protection

- The primacy of the principle of water protection in a variety of management and other decisions, including in land use planning
- Provision of a method for special areas protection, such as would be needed for the Oak Ridges Moraine, where important water systems are linked across watersheds and municipal boundaries

3) CONSERVATION

CELA advocates that long term water protection must encompass conservation planning for all sectors. Conservation objectives cannot be achieved without comprehensive advance planning by those whose decisions will most affect water resources. CELA submits that the following measures must be included in a long term conservation approach.

- Conservation planning must be conducted on a watershed scale, based on an assessment of existing conditions and future uses
- Conservation planning must also extend to municipal water services and delivery systems
- Water rates must be pursued in ways that provide conservation incentives (and do not provide counter incentives, for example by encouraging use of more rather than less water)
- Tangible targets must be established for conservation results; those targets must be pursued with a variety of strategies, including prevention of loss of water resources, and achievement of targets must be assessed with water audits, both as to baseline usage and as to reduction of usage
- Non-essential uses of water must be regulated in drought conditions (We note that we have received a copy of the May, 2000 publication, titled, Ontario Water Response – 2000; Draft dealing with a more short term contingency plan in case of drought conditions; we will be providing separate comment on that draft.)
- Conservation planning must be carried out by all major users of our water resources, both public and private

4) RESTORATION

The third principle which must underlie a long-term Ontario strategy is that of restoration of degraded waters. This might include either or both water quantity and water quality issues, throughout the ecosystem.

- Degraded waters must be restored and even enhanced
- Specific, targeted, measurable remedial plans must be developed and implemented by those whose use and decisions impact on the water systems in question
- Both water quantity issues and water quality issues must be addressed in remedial plans
- In contrast to the approaches of the past, future decisions must follow the principle of reversibility in case they cause unexpected deterioration or stress on water systems

5) FUNDING

The urgent and highly important requirements for long term water protection must be appropriately funded. CELA advocates a funding system that meets the following principles:

- Primarily a user-based system
- Protection of access to disadvantaged persons
- Sources of funds should include:
 - Permit applications
 - Fees for water removals on a unit basis
 - Fees for water diversions on a unit basis
 - Water charges for land use changes
 - Water charges for development activities
- Uses of the fund would include
- To fill scientific gaps including gaps in groundwater data and in surface flows data
- To enable responsible authorities such as municipalities, conservation authorities and others to plan and implement water conservation measures, remedial plans, and restoration and enhancement plans

6) PUBLIC INPUT, PARTICIPATION AND TRANSPARENCY

It is extremely important in long-term water protection to ensure that it is understood that all Ontarians have an important role. Widespread appreciation of the issues involved and the reasons for the urgent need for protective action now and preventive decision making into the future is essential for any strategy to work. Accordingly, CELA submits that these principles must be incorporated into the strategy.

- Public input and participation in water decisions of all kinds
- Transparency as to information upon which decisions are made and as to the decision making process
- Opportunities for notice, and comment, and provision for hearings, appeals and funding of public participation must be included
- Enforcement of the elements of the strategy through a variety of effective measures, including citizen enforcement is essential

7) GOVERNANCE: FIRST NATIONS' ROLE

There are huge areas of the province of Ontario where the water systems are integral of First Nations' communities' ways of life and livelihood. Many of them have not only important historical connections to these water systems, but practical daily reliance upon them. Furthermore, First Nations communities have various constitutionally protected rights in and to these water systems, and the surrounding lands which are interconnected with them, ranging from Treaty rights to aboriginal rights within the meaning of section 35 of the Constitution Act, 1982. Accordingly, First Nations' real and meaningful participation must be part of the governance of Ontario's long term protection of our water systems, and in some situations, should have the

primary governance of these resources. In other cases, First Nations should have at least co-management and governance of these resources and the decisions impacting upon them.

8) ACCESS

CELA advocates that water is a basic human right. While the above principles are essential to the long-term survival of water resources, long term water protection must ensure that measures and decisions are taken without denying access to or over-burdening those in poverty.

Once again, we thank you for the opportunity to make these submissions. We will be forwarding our model *Act to Protect, Conserve, Restore and Enhance Ontario Waters* at our earliest opportunity.

We will forward a copy of these submissions to the Parliamentary Assistants who heard them on June 14th; we would be grateful if you could forward copies to those Parliamentary Assistants on the Committee who were unable to be present on that date. In addition, some of the participants on June 14th expressed interest in receiving copies of the various submissions that were not available on that date, and we are happy to have copies made available to them.

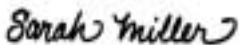
Thank you for your assistance.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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