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Client Services and Permissions Branch  
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To whom it may concern,

**Re: Proposed changes to provide flexibility for water taking activities  
(ERO Number 025-0730)**

The Canadian Environmental Law Association (CELA) provides the following general and specific comments in response to the Environmental Registry proposal: Proposed changes to provide flexibility for water taking activities (ERO Number 025-0730)<sup>1</sup>.

## **PART 1: INTRODUCTION**

### **a. Background**

Canadian Environmental Law Association (CELA) is a legal aid clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives.

CELA exists to ensure that low-income and disadvantaged people have access to environmental justice through courts and tribunals. CELA has extensive experience with environmental approvals in Ontario. Over the past several decades, CELA has been actively involved in water protection and conservation matters at the international, national, provincial, regional, and local levels. For example, CELA has been engaged in Ontario's Water Quantity Protection External Working Group, established by the Ministry of the Environment, Conservation, and Parks, to assist with the groundwater management review. CELA has made submissions related to the moratorium on new or expanded groundwater permits for water bottling and the most recent

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<sup>1</sup> See <https://ero.ontario.ca/notice/025-0730>.

related Environment Registry notice (ERO Number 019-1340) – Updating Ontario’s Water Quantity Management Framework. In addition, CELA has provided public legal information, summary advice and client representation in relation to permits to take water issued under the *Ontario Water Resources Act (OWRA)* for industrial or commercial purposes (i.e. water bottling, golf course irrigation, de-watering of aggregate quarries and landfills, etc.).

CELA stresses, as we have in past submissions, that the amount of water that is available based on long-term sustainability and other goals – such as meeting population growth targets, ensuring climate change resiliency, and realizing benefits to future generations – is finite. The management and prioritization of uses, therefore, needs to first and foremost recognize this reality. **Accordingly, CELA strongly recommends that the government reconsider ERO 025-0730 - Proposed changes to provide flexibility for water taking activities [“the Proposed Amendments”] as these amendments would weaken Ontario’s water policy framework and thus pose a risk to Ontario’s water management going forward.**

#### **b. The Proposed Amendments**

The ministry is proposing to amend *Ontario Regulation 387/04* (water taking and transfer) under the *OWRA* to give proponents greater flexibility and streamline the process to apply for a permit to take water where a permit has been cancelled, expired or revoked in certain circumstances, for previously approved water takings.

The proposed changes would also mean proponents would not need to apply for a new permit to take water if the previous permit has recently been cancelled due to a change in ownership of the property on which the taking was authorized or where the permit has recently expired. These proposed changes could also provide relief to a proponent whose permit may have been cancelled due to an administrative oversight or error - for example, failing to notify the Ministry prior to the sale of a property.

To maintain regulatory oversight, proponents would only be allowed to apply for a permit using the streamlined process under certain conditions:

- the application must be for a taking of water that had been previously occurring under a permit to take water that had been issued by the ministry
- the proponent must submit the application within one year of the cancellation, expiry, or revocation of the permit
- the proposed taking of water must be from the same location and for the same amount or less as was approved under the previously issued permit to take water
- the proposed taking of water must be for the same purpose as authorized under the previously issued permit to take water

These proposed conditions would confirm that the proposed water takings are consistent with the water takings that occurred under the prior permit. The ministry would continue to review applications submitted through the streamlined process to confirm compliance with ministry requirements prior to deciding whether to issue the permit.

In circumstances where a permit has expired and a renewal application has been subsequently submitted, the director may issue a short-term permit on the same terms and conditions as the expired permit to authorize takings for less than one year, to provide time to consider an application to issue a renewal for the typical term of up to ten years. Any renewal application to extend the expiry date for more than one year or longer will continue to be posted for public comment on the ERO.

## PART 2: COMMENTS AND RECOMMENDATIONS

### a. *The Proposed Amendments, as outlined, could result in decisions contrary to the Purpose of OWRA and to the Permit to Take Water Program:*

Section 0.1 of the *OWRA* sets out a clear legislative purpose:

“[...] to provide for the conservation, protection and management of Ontario’s waters and for their efficient and sustainable use, in order to promote Ontario’s long-term environmental, social and economic well-being.”<sup>2</sup>

A key tool in achieving this purpose is the Permit to Take Water (PTTW) program, which is primarily governed by section 34 of *OWRA*.<sup>3</sup> As per the the Ontario government website, the PTTW program exists:

“[...] to ensure the conservation, protection and wise use and management of the waters of the province. Permits are controlled, and not issued if the taking of more water in a given area would adversely affect existing users or the environment.”<sup>4</sup>

These two above provisions reflect a foundational principle – one that CELA has advanced in the past: Ontario’s waters are a shared and finite public resource, and the allocation of such a resource must be subject to rigorous evaluation for it to be protected appropriately. Accordingly, relevant legislative and policy framework within the *OWRA* must commit to the notion that decisions regarding water takings be grounded in principles that promote sustainability and environmental, social, and economic well-being.

*The Proposed Amendments* depart from the *OWRA*’s purpose and framework. By allowing permits that have expired, been cancelled, or revoked to be reinstated through a streamlined process (without undergoing a comprehensive environmental, technical, or community impact assessment), *the Proposed Amendments* undermine the core purpose and intent of the *OWRA*. In many such cases, a streamlined process would not be appropriate.

Further, as currently drafted, given the intent to apply the streamlined approach on transfers of businesses or property to which the permit to take water is relevant, *the Proposed Amendments*

<sup>2</sup> *Ontario Water Resources Act [OWRA]*, RSO 1990, c. O.40 at s 0.1.

<sup>3</sup> *OWRA* at s 34.

<sup>4</sup> See Government of Ontario, “Guide to Permit to Take Water Application Form” (last modified 16 December 2024), online: <<https://www.ontario.ca/page/guide-permit-take-water-application-form>>

could enable potentially unqualified or unknown proponents to obtain permits based solely on past approvals, without regard for changing hydrological conditions, cumulative pressures, or the new proponent's history of past operations including compliance with other permits or enforcement activity related to that proponent. This is inconsistent with the purposes of the *OWRA* and the PTTW as outlined above.

If enacted, *the Proposed Amendments* would avoid key safeguards that ensure water-taking decisions are made responsibly, transparently, and in alignment with the long-term stewardship goals that animate both the *OWRA* and the PTTW program for many of the permits potentially issued under the streamlined approach. Accordingly, **CELA recommends that the MECP withdraw or revise *the Proposed Amendments* to ensure full environmental review, public participation, and consideration of the qualifications of the proponent remain a mandatory part of the permitting process.**

#### **b. Statutory Precedent for Transfer of Permit:**

*The Proposed Amendments* are inconsistent with how similar statutory frameworks operate. A more appropriate approach can be found in other regulatory regimes governing sectors with significant potential impacts on surrounding communities and landowners.

##### **i. *The Nuclear Safety and Control Act (NSCA):***

Among its many purposes, the *NSCA* governs the way in which licenses for nuclear-related activities are issued, renewed, changed, or taken away by the Canadian Nuclear Safety Commission (CNSC).<sup>5</sup> Particularly, section 24(4) of the *NSCA* imposes strict licensing and relicensing requirements when an operation changes hands:

No license shall be issued, renewed, amended or replaced — **and no authorization to transfer one given** — unless, in the opinion of the Commission, the applicant or, in the case of an application for an authorization to transfer the licence, the transferee

(a) is qualified to carry on the activity that the licence will authorize the licensee to carry on; and

(b) will, in carrying on that activity, make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.<sup>6</sup>

There is no concept of automatically reinstating expired or revoked nuclear licenses based on prior approval in the *NSCA*. Rather, as per the provisions outlined above, each licensee (**even upon ownership change**) must undergo a full substantive and safety review, with license renewal tied to a new implementation plan and public reporting. This ensures that licensing is

<sup>5</sup> *Nuclear Safety and Control Act [NSCA]*, SC 1997, c. 9.

<sup>6</sup> *NSCA* at s 24(4).

rigorously governed so that licenses are not transferred to a new owner or different entity without proper evaluation. Accordingly, **CELA recommends that a full evaluation of the proponent's environmental qualifications and compliance history must remain a prerequisite for reissuing permits, particularly where ownership or operational control has changed.**

### c. Right to Public Participation:

While the MECP indicates that the proposed streamlined process, as described in *the Proposed Amendments*, will be limited to takings that are the same in location, quantity, and purpose as those previously approved,<sup>7</sup> this restriction does not address a broader concern: the effective elimination of public oversight in circumstances where there is legitimate public interest and concern.

The *Environmental Bill of Rights (EBR)*<sup>8</sup> mandates that Ontarians be given meaningful opportunities to comment on proposals that could significantly affect the environment. This obligation is not discretionary; rather it is a statutory requirement that reflects Ontario's commitment to democratic environmental governance.

Section 15(1) of the *EBR* provides:

“If a minister considers that a proposal under consideration in his or her ministry for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.”<sup>9</sup>

Further, section 16(1) of the *EBR* imposes a similar requirement for proposed regulations under prescribed statutes:

“If a minister considers that a proposal under consideration in his or her ministry for a regulation under a prescribed Act could, if implemented, have a significant effect on the environment, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.”<sup>10</sup>

These provisions establish that where a proposal may have significant environmental effects, the Ministry must ensure that the public has advance notice and an opportunity to provide input. (The only exception, per sections 15(2) and 16(2), is for proposals that are “predominantly financial or administrative in nature”<sup>11</sup> - categories that do include changes to Ontario's water-taking permit regime, which has ecological, social, and hydrological consequences.)

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<sup>7</sup> *Supra* at note 1.

<sup>8</sup> *Environmental Bill of Rights [EBR]*, 1993, S.O. 1993, c. 28.

<sup>9</sup> *EBR* at s 15(1).

<sup>10</sup> *EBR* at s 16(1).

<sup>11</sup> *EBR* at s 15(2) & 16(2).

Under *the Proposed Amendments*, water-taking permits could be reissued without public notice or comment in circumstances where prior approvals existed. This approach is inconsistent with the legislative intent and mandatory notice provisions of the *EBR*, particularly when the new proponent, surrounding conditions, or environmental risks have changed.

CELA submits that any regulatory change that removes or reduces opportunities for public participation, especially regarding decisions with significant and ongoing environmental implications, should be viewed as inconsistent with the public interest principles that underpin both the *EBR* and the *OWRA*, as highlighted above. **Accordingly, CELA recommends that the Ministry maintain full public notice and comment rights for all water-taking permit decisions, including those subject to reapplication or proposed reinstatement under the new framework.**

#### **d. A Change in Ownership May Be a Change in Risk**

*The Proposed Amendments* fail to recognize a fundamental principle in both environmental law and civil liability: a change in ownership or operational control may bring with it a change in environmental risk. To reiterate, the transferring or reinstating of a PTTW without a full review of the new proponent overlooks several material considerations that directly impact the environment, nearby communities, and public safety.

Take the following few examples: new owners may operate under different conditions - altering truck routes, hours of operation, lighting, or other site-level practices that introduce new nuisance or safety concerns. Even where the proposed water taking is for a smaller quantity than previously permitted, the permit still allows the maximum amount authorized. As such, the full scope of potential environmental impact must be reviewed and made available for public comment.

In addition, the past record, expertise, and compliance history of the new proponent is directly relevant to whether they can responsibly manage a water-taking operation. Legislative frameworks, such as those within the *OWRA* and the *EBR* as outlined above, support the principle that permits should not be passively transferred, but instead should be contingent on demonstrated competence, accountability, and regulatory compliance, as well as adequate provision for any required new conditions that arise as a result of the new ownership such as financial accountability. As a result, **CELA recommends that any change in ownership or operational control must trigger a full regulatory review. This must include public notice and comment, an environmental reassessment, and a formal evaluation of the new operator's qualifications and history.**

### **PART 3: SUMMARY OF RECOMMENDATIONS**

For the reasons set out above, CELA urges the MECP to reconsider *the Proposed Amendments* under ERO Number 025-0730. These changes risk undermining core environmental safeguards that are essential to Ontario's water management framework.

Accordingly, in response to *the Proposed Amendments*, CELA makes the following recommendations to the MECP:

- a. Withdraw or revise *the Proposed Amendments* to ensure full environmental review, public participation, and consideration of the qualifications of the proponent remain a mandatory part of the permitting process.
- b. Require a full evaluation of the proponent's environmental qualifications and compliance history to remain a prerequisite for reissuing permits, particularly where ownership or operational control has changed.
- c. Ensure that the Ministry maintains full public notice and comment rights for all water-taking permit decisions, including those subject to reapplication or proposed reinstatement under the new framework.
- d. Establish that any change in ownership or operational control must trigger a full regulatory review. This must include public notice and comment, an environmental reassessment, and a formal evaluation of the new operator's qualifications and history.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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