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

March 21, 1997

Mr. Rob Messervey
Ministry of Natural Resources
Corporate Affairs Division
Room 6440
99 Wellesley St. West
Toronto, Ontario

BY FAX

Dear Sir:

RE: EBR Registry Number: RB7E40001.P
Red Tape Reduction Act (MNR) 1996

I am writing to provide you with CELA's comments on this Bill.

CONSERVATION AUTHORITIES ACT

We note that the proposed changes to this Act follow on last year's reductions in funding to the Conservation Authorities (CAs), removal of provincial appointees, and authorization of sales of conservation lands in the Omnibus Bill. We have concerns regarding various changes proposed in this Bill.

1. **Reduction of provincial oversight**

Numerous changes further consolidate the downloading of responsibilities concerning Conservation Authorities from the provincial government to municipalities and the withdrawal of the provincial government from oversight of CA decisions: Sections 8, 10, 11, 14(2), 19(3), 29(1). CELA decries this reduction in provincial concern for the functions of the Authorities, and its reflection of a declining role for the province in these conservation responsibilities.

2. **Options for increased development**

Other provisions of the Bill foster increased development on and near Conservation Authority lands. These include:

- **Section 20:** Changes authorize CAs to enter into agreements to permit exploration, storage and extraction of gas or oil, provided that the extraction occurs on lands adjacent to

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CA lands, and the use is compatible with "conservation, restoration, development and management of other natural resources."

The only activity prohibited on CA lands, under this change, is extraction. However, exploration and storage can have serious environmental impacts, and will now be permitted on CA lands.

Further, the section, together with last year's funding cuts and authorization of sales of CA lands, may cause CAs, hard pressed for funds, to sell off lands that are resource rich so that they become "adjacent" lands, and enter into development of them as well as remaining CA lands.

- **Section 21(d)**: This has been changed to permit CA lands to be leased for up to five years, a change from the current one year limit that is likely to increase development options.

- **Section 28(1.3)**: This will remove any need for an approval from a CA for any activity for which approval has been obtained under another Act. This raises concerns that approvals for matters inimical to conservation, such as entire subdivisions (under the Planning Act) or landfills (under the Environmental Protection Act or Environmental Assessment Act) could cause such developments to occur on CA lands with no ability of the Conservation Authority to exclude them.

3. **Reduced regulatory scrutiny**

- **Section 28** is changed to eliminate the need for approval of CA regulations by Cabinet, although Cabinet will continue to establish regulations governing the content of regulations to be made by the Authorities. The reduction in provincial oversight will remove the benefit of consistent regulatory standards governing CA lands across the province.

LAKES AND RIVERS IMPROVEMENT ACT

1. **Privatization options**

- **Section 3(1)(c)**: We are concerned with the proposal in the Act that Cabinet will now have the authority to make regulations "governing applications for approvals under this Act." This unfettered authority replaces the more limited authority of the current Act which permits Cabinet to delegate approval powers to conservation authorities, or other agencies or bodies. The current delegation power is very broad; the removal of even these limits suggests that unfettered delegation of powers to non-governmental persons and corporations and exemptions from requirements for approvals may occur.

- **Section 4**: will permit "agreements" between the Minister and any government or person regarding management, protection and use of lakes and rivers, and the "design,

construction, operation, repair, maintenance, alternation or removal of dams or other works in lakes and rivers."

Again, this change suggests that privatization of these functions will occur. The section does not provide that such agreements will be accessible to the public, nor does it require that these functions be carried out in accordance with any particular standards.

- **Section 15:** Changes to this section will permit the Minister to delegate any part of his/her powers or duties respecting approvals of construction, repair and use of dams to any agency, authority, corporation or person outside the Ministry.

This plan, which amounts to the removal of MNR from its regulatory responsibility for dams, is a shocking withdrawal of governmental oversight of an important economic and environmental function. In CELA's view, it is entirely inappropriate for non-governmental corporations or persons to have such approval powers.

2. **Weaker protections**

- **Section 17:** This change will permit the Minister to approve location or plans for a dam after construction has been completed. Such a provision is an invitation to developers to construct dams without approvals, and then rely on this section to pressure for approval afterward. It seriously compromises the regulatory effectiveness of the Act.

- **Section 36:** The current Section 38 of the Act contains an absolute prohibition against pollution. Specifically, it provides:

> No person shall throw, deposit or discharge, or permit the throwing, depositing or discharging of, any refuse, sawdust, chemical, substance or matter from any mill into a lake or river, or on the shores or banks thereof.

The Bill weakens the section by qualifying it; such actions are now only prohibited if they "conflict with the purposes of this Act." It is difficult to see when such actions could be acceptable or why such a qualifier is required, unless it is to lower the level of protection against such actions.

PUBLIC LANDS ACT

1. **Privatization options**

- **Section 2:** Changes to this section will permit the Minister to "enter into agreements with any person for the purpose of carrying out his or her duties under this Act." Again, this is a shocking privatization of regulatory functions that citizens have a right to expect from

government. Will these agreements be public? What safeguards will be enacted to ensure that the functions are properly performed?

- **Section 16:** This change removes any limit on the size or dollar value of public lands that can be leased or sold, presumably opening the door for significant sales of lands now owned by all citizens of Ontario.

2. **Land use plans**

- **Section 12:** This section will now contain the statutory authority for the land use planning process announced by the government. These plans, to be prepared according to a planning manual, will establish "zones to define the purposes for which public land, water and natural resources within each zone may be managed." The plans will be subject to approval by the Minister, who may amend them before or after approval. Citizens will have a thirty day appeal period after approval of the plans, and the Minister may have them reviewed, for purposes of the appeal, by "individuals, or a board, commission or agency". The Statutory Powers Procedure Act will not apply to the appeals, so that citizens cannot be assured of a fair hearing. However, the Minister has final approval powers.

Whether the land use planning process will include environmental integrity and full rights of public participation remains to be seen. However, the unqualified rights of Ministerial approval and the exclusion of the Statutory Powers Procedure Act provide reasons to be concerned about the process.

Thank you for your consideration of these comments.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Michelle Swenarchuk
Executive Director