

**WATER TAKING AND TRANSFER REGULATION,
(O.REG. 285/99) DRAFT 2004**

Re: EBR REGISTRY NO. RA04E0011

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**SUBMISSIONS OF THE
CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public legal education, community organization, and law reform activities.

CELA has had a long history with water issues both at the provincial and federal level. It has undertaken extensive research, published briefs,¹ and conducted litigation in the field. CELA was involved in both phases of the Walkerton Inquiry and a CELA counsel was appointed to the Advisory Committee for Watershed-based Source Protection Planning. A CELA staff member has also been serving on the Advisory Committee to the Great Lakes Water Initiative of the Council of Great Lakes Governors and the Premiers of Ontario and Quebec. CELA has represented clients in relation to a number of controversial water taking permit applications, including a taking by a Swiss multinational company in Perth, Ontario, a taking by a water bottling company in Grey County, and the appeal of the Nova Group permit to export water by tanker from Lake Superior (the hearing was eventually cancelled when the applicant withdrew the appeal). Consequently, the organization has considerable experience and insight into public concerns regarding water-taking in the province.

The purpose of this brief is to respond to EBR Registry RA04E0011, the proposed Amendments to the Water Taking and Transfer Regulation (Regulation 285/99 under the *Ontario Water Resources Act*) with comments due on August 17, 2004.

PART II - GENERAL COMMENTS ABOUT THE PROPOSED AMENDMENTS

The proposed amendments make a number of significant improvements to the Ministry of Environment's Permit to Take Water ("PTTW") programme. In particular, the proposed amendments will further refine the factors which must be taken into consideration by the Director when reviewing a PTTW including:

- water balance and sustainable aquifer yield;

¹ See *Submissions on the Proposed Amendments to the Water Taking and Transfer Regulation, (Regulation 285/99 under the Ontario Water Resources Act) EBR Registry Number RA03E0009*, R. Nadarajah and S. Miller, (Toronto: CELA), May 2001; *Submissions by the Canadian Environmental Law Association to the Ministry of Environment on the Surface Water Transfers Policy, EBR Registry Number PA8E0027*, P. McCulloch, S. Miller, K. Cooper and P. Muldoon, (Toronto: CELA), June 1998; *Submission on Regulation made under the Ontario Water Resources Act: Water Transfers, EBR Registry Number RA8E0037*, P. Muldoon and S. Miller, (Toronto: CELA), February, 1999; *Commentary for an Act to Conserve Ontario Waters*, (Toronto: CELA), J.F. Castrilli, May 2001; *Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act Volume 1 - An Overview*, (Toronto: CELA), A. Wordsworth, May 2001; *Tragedy on Tap: Why Ontario needs a Safe Drinking Water Act, Volume II*, (Toronto: CELA) R. Lindgren, L. McShane, G. Patterson and A. Wordsworth May, 2001.

- existing uses of water for municipal water supply and sewage disposal, livestock private domestic and agricultural purposes;
- low water conditions; and
- a planned municipal use of water that has been approved under a municipal official plan in accordance with the Planning Act, (Part III) or under the Environmental Assessment Act.²

In addition, the proposal also requires the Director to consider whether water conservation in accordance with sectoral standards is being implemented or proposed to be implemented, the purpose for which the water is being used or is proposed to be used, and the prospect that the person will actually use the water in the future.

CELA supports these amendments and believes that these measures will considerably improve MoE's PTTW programme. We are pleased to see that a number of the recommendations that stakeholders, including CELA, have made during previous multi-stakeholder consultations have been adopted in this proposal.

However, a number of the proposed amendments are not sufficiently detailed or stringent, to achieve the purported objectives of the Water Taking and Transfer Regulation. We have therefore recommended a number of additional recommendations which we believe are necessary to ensure the effective operation of the PTTW programme. We note that some of these recommendations have been recommended by CELA in previous submissions to the Ministry.

PART III - SPECIFIC COMMENTS

(1) The Eco-System Approach

CELA supports the proposed amendments to O.Reg. 285/99 which further refine the ecosystem approach in issuing PTTW. The proposed amendments will require the Director to consider the variability of the water flows, water levels, minimum stream flows and habitat that depends on water flow or water.³

CELA also supports the refinement to the factors that the Director needs to take into account in issuing PTTW, including the water balance and sustainable aquifer yield.⁴ This amendment adopts one the key recommendation made by Mr. Justice Dennis O'Connor, the Commissioner of the Walkerton Inquiry, in his *Part II Report of the Walkerton Inquiry – The Events of May 2000*.⁵ CELA had also previously recommended that a clause be added to O. Reg. 285/99 requiring the Director to assess the impact proposed water taking would have on the water

² Ontario Ministry of Environment, *Compendium to the Proposed Amendments to the Water Taking and Transfer Regulation (O.Reg. 285/99)* 2004, p.1.

³ See section 3(2) 1i A, B, and C, Draft Water Taking and Transfer Regulation (O.Reg. 285/99) (Draft June 2004).

⁴ See section 3(2) 2 i A, Draft Water Taking and Transfer Regulation (June 2004).

⁵ Ontario, *Part Two Report of the Walkerton Inquiry, A Strategy for Safe Drinking Water* (Toronto, Queen's Printer, 2002) pp.104-106 (Commissioner: The Honourable D. R. O'Connor).

budget in a watershed or sub-watershed prior to approving a PTTW.⁶ We are pleased to see that the MoE has incorporated this recommendation into the draft Water Taking and Transfer Regulation.

CELA recommends that information about water balance and sustainable aquifer yield should be stored in an electronically accessible database, so that other government agencies as well as the public can have access to information about the state of Ontario's water resources.⁷ The database should also include information about minimum flow levels in watersheds and sub-watersheds beyond which no further water allocation would be allowed.⁸ Cumulative data should be made available both by watershed and by sector of use. Seasonal reports (spring, summer, fall and winter) should be required for individual applicants, by watershed, and by the Province on use by sector. The database should include both existing and new permits.

CELA supports Section 3.(2)1ii which recognizes that the Director must evaluate water takings to determine the impact it has on both ground and surface water impacts and their interrelationship which may be affected by the water taking, including water quality and water quantity. However where there is insufficient information available to satisfy the Director, special conditions should be added to the permit to limit the volume and term of the taking until this information becomes available.

CELA Recommendation #1

CELA recommends that information about water balance and sustainable aquifer yield should be stored in an electronically accessible database, so that other government agencies as well as the public can have access to information about the state of Ontario's water resources.⁹ The database should also include information about minimum flow levels in watersheds and sub-watersheds beyond which no further water allocation would be allowed.¹⁰ Cumulative data should be made available both by watershed and by sector of use. Seasonal reports (spring, summer, fall and winter) should be required for individual applicants, by watershed, and by the Province on use by sector.

CELA recommends that when there is insufficient information available to satisfy the Director with respect to section 3 (2) 1 ii, special conditions should be added to the permit to limit the volume and the term of the taking until this information becomes available.

⁶ See Nadarajah R. and Miller S., *Submission on the Proposed Amendments to the Water-Taking and Transfer Regulation* (Toronto:CELA) (May 21, 2003) pp.3-4.

⁷ CELA had also recommended that this information also be part of the source water protection plans. See Lindgren, R. Muldoon, P. Nadarajah R. McClenaghan T, and Miller, S. *Final Submissions of the Canadian Environmental Law Association to the Ministry of Environment regarding the White Paper on Watershed-Based Source Protection Planning* at p.15.

⁸ Ibid.

⁹ CELA had also recommend that this information also be part of the source water protection plans. See Lindgren, R. Muldoon, P. Nadarajah R. McClenaghan T, and Miller, S. *Final Submissions of the Canadian Environmental Law Association to the Ministry of Environment regarding the White Paper on Watershed-Based Source Protection Planning* at p.15.

¹⁰ Ibid.

(2) The Precautionary Principle

CELA also recommends that a clause be added that the Director will consider a precautionary approach in assessing PTTW applications. We note that this recommendation is consistent with the MoE's Statement of Environmental Values as well as Mr. Justice O'Connor recommendations with respect to protecting the Province's drinking water supply.¹¹ CELA recommends that precautionary approach be operationalized in the government's decision making process regarding the state of the Province's water resources will protect and ensure the sustainability of the resource for current and future generations. In particular, the precautionary approach should be used where there is insufficient information available on the impact the taking will have on ground and surface waters. The MoE should err on the side of safety by imposing special conditions to the permit to limit the volume and term of the taking until this information becomes available.

CELA also recommends that the MoE amend its PTTW manual to reflect the proposed amendments to the O. Reg. 285/99 once it has been promulgated. The MoE staff should also be provided technical training on how to review new PTTW applications to ensure consistency with the proposed amendments. MoE staff should also be provided with guidance on how to implement the proposed amendments to ensure a consistent decision making process throughout the Province on PTTW applications.

CELA Recommendation #2

CELA recommends that a clause be added to Section 3(2) of O. Reg. 285/99 requiring the Director to take a precautionary approach in assessing PTTW applications. In particular, the precautionary approach should be used where there is insufficient information available on the impact the water taking will have on ground and surface waters. The MoE should err on the side of safety by imposing special conditions to the permit to limit the volume and term of the taking until this information becomes available.

CELA also recommends that the MoE amend its PTTW manual to reflect the proposed amendments to the O. Reg. 285/99 once it has been promulgated. The MoE staff should also be provided technical training on how to review new PTTW applications to ensure consistency with the proposed amendments. MoE staff should also be provided with guidance on how to implement the proposed amendments to ensure a consistent decision making process throughout the Province on PTTW applications.

(3) Reasonable Prospect Water will be Used

Subsection 3(2) 3(iii) of the proposed amendments to O. Reg. 285/99 allow the Director when considering water availability, to consider if the water is not currently being used whether there is a reasonable prospect that the person will actually use the water in the "near future".

¹¹ See Ontario, *Part Two Report of the Walkerton Inquiry, A Strategy for Safe Drinking Water*, at pg.76-78.

This wording of this subsection could be problematic and appears to be at odds with the MoE guidelines which state quite explicitly that "an Applicant cannot reserve additional water for future use but must request an amendment to the Permit as the additional need arises."¹²

The term "near future" is broad and ill defined and could mean anywhere from a few months to a few years. This section should be amended to authorize the Director to amend a PTTW to reduce the amount of taking if a person is currently not using the water and there is no reasonable prospect that the person will use it within a specified period of time. (e.g. six months). Best practice based conservation standards for all sectors will need to be developed to assist Applicants and MoE staff in defining what constitutes a "reasonable prospect" (See recommendation #6 below).

CELA Recommendation #3

CELA recommends that the term "near future" in subsection 3. (2)3 (iii) of the proposed amendments to O.Reg. 285/99, be amended to authorize the Director to amend a PTTW to reduce the amount of taking if a person is currently not using the water, and there is no reasonable prospect that the person will use it within a specified period of time. (e.g. six months). The MoE should develop best practice based conservation standards for all sectors to assist applicants and MoE staff in defining what constitutes a "reasonable prospect" See recommendation #6 below.

(4) Public Consultation

Subsection 3(2) 4(i) states that the Director shall consider the interests of other persons who have an interest in the water-taking, or proposed water-taking, to the extent that the Director is made aware of those interests.

A key means of ensuring that the Director is aware of the public interest, is to ensure that the public is provided with information about the PTTW application at an early stage and is thus in a position to make the Director aware of their interests. Currently the *Environmental Bill of Rights* registry remains the primary means of soliciting input public input. However, the 30-day comment period does not always provide the public with sufficient time to obtain information and review a PTTW application. A considerable amount of the information provided by PTTW Applicants includes highly technical and scientific information. Thus, in order for the public to provide meaningful comments on PTTWs they should, at the very minimum, be provided with access to these documents.

In the past, CELA's clients have had to resort to requests under the *Freedom of Information and Protection of Privacy Act* to obtain information. Unfortunately, a response to these requests are often not received in a timely manner to allow for a response within the EBR time lines for comments. CELA therefore recommends that public consultation should commence prior to the

¹² Ontario Ministry of Environment, Guide for Applying for Approval to Permit to Take Water, (Interim Guide) June 2000, p. 3 paragraph 14.

EBR Registry posting, particularly for large takings, or takings near ecologically sensitive areas, or where the taking may generate public interest. The MoE should also provide the public upon request with expert reports in relation to a PTTW application as well as any supporting documents so that they can provide meaningful comments during the EBR comment period.

CELA Recommendation #4

CELA recommends that public consultation commence prior to posting the PTTW application on the EBR registry when the taking is for a large amount of water, or is in an ecologically sensitive area, or if the proposal may generate considerable public interest. The MoE should also provide the public, upon request, with expert reports in relation to a PTTW application as well as any supporting documents so that they can provide meaningful comments during the EBR comment period.

(5) Consultation by Applicants

The MoE needs to prepare a guidance document for Applicants on how to undertake public consultation. In cases where an application will be contentious (e.g. a large taking of water or a taking near an ecologically significant area), Applicants should be required to submit a stakeholder consultation plan for comment and approval by the Ministry, outlining how public consultation will be undertaken. The MoE should also require that Applicants undertake public consultation at the early stage of the permitting process.

CELA Recommendation #5

CELA recommends that the MoE prepare a guidance document for Applicants on how to undertake public consultation. CELA recommends that in cases where an application will be contentious (e.g. a large taking of water or a taking near an ecologically significant area), Applicants should be required to submit a stakeholder consultation plan for comment and approval by the Ministry, outlining how public consultation will be undertaken. CELA also recommends that Applicants undertake public consultation at the early stage of the permitting process.

(6) Water Conservation

Subsection 3(3) of the proposed amendments allow the Director, when considering a PTTW application, to consider whether water conservation in accordance with sectoral standards is being implemented or is proposed to be implemented.

The wording of this provision is not rigorous enough to ensure that conservation measures are, in fact, implemented. The Director should take proactive measures to ensure conservation of water by requiring Applicants to assess mechanisms for water conservation in their operations/facilities. Public education and guidance on best practices in water conservation for all sectors should be provided, and regularly updated, to assist MoE staff in evaluating permits

applications and applicants in reducing water use. CELA has previously recommended that the *Ontario Water Resources Act* establish explicit goals/targets for water conservation /efficiency (i.e. reduced per capita use of water in Ontario by 30% within five years) which should be reflected in the PTTW decision making process.¹³

Applicants should be required as a condition in their permits to report on return flow of waters they withdraw and on the location of that return. This is important for several purposes, it helps define consumptive use of the water, and it identifies if water is being removed from one part of a watershed and returned to another part of the same watershed bypassing in-stream uses between watersheds. Return flow data on location will determine if water is being diverted from one watershed to a different watershed. This will be important in identifying impacts on ecosystems, and remedial actions that can be taken in times of drought and shortages. Information about return flows will also assist the MoE in determining reasonable use. The US Environmental Protection Agency currently makes use of consumptive use co-efficients for assessing eco-system impacts. Although consumptive use co-efficients are considered to be a blunt tool, they should be utilized to assess ecosystem impacts until more precise measurements become available.

Requiring return flow data could also act as a deterrent to prevent unnecessary water takings and promote conservation among users.

CELA Recommendation #6

CELA recommends that the Director take proactive measures to ensure conservation of water by requiring applicants to assess mechanisms for water conservation in their operations/facilities. Public education and guidance on best practices in water conservation for all sectors should be provided and regularly updated to assist MoE staff in evaluating permits applications and applicants in reducing water use. CELA also recommends that the *Ontario Water Resources Act* establish explicit goals/targets for water conservation /efficiency (i.e. reduced per capita use of water in Ontario by 30% within five years) which should be reflected in the PTTW decision making process.

CELA also recommends that permits include conditions requiring applicants to report on the return flows of the water withdrawn and the location of the return. This information should also be included in the data system developed for PTTW and in the information required for public review of each permit.

(7) Water Transfer

Subsection 3(2) prohibits a person from transferring water out of a basin subject to exemptions found in subsection 3(3), 3(4), 3(5), 3(6), 3(7) and 3(8). All these exemptions represent potentially major water exports. However, no data is being collected or required to ascertain how

¹³ See *Final Submission of the Canadian Environmental Law Association to the Ministry of Environment Regarding the White Paper on Watershed –Based Source Protection Planning*, p. 17.

much water is being used, consumed or transported out of the basin. Furthermore, there is no monitoring as to the long-term cumulative effects of such withdrawals. CELA has previously recommended that if there are to be general exceptions to water export, these exceptions must be within a regulatory framework, which has complete information on the amount of water exports.¹⁴

The July 19, 2004 Draft Great Lakes Basin Sustainable Water Resources Agreement defines diversion as meaning "a transfer of water from the Great Lakes Basin into another watershed, or from the watershed of one of the Great Lakes into that of another, by any means". This definition is in conflict with the definition of water basins proposed in this draft regulation, which defines the Great Lakes as a single watershed.

The definition of water basins in the proposed regulation should be amended to be consistent with the definition of watershed in the Great Lakes Basin Sustainable Water Resources Agreement, since the latter will result in adding a legally binding water regime to the Great Lakes Charter.

New watershed plans will soon developed as the result of Ontario's new source protection legislation. CELA recommends that this regulation be applied to the same watershed scale as set out in the source protection regulations in order to be consistent with the transition underway to watershed based management.

CELA Recommendation #7

CELA has previously recommended that if there are to be general exceptions to water export, these exceptions must be within a regulatory framework, which has complete information on the amount of water exports. This framework should at the minimum include data on how much water is being used, consumed or transported out of the basin. Furthermore, there should be monitoring as to the long-term cumulative effects of such withdrawals.

CELA also recommends that the definition of water basins in the proposed regulation be amended to be consistent with the definition contained in the Draft Great Lakes Basin Sustainable Water Resources Agreement now under public review. This amendment would make each Great Lake a separate water basin for the purpose of transfers.

CELA recommends that this regulation be applied to the same watershed scale as set out in the source protection regulations in order to be consistent with the transition underway to watershed based management.

¹⁴ See *Submission on the Regulation made under the Ontario Water Resources Act: Water Transfers EBR Registry No. RA8E0037*, pp.6-7.

(8) Consultation by MoE

Subsection 6(1)(2) states that the Director who is considering a PTTW application shall give notice of the application to upper tier and lower tier municipalities, or single-tier municipalities as the case may be, within whose area of jurisdiction the proposed water taking is located. In addition, any conservation authority within whose jurisdiction the proposed water taking is located is also entitled to notification. The notification requirements are subject to certain exemptions.

CELA supports these proposed amendments but recommends that in addition to the notification requirement, the MoE should also circulate the PTTW application to all municipalities and conservation authorities in the watershed and obtain sign-off before a PTTW is issued.

CELA Recommendation # 8

CELA recommends that in addition to the notification requirement to upper tier and lower tier municipalities and single tier municipalities, the MoE should also circulate the PTTW application to all municipalities and conservation authorities in the watershed and obtain sign-off before a PTTW is issued.

(9) Reporting of Water-takings

Section 7(1) requires every person who obtains a permit after July 1, 2005 to record the volume of water taken daily.

This section is only subject to the takings listed in subsection 7(2). These cover: municipal water supply, beverage manufacturing, fruit or vegetable canning (except water taken only for washing in course of canning or pickling), and Municipal Industrial Strategy for Abatement (MISA) regulations. This section also covers aggregate processing (if the aggregate and the water that is taken are incorporated into a product in the form of a slurry) and production manufacturing (if in the normal course of manufacturing or production, more than 50,000 liters of water may be incorporated in a single day into the product).

CELA is concerned that the limits placed by this sectoral approach will not capture the full takings which are taking place in the Province. MoE should phase other sectors into the monitoring and reporting requirements to ensure that it has an accurate picture on water-takings in the province. CELA also recommends that MoE review all water taking permits every five years, including permits already issued. This review should include an analysis of volumes permitted but not used and adjustments should be made to permits to reduce permitted volumes not used.

The monitoring and reporting requirements should be included in a publicly accessible web site and should include the following additional information 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;
- (x) the permit expiry or cancellation date;
- (xi) the applicant's use of best conservation practices to reduce volume requested;
- (xii) the volume of water returned to the ecosystem; and
- (xiii) the location of the return flow.

The MoE should ensure that Applicants comply with the terms and conditions of their PTTW and take prompt enforcement action to address any non-compliance. In addition, the MoE should ensure that it has sufficient resources, both in terms of budget and staff to undertake the additional work that will result from the more in-depth analysis of information required under the proposed amendments to O. Reg. 285/99.

CELA Recommendation #9

CELA recommends that MoE phase other sectors into the monitoring and reporting requirements to ensure that it has an accurate picture on water-takings in the province. This review should include an analysis of volumes permitted but not used and adjustments should be made to permits to reduce permitted volumes not used.

The monitoring and reporting requirements should be included in a publicly accessible web site and should include the following additional information 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;
- (x) the permit expiry or cancellation date;
- (xi) the applicant's use of best conservation practices to reduce volume requested;
- (xii) the volume of water returned to the ecosystem; and
- (xiii) the location of the return flow.

The MoE should determine actual volumes of water consumed and not returned to the watershed. Over time the most accurate way to do this is to require the applicants to meter the return flows rather than estimate them. However, this could prove expensive, therefore the MoE should devise ways to facilitate and assist with the installation of meters to measure return flow.

(10) Provide Director with Authority under the OWRA to Impose a Moratorium

On May 4, 1999, in response to drought conditions in Ontario, the former Minister of Environment, the Honourable Norm Sterling announced in the Provincial Legislature that a moratorium on all water-takings had been imposed.¹⁵

CELA believes that this was the appropriate action under the circumstances, however there is no express legislative authority in the *Ontario Water Resources Act*, which provides the Minister, or any government official, with the authority to impose a moratorium. The Environmental Commissioner of Ontario subsequently made inquiries about the moratorium and was advised by MoE that a moratorium was in fact never imposed, but rather the Ministry was applying greater scrutiny on PPTW applications.¹⁶

CELA recommends that the *Ontario Water Resources Act* be amended to provide the Minister, or the Minister's delegate, with the authority to impose water-taking prohibition for a prescribed time frame in areas designated as ecologically sensitive, or facing serious water quality/quantity issues.

CELA Recommendation #10

CELA recommends that the *Ontario Water Resources Act* be amended to provide the Minister, or the Minister's delegate, with the authority to impose water-taking prohibition for a prescribed time frame in areas designated as ecologically sensitive or facing serious water quality/quantity issues.

(11) Fees for PTTW

In December 2003, the government announced its intention to charge companies and other permit holders that remove water from watersheds. The MoE has noted during multi-stakeholder consultations that other jurisdictions including most Canadian Provinces charge a fee for water taking.¹⁷

¹⁵ Hansard, May 4, 1999.

¹⁶ Environmental Commissioner of Ontario, *Ontario's Permit to Take Water Program and the Protection of Ontario's Water Resources, Brief to the Walkerton Inquiry*, (Toronto: ECO) p. 8.

¹⁷ Ontario Ministry of Environment, Slide Presentation made on April 2, 2004 at the Permit to Take Water Multi-Stakeholder Consultation process.

CELA supports the proposal for charges to water-taking and has recommended that the MoE proceed with this initiative. However, the proposed amendments do not address the issue of fees for water-takings. The EBR Registry posting for the proposed amendments to O. Reg. 285/99 state that "The MoE is proposing to develop a service cost recovery fee structure to recover costs associated with the Permit to Take Water Program". However, no details or time frame have been provided about this initiative.

CELA has in the past recommended that fees be imposed for water-taking and recommends that MoE make this issue a priority.

CELA Recommendation #11

CELA recommends that the MoE establish clear time frames for imposing fees on water taking in the Province.

(12) Guidance Manual for staff

The MoE's *Permit To Take Water Guidelines and Procedures Manual* (Revised April 14, 1999) and the *Guide for Applying for Approval of Permit To Take Water*, (Interim Guide) June 2000 should be amended to ensure consistency with the amendments made to O. Reg. 285/99.

CELA Recommendation #12

CELA recommends that the MoE's *Permit To Take Water Guidelines and Procedures Manual* (Revised April 14, 1999) and the *Guide for Applying for Approval of Permit To Take Water*, (Interim Guide) June 2000 be amended to ensure consistency with the amendments made to Reg.285/99.

PART IV: - CONCLUSION

CELA welcomes the MoE's amendments to the Water Taking and Transfer Regulation, (O.Reg. 285/99) and is pleased to see that many of the proposed amendments made by stakeholders during the multi-stakeholder consultations have been adopted in the draft regulation. However, a number of additional amendments will be required in order to ensure that the Province establishes and maintains an effective regulatory framework over water-takings.

In particular, the MoE needs to ensure that all takings in the province are monitored and recorded, including water transfers out of the Province, to ensure that the Ministry has accurate information about the state of water resources in the province. There has been a critical gap in the information on the state of water resources in the province, as well as the volume of water takings. CELA believes it is essential that the MoE collect and maintain this data in a publicly accessible database. This is essential to ensure that MoE's staff have access to accurate information about the availability of water when reviewing applications for PTTWs.

The MoE also needs to ensure that it provides guidance to Applicants on the increased public consultation requirements which are proposed in the draft regulation. Finally, the MoE should amend the *Ontario Water Resources Act* to provide the Director with the authority to impose a water-taking prohibition for a prescribed time frame in areas designated as ecologically sensitive or facing serious water quality/quality issues.

PART V: - SUMMARY OF CELA'S RECOMMENDATIONS

CELA Recommendation #1

CELA recommends that information about water balance and sustainable aquifer yield should be stored in an electronically accessible database, so that other government agencies as well as the public can have access to information about the state of Ontario's water resources. The database should also include information about minimum flow levels in watersheds and sub-watersheds beyond which no further water allocation would be allowed. Cumulative data should be made available both by watershed and by sector of use. Seasonal reports (spring, summer, fall and winter) should be required for individual applicants, by watershed, and by the Province on use by sector.

CELA recommends that when there is insufficient information available to satisfy the Director with respect to section 3 (2) 1 ii, special conditions should be added to the permit to limit the volume and the term of the taking until this information becomes available.

CELA Recommendation #2

CELA recommends that a clause be added to Section 3(2) of O. Reg. 285/99 requiring the Director to take a precautionary approach in assessing PTTW applications. In particular, the precautionary approach should be used where there is insufficient information available on the impact the water taking will have on ground and surface waters. The MoE should err on the side of safety by imposing special conditions to the permit to limit the volume and term of the taking until this information becomes available.

CELA also recommends that the MoE amend its PTTW manual to reflect the proposed changes to O.Reg. 285/99 once it has been promulgated. MoE should also provide its staff with technical training on how to review new PPTW applications to ensure consistency with the proposed amendments.

CELA Recommendation #3

CELA recommends that the term "near future" in subsection 3(2) 3(iii) of the proposed amendments to O.Reg. 285/99, be amended to authorize the Director to amend a PTTW to reduce the amount of taking if a person is currently not using the water, and there is no reasonable prospect that the person will use it within a specified period of time. (e.g. six months).

The MoE should develop best practice based conservation standards for all sectors to assist applicants and MoE staff in defining what constitutes a "reasonable prospect" See recommendation #6 below.

CELA Recommendation #4

CELA recommends that public consultation commence prior to posting the PTTW application on the EBR registry when the taking is for a large amount of water is in an ecologically sensitive area, or where the proposal may generate public interest. The MoE should provide information to the public on where they can obtain technical documents and any supporting documents and how to contact the Applicant/MoE if they have specific questions or comments about the proposed taking.

CELA Recommendation #5

CELA recommends that the MoE prepare a guidance document for Applicants on how to undertake public consultation. CELA recommends that in cases where an application will be contentious (e.g. a large taking of water or a taking near an ecologically significant area), Applicants should be required to submit a stakeholder consultation plan for comment and approval by the Ministry, outlining how public consultation will be undertaken. CELA also recommends that the public consultation by Applicants be done at the early stage of the permitting process.

CELA Recommendation #6

CELA recommends that the Director take proactive measures to ensure conservation of water by requiring applicants to assess mechanisms for water conservation in their operations/facilities. Public education and guidance on best practices in water conservation for all sectors should be provided and regularly updated to assist MoE staff in evaluating permit applications and applicants in reducing water use. CELA also recommends that the *Ontario Water Resources Act* establish explicit goals/targets for water conservation /efficiency (i.e. reduced per capita use of water in Ontario by 30% within five years) which should be reflected in the PTTW decision making process.

CELA also recommends that permits include conditions requiring applicants to report on the return flows of the water withdrawn and the location of the return. This information should also be included in the data system developed for PTTW and in the information required for public review of each permit.

CELA recommends that this regulation be applied to the same watershed scale as set out in the source protection regulations in order to be consistent with the transition underway to watershed based management.

CELA Recommendation #7

CELA has previously recommended that if there are to be general exceptions to water export, these exceptions must be within a regulatory framework which has complete information on the amount of water exports. This framework should at the minimum include data on how much water is being used, consumed or transported out of the basin. Furthermore, there should be monitoring as to the long-term cumulative effects of such withdrawals.

CELA also recommends that the definition of water basins in the proposed regulation be amended to be consistent with the definition contained in the Draft Great Lakes Basin Sustainable Water Resources Agreement now under public review. This amendment would make each Great Lake a separate water basin for the purpose of transfers.

CELA Recommendation #8

CELA recommends that in addition to the notification requirement to upper tier and lower tier municipalities and single tier municipalities, the MoE should also circulate the PTTW application to all municipalities and conservation authorities in the watershed and obtain sign-off before a PTTW is issued.

CELA Recommendation #9

CELA recommends that MoE phase other sectors into the monitoring and reporting requirements to ensure that it has an accurate picture on water-takings in the province. This review should include an analysis of volumes permitted but not used. The MoE should also evaluate seasonal use through this review.

The monitoring and reporting requirements should be included in a publicly accessible web site and should include the following additional information 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;
- (x) the permit expiry or cancellation date;
- (xi) the applicants use of best conservation practices to reduce volume requested;
- (xii) the volume of water returned to the ecosystem; and
- (xiii) the location of the return flow.

The MoE should determine actual volumes of water consumed and not returned to the watershed. Over time the most accurate way to do this is to require the applicants to meter the return flows rather than estimate them. However, this could prove expensive, therefore the MoE should devise ways to facilitate and assist with the installation of meters to measure return flow.

CELA recommends that the MoE ensure that Applicants comply with the terms and conditions of their PTTW, and take prompt enforcement action to address any non-compliance. In addition, the MoE should ensure that it has sufficient resources, both in terms of budget and staff, to undertake the additional work that will result from the more in-depth analysis of information, which will result from the proposed amendments to O. Reg 285/99 and for enforcement purposes.

CELA Recommendation #10

CELA recommends that the *Ontario Water Resources Act* be amended to provide the Minister, or the Minister's delegate, with the authority to impose water-taking prohibition for a prescribed time frame in areas designated as ecologically sensitive or facing serious water quality/quantity issues.

CELA Recommendation #11

CELA recommends that the MoE establish clear time frames for imposing fees on water taking in the Province.

CELA Recommendation #12

CELA recommends that the MoE's *Permit To Take Water Guidelines and Procedures Manual* (Revised April 14, 1999) and the *Guide for Applying for Approval of Permit To Take Water*, (Interim Guide) June 2000 also be amended to ensure consistency with the amendments made to Reg.285/99.