



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

October 8, 2009

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Ministry of Natural Resources  
Natural Resource Management Division  
Lands and Waters Branch  
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Dear Mr. Cameron:

**RE: EBR Registry No. 010-7477: Amendments to Ontario Low Water Response policy**

The Canadian Environmental Law Association (“CELA”) is a non-profit, public-interest group established in 1970 to use existing laws to protect the environment and advocate environmental law reform. 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 protection and resource management matters.

Since its inception, CELA has advocated the timely development of effective laws, regulations and policies to protect water resources within Ontario and across Canada. Among other things, CELA represented the Concerned Walkerton Citizens at the Walkerton Inquiry, and was actively involved in the development of the *Safe Drinking Water Act, 2002*, the *Clean Water Act, 2006* (“CWA”), and regulations, policies and guidelines thereunder.

In general, CELA is supportive of the need to amend the Ontario Low Water Response policy (“OLWRP”) in order to improve the management of low water conditions. We are particularly supportive of the Province’s acknowledgement in Section 4.6 that best management practices and Integrated Watershed Management (“IWM”) “should provide the foundation for managing water resources in stressed watersheds and for Climate Change Adaptation”. We therefore support the recommendation that an IWM strategy be developed as a proactive approach to helping prevent low water conditions, and strongly encourage the Province to embrace IWM formally and incorporate its practice in land-use planning and water resource management. CELA does however submit that best management practices and particularly IWM should be applied province-wide, and not simply be seen as tools for use in stressed watersheds.

CELA has several further comments on amendments to the OLWRP, as well as a number of concerns about the current policy which we would like to express.

(1) **Failure to Incorporate Ontario’s Clean Water Act, 2006, and the implementation work being undertaken under this law, into the OLWRP**

In the executive summary of the OLWRP it is stated that the purpose of the policy is to ensure the Province is prepared for, and ready to assist in coordinating local response to, drought situations within Ontario. These goals are to be achieved through provincial and local implementation of the policy (Section 1.2). Furthermore, the OLWRP is said to have been “developed using existing science, data collection networks, and analysis processes” (Section 1.3).

CELA is quite surprised that no amendments have been made to the OLWRP in order to incorporate the *Clean Water Act, 2006* (“CWA”), and the source water protection implementation work currently underway under this law, into preparing for drought situations. The CWA was passed to help protect Ontario’s sources of drinking water from both qualitative and quantitative threats. In order to mitigate the latter, the Ministry of the Environment (“MOE”) has undertaken an enormous hydrological data collecting and mapping project which, when completed, will give policy makers, municipalities, and Ontario residents an accurate idea as to the amount of water contained within the province’s aquifers. Moreover, these data collecting and mapping exercises are being tied to climate change modelling to identify aquifers, streams, rivers and lakes vulnerable to changes in temperature and precipitation patterns. It is in the Province’s authority to use the results of the data collecting, mapping and modelling to make decisions on modifying, restricting and prohibiting various land uses that would result in unsustainable water takings.

We consider the failure to incorporate the CWA into the OLWRP a grave oversight in the policy’s amendment. The work being undertaken under the CWA would directly help the Province achieve its goals of preparing for, and coordinating local response to, drought situations. Not only does the failure to incorporate the work being done under the CWA mean the science, data development, and analysis processes of the MOE’s source protection branch may potentially be overlooked, it raises the possibility of duplicating work already completed at great expense to the Province.

We therefore urge the Province to amend the OLWRP so that it incorporates the CWA and all related work undertaken under this law.

(2) **4.5 Priority Water Uses**

Section 4.5 introduces a “basic model” for prioritizing water use. Under this model, water use is divided into three classes: essential, important and non-essential.

The first class, essential, applies to water used by humans, livestock and ecosystems. The second class, important, applies to water required for the social and economic well being of a

particular area. The third class, non-essential, applies to water use which can be interrupted for short periods without significant social or economic impacts.

CELA notes that no mention of water conservation appears in this section; the nearest this section comes to mentioning water conservation are the terms “efficient use” and “protection of the resource”, taken together. This is despite that fact that one of the roles outlined for water response teams is to use water data, legislation, communication techniques and local tools to advocate conservation (Section 2.1). Moreover, balancing the “efficient use” of water with “protection of the resource” and ensuring equity among users, may not result in reduced water takings in areas which have experienced water shortages in recent history, and/or are likely to be stressed in the future.

CELA strongly recommends that this section be amended. The “ultimate goal” should be the conservation of water. At a minimum this implies no new or increased water takings, as well as the possibility of forced reductions in water takings in stressed areas. Although water response teams in such areas are, under the current OLWRP, free to develop water conservation measures on their own, it is CELA’s view that these measures should be entrenched within provincial policy.

Furthermore, CELA notes important inconsistencies between statements about balancing water use among users (i.e. humans, livestock and ecosystems) in this section and in others (e.g. the more proactive approach to water management in stressed areas discussed in Section 4.6); and proposed mitigation strategies for important water uses in dealing with droughts, such as trucking in water to ensure the social and economic well being of an area under stress. If, during a drought, an area’s businesses, industries, or residents have been forced to rely on water imports to ensure the maintenance of social and economic well being, exactly what sort of ecological destruction must simultaneously be taking place in this area? This proposed mitigation strategy highlights the fact that water use for ecosystems is effectively *not* considered essential. It also highlights the fact that at a very high policy level proactive measures (trucking in water being a highly *reactive* strategy) are not seriously being considered. It would make more sense, in stressed areas, for water response teams and provincial water managers strongly to advocate rainwater harvesting systems, such as collecting rainwater from roofs for storage in cisterns. Such systems would provide the potential for rainwater to be used productively in maintaining social and economic well being. In addition, CELA encourages the Province to work towards the prohibition of water extraction from aquifers, streams, rivers and lakes in stressed areas for non-essential water uses (e.g. swimming pools, lawn watering). Non-essential uses should be sourced in ways that will have little or no negative effect on a stressed area’s water supply. Rainwater harvesting is one such source of water.

CELA strongly recommends that the Province work on eliminating these inconsistencies in its approach to water uses. With such inconsistencies in the policy, it will not be surprising if droughts resulting in water shortages for humans, livestock and ecosystems continue to occur all too frequently, which was precisely the reason it was decided to amend the OLWRP in the first place.

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In summary, CELA wishes to restate our recommendations concerning the OLWRP:

1. The Province should amend the OLWRP so that it incorporates the CWA and all related work undertaken under this law.
2. The “ultimate goal” of prioritizing water uses should be the conservation of water for humans, livestock and ecosystems. To achieve this goal, the Province should embrace a policy of no new or increased water takings, as well as consider forced reductions in water takings in stressed areas.
3. Inconsistencies within the Province’s approach to water uses, such as water use for ecosystems being effectively not considered essential, should be eliminated.

We appreciate this opportunity to provide input on the amendments to the OLWRP and the policy in general, and we trust our comments and recommendations will be taken into account in the Province’s efforts to protect water resources.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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