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Ministry of Natural Resources and Forestry  
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via email [mike.henry@ontario.ca](mailto:mike.henry@ontario.ca)

December 27, 2018

**Re: Consultation on Draft 2019-2029 French-Severn Forest Management Plan**

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Please accept this submission of the Canadian Environmental Law Association (CELA) in response to the Ministry of Natural Resources and Forestry's (MNRF) Stage Four notice<sup>1</sup> to review and comment on the draft Forest Management Plan (FMP)<sup>2</sup> for the French-Severn Forest, 2019-2029.

As detailed below, CELA recommends that the draft FMP be amended to adopt an herbicide-free approach to forest management. We make this recommendation in light of Health Canada's ongoing review of glyphosate. To continue using glyphosate despite scientific uncertainty is inconsistent with the international law principle of the precautionary principle. Opting for herbicide-free forest management also aligns with the purposes of the *Crown Forest Sustainability Act*, which provide for the sustainability of Crown forests, while considering the social, economic and environment needs of present and future generations.

**I. Background - Canadian Environmental Law Association**

The Canadian Environmental Law Association ("CELA") is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment.<sup>3</sup> For nearly 50 years, CELA has used legal tools, undertaken

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<sup>1</sup> MNRF, "Review of Draft Forest Management Plan: Information Centre French-Severn Forest 2019-2029 Forest Management Plan," online: [http://www.westwindforest.ca/wp-content/uploads/2018/10/Q82-SAA-166\\_Review-of-Draft-FMP-Information-Centre-French-Severn-Forest.pdf](http://www.westwindforest.ca/wp-content/uploads/2018/10/Q82-SAA-166_Review-of-Draft-FMP-Information-Centre-French-Severn-Forest.pdf)

<sup>2</sup> MNRF, "Forest Management Plan for the French-Severn Forest (360) – April 1, 2019 – March 31, 2029," online: <http://www.efmp.lrc.gov.on.ca/eFMP/viewFmuPlan.do?fmu=360&fid=59006&type=CURRENT&pid=59006&sid=24623&pn=DP&ppyf=2019&ppyt=2029> [FMP]

<sup>3</sup> Canadian Environmental Law Association, online: [www.cela.ca](http://www.cela.ca)

ground-breaking research and conducted public interest advocacy to increase environmental protection and the safeguarding of communities. We work towards protecting human health and our environment by actively engaging in policy planning and seeking justice for those harmed by pollution or poor environmental decision-making.

### **III. Recommendation: Adopt herbicide-free forest management practices**

#### **i. Use of Herbicides in the FMP**

The Forest Management Plan (FMP) notes that herbicides may be used during site preparation to “control unwanted herbaceous and woody competition in order to promote the establishment of more desirable regeneration (in many case[s] conifers).”<sup>4</sup> Herbicides may be applied by helicopter, air blast sprayers mounted on skidders or by hand-operated backpack mist blowers.<sup>5</sup>

Herbicides may also be used during tending, for the “control or removal of undesirable competition that is impeding the growth of target and acceptable species.”<sup>6</sup> This would similarly be accomplished by helicopter, air blast sprayers mounted on skidders or by hand-operated backpack mist blowers.<sup>7</sup>

The FMP also permits the “aerial application of pesticides for renewal, tending, or protection” within Areas of Concern (AOC), such as a “large/medium/small lakes, high or moderate potential sensitivity ponds or streams, and rivers.”<sup>8</sup> While the FMP lists certain prohibitions within AOCs, significant or sensitive areas, the application of pesticides remains permissible. Similarly, so long as the buffer zone prescription for sensitive areas is adhered to, aerial application of pesticides is also permitted in provincially significant wetlands.<sup>9</sup>

#### **ii. Response & Recommendations**

CELA does not support the Ministry of Natural Resources and Forestry’s position that as “glyphosate has been used safely and effectively in Ontario’s forests for more than 30 years,” its continued use is acceptable.<sup>10</sup>

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<sup>4</sup> FMP, p 126

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> FMP, p 196

<sup>9</sup> FMP, p 170

<sup>10</sup> See Appendix 1

First, while the Pest Management Regulatory Agency (PMRA) re-evaluation of glyphosate concluded in 2017 that glyphosate is of acceptable risk, that decision is the subject of nine Notices of Objection filed under Section 35(1) of the *Pest Control Products Act* by multiple environmental and public health organizations as well as individual scientists or concerned citizens.<sup>11</sup> These Notices of Objection submitted extensive evidence that the PMRA review was scientifically inadequate, that it relied almost entirely on non-published and internal reports by companies with a financial benefit to gain from the decision, and that it omitted extensive, independent studies. The Notices of Objection filed important scientific evidence calling into question the credibility of the review and seeking an independent Board of Review.

Secondly, ongoing litigation in the United States has brought to light disturbing information about undue influence by manufacturer of glyphosate on the regulatory approval process. Specifically, the so-called Monsanto Papers, the discovery documents released during the 2018 trial of *Dewayne Johnson v Monsanto Company*,<sup>12</sup> call into question the independence of scientific data and studies relied upon during the review by both US and Canadian pesticide regulatory bodies. The materials contained in the Monsanto Papers indicate that some of the studies were reviewed or ghost written by Monsanto's scientists.<sup>13</sup>

Civil society organizations<sup>14</sup> have since reiterated their Notice of Objection request that Health Canada establish an independent review panel to review the potential influence of Monsanto in the studies relied upon by the PMRA. While the federal Minister of Health has yet to decide on a Board of Review, in November of this year, Health Canada stated in the media that in light of the Monsanto Papers, "Health Canada scientists are currently reviewing hundreds of studies to assess whether the information justifies a change to the original decision, or the use of a panel of experts not affiliated with Health Canada."<sup>15</sup> **These recent events demonstrate that contrary to the statements made by the MNRF, evidence demonstrating the acceptable use of glyphosate remains very much in flux.**

In response to this ongoing review, CELA recommends the MNRF cease reliance glyphosate on the basis of the precautionary principle, which as the MNRF recognizes, is a principle recognized

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<sup>11</sup> Health Canada, "Programs and special actions – Current reconsiderations," online: <http://pr-rp.hc-sc.gc.ca/pi-ip/result-eng.php?1=0&2=501&3=psrc&4=n&5=2&6=DESC&7=X&8=E>

<sup>12</sup> *Johnson v. Monsanto Co.*, 2018 WL 5246323 (S.F. Super. Ct. Oct. 22, 2018)

<sup>13</sup> Ecojustice, "Media Backgrounder: Health Canada's re-evaluation of glyphosate and the Monsanto Papers" (November 2018), online: [https://www.ecojustice.ca/wp-content/uploads/2018/11/FINAL\\_Monsanto-Papers-background.pdf](https://www.ecojustice.ca/wp-content/uploads/2018/11/FINAL_Monsanto-Papers-background.pdf)

<sup>14</sup> Canadian Association of Physicians for the Environment, Environmental Defence, Ecojustice, Equiterre, David Suzuki Foundation, and Prevent Cancer Now, "Re: Final Notice of Objection to Re-Evaluation Decision RVD2017-01, Glyphosate, April 28, 2017," online: [http://equiterre.org/sites/fichiers/letter\\_to\\_minister\\_of\\_health\\_re\\_-\\_glyphosate\\_objection\\_ecojustice\\_2018oct29\\_en.pdf](http://equiterre.org/sites/fichiers/letter_to_minister_of_health_re_-_glyphosate_objection_ecojustice_2018oct29_en.pdf)

<sup>15</sup> CBC, "Troubling allegations' prompt Health Canada review studies used to approve popular weed-killer," (11 Nov 2018), online: <https://www.cbc.ca/news/technology/monsanto-roundup-health-canada-1.4896311>

in the guiding documents for the FMP (ie. the Site Stand Guide and the Forest Management Guide for the Great Lakes-St. Lawrence Landscapes). To continue using glyphosate in light of scientific uncertainty is inconsistent with the international law principle, the precautionary principle, which states that lack of scientific certainty must not be used as a reason to ignore or postpone preventive or remedial action when there are other good reasons to act, such as in circumstances of potentially serious or irreversible environmental harm.<sup>16</sup>

The precautionary principle has been adopted by the Supreme Court of Canada as an appropriate aid in interpreting environmental statutes. In *Spraytech v. Hudson (Town)*, the court adopted the definition of the precautionary principle as enunciated in the Bergen Ministerial Declaration on Sustainable Development (1990):

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.<sup>17</sup>

Therefore, in applying the precautionary principle to this FMP, the MNRF should adopt forest practices and measures which avoid the use of glyphosate.

Thirdly, opting for herbicide-free forest management would align with the purposes of the *Crown Forest Sustainability Act* which provide for the sustainability of Crown forests, in light of social, economic and environment needs of present and future generations.<sup>18</sup> Concerns from the public about the potential environmental effects of herbicides prompted the Quebec government in 1994 to commit to ending chemical herbicide use in its forests, and opt for an integrated approach to vegetation management.<sup>19</sup> In 2001, the objective was achieved. A similar strategy, based on the purposes of the *Crown Forest Sustainability Act* which is cognizant of social considerations, would be possible for the French-Severn FMP. Like Quebec,

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<sup>16</sup> See Marco Martuzzi, “The Precautionary Principle: In Action for Public Health” (2007) 64 *Journal of Occupational and Environmental Medicine* (2007) 569; European Environment Agency, *Late Lessons from Early Warnings: The Precautionary Principle 1896-2000* (Copenhagen: EEA, 2002) at 13, 15; Nicolas de Sadeleer, “The Principles of Prevention and Precaution in International Law: Two Heads of the Same Coin?”, chapter 9 in *Research Handbook on International Environmental Law*, Malgosia Fitzmaurice, David M. Ong and Panos Merkouris, eds (United Kingdom: Edward Elgar, 2014) at 184.

<sup>17</sup> *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 at para 31, [2001] 2 S.C.R. 241.

<sup>18</sup> *Crown Forest Sustainability Act, 1994*, SO 1994, c 25, s 1

<sup>19</sup> Ressources naturelles, Faune et Parcs Québec, “Integrated Forest Vegetation Management in Québec (Canada): An Effective Alternative to Herbicides.” (September 2003), online: <https://mern.gouv.qc.ca/english/publications/forest/publications/Roy-A.pdf>

concerns from the public about reliance on glyphosate have also been raised in Ontario and CELA supports the request from the TEK Elders that herbicides be removed from forestry.<sup>20</sup>

**All of which is respectfully submitted this 27th day of December 2018:**

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

per

A handwritten signature in black ink, appearing to read "Kerrie Blaise".

Kerrie Blaise, Counsel

cc

Ildiko Apavaloae, MNRF Regional Planning Forester  
Barry Davidson, Westwind Forest Stewardship Inc.

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<sup>20</sup> TEK Elders Group, online: <http://tekelders.weebly.com/thoughts>

## Appendix 1

Ministry of Natural  
Resources and Forestry

Parry Sound District Office  
7A Bay Street  
Parry Sound Ontario, P2A 1S4

Ministère des Richesses naturelles  
et des Forêts

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August 14, 2018

Kerrie Blaise, JD MSc BES  
Ontario Wildlands Conservancy  
328 Davis Dr.  
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P0H 1Y0

### **RE: 2019-2029 French Severn Forest Management Plan – Stage 3: Proposed Operations**

Dear Ms. Blaise,

Thank you for your comments dated July 4, 2018 on Stage 3: Proposed Operations for the 2019-2029 French-Severn Forest Management Plan (FMP). The Planning Team has reviewed your comments and is providing this letter in response to your comments.

#### 1. Protecting species at risk requires active monitoring and mitigating harmful effects.

Protecting species at risk starts at the landscape level through implementation of the Forest Management Guide for Great Lakes St. Lawrence Landscapes (LG) using a coarse filter management approach to ensure a diversity of ecosystem conditions through time providing habitat for the majority of native species. The results of applying the LG are reflected in the Long Term Management Direction (LTMD) developed for the FMP at Stage 2.

Conservation direction for species at risk is further incorporated in forest management planning through implementation of the Forest Management Guide for Conserving Biodiversity at the Stand and Site Scales (SSG). Operational prescriptions and conditions for areas of concern (AOCs) are developed based on this direction in the SSG to minimize, mitigate and prevent potentially harmful impacts on species at risk amongst a number of forest values.

Operational prescriptions and conditions for known locations of species at risk, as well as of other forest values based on Ministry of Natural Resources and Forestry (MNR) data, are prepared in accordance with the Forest Management Planning Manual (FMPM), with the resulting information products (e.g., maps) being exchanged in accordance with the Forest Information Manual.

Annotation is used on maps and is correlated to the known locations of particular species and/or habitat and to the corresponding mitigation measures found in the applicable AOC prescription or condition. These maps were available for review at Stage 3 (Review of Proposed Operations) and will be available for review at Stage 4 (Review of Draft FMP). In some cases, the specific data pertaining to a species (e.g. precise location information) is sensitive, and the species and/or its habitat become a sensitive value that the planning team protects through the use of a unique coding system. While AOC annotation is shown on operations maps, the specific value type is uniquely coded so as to be undiscernible by the public. Values information is shared with the forest industry and MNRF staff on a need to know basis in order to ensure the prescriptions and conditions for the AOC are applied.

Each year during implementation of a FMP, the Sustainable Forest License holder (Westwind Forest Stewardship Inc.) submits an Annual Work Schedule (AWS) for review and approval. The AWS is a subset of the areas approved for the 10-year period of the FMP. The review of the AWS allows MNRF staff to identify priority areas that may require additional fieldwork to identify forest values including species at risk. Accordingly, field surveys are carried out and the information collected on new values is shared with the forest industry so that the appropriate AOC can be applied.

During operations, where the forest industry identifies a previously unidentified forest value, this information is submitted to the MNRF. The value is verified and the appropriate AOC is then applied; where required operations are curtailed or modified.

It is then through the combination of known information, information collected in advance of operations and those during implementation of operations that serve to contribute to baseline information to mitigate, minimize or prevent impacts on values such as species at risk.

The Ontario Wildlands Conservancy (OWC) submission highlighted efforts of your own to document observations of species at risk. Please note this information can be shared with the Natural Heritage Information Centre (<https://www.ontario.ca/page/natural-heritage-information-centre>) or with biologists here at the Parry Sound District. The information will be verified and can then be used in forest management planning.

## 2. Planned Operations must take into account the precautionary principle

MNRF's Statement of Environmental Values (SEV) includes a number of principles including those highlighted in your submission. Development of FMPs on Crown land takes direction from a variety of guides and manuals that are developed using the most up-to-date information available. These sources of direction have been developed in consideration of MNRF's SEV.

In both the SSG and the Forest Management Guide for Great Lakes-St. Lawrence Landscapes (LG) there is acknowledgment that the precautionary principle was used in guide development. Where uncertainty exists within direction in the SSG, monitoring programs are identified as a priority and are used to inform the periodic review and

potential corresponding revisions of the SSG. Direction in the SSG was also developed based on a thorough review of the scientific literature, and on the advice and expert opinion of researchers and resource managers. When information was limited or opinions varied, conservative direction was prescribed. The LG likewise deals with the precautionary principle by applying the principles of adaptive management and decision analysis.

The aforementioned Area of Concern (AOC) prescriptions that are developed using the SSG are used during the planning for and implementation of operations in an FMP. The specific AOC prescription, depending on value classification, often includes a combination of no cut reserve and/or modified harvest operation, as well as limitations on the location, maintenance and use of roads as well as silviculture activity.

FMPs must reflect the direction within the SSG and LG; thus, it can be concluded that the FMP deals with caution and special concern as it is conducted in an adaptive management cycle that facilitates continuous improvement.

### 3. The use of glyphosate in aerial spraying does not promote biodiversity nor align with the precautionary principle

Forest managers may decide to use herbicides, including glyphosate, based on effectiveness, worker and public safety, cost or environmental effects. Glyphosate has been used safely and effectively in Ontario's forests for more than 30 years.

Effective vegetation management can be essential to conserving biodiversity. For example, without tools for effective vegetation management, forest managers cannot sustainably maintain the white and red pine component of the French-Severn Forest. Reduction in the pine component would have dramatic effects on the diversity of plant and animal species found in the Forest. There is general agreement that the potential long-term landscape-scale effects on biodiversity of not using herbicides, far outweigh any potential short-term localized effects of herbicide application.

OWC is concerned with the binding of glyphosate to bottom sediments in water, a reaction that can increase the half-life of glyphosate and, in turn, increase the potential surface water contamination due to soil erosion. The use of glyphosate in forestry requires the application of wide buffer zones to prevent entry of herbicide into water bodies. Modern application and navigation technology results in very accurate deposition. One of the reasons that glyphosate has such a minimal environmental impact is that once applied, any of the herbicide that is not absorbed by plants is tightly bound to organic matter and soil particles. Glyphosate will then degrade into naturally occurring substances (through photo-, chemical, and soil microbial degradation processes) with a half-life of days to weeks depending on environmental conditions.

OWC has requested that MNRF cease reliance on aerial silvicultural glyphosate application or otherwise provide a list of all studies and reports relied upon to support ongoing use of glyphosate. Planning teams are required to consider alternatives to



herbicides to control competing vegetation in order to regenerate forests to ecologically appropriate species.

A vast amount of research has been published on the effects of glyphosate on the environment and human health. This information has been reviewed by regulators (Health Canada) to improve recommendations for use. A re-evaluation of glyphosate was recently completed in 2017 (Re-evaluation Decision RVD2017-01 Glyphosate) and published by Health Canada which re-affirms the use of glyphosate for forest vegetation management. This re-evaluation included consideration of the effects of forest glyphosate applications on the forest environment, and on forest workers and users of the forest, including hunters and recreational users. Information regarding this report can be found at <https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates/registration-decision/2017/glyphosate-rvd-2017-01.html>.

Please also find attached the document entitled "Frequently Asked Questions On the Use of Herbicides in Canadian Forestry" Technical Note No 112 from Natural Resources Canada that provides information on the use of herbicides in forestry.

The next stage in the public consultation process in the development of the 2019-2029 French-Severn FMP is Stage 4: Review of Draft Plan. This stage will again involve information centres in both Parry Sound and Huntsville, tentatively scheduled for the end of October 2018. The draft FMP will also be available for review on the [ontario.ca/forestplans](http://ontario.ca/forestplans) website. You will be sent a notification, once finalized, of the specific details of these information centres.

If you require any additional information, please do not hesitate to contact Michael Henry, Management Forester, at 705-773-4238 or via email at [mike.henry@ontario.ca](mailto:mike.henry@ontario.ca). Thank you.

Sincerely,



Dan Duggan  
District Manager  
Parry Sound District  
Ministry of Natural Resources and Forestry

.cc Barry Davidson, 2019-2029 French Severn Forest Plan Author, Westwind Forest Stewardship Inc.

Attachments (1)

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