Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

Next Steps for Bill C-37:

HAVE YOUR SAY ON SOURCE WATER PROTECTION

This resource is for First Nations leaders, staff, and community members who are interested in learning more about and/or providing comments about source water protections in Bill C-37, an "Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands."

While Bill C-37 addresses many aspects of water security, this brief is specifically focused on components related to source water protection.

In addition to this analysis, the Canadian Environmental Law Association is offering the following support to First Nations in Ontario:

In-person and virtual meetings to discuss your community's unique source water protection needs

Support with participating in the anticipated committee process for Bill C-37 or other forms of engagement

CELA Publication #1723

Background

Bill C-37 was first introduced in Parliament in June 2026. The Bill essentially "replaced" a previous bill, Bill C-61, which had been introduced in 2024 under the previous government. However, as Parliament was pro-rogued in January 2025, Bill C-61 did not reach a third reading vote.

Bill C-61 was created in partnership with and largely supported by First Nations leaders, but significant changes were made to what is now Bill C-37 without such participation.

It is anticipated that Bill C-37 will be sent back to committee for review during the current parliamentary term. This will be an opportunity to address the changes made without consultation.

Source Water Protection

Source water refers to the untreated water from lakes, rivers and groundwater resources that is used to supply a drinking water system. Preventing harm to source water is a crucial component of water security as it can be expensive or even impossible to remedy a problem after it has happened.

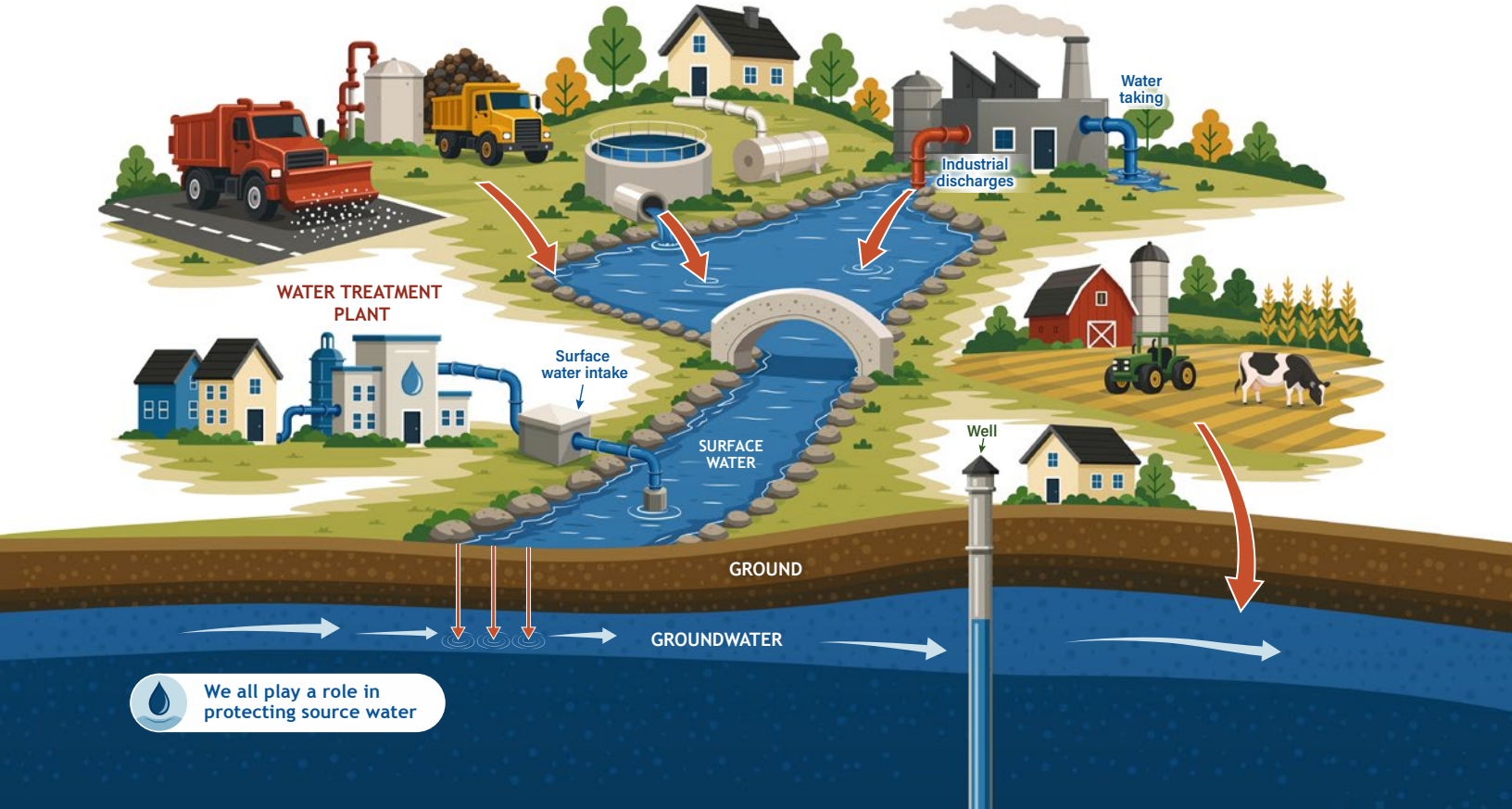
Source protection plans help identify and prevent pathways through which residential, commercial, industrial, infrastructure, and agricultural activities may contaminate or deplete drinking water sources

INFRASTRUCTURE
- Landfills
- Fuel storage tanks
- Road salt and airport de-icing
- Household contaminants

WASTEWATER
- Septic systems
- Sewage lagoons or treatment systems
- Sewer overflow into waterways

INDUSTRY
- Mining
- Industrial chemicals
- Hazardous waste storage
- Industrial discharges
- Water taking

AGRICULTURE
- Pesticides
- Livestock
- Manure application



In Ontario, the source water from most municipal water systems in non-Indigenous communities is protected by provincial source protection laws. Under this system, policies that are meant to identify, mitigate and prevent risks to source water are developed locally to ensure that they address the community's unique needs. Where and how these policies can be enforced is dependent on the natural boundaries and movement of the water source, not property lines or other political boundaries.

First Nations communities in Canada have not historically had equal access to protecting their sources of water. While some First Nations in Ontario have the option to join the province's source protection plan, the ability for all First Nations to lead the development and enforcement of their own source protection strategies has long been needed.

Source Water Protection in Bill C-37

Source protection is directly and indirectly addressed in multiple parts of Bill C-37, but some content has changed from how it appeared in Bill C-61. The following sections will summarize the key source protection components of Bill C-37 and, where relevant, explain CELA's recommendations for what amendments should be made.

Right to safe drinking water

Section 3 of Bill C-37 is a statement about the rights that exist on First Nations lands in respect to the human right to safe drinking water. It reads:

> *"it is the policy of the Government of Canada to further the progressive realization, for individuals on First Nation lands of the human right to safe drinking water, as protected by the International Convention on Economic, Social and Cultural Rights."*

This wording has been changed from how it appeared in Bill C-61 without consultation. CELA asserts that the language of "furthering the progressive realization," of this right is not strong enough and recommends that this section be replaced with the following, as it appeared in Bill C-61:

> *"It is recognized and affirmed that it is a human right of every individual on First Nations land to have access to clean and safe drinking water in accordance with this Act."*

While this section does not explicitly deal with source water protection, it is an important founding principle that will inform how source protection components in this future law are interpreted and implemented.

Source water as a critical component in drinking water protection

In multiple places throughout the Preamble, Purpose and Principles sections of Bill C-37, source protection is mentioned and recognized as **"critical for the cost-effective and efficient provision of water services on First Nation lands."**

The Principles section, which acts as guidance for decision making under the Act, specifies that **"effective water services include a multi-barrier approach."** A multi-barrier approach is considered best practice for ensuring access to safe drinking water, with source protection being the first barrier that stands between communities and contaminated or depleted water.

Other barriers, which are also addressed in Bill C-37, include water treatment, training for water professionals, emergency planning and monitoring.

The reiteration of the importance of effective source protection is valuable for ensuring that the interpretation and implementation of Bill C-37 will be reflective of this.

Substantive equality

The concept of substantive equality is included in both the Preamble and the Principles section of Bill C-37 and is meaningful to how source protection should be approached under it. Substantive equality means that First Nations water systems must not only be effective and acceptable, but that their right to achieve this must be equal to that of non-Indigenous communities.

This is particularly relevant to source protection as non-Indigenous communities, particularly those in Ontario, benefit from a variety of strong and specific source water protection powers that some First Nations either do not have access to or do not deem acceptable.

Protection zone jurisdiction and regulation

Water does not respect political boundaries. Because of this, source protection policies, such as the ones seen in Ontario, must be informed by the natural state of the river, lake or groundwater resource being used for drinking water.

This is addressed in Bill C-37 by proposing that, in collaboration with neighboring governments, First Nations-developed source protection policies be applied in **"in a protection zone that is adjacent to the First Nation lands of a First Nation."**

CELA is supportive of the general intention of these provisions, but recommends that changes be made to assure that these protection zones will be substantively equal to those used by non-Indigenous communities.

CELA recommends that the phrase "adjacent to," is removed when describing a protection zone. This language was not present in Bill C-61 and, given the wide variation in how far and fast water travels, limiting a protection zone to an area "adjacent" to a First Nation may be not only incompatible with effective source protection, but also lacking in substantive equality.

In the Regulations section, further details are given about the responsibility of the federal government to make regulations defining "protection zones" in consultation and cooperation with First Nations.

What does this mean for you?

Indigenous-led source water protection is long overdue. CELA believes that, if defined and implemented properly, the protection zones proposed in Bill C-37 are a positive step towards addressing unequal access to clean drinking water for First Nations communities in Canada.

Having the ability to develop and enforce source protection policies beyond the borders of First Nations land is essential to long-term water security, but could also prove challenging due to a variety of conditions, including:

- **Developing agreements with neighbouring governments about the application of First Nations laws in protection zones**
- **Creating effective and acceptable source protection policies**
- **Addressing existing source water risks that existed before source protections under Bill C-37 come into force**

CELA has a deep background in the legal and regulatory framework related to source water protection and experience working with several First Nations on source water protection approaches.

We are offering our support by exploring your Nation's specific source protection needs, identifying anticipated challenges and helping to ensure that you have your say in ensuring that the defining and implementation of source protections in Bill C-37 is appropriate and effective.

For more information, please reach out to us at:
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