



April 20, 2015
Ben Hatcher
Program Advisor
Ministry of the Environment and Climate Change
Environmental Programs Division
Modernization of Approvals Branch
135 St. Clair Avenue West, Floor 4
Toronto Ontario M4V 1P5

Mr. Hatcher:

Re: Conservation Ontario's Comments on the "Technical Paper on the Environmental Activity and Sector Registry and Short-Term Water Takings" (EBR #012-0580)

Thank you for the opportunity to provide comments on the "Technical Paper on the Environmental Activity and Sector Registry and Short-Term Water Takings" (EBR #012-0580). The following comments are provided by Conservation Ontario on behalf of Ontario's 36 Conservation Authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs on this Technical Paper.

General Comments

In general, Conservation Authorities are supportive of the proposed changes in the Technical Paper. The proposed changes will serve to streamline the approvals process for many short-term, low-risk (Category 1 and 2) water taking activities, and free up Ministry of the Environment and Climate Change (MOECC) resources to focus on potentially more critical water taking proposals under Category 3. For example, the current requirement for proponents to obtain a Permit to Take Water (PTTW) for the diversion of flow around a construction site where the water is being directly returned to the watercourse has been an irritant for developers (including the construction industry, municipalities and Conservation Authorities) for some time. The requirement to apply and obtain a PTTW prior to commencement of a construction project has in some cases, resulted in requests for in-water work timing windows to be extended due to application processing timelines. The proposed clarification should address this issue and allow works to be scheduled during times of least risk to fish and their habitat.

Conservation Authorities are especially supportive of the proposal to exempt wetlands and other conservation projects from subsection 34(1) of the *Ontario Water Resources Act* (OWRA). Conservation Authorities and other agencies (such as Ducks Unlimited), undertake wetland restoration projects which result in overall benefits to the watershed. Providing a streamlined approvals process for conservation projects removes disincentives to landowner participation. For example, since 2008 the Ausable Bayfield Conservation Authority has provided a wetland restoration program for flood and erosion control in fields, as well as improving water quality for Species at Risk and providing diverse wildlife habitat. The current requirement to obtain a PTTW and to provide annual reports has, at times, made it more

challenging to convince private landowners to create wetlands on their property. The proposed exemption would help to eliminate some of those administrative barriers.

Conservation Authorities are equally supportive of the proposal to exempt “a taking of water by means of an existing structure or works built across a watercourse for the diversion or storage of water from a surface source of supply if the structure or works is intended solely to allow all natural watercourse flow to pass freely over the crest of the structure” (i.e. weirs). Many Conservation Authorities own and operate several existing structures which store water from a surface source of supply and allow all natural watercourse flow to pass freely over the crest of their weir. For instance, Lakehead Region Conservation Authority owns a free flow weir, which sole purpose is to act as a sea lamprey barrier. The proposed removal of the requirement to have a PTTW is appreciated; the exemption of such water takings from subsection 34 (1) of the OWRA for structures which have been in place for decades is supported.

The wording for the proposed exemption for weirs is very limiting as “all water must flow freely over the crest of the dam”. Many weirs are outfitted with fish ladders which provide a benefit to the watercourse. The current wording would exclude all weirs that are outfitted with fish ladders and dams with small operable gates used for maintenance. These features do not change the natural flow regime of the watercourse, but allow for the safe passage of fish through the watercourse or maintenance of the structure while maintaining a natural flow regime. The Ministry should consider revising the wording of the proposed exemption so that it is not so limiting.

While Conservation Ontario is supportive of the proposed exemptions found within this paper, it is requested that the Ministry clarify the status of *existing* Permits to Take Water which have been obtained for the purposes of constructing a wetland or a weir. Should this proposal be approved, it is Conservation Ontario’s preference that this approval would also include removing the requirement for annual reporting on the aforementioned projects. It is anticipated that a review of these projects in relation to any new regulations would take place when the permits came up for their 10 year renewal, however the public would be better served through removing unnecessary reporting requirements if possible in advance of that 10 year period.

Finally, Conservation Ontario is supportive of the comments provided by the Ontario Waterpower Association on April 7, 2015 with regard to this Technical Paper, including the four recommended improvements to the framework.

Specific Comments

Section 2.1

Conservation Authorities are supportive of the definition of “qualified persons” for proposed ground water takings however there is value in adopting a multi-disciplinary approach requiring input from aquatic and/or terrestrial ecologists in addition to geoscientists and engineers. Conservation Authority staff have experienced some cases where impacts on significant wildlife habitat have been observed from relatively minor water takings and ecologists may be in a better position to comment on the potential for adverse impacts of the proposed water taking activity on natural features.

Section 2.2

This section should also mention that permitting must have consideration for provisions under the *Clean Water Act* for areas with Significant Drinking Water Quantity threats as established through the Source Water Protection water budgeting process.

Section 2.3

Recommended additions are included in **bold text** and recommended deletions are included in ~~strikethrough~~.

Conservation Authorities

Under the *Conservation Authorities Act*, administered by the Minister of Natural Resources and Forestry, conservation authorities have been established by municipalities **in conjunction with the province** to manage watersheds throughout most of southern Ontario **and parts of northern Ontario**. In 2006, the Minister of Natural Resources and Forestry approved ~~the individual revisions to the "Development, Interference and Alteration"~~ regulations for each conservation authority, which enable conservation authorities to **regulate control development and activities in or adjacent to river or stream valleys, Great Lakes and inland lakes shorelines, watercourses, hazardous lands and wetlands.** ~~through a permitting process in areas prone to water-related natural hazards, such as shorelines, river and stream valleys, floodplains, watercourses, and wetlands.~~ The conservation authority permitting process is designed to deal with issues related to **confirm that the control of flooding, erosion, dynamic beaches, pollution and "conservation of land" are not affected. They also regulate the straightening, changing, diverting or interfering in any way with the existing channel of a watercourse or for changing or interfering in any way with a wetland.**

It would be beneficial to include the *Endangered Species Act* and *Species at Risk Act* when describing MNRF and DFO approval requirements respectively.

Section 3.0

It is recommended that reference to temporary works, such as coffer dams, is included to provide clarification that this is a temporary diversion and does not apply to long term diversion of water within a watercourse. This section should also clarify that for a groundwater taking that the water should be returned to the same aquifer, in order to follow the same principles outlined in the definition of consumptive use under the *Clean Water Act*.

Section 4.1

MOECC should consider strengthening/clarifying their conditions as follows:

- i. Water pumped from the watercourse must be returned **immediately** to the same watercourse **downstream of the dewatered construction site.**
- ii. Subsection ii implies that the proponent should ensure that their pumping equipment is operating properly and is not the source of any "visible oil sheen" produced at the point of discharge. However, this condition should be clarified to state that if the oil sheen is a pre-existing condition of the water being pumped from the water body, the proponent must take appropriate measures to filter the effluent such that it no longer contains or produces a visible oil sheen. Furthermore, proponents should be encouraged to contact the Spills Action Centre if they suspect the oil sheen is coming from an external source upstream/outside of their work area.

- iii. This condition should be clarified to indicate that proponents should control both overland and in-stream erosion.
- iv. MOECC should consider thermal impacts of the discharged effluent on the natural environment in addition to erosion and sediment.

A condition should also be added that requires implementation of best practices when pumping water to avoid direct injury to fish, such as the installation of screens with appropriate mesh size.

Section 4.2

Many wetland restoration projects include the construction of a water control structure as well as planned use of a mechanical pumping device to hasten the process. The wording in the technical paper is clear that water takings would be exempt from a permit if the taking of water is by “means of a structure or works constructed for the diversion...”. It is, however, not clear if the exemption would apply if a mechanical pumping device is utilized, either in addition to, or instead of, a water control structure. It is requested that this policy be clarified to ensure that use of a mechanical pumping device to either pump water in or out of a wetland would be exempt from a PTTW provided the pumping is to achieve wetland restoration objectives.

Definitions of the terms “restoration, management and conservation” in terms of the proposed wetland PTTW exemptions should also be provided to ensure clarity for when a wetland project may require a PTTW and when the project does not.

Conservation Ontario recommends that the ownership of dams by Conservation Authorities and CA regulations should be separated into two paragraphs in order to provide clarity.

“Many dams owned and or operated by a Conservation Authority have additional operational guidance that establishes limits to high and low water levels and to maximum and minimum flows. Pursuant to regulations under the *Conservation Authorities Act*, Conservation Authorities require permitting for development projects in areas prone to flooding. Regulated areas include lands in or adjacent to river or stream valleys, shorelines of Great Lakes and ~~large~~ inland lakes, watercourses, **river or stream valleys** ~~steep or erodible slopes~~, **hazardous lands** and wetlands. The Conservation Authorities regulate proposed developments ~~so as~~ to address potential impacts from flooding, erosion, dynamic beaches or pollution and to ensure land conservation. The definition of “development” under the *Conservation Authorities Act* includes construction of a building or structure (including dams), site grading, and the temporary or permanent placement of material. Conservation Authorities also regulate projects that involve the altering of and interference with a watercourse or a wetland. A permit may be ~~denied, or~~ granted with **or without** conditions **or denied by the Conservation Authority Hearing Board.**”

Section 5.1

This section would benefit from a description of how the Province as part of the Environmental Activity and Sector Registry (EASR) process reviews the registry to ensure that projects meet the eligibility criteria and operating requirements.

Section 5.2

Caution should be exercised in the use of stream order in determining stream size or flow, particularly in areas which are highly altered (i.e. urban) or where the stream is obscured by forest cover. There can

often be a discrepancy on the ordering of streams, depending upon the mapping that is used. Since most streams are not gauged, determining 7Q20 at a specific location may be difficult and extrapolations may not be reliable. Of particular concern with this type of water taking is the provision for drought conditions. Although the prescribed rate (<5% of the 7Q20) is conservative, it may still have an impact on the watercourse during drought conditions. It is recommended that the MOECC considers adding a provision for reducing the rate of taking during drought conditions to the operating requirements.

It is stated on page 12 that it is intended that the takings are for a short duration, but there are no criteria or operating requirements listed that takes into account the length of the taking. It is recommended that either criteria or an operating requirement be added to reflect the intended short term nature of the proposed taking.

As the Proposed Eligibility Criteria already require a qualified person to review the application, it would be helpful to also require that an ecologist be involved to ensure that the taking of surface water does not impact the environment from which it is withdrawn. As information is already being logged as part of the process, basic water quality information, including temperature, pH, etc could be included in the documentation.

For OR-2.4 it implies that a Ministry District Office will be notified only if a complaint is received. It is recommended that the language be amended to reflect that the proponent should contact the District Office should there be any significant impacts to the natural environment or it should be combined with OR-2.5. For OR-2.5 clarification is required as to whether or not the qualified person would need to be onsite at all times, otherwise, additional direction on determining what an “adverse impact to the environment or water supplies” may be required.

Section 5.3

Consideration should be given to evaluating whether the groundwater taking is intercepting a significant source of base flow to a nearby watercourse. The proposed setback should align with other regulations (including the *Conservation Authorities Act*) to streamline the application process.

In OR-3.3, it is recommended that a provision not to discharge to a wetland or other sensitive feature be added. In addition, a requirement should be added that the discharge activity “shall not cause downstream erosion of the stream or wetland”.

Similar to the surface water taking requirement, the EASR requirement for construction dewatering is only intended for short takings, but the length of taking is not addressed until after a year of taking under OR-3.7. Many large-scale construction projects are known multiple year projects at the onset. It is unclear as to whether known multi-year projects require a PTTW at their commencement, or only after the project has been pumping for one year.

Section 7.0

It is recommended that the last paragraph be expanded to include the opportunity to track cumulative water taking within a single watershed. The online EASR registry could serve as a source of information to assess cumulative effects of multiple water takings and provide updated guidance to ensure the watercourse’s capacity to provide water to all users (human and the environment) is not compromised.

Once again, thank you for the opportunity to provide comment on the "Technical Paper on the Environmental Activity and Sector Registry and Short-Term Water Takings" (EBR #012-0580). Please feel free to contact me at ext 226 should this letter require any clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rich". The signature is written in a cursive, flowing style.

Leslie Rich
Policy and Planning Officer

c.c. Ontario Waterpower Association
Ducks Unlimited Canada