

March 20, 2017

By email: moecc.waterpolicy@ontario.ca

Leo Luong, Manager
Ministry of the Environment and Climate Change
Climate Change and Environmental Policy Division
Land and Water Policy Branch
40 St. Clair Avenue West, Floor 10
Toronto, ON
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Dear Mr Luong,

**Re: A regulation establishing a new water bottling charge
(EBR Registry Number: 012-9574)**

The Canadian Environmental Law Association (CELA) provides the following general and specific comments in response to the Environmental Registry proposal: [A regulation establishing a new water bottling charge](#) (EBR Registry Number: 012-9574). The Environmental Registry notice proposes a new water charge, to be applied to groundwater sourced water bottling permit holders only, of \$500 per million litres. This charge is intended to partially recover the costs of the province's efforts to "gain a better understanding of and to more effectively manage groundwater takings by water bottling facilities"¹ and will include "enhanced monitoring and data management tools, educational and guidance materials, staffing, supporting engagement with stakeholders"². CELA has been involved in water protection for a very long time and has, in particular, repeatedly commented on the importance of full cost recovery for Ontario's water management programs. As well, 13 undersigned individuals and organizations endorse our submission.

General comments about the water charges program:

Authority for the water charges regulation comes from the [Ontario Water Resources Act](#) (OWRA):

75(1.5) The Lieutenant Governor in Council may make regulations establishing and governing charges to promote the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose in the administration of this or any other Act...

¹ [A regulation establishing a new water bottling charge](#) (EBR Registry Number: 012-9574).

² *Ibid.*

This regulation making authority was the result of amendments to the OWRA in 2007.³ In general, it was suggested that any water charges initiatives would respect three guiding principles: cost recovery, encouraging water conservation, and fairness among water takers.⁴ CELA has previously expressed, and continues to have, strong support for applying these three principles to the water charges program.

Recommendation 1: Ensure that the water charges program is consistent with the principles of cost recovery, encouraging water conservation, fairness among water takers.

Shortly after the amendments to the OWRA in 2007, “phase 1” of the water charges was initiated when [O Reg 450/07](#) was made. A water charge of \$3.71 per million litres was established and is applied to “high consumptive” water users, including permit holders that were bottling water, manufacturing beverages, canning or pickling fruits and vegetables, making ready-mix concrete, and manufacturing agricultural chemicals (including fertilizers and pesticides). The Ministry of the Environment and Climate Change (“Ministry”) consulted on “phase 2” of the water charges program, intending to establish a charge for “medium and low consumptive” water users in 2009.⁵ CELA wrote in support of extending the water charges program as proposed. However, when a decision was made on related water conservation proposals in 2012, the Environmental Registry notice was silent about the water charges program.⁶

Several voices have spoken out about the inadequacies of the water charges program. In 2009, the Environmental Commissioner of Ontario stated:

The new water taking charge, as established, will not meaningfully “promote the conservation, protection or wise management of Ontario’s waters,” despite the fact that this purpose is explicitly authorized by the OWRA. The very low charge rate of \$3.71 per million litres of water is unlikely to create any real economic incentive for conservation – just a penny will buy almost three cubic meters of water. Nor is it likely that the new charge will result in any new or expanded water management programs.⁷

Citing the water charges program’s low recovery rate and that it had not been expanded beyond “phase 1”, the Drummond Commission recommended that the Ministry “Move towards full cost recovery and user-pay models for environmental programs and services.”⁸

Ontario’s Auditor General reported in 2014:

The province’s annual cost of administering its water quantity management programs, which include the Ministry’s Permit to Take Water program and its Provincial Groundwater Monitoring Network, is \$16.2 million. Of this amount,

³ See [Safeguarding and Sustaining Ontario's Water Act, 2007](#).

⁴ [Water Conservation Charges Proposal](#) (EBR Registry Number: 010-0162).

⁵ [Stewardship – Leadership – Accountability. Managing Ontario’s Water Resources for Future Generations](#) (EBR Registry Number: 010-6350).

⁶ See the decision notice for [EBR Registry Number: 010-6350](#).

⁷ Environmental Commission of Ontario (2008), [Getting to K\(no\)w, Annual Report 2008/09](#), p97.

⁸ Commission on the Reform of Ontario’s Public Services (Drummond Commission) (2012), [Public Services for Ontarians: A Path To Sustainability And Excellence](#), pp336-7.

\$9.5 million are direct program costs attributable to industrial and commercial users which may be recovered through water-taking charges. However, the Ministry, at the time of our audit, was recovering only about \$200,000 through its water-taking charges.⁹

And, in 2015, the Environmental Commissioner of Ontario encouraged the Ministry to increase the water charge and expand the scope of the water charges program. She also concluded that: Effective stewardship of Ontario's water resources – including monitoring quality and quantity, assessing cumulative effects on drinking water supplies and ecosystems, promoting and enabling water conservation by industry and individuals, and conducting research into all of these and related fields – requires money, much more money than the MOECC's reported water quantity program costs of \$16.2 million. The government should allocate additional resources to the conservation and wise management of Ontario's water resources. Its current stated expenditure of \$16.2 million is a drop in the bucket compared to what a robust water management program requires.¹⁰

CELA agrees with all of these experts and is dismayed that after all these years there has been no progress in extending the water charges program to fulfill its intended purposes. We strongly encourage the Ministry to expand the water charges program to move toward full cost recovery on a user pays basis.

Recommendation 2: Expand the water charges program to move toward full cost recovery on a user pays basis, ensuring that the charge for high consumptive users is increased and charges for medium and low consumptive users are introduced.

CELA is supportive of the policy direction expressed in the proposal notice:

While a key focus of our efforts to enhance water management in Ontario is on groundwater use for water bottling, we recognize the need to also take a broader look at the rules governing water takings in Ontario to ensure that they are adequate to protect and conserve ground and surface water in the province for future generations. In particular, we need to account for the cumulative effect of water takings on our watersheds and how the supply and demand for water will be affected by climate change and growth pressures. We plan to review elements of the regulatory and policy framework related to "high use watersheds" and the rules that apply to water takings in those areas. The review will also examine the need to prioritize water uses in order to guide future water management decisions when water sources may be stressed.¹¹

Given the challenges of a changing climate and increased population growth, we are encouraged that the Ministry has identified the need to account for cumulative effects and the need to

⁹ Auditor General of Ontario, 2014 Annual Report of the Office of the Auditor General of Ontario, [Chapter 3, VFM Section 3.12](#), p431.

¹⁰ Environmental Commission of Ontario (2015), Small Things Matter, Annual Report 2014/15, [p86](#).

¹¹ [A regulation establishing a new water bottling charge](#) (EBR Registry Number: 012-9574).

prioritize water uses. We strongly encourage the Ministry to move quickly to enhance the water management program itself to ensure that the purposes of the OWRA – “conservation, protection and management of Ontario’s waters and for their efficient and sustainable use, in order to promote Ontario’s long-term environmental, social and economic well-being” – are met.

Recommendation 3: Move quickly to enhance the water management program in order to address the need for cumulative effects assessment and the need to prioritize water uses in the face of the challenges of a changing climate and increased population growth.

Specific comments responding to the questions posed:

Below, we provide CELA’s comments in response to the questions posed in the Environmental Registry notice.

1. Do you agree that the Ontario government should establish the proposed new regulatory charge to recover costs that the province incurs to better understand and more effectively manage groundwater takings by water bottling facilities? Yes or No?

As discussed above, CELA fully supports a water charge that recovers costs the government incurs in water management programs on a user pays basis. We firmly believe that all sectors should pay their fair share, for all three types of consumptive uses – low, medium and high. As well, the water charges must be rationalized; if there are to be different charges within the high consumptive uses category there must be further rationale provided so that we can provide meaningful comment. However, given that there are no details about the specific costs of the proposed activities/programs that will be necessary and there are no details regarding how much revenue is anticipated to be raised by the proposed charge of \$500 per million litres, CELA cannot specifically comment on whether the level of the proposed charge is appropriate.¹²

According to the proposal notice, the Ministry intends to increase programs that are necessary to understanding and managing groundwater takings by water bottling facilities. As such, those facilities should share in the responsibility of paying for those programs. The proposal notice clearly indicates that “There will be significant costs ... incurred by the province related to enhanced monitoring and data management tools, educational and guidance materials, staffing, supporting engagement with stakeholders.”¹³ As well, the proposal notice states “Where programs or portions of programs relate to managing water quantity more broadly and water takings by a range of sectors, their costs would not be recovered through the proposed new charge.”¹⁴ These (and other) statements in the proposal notice suggest that the Ministry is seeking to ensure that water bottling permit holders are contributing to the cost of the water management programs necessary to ensure their sustainable water use. Provided that the charge, as proposed, is consistent with the principles of cost recovery, encouraging water conservation,

¹² In the Ministry’s information notice [Findings of the Regulatory Water Charges Review](#) (EBR Registry Number: 011-7811), details about program costs and the total amount raised by high consumptive users is provided, allowing member of the public to determine the success (or lack thereof) of the water charges program. The new water bottling charge proposal notice provides no such details.

¹³ [A regulation establishing a new water bottling charge](#) (EBR Registry Number: 012-9574).

¹⁴ *Ibid.*

and fairness among water takers, we would be supportive. There simply is not enough detail in the proposal notice for that determination.

2. Do you agree with the proposal to review the charge at least every five years?

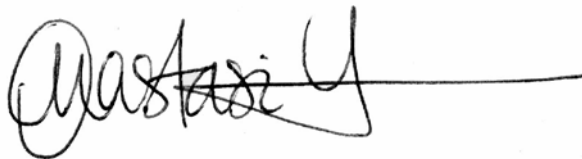
Yes. It is entirely appropriate for the water charge to be regularly reviewed and adjustments made to ensure that the principles associated with the program are being adhered to. CELA encourages the Ministry to ensure that all water charges are reviewed together and that swift action is taken if modifications are needed.

3. Do you have any other comments on the proposed regulatory charge?

Yes. First, CELA stresses that, regardless of whatever water charge is required to recover actual management costs, the amount of water that is available based on long term sustainability and other goals such as meeting population growth targets, ensuring climate change resiliency, and realizing benefits to future generations is finite. As such, simply recovering the province's water management costs must not be used as the determinant as to whether a water permit ought to be issued or a specific water use ought to be prioritized. Second, while not directly related to the new proposed charge, we believe our general comments and recommendations discussed above are important considerations to ensuring the aims of the water charges program are met.

CELA would be happy to meet at your convenience to discuss any of our comments or recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anastasia', followed by a long horizontal line extending to the right.

Anastasia M. Lintner, PhD, LLB
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This submission is endorsed by the following individuals and organizations:

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Cc: Dianne Saxe, Environmental Commissioner of Ontario (dianne.saxe@eco.on.ca)