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Erin Lee  
Water Policy  
Ministry of Environment, Conservation and Parks  
Foster Bldg,  
40 St Clair Ave W,  
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[waterpolicy@ontario.ca](mailto:waterpolicy@ontario.ca)

Dear Sir/Madam:

**Re: Ecojustice Comment to the Ministry of the Environment, Conservation and Parks  
Updating Ontario's Water Quantity Management Framework Proposal Paper (ERO #019-  
1340)**

Ecojustice is a national environmental law organization with offices across Canada. For more than 25 years we have gone to court to protect wilderness and wildlife, challenge industrial projects, and keep harmful chemicals out of the air, water, and ecosystems we all depend on. We represent community groups, non-profits, Indigenous communities and individual Canadians in the frontlines of the fight for environmental justice. This submission is made on behalf of Ecojustice and not on behalf of any client organization.

Thank you for the opportunity to comment on *Updating Ontario's Water Quantity Management Framework Proposal Paper* (Proposal). Ecojustice has several concerns with this Proposal:

1. Failure to clearly prioritize
  - a. There is a lack of a justified and clear definition of municipal drinking water
  - b. Lack of clarity about what takes priority where environmental flows and drinking water conflict
  - c. Lack of clarity about the level of priority for water bottling takings

2. Lack of justification for the threshold for the Proposal of 379,000 litres per day for municipal support.
3. Lack of clarity about how priorities would actually be achieved using this threshold.
4. Lack of a policy framework for ensuring environmental flows.

We recommend that this Proposal be re-posted for consultation using clear definitions and providing clarity for the prioritization of water uses including water bottling. Further, the Proposal must include a plan for integrated watershed management and a policy for goal setting on environmental flows, and how these goals would be utilized within the permit to take water (PTTW) process. We recommend that conservation authorities be provided with sustainable funding to participate in integrated watershed planning and that conservation authorities have a say in whether or not PTTWs are approved.

#### Failure to clearly prioritize

The Proposal fails to prioritize drinking water over other uses, including water bottling. While the Proposal includes a priority of uses, these priorities are poorly defined.

First, there is no information in the Proposal clearly identifying whether water bottling would be considered drinking water or industrial/commercial or conversely an “other” non-essential use. It is our position that water bottling should have the lowest priority and that this must be made clear in the regulation. In-fact we support an ongoing moratorium on water bottling given the lack of clear assurance that water resources can be used sustainably.

Second, the uses that would be prioritized under “drinking water” are poorly defined in the Proposal. The Proposal provides examples such as municipal and Indigenous water supplies, private and domestic use, livestock watering and schools and hospitals. We are unaware of any justification for including livestock watering within “drinking water” nor a justification for livestock watering to take priority over other uses such as irrigation. A clear definition of drinking water that includes private residential wells, municipal and indigenous water supplies and specific institutional uses needs to be consulted on. This definition should exclude water bottling and livestock watering.

Third, the Proposal ranks environmental flows equally with drinking water. It is not clear what use takes priority where these conflict. This is particularly salient given that the province is undertaking growth forecasting that would force municipalities to plan for large increases in water supplies throughout the greater golden horseshoe. As set out in our submission on ERO 019-1679 there has been no assimilative capacity study to ensure that servicing this growth is possible without adversely impacting ground and surface water in the greater golden horseshoe and beyond.

#### Lack of clarity about how priorities would be ensured

Ecojustice disagrees that “The current framework for managing water takings in Ontario is well suited to assessing and managing the impacts of individual water taking proposals.” Ontario has no process to establish targets for environmental flows or groundwater levels that are sustainable in a given watershed. The province has little or no information in takings that are below the

threshold of 50,000 litres per day under s.34 of the OWRA for permits to take water, nor what the cumulative impacts of those takings might be on water sustainability or environmental flows. Individual applications for PTTWs only evaluate whether a specific application will cause unacceptable impacts, and there are no standards by which the Ministry evaluates such applications where they have the potential to reduce environmental flows. Although the Ministry is required to consider cumulative effects of a Proposal along with other water uses in a region under its statement of environmental values, and take an ecological approach the Ministry does not do so. While Ecojustice supports ensuring that the Ministry has even clearer jurisdiction to consider cumulative effects, it is not clear how the Ministry will go about examining this in practice. The current policy framework is clearly inadequate.

The current permits to take water guidelines do not establish environmental flows as a priority. The guidelines only indicate that “stream takings” and “groundwater takings” should not interfere with the natural functions of a stream. The Ministry has no history of establishing flow targets for environmental purposes nor any way to integrate those targets into decision-making on PTTWs.

Most work on establishing goals or objectives for surface water flow management for environmental purposes are conducted by Ontario conservation authorities. It is not clear from the Proposal how the Ministry will use the analysis of conservation authorities in determining when environmental flows may be impacted. The Ministry does not establish regional water budgets to manage existing and future uses in a comprehensive manner. An analysis of what an integrated water management framework could look like was prepared by Conservation Ontario in 2010.<sup>1</sup> It is not evident that the Proposal considered amending the OWRA or regulations to ensure that integrated water management takes place. Most notably, actual goals for both drinking water and environmental sustainability are absent from the Ministry’s approach, as well as any effective monitoring or adaptive management framework to ensure those goals are being met. For example, Conservation Ontario has noted:

Goals and objectives should be established during the Characterization phase. These goals and objectives may be refined at a later stage. Preliminary goals should determine what resources are to be preserved, protected, enhanced, or rehabilitated. The goals and objectives must reflect that there are limits to changes that the ecosystem can withstand and that these limits should be considered before compensation measures are developed to accommodate future changes. Adverse effects of human activity cannot always be eliminated through compensation measures and such measures cannot replace good planning.

Ontario is simply not undertaking adequate planning or research, nor transparent goal setting on a watershed basis to ensure that PTTW applications can be fairly considered in the context of the cumulative effects of multiple takings. Without integrated watershed planning, including clear goal setting, water budgeting and prioritization, the Proposal is bound to fail. In particular water budgeting needs to include assimilative capacity assessments and the determination of instream

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<sup>1</sup> [https://conservationontario.ca/fileadmin/pdf/policy-priorities\\_section/IWM\\_WaterMgmtFramework\\_PP.pdf](https://conservationontario.ca/fileadmin/pdf/policy-priorities_section/IWM_WaterMgmtFramework_PP.pdf)

flow needs, goals and targets. Planning to maintain ecological function must be precautionary and “should be based on well-defined goals... rather than on future scenarios and risk calculations.”<sup>2</sup> The Proposal does not clearly outline how environmental flows will be prioritized. There must be established parameters for determining what the appropriate environmental flows are needed to sustain the watersheds and surrounding ecosystems. The absence of clear policies on environmental flows is a serious concern.

There is also a lack of clarity about the role of source water protection committees under the *Clean Water Act* in the Proposal. Some water takings may pose significant drinking water threats and should be regulated under source water protection policies. It is not clear how the priority will be applied where activities are significant drinking water threats.

#### Lack of justification for the thresholds

Water takings are regulated under s.34(1) of the *Ontario Water Resources Act* (OWRA). This provision requires a PTTW for takings in excess of 50,000 litres per day. The Proposal would rely on a threshold of 379,000 litres per day before municipal support is required for water bottling. This figure corresponds to exemptions from requiring a PTTW for certain uses (for example livestock and domestic purposes) which are set out in s.34(2) of the OWRA. This is also the “threshold amount” used in section 34.5 of the OWRA which functions as a limit on inter basin transfers under s.34.6(1)(b) of the OWRA. It is not clear why municipal support should not be required for all water bottling Proposals captured by s.34 of the OWRA. No justification for this is provided in the discussion paper. In general, we have serious concerns about the capacity of Municipalities to evaluate these applications. In practice, the work is normally done by conservation authorities. Providing sustainable provincial funding to conservation authorities to undertake integrated watershed management and providing them with a veto on water takings would in our view be a more productive mechanism to ensure that large water takings are supported locally.

Allowing for more municipal support without accompanied capacity funds does not allow municipalities the ability to be more involved in the decision making process on water taking permits. In fact, changing the regulation to include a mandatory approval by the host municipality for water taking permits without accompanied funding may result in poorly funded municipalities being at a disadvantage when dealing with sophisticated applicants. Increased municipal funding is necessary to allow full involvement in the decision making process.

The exemptions applying to PTTW may not require municipalities’ permission does not allow enough input into the decision making process. The exemption for unorganized territory water taking may increase interest in water taking near rural or Indigenous communities causing further impacts to the local environment without local input. Further policy must be developed to protect these ecosystems from effects of water takings.

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<sup>2</sup> Ibid.

### Availability of Data

The proposed changes to increase data accessibility would not ensure the public is confident the environment is not harmed by water taking permit holders. The Ministry should ensure the actual application data is posted to ERO with each permit posting, along with any other relevant information from nearby takings, including takings below the PTTW thresholds. Again, without integrated watershed management, including transparent goal setting and planning, it is unclear how the public would be able to use any data that is released either in relation to a specific application or more globally.

### Addressing Process for Regulation Changes

There should be a more extensive consultation process for the proposed changes contained in the Water Management Framework Proposal. The public should be given the opportunity to comment on the specific language of the drafted provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'L.B.', with a stylized flourish extending to the right.

Laura Bowman  
Staff Lawyer  
Ecojustice