



ISSN 1710-9477

Legislative Assembly
of Ontario
Second Session, 38th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Monday 21 August 2006

Journal des débats (Hansard)

Lundi 21 août 2006

**Standing committee on
social policy**

Clean Water Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur l'eau saine

Chair: Shafiq Qadri
Clerk: Trevor Day

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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 21 August 2006

Lundi 21 août 2006

The committee met at 0905 in committee room 1.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Acting Chair (Mr Ernie Parsons): Good morning. We are calling to order the standing committee on social policy to deal with Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts.

I am a very temporary Acting Chair until the Chair arrives, so bear with me. It is clear they do not select Acting Chairs on the basis of looks.

SUBCOMMITTEE REPORT

The Acting Chair: It being 9 a.m., the first item is the report of the subcommittee on committee business, and I would ask for a motion.

Ms. Kathleen O. Wynne (Don Valley West): I'd like to move the report of the subcommittee, Mr. Chair. I'll just read the subcommittee report.

Your subcommittee met on Wednesday, July 5, 2006, to consider the method of proceeding on Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts, and recommends the following:

(1) That the committee intend to meet from 9 a.m. to 4:30 p.m. in Toronto, Walkerton, Cornwall, Bath and Peterborough the week of August 21, 2006, for the purpose of holding public hearings.

(2) That, at the discretion of the subcommittee, teleconferencing be utilized to hear from witnesses unable to appear in person.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the major Toronto English dailies and certain Toronto French weeklies for one day during the week of July 24, 2006, and that an advertisement also be placed on the OntParl channel and the Legislative Assembly website.

(4) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the local papers of Walkerton, Cornwall, Bath and Peterborough for two days during the week of July 24, 2006, and that the advertisements be placed in both English and French papers, if possible.

(5) That the committee clerk, with the authorization of the Chair, post information with any other mediums of advertising deemed acceptable to the subcommittee.

(6) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Tuesday, August 8, 2006.

(7) That in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 6 p.m. on Tuesday, August 8, 2006.

(8) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Thursday, August 10, 2006.

(9) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members, if necessary.

(10) That the Minister of the Environment be invited to appear before the committee at 9 a.m. on Monday, August 21, 2006, to make a presentation of up to 15 minutes and field questions from each caucus for up to five minutes each.

(11) That the deadline for written submissions be 5 p.m. on Monday, August 28, 2006.

(12) That the research officer provide a summary of the presentations by Monday, September 4, 2006.

(13) That, for administrative purposes, proposed amendments be filed with the clerk of the committee by 12 noon on Wednesday, September 6, 2006.

(14) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, September 11, 2006, and Tuesday, September 12, 2006, from 10 a.m. to 4 p.m., as required.

(15) That consideration for witness reimbursement be determined by the unanimous agreement of subcommittee on a case-by-case basis.

(16) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Acting Chair: Thank you, Ms. Wynne. Any discussion? Those in favour? Those opposed? It's carried.

The report of the subcommittee that has just been adopted provides for the Honourable Laurel Broten to have 15 minutes.

Please proceed.

MINISTRY OF THE ENVIRONMENT

MINISTÈRE DE L'ENVIRONNEMENT

Hon. Laurel C. Broten (Minister of the Environment): Thank you very much, and good morning, everyone. I very much welcome the opportunity to speak to you today about the proposed Clean Water Act.

Let me begin by thanking all of the members of the standing committee for your time and what I know will be very thoughtful consideration of the proposed bill.

This is such an important piece of legislation, and I'm really proud to have been able to put forward a bill that will have a profound and lasting impact on our quality of life in this province.

0910

My meetings with people across Ontario have only reinforced for me that this is a valuable endeavour that addresses a real need. This legislation will empower communities, so it is especially important and appropriate that the bill has been shaped by so many able hands. Ministry staff and I have met with more than 300 groups—mayors, farmers, First Nations, conservationists, business leaders and others—and clearly, we all agree on the fundamental principles underlying the proposed Clean Water Act, and that is that all people deserve to have a supply of safe, clean drinking water. This is a fundamental right, and it goes beyond the protection of our health. It helps ensure our quality of life. Municipalities are both the deliverers and the beneficiaries of clean, safe drinking water, and it is time that they were given a larger voice on how to protect it. Their role is more than just important; it's essential. And we intend to give them that voice.

The challenge before us is, how do we get where we need to be? To ensure that our water is protected and plentiful, Justice O'Connor recommended a multi-barrier approach. The proposed Clean Water Act fulfills one major component of that multi-barrier approach: prevention. Over the next week, as you hear from many presenters, please keep in mind that the Clean Water Act will be highly effective at prevention. But it is not designed to do everything. There is no one tool that alone will protect our water. The act would work in concert with better treatment, monitoring, inspections, certification and training of system operators to deliver a comprehensive and protective system.

I look forward to hearing the presentations. Many of the people and groups you will hear from have been very involved in source protection efforts, and it's important that you learn from their excellent work. I believe that

you will hear a universal message: Treatment alone is not enough; prevention is key to keeping our water safe.

This legislation sets prevention above all else as its fundamental principle. Preventing problems from occurring in the first place is far better than having to fix them after the fact. We believe that communities are best positioned to decide what protective measures are needed, how best to carry them out, and who should lead the efforts. We owe it to all people of Ontario to make sure that what happened in Walkerton never happens again. In his report of the Walkerton inquiry, Justice O'Connor made it clear that the precautionary principle must play an integral role in decisions affecting the safety of drinking water. The proposed Clean Water Act is inherently precautionary, and as regulations are developed under the act, we will be mindful of that precautionary principle.

The Clean Water Act is precautionary because it is proactive. Communities will look at vulnerable sources of drinking water and evaluate potential threats. The source protection plans would propose measures to reduce those threats. Under the act, watershed communities would monitor and evaluate how threats are being reduced and prevented. Source protection plans would be reviewed and amended over time to respond to new threats and to better protect against existing threats. The Clean Water Act would ensure that people in communities across the province can protect their drinking water supplies from getting contaminated through locally driven, science-based source protection plans. If communities are going to be able to make decisions about protecting their drinking water sources, those decisions need to be based on the best available science and made in consultation with their community.

Nous croyons que ce sont les collectivités locales qui sont les mieux placées pour décider des mesures de protection à prendre, de la façon de les appliquer et des personnes qui doivent s'en occuper. Si les collectivités prennent des décisions pour protéger les sources d'eau potable, ces décisions doivent se fonder sur les meilleures données scientifiques possibles et doivent être prises en consultation avec la collectivité.

For some communities, it would be the first time they would be able to identify potential threats to their drinking water systems and develop plans to address them. For others, it would be a continuation of work they have already done. Up until now, any community that wanted to take a preventive approach was essentially working in isolation. By looking at the entire shared watershed, we're ensuring that information gets shared, planning is aligned and threats are dealt with before they become serious problems. We recognize the good work that has already been done by municipalities and conservation authorities. Each plan should be built on the progress that has already been made at the local level.

The magnitude of what's being accomplished here is truly remarkable. We are well into the largest scientific exercise we have ever undertaken to find out how much water we have and how clean and protected it is. This has never been done before in the history of our province. To

effectively protect our supplies of drinking water, we need to know how much we have in reserve, how it replenishes itself and what poses a threat to our supply.

Right now across Ontario, conservation authorities and municipalities are using leading-edge research and technology to build comprehensive maps of our surface and groundwater resources. To give watershed plans the strongest possible scientific foundations, our government anticipates providing \$120 million to help communities and their partners across Ontario study and assess their watersheds, undertake water budgets and get the science right. There will be implementation costs; we know this. We can't predict what they will be for each community because every region has its own characteristics and challenges.

This is actually one of the great strengths of the Clean Water Act. Instead of trying to design one central model that forces pegs into holes, we're listening to the communities themselves to tell us what it will take to implement. Local planning teams will need to look at their findings, the technical studies and the risk assessments for each source protection planning area along with each vulnerable area that's been defined by the scientific research and technical data.

While it is impossible to anticipate exactly what the implementation costs will be for every community right now, we have two excellent examples of what can be accomplished. Waterloo region and Oxford county were early advocates of source protection planning and are now implementing plans they've developed to protect their drinking water sources. These costs have been quite manageable and moderate. Costs to homeowners in these communities have ranged from approximately 75 cents a month for a household in Waterloo county to around \$1.50 a month in Oxford county.

We know there may be some hardship cases. That's why we're considering a safety net approach that will address each specific hardship situation on a case-by-case basis. We welcome further discussion with all of our stakeholders once this becomes clear and communities have considered the balance between who can contribute to source protection and who benefits at the local level.

Since we first brought forward this legislation, I have had the opportunity to visit many communities around the province. I have spoken with people about the Clean Water Act and heard their views about how we can best protect our drinking water. I've seen excellent local efforts first-hand, and whether I was speaking to the mayor of North Bay or the councillors of Essex county or farm groups in Waterloo or conservation authority staff in Belleville, the message I heard was consistent: People everywhere agree that water protection must be seen as a shared responsibility, and the most effective way to protect local water is through local involvement.

We have heard from Ontario's First Nations that they must have access to safe sources of drinking water. Where First Nation communities wish to participate in the process, we are considering amendments to the legislation that would ensure that First Nation drinking water systems can be protected under Bill 43.

We have also heard a number of good suggestions from the honourable members of the Legislature during the debate following second reading. This feedback is useful as we consider amendments that will make this bill better.

One of the amendments we're considering would let a local community have the option of negotiating risk management plans to address significant drinking water threats. Instead of permits, we intend to create risk management tools. This comes directly from advice we received during consultations and should address many of the questions that we heard.

We will introduce changes that will require officials and inspectors to have a specified set of qualifications, including training in biosecurity and the appropriate health and safety protocols, in order to be appointed to their jobs. These are a few of the ideas we have developed in response to stakeholder suggestions that will make this important bill even better.

0920

Many of our efforts and investments up to now have focused on groundwater. The Clean Water Act will also benefit the millions of Ontarians, including people in our largest cities and most developed industrial areas, who draw their water from the Great Lakes. The implementation of source protection plans within watersheds that drain into the Great Lakes will help protect the Great Lakes, which supply 70% of Ontario's population with their drinking water.

Our government is doing a lot to protect the Great Lakes: supporting conservation measures and sustaining and protecting our valuable water resources. The recent Great Lakes Charter Annex agreement strengthens the protection of the Great Lakes by banning diversions and promoting conservation on both sides of the border. The Clean Water Act would add to this by letting us set water quality and quantity targets for the source protection areas that feed the Great Lakes. It's a fundamental part of the bigger picture on protecting our water from contamination and depletion. We believe locally driven, developed and delivered source protection plans are the best way to protect our community drinking water sources in the long term.

I look forward to hearing from all of our municipal partners as we move forward with Bill 43. Let's take this opportunity to work together as stewards of our environment and protectors of our valuable water resources. I want to take this time to thank everyone who has prepared submissions and taken the time to appear. I look forward to hearing your good ideas in the week to come. Thank you.

The Acting Chair: Thank you, Minister. Each of the three caucuses has up to five minutes for questions. We will start with the official opposition.

Ms. Laurie Scott (Haliburton–Victoria–Brock): Thank you very much, Madam Minister, for appearing before us today on this very important bill, and to all the stakeholders who have applied to appear before our committee over the week and, we hope, longer.

I have some questions that for you on the Clean Water Act, source water protection. In Justice O'Connor's report, he said there didn't need to be an extra layer of bureaucracy, some more legislation brought in, but that the ministry actually did have the power under the Ontario Water Resources Act, section 33. It was in section 68 that Justice O'Connor said that.

I want to ask directly, is the ministry simply down-loading some costs and liabilities to the municipalities and the landowners? To be honest—I know you've heard a lot of submissions and you're going to hear some more—we want a partnership with the municipalities. The PC Party, our caucus, all want clean water, but we want to get there in a co-operative manner, not in what we feel is like a dictatorship within this legislation.

Is the province actually evading responsibility for clean water by setting this legislation up with no funding that we know of for municipalities and the landowners for implementation? You mentioned a hardship fund that may kick in. Do you have any limits? What's the cut-off point? Is it \$2 a month? It's a financing question that I ask you about.

Has the province done any cost-impact analysis? I realize that you said each municipality is going to be treated on the basis of what they have implemented in infrastructure now. I can speak for rural Ontario that the infrastructure needs are great. So have you done any cost analysis and could this legislation not have been done within the existing legislation that I previously mentioned?

Hon. Ms. Broten: That was a very long question. Let me start and break it down and answer on a few of the points you made.

Justice O'Connor, in his recommendations, made reference to the legislation that empowered MOE, the Ministry of the Environment, my ministry, to take action. The Ontario Water Resources Act empowers the Ministry of the Environment to undertake some work. But what we found as we talked to communities and built on the concept of precaution and prevention was that those out in communities right across this province all have different issues. Their drinking water comes from different sources; they have different challenges, whether they are industrial, whether they are agriculture-based, whether they are large populations, remote, small.

As we travelled the province, we found that we needed to have locally driven, science-based information coming forward. The Clean Water Act empowers the source protection committees and that brings that local perspective, that local knowledge base. It allows municipalities, which up until the Clean Water Act had no mechanism, to require that work be done, require that something take place to protect their source of municipal drinking water. Their hands were tied. They couldn't work across the watershed boundary; they were limited to their own municipal jurisdiction. Those are the concepts which Justice O'Connor indicated the province needed to tackle to ensure that we didn't have another situation where we were not preventing something from happening but rather we were managing it after the fact.

The structure that's been put in place under the Clean Water Act, or is proposed to be put in place under the Clean Water Act, brings together those who need to be brought together at a local table to manage the local situation, who are knowledgeable and who will bring that expertise. That is the structure of the legislation.

Let me just respond to your questions about implementation costs. As I said in my opening remarks, the best advice and expertise that we have received is from some of those communities in our province that are out in front and have done some of this work already. We've been able to see in those communities—Waterloo and Oxford, which are quite different in many respects. One is fairly industrial and one is agricultural—a good mix—so they've given us a good cross-section of what we might examine across the province. We've seen very moderate, manageable costs come forward.

That being said, I think it's very important to acknowledge that the big cost right now is the scientific exercise that we're undertaking. The province has paid for that scientific exercise because it's critical. We need to collect that information and support our municipalities and conservation authorities as they do that. As I said, we expect to expend some \$120 million on that exercise. Once communities have identified those threats that exist, the hardship will be defined in concert with SWSSA, the Sustainable Water and Sewage Systems Act. The Clean Water Act hardship fund, hardship concept, that is going to be put in place will respond on those on a case-by-case basis, because when we—

The Vice-Chair (Mr. Khalil Ramal): Thank you, Minister. I've just been instructed about the timing.

Hon. Ms. Broten: Oh, okay.

The Vice-Chair: Now Mr. Tabuns for five minutes. I'm sorry, I just came in—

Hon. Ms. Broten: He's back and he's mean.

Mr. Peter Tabuns (Toronto-Danforth): Cruel but fair.

Minister, thanks for appearing before us this morning. The first question I have for you is, if this act had been in place when approval for the big pipe had been sought, whether this act would have prevented the construction of the big pipe.

Hon. Ms. Broten: I'm not going to speculate as to what might have happened in the past, but let me talk to you a little bit about—there certainly have been a lot of lessons learned with respect to dewatering and 16th Avenue in particular. As we move forward in that region, the big pipe is responding to concerns by the medical officer of health, who had raised a very serious alarm that sewage is going to back up into homes and businesses if that system was not upgraded. That is to meet approved growth that was approved many years ago, in fact, under the NDP government. So it's a critical issue, and that in and of itself would be something that would need to be examined by that community.

As we move forward right across the province, the Clean Water Act brings that preventive analysis. It does not replace every other protective measure that's in place.

The work that the MOE is responsible for, the work that municipalities are responsible for as they move forward and build their infrastructure, all that stays in place. Those critical components of examining how we meet a critical need in a community, of ensuring that they have a sewage system that meets their needs, how we manage infrastructure that is going into an area where perhaps some of the science was not as clear initially—I think we see, as we now move forward with 19th Avenue, that a lot of lessons have been learned. We've seen dewatering reduced on 16th Avenue as well, by some 57% reduction of water taking at that time.

So all of those layers remain: water-taking permits, certificates of approval, roles and responsibilities of the province and the municipality. Then built on top of that is an added layer of prevention and protection, where your source water protection committee would have examined those threats.

0930

Mr. Tabuns: Okay.

Hon. Ms. Broten: Again, not to speculate, they may have identified the sewage issue as a concern in their community, and rightly so; the medical officer of health also did.

Mr. Tabuns: I appreciate that you can't speculate deep into the past. How about the future? Can you tell us that this act would prevent such further development along the lines of a big pipe in the future?

Hon. Ms. Broten: Well, again, as I said, it's not something that I can speculate on as to what would have happened in the past or what would happen in the future. I don't sit as the decision-maker or the identifier of what are significant threats to drinking water. The concept, and I think the critical component, as the Ministry of the Environment examines a variety of issues that need to be examined as the York-Durham sewage system expansion continues—they are governed by the best available science, and decisions are being made on the basis of science: How can we ensure that water is protected and safe at the same time as responding to a critical infrastructure need for that part of our province?

The Clean Water Act decisions and the source protection committee will also be making their decisions based on the best available science. That's why science is being collected as we move forward: to identify those significant threats and to require significant threats to municipal drinking water to be examined. Although I do not sit as the decision-maker, that gives me comfort in that making decisions on the best science is always going to lead us, in my view, to a protective and a preventive best decision.

Mr. Tabuns: Why doesn't this bill include provision for water-taking fees as a way of protecting quantity and financing the sorts of protective investments we need?

Hon. Ms. Broten: As I said at the outset, this is a very important and, I think, great bill, but it does not contain every provision with respect to water that might ever exist. Water-taking charges is something that is an important examination. Water-taking permits was some-

thing that Minister Dombrowsky made headway on immediately upon becoming minister. Water-taking charges is something that we will be making headway on ourselves. But not every issue is examined in this preventive, foundational piece of legislation.

The Vice-Chair: Ms. Wynne.

Ms. Wynne: Thank you, Minister, for being here. I know, as a Toronto member, it's really important that we're able to, as a government, demonstrate that we have implemented the recommendations of the O'Connor report and that we understand how important clean water is across the province. I actually had the privilege on Friday of being in Perth-Middlesex and talking to a number of farmers. I know that these issues are paramount to them.

I'm wondering if you can talk a little bit about how we're going to be working with farmers through risk-management plans. You mentioned that in your opening remarks. Can you just talk about how that will work?

Hon. Ms. Broten: One of the issues and concerns and queries I've heard as I travelled the province was the concern about those folks coming through onto farmers' property not being knowledgeable about biosecurity and the threats that our agricultural sector needs to respond to in our current climate. So as I indicated in my opening remarks, one of the amendments that we're considering is to very much put in certainty as to the qualifications of those who will be seeking entrance onto our agricultural farms and onto our farm operations. I think that's a critical component.

The other issue is that I recognize, and I know that all committee members will join me in this, that our farming communities are incredible stewards of our water. They are incredible stewards of our province. We want to build upon the work that they have done, because in communities right across this province we have leaders in the work of how do we ensure that we have clean, safe drinking water; how do we ensure that we have farm operations managed in a sustainable way, that their cattle are safe, that they are safe? They are drinking that water in their homes and in their communities. So we seek to build upon the work that farmers will have already done and to work with them as we move forward in this co-operative and holistic examination of what threats exist to municipal drinking water. Let's bring those folks to the table, along with their municipal partners and along with other interested individuals in that community, to ensure that everyone in that community has clean, safe drinking water. That's a really important imperative under the legislation.

Ms. Wynne: I have just a final question. The member for the third party was talking about a planning decision that was made a number of years ago that then had an impact on the way sewage needed to be dealt with. As I was reading the legislation, my understanding is that this act will take primacy over other acts and that the OMB, for example, will have to take into account these plans. Could you just clarify the interrelationship between planning decisions and the safe water plans?

Hon. Ms. Broten: The conflict provisions under the legislation are that whatever legislation is most protective of drinking water will have supremacy. In most instances—in my view, in all instances—that will mean the Clean Water Act will have supremacy. However, it's important to acknowledge that there may be some other component, some other piece of legislation that will have protective measures over drinking water in that instance. An open approach, whatever is most protective of drinking water, will have supremacy. That will give a critical tool—an examination, as you've indicated—to layer decision-making and to have additional considerations brought to bear under the planning context, for example.

Understanding in a planning context that what is under the ground in terms of groundwater needs to be considered as we move forward with decisions being made by a number of different bodies or joint bodies, as it may be, is so important and is really a tool that has been lacking across the province. We have heard that point, as we have areas that are sort of the hot-button, problematic areas in the province. Some folks have said, "We don't have the tools that we need to be able to make that preventive, protective decision." That's what the Clean Water Act gives them.

The Vice-Chair: Thank you, Minister.

Hon. Ms. Broten: Thank you very much.

The Vice-Chair: I've been instructed by the clerk to stick to the time. I believe that we have many people who are going to speak to the committee.

DUFFERIN AGGREGATES,
ST. LAWRENCE CEMENT

The Vice-Chair: Now we move to the second part of our day. We invite Dufferin Aggregates, St. Lawrence Cement, Bill Galloway.

Mr. Galloway, you have a partner with you today, so could she state her name? You have 15 minutes—10 minutes; I'm sorry. You can speak all the way through the 10 minutes or you can divide them between a statement and opening the floor up for questions from the three parties who are present today with us.

The Clerk of the Committee (Mr. Trevor Day): There will be five minutes of questions after.

The Vice-Chair: I'm sorry. Ten minutes of statement and five minutes of questions—my apologies.

You can start, Mr. Galloway.

0940

Mr. Bill Galloway: It's a pleasure to be here today. Thank you for allowing us to speak before you.

With me is Andrea Bourrie. She's our property and resources manager with Dufferin Aggregates. Andrea has a registered professional planning designation and is a member of the Canadian Institute of Planners. She is responsible within Dufferin and St. Lawrence to manage our planning issues, and is very well attuned to the interrelationships between our planning, permitting and

operational mandates. Andrea has been following Bill 43 since its inception.

Initially, starting off a little bit about Dufferin Aggregates, we provide 60% of our product, crushed stone, to the GTA. We employ over 400 people. We've identified the number of operations we have in the province. We operate from London through Cayuga, down through Hamilton, as far east as Clarington, and up in the Brechin area. Our main hub of operations is in Halton region, with our Milton/Acton quarries. We're also very active in the municipality of Puslinch.

We have successfully rehabilitated our quarries and our sand and gravel operations into naturalized states: wetlands, lakes and forested slopes. We have a water-based system at our Milton quarry, which will eventually be controlled by the conservation authority.

We've been a partner in the community for over 40 years and have a strong record of water management and stewardship of our resources in the communities that we work with. We're very supportive of the government's plan for clean drinking water. It's essential for human health. We do believe, as Justice O'Connor recommended, that the responsibility lies with the province for water resources, and we again believe that it's very important that this has a scientific base in its implementation and management.

Aggregates are a handler of water rather than a consumer of water, and our Golder study that was presented in 2004 indicates that that is the case. As little as 10% of our water actually leaves our sites; 90% of our water is actually returned to the water table within the site that we operate in.

With quarry dewatering, virtually all the water stays in the local watershed. Aggregate is really a crushing and screening process with rock, and we also wash it to get some of the fine, particulate matters off the product. There are absolutely no chemicals added to the product or to the water. Water is used on the site for our wash plants and for dust control. All of the water that we use for those purposes is recycled.

We're a very highly regulated industry. There are 25 federal and provincial acts that govern us. Groundwater and surface water are intensively studied under the Aggregate Resources Act and the Planning Act prior to licensing, and the minister has the opportunity to advise or request changes to our existing permitting and the existing approvals under the ARA.

The water-taking process is a very strong element of the province's control over the amount of water that is taken, and that process is managed through the MOE, and fuels and lubricants through a TSSA process. All of the water that is discharged is monitored and controlled. It is governed under the Ontario Water Resources Act for both quality and quantity. Of course, the EPA determines exactly what can and cannot be brought into an existing quarry or pit. The government itself has actually gone through and monitored pits and quarries throughout the province and determined that there is no threat to drinking water in our operations.

We believe that our industry, and Dufferin Aggregates, if we are properly managed operations, can advance the clean water objectives.

There's an example cited at Bellwood quarry in Atlanta, Georgia, which is going to be the site of a 1.9-billion-gallon west-side drinking water reservoir. I've attached some information on that in appendix 5. We also have examples of this in other jurisdictions, in Colorado, where quarries are used for drinking water. The GRCA in our own jurisdiction has Belwood Lake in Centre Wellington, which is a reservoir storage area within the watershed.

Our rehabilitation plans have been so successful that people don't even know that there have been pits and quarries—the botanical gardens, the Kelso recreation centre. In fact, as we all watched TV during the Sydney Olympics and looked at the rowing course and the kayakers going down whitewater rafting, none of us realized that in fact that was an existing sand and gravel operation and that it was a rehabilitated area that was being used for these venues. So we feel our aggregate operations contribute to the preservation of green space and our water resources.

We do have concerns. We fully support the objective of ensuring a clean supply of drinking water to meet the needs of all Ontarians, and we support the retention of ultimate responsibility by the province for water resources, as Justice O'Connor recommended. Science is an important part of water management and an important part of managing drinking water, and we of course support that. We are concerned that in the legislation there may be restrictions on land uses and activities that are not a threat to drinking water. We're concerned that the act itself does not adequately ensure consistency in the implementation and leaves too much to the regulations that will come after the legislation itself.

The government has a very strong set of pillars in the economy, the community and the environment. We've gone through the process of the growth plan; we've gone through the process of the greenbelt. In each of those pieces of legislation, there are clauses that link all of the resources of the province and balance those resources within the province. By no means are we suggesting that we should be threatening drinking water, but we do believe that Bill 43 should be dovetailed with those other pieces of legislation so we ensure that there are no undesired consequences within Bill 43 that may end up trumping what the government has already started to do with the greenbelt, the provincial policy statement and growth plans.

In effect, when we talk about consistent implementation, water belongs to all of the people of Ontario, and the province must retain ultimate responsibility for it, along with other shared resources. We're concerned that the framework of Bill 43 will end up having diverse sets of plans across the province that are inconsistent, that there will be a fragmentation of applicable rules and standards across the province. You may create an unlevel playing field for business, and you may end up inadvert-

ently sterilizing other resources that are required for close-to-market aggregate supplying.

The government has a clear intention in Bill 43 to protect drinking water. It's very important that the provincial regulations set scientifically based definitions and procedures for designation, identification and assessment. It's important that the terms that are laid out in the regulations clearly articulate what is intended by the government in this legislation. The concept of "trump card" should be there around drinking water.

Moving on to recommendations, consistent implementation: Municipalities implementing cannot be in a position where they end up placing more restrictive plans than what the government intended through this legislation.

Amend the "conflict" clause to avoid unintended consequences to land use by restricting supremacy over other interests to instances where supremacy is necessary to protect drinking water. I would emphasize "drinking water."

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The Vice-Chair: Thank you, Mr. Galloway. Now we are open for questions. Ms. Scott?

Ms. Scott: Thank you for appearing here before us today. You've highlighted a lot of good points that we're hoping some amendments will come forward on.

There is a provincial responsibility that should still be in place, and we do feel that it may compromise municipalities and create an uneven business field. With the existing legislation, can you give an example—you've got, I think you mentioned, 20-some regulations that you have to follow now, some laws that you have to follow. Do you see the Clean Water Act as impeding your business? Can you give an example of possibilities, as the Clean Water Act stands now, where you'll be at quite a disadvantage in the business-related atmosphere?

Mr. Galloway: We feel it ends, because we already have an existing piece of legislation with permits to take water, COAs governed under the ARA and the Planning Act—all of these effectively deal with drinking water, and they effectively deal with watershed protection and also ground and surface water. So we feel that adding further legislation to these existing bodies of legislation is not required in the aggregate industry. We feel we're a very low risk to drinking water.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming and making a presentation today. In the last few years, have you seen a tightening of regulation and legislation around aggregates, or a loosening?

Mr. Galloway: I can say that there has been a tightening of regulation and there has been a tightening of the scrutiny around our aggregate operations. There has been increased inspection by all ministries, whether that be natural resources, environment, labour. Frankly, we welcome it. It's important that we operate properly and we operate within our existing permits. We're very proud of our environmental record, very proud of our rehabilitation record. I believe, as a company, we're seen as a strong leader within the industry.

The Vice-Chair: Mr. Wilkinson?

Mr. John Wilkinson (Perth–Middlesex): Thank you, Bill, for coming today. We appreciate the fact that you've been working with the ministry, and your association, in helping us get to the Clean Water Act. I would agree with you that there are some shining examples in the industry of environmental stewardship that we can all be proud of. We appreciate the fact that you're here.

I guess the issue that we're dealing with is, in regard to consistency, it would be easier for the industry if there was one set of rules right across the province. There would be a level playing field, and you'd know exactly where you stand. Of course, as the minister was saying this morning, the approach that we've taken is local. I know that it causes some challenge and some concern, but don't you feel that the minister, because the minister has the power to approve the terms of reference and all of those types of things, would have the powers to ensure their consistency? And if you don't, specifically what amendment would you like to see to make sure that that issue of consistency that you're concerned about is addressed in the bill?

Mr. Galloway: We believe that the minister and the province should maintain control to ensure there is consistency. In the bill itself and then the regulations, what we would ask for is that local involvement has to take place; cross-watershed has to be in place. We have no quarrel about that; we have no quarrel about protecting drinking water. The important thing is that we end up with policies that are consistent, but we shouldn't be putting municipalities or conservation authorities in a position where they happen to be more restrictive. If there are issues that are local due to science, by all means let's address those, but if they're just out of pure policy, then we would have a problem with that. I don't believe we want people making decisions locally, interrupting what the province's intent is for the legislation on the basis of policy. It has to be science-based.

The Vice-Chair: Thank you, Mr. Galloway.

ONTARIO MEDICAL ASSOCIATION

The Vice-Chair: Now we're going to move to the Ontario Medical Association. I think you know what the procedure is. You have 10 minutes to speak and five minutes for questions. You can start any time.

Dr. Ted Boadway: Mr. Chairman and members of the committee, thank you very much for providing the Ontario Medical Association with the opportunity to present to you on this source water protection legislation. I am Dr. Ted Boadway and with me is Mr. John Wellner. We're both with the OMA.

Six years ago, the tragedy in Walkerton resulted in a process leading us all here today. There have been many stages to this process, and this is the last of the four building blocks of legislation required to complete the structure which will remedy the insufficient and unsafe water situation Ontario discovered it was in. We were all vulnerable, but the residents of Walkerton paid the price with their health and with death.

The need to protect the source of drinking water has been recognized for millennia as a key to the welfare and success of communities. By the time the Romans displayed their prowess at water source protection and transport, the importance had been known and various measures practised for over 1,000 years. History shows us that much of this knowledge was lost during the Dark Ages of Europe, with incalculable cost in human suffering over centuries. Indeed, it wasn't until the 16th century when the city of Lichfield became the first in England to provide clean, safe water to every citizen. They did so by paying attention to source protection and safe transport, just as the Romans had. So we come forward to today, and Ontario is catching up.

The OMA has been pleased to be part of this process of repair and renewal. The Walkerton crisis appeared during the annual meeting of our association in London, Ontario. A unanimous decision was made by this profession at that meeting to spare no effort in doing our part to help to respond to this challenge. We did what we could to support the doctors in that area but, quite frankly, they bore an enormous burden and we were able to help them only modestly. The profession remembers their effort.

The establishment of the commission was the single most important step carrying us into the future. It was a wise act on the part of government. The commissioner's hearings and scientific review showed that Ontario's system of water protection was in disarray and that in some cases appropriate protections had never been in place. At the conclusion of his work, the commissioner made public reports which took a holistic view of our water supply. His extensive list of recommendations for remedy were not merely useful; they were brilliant. We have all followed that brilliance in the subsequent years.

We presented to the commission on several occasions and met extensively with the commissioner's various teams. We were part of a variety of scientific panels and made a series of recommendations, all of which were adopted and then adapted in ways appropriate to the circumstances. We have been part of the consultation process, where appropriate, of the various pieces of legislation coming out of the commission.

We believe that government, both under the previous leadership and under the present leadership, has done a good job of responding to the commission's recommendations. In the case of this source water legislation, the process has been necessarily long and exhaustive. Dr. Albert Schumacher, an OMA president who went on to become a Canadian Medical Association president, served on the committee considering this topic with the previous government. When he moved to the federal scene, Mr. Wellner and I served during the extensive consultation process in this government. This consultation has taken many years, and all parties with an interest in this matter have been at the table. There has been extensive opportunity for input, and, even more encouragingly, that input has been carefully reviewed and used whenever possible.

The Minoans, the Romans and the English all cared about their water sources because of the effect they had on the health of their populations. People can drink water contaminated with any one of a host of germs. As we all know, these can be catastrophic for the human organism, as in Walkerton. These germs can cause the entire inside of your bowels to slough off, leaving a massive, weeping, bleeding surface. The toxins can cause your kidneys to fail. Sometimes your blood turns to sludge. Sometimes, as physicians, we are able to effectively combat these injuries with medical therapy, but sometimes the illness is overwhelming and either kills the patient or leaves them permanently damaged for life. These are just some of the mechanisms by which germs can damage and kill us. So this legislation may be about the environment and may have something to say about farming or mining or other human activities but, as physicians, this important water-source protection legislation is about health.

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The ancients knew that to get safe water you started at the source, but in Ontario we became overconfident in our ability to treat water just before use. We can do things to treat water they could not do but, to be prudent, we should benefit from their wisdom and add our own. In other health care settings, every step of testing and treatment has protective mechanisms built in which are deliberately designed to overlap each other. Redundancy is central to the medical notion of safety, and so we support this legislation, which takes us right back to the beginning of the water stream and introduces protective mechanisms.

Some things which are toxic, once they get into the water, can be removed by subsequent processes. But if that process fails, without redundancy, the population becomes vulnerable. Going back to the source and protecting the water from ever having become contaminated in the first instance is the only way to be able to say to the people of Ontario, "Your health is protected."

We are interested in legislation that will work to protect the health of the people of Ontario. Our review of this legislation shows us that there are two areas wherein the processes of safety can and, we believe, most certainly will fail unless they are corrected through amendment.

In section 37, we see that the process of correction requires that two ministries of the government act together in order to protect health. This is a recipe for inaction. No one is in charge and no one is accountable. Furthermore, this is asking two entirely different ministries to act jointly and with alacrity in order to protect health. This is a recipe for stasis and resultant disaster. We recommend that section 37 be amended such that the Ministry of the Environment is made responsible for taking the corrective action after consultation with the Ministry of Municipal Affairs and Housing.

Further, in section 48 the timelines we see are a plan for illness rather than a plan for health. This section applies where there is "activity which is a significant drinking water threat." With such a significant threat to the health of hundreds and perhaps thousands of people,

this section requires that no matter how dire the risk, the permit official must wait at least 120 days before protective action can be ordered in the face of recalcitrance. We are unaware of other remedies for this delay in the act, and this is unacceptable. I must tell you that we were concerned about this. This is a well-crafted act, and we were surprised to see this in here. We sought reassurance that in fact our interpretation was incorrect but were unable to get such reassurance. We still stand to be corrected, but if our interpretation is correct here, this needs repair. We therefore recommend that section 48 be amended such that, after failure to comply with an order and with a continuing imminent threat to health, the inspector may act immediately.

So, Mr. Chairman and members of the committee, let me assure you that the Ontario Medical Association supports this legislation. Everyone has had years to be recognized in the process. There has been extensive consultation and innumerable opportunities to be heard, and, as we indicated earlier, there has been action upon these suggestions. This legislation is encompassing of the subject. It is thorough and fails in only a few areas to be sufficient to protect the health of the citizens, and it can be easily repaired. It gets to the source, and the doctors of Ontario support it. Thank you for providing this opportunity to be heard.

The Vice-Chair: Thank you, Dr. Boadway. Now we'll start with a question from Mr. Tabuns.

Mr. Tabuns: Dr. Boadway, good to see you. Thank you for coming in, Mr. Wellner. Do you have any other amendments that are of concern to you, or are these the two key amendments? Are there any subsidiary or smaller amendments that you believe would enhance this act?

Dr. Boadway: These are the two we have focused upon. We think these are significant. We do not have smaller amendments that we're prepared to put forward at this moment. We wanted to focus on two important ones because we're afraid that if we don't, they will get lost. That's our experience, by the way.

Mr. Tabuns: I understand that.

Section 48: Have you had discussions with the ministry about this amendment to date, and how have they responded?

Dr. Boadway: We actually have not had discussions. We sent our inquiries in by message and never received any responses. In the face of waiting two weeks for these responses, we felt there wasn't a response, so we just went ahead.

The Vice-Chair: The parliamentary assistant to the minister.

Mr. Wilkinson: Thank you so much to the OMA for coming in and working with us on this. One observation: If you review section 80 of the bill, which deals with imminent threats, employees or agents of a source protection authority or a municipality must immediately notify the ministry if they become aware of a discharge that will result in an imminent drinking water hazard. They must also notify the ministry if the raw water of a

drinking water system exceeds standards that are prescribed in regulation. So we do have in place a protocol that deals with the ministry being notified. People have a legal requirement to notify the minister, and of course the minister has all of the powers, in my opinion, to take immediate action. Unless I'm wrong, section 80, if you look at that, will address your concern. We'd be more than happy if you could make sure that you advise me, after reviewing section 80, if you still have that concern about section 48.

Are you of the opinion that in the local planning process it's important that our local district medical officer of health be represented on that source water planning committee?

Dr. Boadway: First of all, we're aware of section 80. As we looked at the two streams of process, we thought they actually didn't link very well. If you don't have the two streams of process linked and you don't have protection built into this process, then this one might not in fact kick in and give you the protection you need.

Mr. Wilkinson: You'll get that redundancy. It's there, but it's redundant.

Dr. Boadway: As I said, we're prepared to be corrected on that, but that's how we saw it.

Mr. Wilkinson: And in regard to the local district officer of health?

Mr. John Wellner: Mr. Wilkinson, if I may—

The Vice-Chair: I'm sorry, the time is up for Mr. Wilkinson. My apologies.

Ms. Scott.

Ms. Scott: Thank you very much for appearing here today. I'll let you answer Mr. Wilkinson's question.

The Vice-Chair: Can you state your name, sir?

Mr. Wellner: It's John Wellner. I'm director of health policy at the Ontario Medical Association.

Just very quickly—thank you; I appreciate that—we are very interested in medical officers of health, and they themselves are interested in participating. Obviously, there are some watershed boundaries that overlap and include many local health units, and some local health units that include many watersheds. So there are some issues that still have to be addressed, but in general, yes, and I think you'll hear from the Association of Local Public Health Agencies this afternoon.

Ms. Scott: Quickly, I'll just ask you: Are you concerned that the provincial government is abdicating its responsibilities, asking too much of municipalities to implement the source water protection? You brought up Walkerton—and that's a real community—and what happened there. Do you think Bill 43 is actually able to be implemented by the municipalities without sufficient funding?

Dr. Boadway: That is well beyond my level of competence and I wouldn't try to answer it. I'm sorry.

The Vice-Chair: Thank you, Doctor.

SIERRA LEGAL DEFENCE FUND

The Vice-Chair: Now we move on to the Sierra Legal Defence Fund.

You may start any time you want. You have 10 minutes, and then five minutes for questions.

Dr. Anastasia Lintner: Good morning, everyone. Sierra Legal appreciates the opportunity to make oral submissions to this committee this morning on Bill 43. I have prepared a statement. I won't follow it exactly so that you don't get too bored following along. My name is Dr. Anastasia Lintner. I'm staff lawyer and economist for Sierra Legal's Toronto office, and I'm also an adjunct professor in the economics department at the university of Guelph.

Sierra Legal is Canada's largest non-profit environmental organization. We're Canada's independent legal champions for a healthy environment. Among Sierra Legal's goals is the preservation and restoration of water quality, quantity and riparian protection to a level that ensures healthy ecosystems. We have been very engaged in the whole process that has resulted from the Walkerton tragedy and have always made submissions, from the point of the inquiry right through to the more recent draft legislation and the proposed legislation and regulations, to ensure that this goal is met. It's with a great deal of involvement and background in the source protection issue that I'm making these submissions today.

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Before I get into the meat of the presentation, I just want to note that it may be that there hasn't been enough time scheduled for the public hearings on this matter. There were a great deal of requests to appear that had to be turned away, and the public hearings themselves are not going to locations in central and northern Ontario. As Justice O'Connor has stressed that these recommendations for source protection should apply everywhere throughout the province, we believe there should have been greater coverage in terms of the locations for public hearings.

Sierra Legal endorses the government's efforts to fulfill all of Justice O'Connor's recommendations resulting from the Walkerton inquiry. We believe that the proposed Clean Water Act, Bill 43, is essential to the long-term health of our communities and the environment. Introducing Bill 43 is a big step forward toward water protection in Ontario, and we strongly recommend that Bill 43 be as effective as possible.

As it is currently drafted, Bill 43 meets many of the recommendations of Justice O'Connor and many of the recommendations of a coalition of citizen and non-government groups that put forward a statement of expectations in 2004. However, there can be further enhancements to the bill. We recommend that Bill 43 be strengthened to fulfill what I call Sierra Legal's four Ps: priority, precaution, prevention and parity.

Priority should be given to protecting water resources in Ontario. As Justice O'Connor emphasized in part 2 of his Walkerton inquiry report, this protection is the first, and for some communities will be the only, barrier protecting and providing safe drinking water to residents. However, human health is not and should not be the only priority. While Justice O'Connor in his recommendations

was bound by the terms of the Walkerton inquiry, this is not so for you. The Clean Water Act should hold ecosystem health as a priority as well.

Sierra Legal is pleased to see that when it comes to the potential for conflict between different decisions being made locally and different pieces of legislation and regulations that may apply, there is an ability to ensure that water protection is the priority. This priority in Bill 43 should not be weakened. As a signal of priority, Sierra Legal believes that what needs to come along with this package is sustainable funding. There are many recommendations for initiatives that could be used to ensure this funding, and they should be pursued. At the same time, the province must ensure that water remains a public or common resource. Responsibility and accountability for water source protection should not be privatized.

Our second P is the precautionary principle. The minister mentioned in her statement this morning that precaution is the whole intent of the legislation. If that's the case, then this should be made absolutely clear within the legislation. In part 2 of the Walkerton inquiry report, Justice O'Connor states: "When the potential consequences of the hazard in question are large, the precautionary principle has a role to play in practical risk management and should be an integral part of decisions affecting the safety of drinking water."

If that is the case, then there should be a specific definition and specific reference to the precautionary principle in order to ensure that it's clearly and consistently applied and is the purpose of the legislation. There are two recommendations that are detailed in the handout I gave you that deal with that issue.

The third P, prevention: Preventing water resources from becoming contaminated in the first place is the cornerstone to the Clean Water Act. On one hand, raw water that is not contaminated when it enters the drinking water treatment and distribution system, or for that matter private wells, will be cheaper and easier to clean. What we should have learned from Walkerton and other tragedies such as North Battleford and Kashechewan is that it is less costly to prevent our water resources from becoming contaminated than to deal with the consequences. On the other hand, water that is not contaminated when it enters or is returned to natural water courses will ensure healthy ecosystems. Again, the cost of preventing water contamination is less than dealing with the consequences of the ecological degradation that result.

Sierra Legal advocates prevention, in that water is a common resource, and as with other common resources, there should be a balancing of responsibility that goes along with the right to use a resource. The oft-employed phrase, "Take only photos, leave only footprints," when talking about a common resource such as a provincial park, requires that the resource be left as the visitor found it. This is a hallmark of the principle of intergenerational equity. The Clean Water Act should ensure that prevention and intergenerational equity are addressed by en-

suring that all potential sources of contamination, such as human or animal waste, industrial pollution and urban runoff, do not reach the water system, but also that contamination is not encouraged by over-depletion of the water resources.

I'll just finally state that our fourth principle, parity, is very, very important. It leads to the idea that there isn't going to be adequate universal application of this act as it now stands throughout the province.

The Vice-Chair: Thank you, Doctor. The parliamentary assistant?

Mr. Wilkinson: Dr. Lintner, thank you so much for coming. We do want to commend the Sierra Legal Defence Fund. You're absolutely right: You have been involved since the tragedy in Walkerton, and your group has made significant contributions as all of our legislation from the previous government and our own government has evolved.

I was wondering if you could just help us out, since we're at the beginning of this process, and, given your credentials, if you could just give us a quick brief on riparian rights. That is something for us as legislators that I think we're going to hear, because we'll always hear about the conflict between the shared common aquifer and property rights.

Dr. Lintner: The idea of riparian rights is exactly the kind of principle that I was stating about balancing the responsibility with the rights. With a riparian right, an individual who has water flowing over or adjacent to their property would be able to make use of that water so long as it is returned without substantial alteration in the quality or the quantity. With that principle involved, I submit that that is the kind of treatment we want for all the water resources throughout Ontario, without requiring that it be a private right. To the extent that the government is interfering with private rights, you should keep in mind that individuals have a responsibility to ensure that the quality and quantity aren't altered in the first place.

The Vice-Chair: Thank you, Mr. Wilkinson. Ms. Scott.

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Ms. Scott: Thank you very much for appearing before us here today. I agree that there certainly is not enough time for public hearings, especially in the southwestern and northern parts of Ontario.

You mentioned that the Clean Water Act needs proper funding. Who do you think should pay the implementation costs associated with the Clean Water Act?

Dr. Lintner: The implementation should be funded through the province, and I believe that the way it can be funded would make use of a number of potential sources of that funding. So while the province ultimately would be responsible, it may be that some of the raising of funds would be through ensuring that there are some charges at the municipal level, but also ensuring that the province would charge for permits to take water, and so on.

Mr. Tabuns: Thanks for your presentation today. You make a number of recommendations here, some of which

have proposed legislative wording and some of which don't. Can you provide us with legislative wording for all the amendments that you've brought forward?

Dr. Lintner: I can do that.

Mr. Tabuns: Great. Thank you.

The Vice-Chair: Thank you, Dr. Lintner, for your presentation.

SIERRA CLUB OF CANADA,
ONTARIO CHAPTER

The Vice-Chair: Now we have the Sierra Club of Canada, Ontario chapter. If you know the procedure, you have 10 minutes to speak and five minutes for questions. I wonder if you could state your name. You can start any time you want, sir.

Dr. Lino Grima: My name is Lino Grima, and I'm an academic with four decades of experience in the water management field at the University of Toronto. I appreciate this opportunity to comment on the Clean Water Act, which is a crucial step for the long-term protection of healthy communities and freshwater ecosystems.

The Ontario government is to be highly commended for this and other legislative initiatives flowing from the recommendations of Mr. Justice O'Connor. I've handed in a longer written version of this presentation and I shall limit this oral version to some highlights and our 12 recommendations.

I make this presentation on behalf of the Sierra Club of Canada and its Ontario chapter. The Sierra Club of Canada has about 10,000 members, supporters and youth members, with five chapters across Canada. The other authors of this presentation are also deeply committed to water advocacy and, among other responsibilities, serve on the Ontario advisory committee on the implementation of the Great Lakes annex.

The Sierra Club of Canada wishes to associate itself with the many excellent specific recommendations to improve this legislation, communicated to you by the group of environmental and community organizations led by CELA and Environmental Defence, with generous support from the Gordon foundation.

The Sierra Club of Canada strongly supports this bill and seeks its early implementation: the sooner, the better. Five years sounds like a long time, but the sooner it's implemented, the better.

While the act is an excellent start, some changes are needed to make this act more effective in protecting the health of the citizens of Ontario.

Our first set of recommendations refers to water conservation. While the main thrust of the Clean Water Act is protection of water quality at source, it is clear that the protection of water quantity is equally fundamental to the purposes of this act. Groundwater aquifers are often the source of community water supply. One of the major threats to water quality and the replenishment of groundwater aquifers is the spread of impervious services in recharge areas. Therefore, our first recommendation is

to set clear guidelines to limit the spread of impervious services in recharge areas.

Our second recommendation is that Bill 43 be amended to include a requirement that source protection plants within all Ontario watersheds be mandated to develop best practices in water conservation. In particular, assessments in water budgets required by this act in section 13 should identify effective water conservation policies for the watershed. It is at this point that key assumptions would be made about demands for water by residential, municipal and industrial users. The assessment report should include a water conservation plan aimed at reducing overuse and thereby avoiding potential water shortages.

The Sierra Club's third recommendation is that the full cost of community water supply includes the administrative and infrastructure costs of source protection and that municipalities, especially small ones, have access to new and additional sources of revenue to meet the significant additional responsibilities of this act.

Our next set of recommendations refers to the use of risk assessment. At section 48 of the proposed act, the response to a potential threat to drinking water may include the preparation of a risk management plan. The risk assessment and management plan would be prepared in accordance with regulations and rules. We request further opportunity to comment on regulations when they are drafted.

However, having worked with the risk management framework on a wide range of issues, the Sierra Club of Canada's fifth recommendation is that source protection plans reflect a worst-case scenario hazard assessment rather than conventional risk assessment.

In our next recommendation, the Sierra Club strongly recommends that the precautionary principle be included in the purposes of this act, and furthermore, that the precautionary principle be the main guideline in the development of the source protection plans.

Our next set of recommendations is about the need to integrate relevant aspects of Great Lakes protection in this bill. To some extent, sections 74 and 76 in part V of this bill address our concern, but not entirely. Our seventh recommendation is that the source of water for the very large majority of Ontarians should be an integral and equal part of this act and that the provisions in sections 74 and 76 should be mandatory rather than permissive.

Our next recommendation is that Ontario take this excellent opportunity to integrate into this bill reference to the remedial action plans required by the Great Lakes Water Quality Agreement. Similarly, we strongly urge that there be a connection between Bill 43 and the provisions to implement the annex agreement which was signed last December, and especially its provisions on conservation, limits on consumptive use, return flow and diversions out of the basin.

We next turn to the role of citizen participation. The success of Bill 43 will be judged in its implementation, which will, no doubt, require public support, particularly

at budget time. Therefore, meaningful citizen participation is to be supported. It is not a tap that can be turned on at will. Public support needs to be encouraged and nurtured in good times if it is to be available in the lean times.

We strongly recommend that residents have more than token representation on the source protection committee and that residents be selected through an open election or transparent appointment process. In addition, we strongly urge that the representation of public health departments on the source protection committees be mandatory.

The Sierra Club of Canada strongly recommends that the process of the source protection plan in all its stages be transparent and particularly that all draft terms of reference and assessment reports be open to public comment prior to approval. We also strongly recommend that a provision for regular, periodic review of the source protection plans be made mandatory in this bill.

We appreciate very much the opportunity to comment on the Clean Water Act. I thank you, Mr. Chairman.

The Vice-Chair: Thank you, Mr. Grima. Ms. Scott?

Ms. Scott: Thank you very much for appearing here before us today and for your recommendations, which we look forward to taking further. Do you feel the impact on rural Ontario, how this is going to be? It's really downloading the responsibility, the implementation costs onto the municipalities. How do you feel about the Clean Water Act right now? Who do you think should be paying for the costs?

Dr. Grima: I'm sure this is a very political process, and no doubt there will be new responsibilities given to municipalities under this act, and I think some financial arrangements should be made in order to make this possible. I'm not sure how this would be done, but—

Ms. Scott: But you think the province should still have a responsibility in the costs associated with implementing the Clean Water Act?

1030

Dr. Grima: I think the province has the final responsibility for protecting the health and the environmental quality of source water in Ontario.

Ms. Scott: Okay.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Professor Grima, thank you for coming today. Good to see you. One of the things that you speak about in your package here is taking an approach to source protection plans that reflect worst-case hazard assessment rather than conventional risk assessment. Can you tell us how sharp the difference is between those two?

Dr. Grima: Yes. The difference is related to the precautionary principle: that when we're dealing with something as important as health and safety and maybe the difference between life and death, we should err on the side of caution. In hazard assessment—and I hope you guys don't tell this to my dean, because I happen to teach in this area—I think we should be very cautious and take a worst-case scenario rather than try to balance all the bits and pieces in our lives, which is what risk assessment does.

I'm not suggesting that we should avoid all risk. We take risks all the time. I've taken a risk this morning coming here. I'm taking lots of risks talking to you guys.

So that's the difference. The difference is realizing that this is a critical issue. We have some unfortunate experience in this respect. I've travelled in many places, and the big difference between so-called Third World countries and our countries is that you can drink tap water with confidence. That's my personal definition of the difference.

The Vice-Chair: Ms. Wynne.

Ms. Wynne: Thank you very much for being here, Professor. You've raised the issue of the Great Lakes, and I understand that 70% of Ontarians drink water that comes from the Great Lakes. You've suggested that the measures should be mandatory. There are sections in the bill where we refer to and we require consideration of agreements, and that is in the legislation. But given that these are international waterways, we have some limitations on what we can require and what we can make mandatory and our ability to effect changes on a whole-lake basis. So can you comment from your perspective on how you think the federal government could help in protecting the Great Lakes, what they should be doing?

Dr. Grima: In the larger brief that I handed in, I refer to two processes, toward international and interprovincial-interstate processes. I think these present a good opportunity to refer in Bill 43 to these two other processes. One process is the Great Lakes Water Quality Agreement, which dates back to 1972. In 1987 it was revised to include a protocol about the areas of concern. It seems to me that the remedial action plans, on which I have worked since 1987 too, give us a good opportunity to look at the protection of water sources on a larger scale than just one watershed. For example, Toronto gets its water from four different plants over a spread of 30 kilometres, and the shoreline can be polluted by storm water—

Ms. Wynne: But does the federal government have a role in making that happen?

Dr. Grima: I think the Ontario government and the federal government already have an agreement on the Great Lakes, and I think there should be a reference to that. It's just making use of what the federal government is already doing.

The Vice-Chair: Thank you, Dr. Grima.

ONTARIO WATER WORKS ASSOCIATION

ONTARIO MUNICIPAL WATER ASSOCIATION

The Vice-Chair: I'm now going to move on to new presentations, by the Ontario Water Works Association and the Ontario Municipal Water Association.

You know the procedure: 10 minutes for your presentation and five minutes for questions. You can start any time you're ready.

Mr. Rod Holme: Thanks very much. My name is Rod Holme. I chair a joint committee on water legislation for

our two associations. With me are Rob Walton, chair of the Ontario Municipal Water Association; Wayne Stiver, president of the Ontario Water Works Association; and Joe Castrilli, who is counsel to both associations. Our associations are appearing before you jointly in overall support of Bill 43, the Clean Water Act.

Our associations are representative of the full range of professionals involved in the provision of drinking water in this province. OMWA was founded in 1967 and represents over 170 water authorities supplying drinking water to over seven million residents of Ontario. The organization's historic focus has been on legislative, regulatory and policy matters, in conjunction with the delivery of safe drinking water in the province. OWWA is a non-profit scientific and educational association made up of over 1,700 members that includes individuals, businesses, consulting firms and municipal water providers.

Our associations were jointly parties to part 2 of the Walkerton inquiry. Since the end of the inquiry, OMWA and OWWA have participated in and prepared extensive submissions on the post-Walkerton legislative activities of the government surrounding safe drinking water. The recommendations of the Walkerton inquiry recognized source water protection as an essential element in a multi-barrier approach, which both our associations have long supported as integral to protection of drinking water and public health.

Our associations agree with the purpose of Bill 43 and support all of the measures in the bill as integral to meeting the bill's purpose. We have studied the bill very closely and we do wish to offer constructive suggestions for its improvement. Both organizations urge the standing committee to examine our four overarching themes and six recommendations that both organizations believe the standing committee should have regard to in consideration of Bill 43.

Mr. Rob Walton: I'll speak to the first two of our recommendations, the first being making municipalities true partners in the process of source water protection. Municipalities believe that they are being given considerable responsibility without corresponding authority under Bill 43. Only municipalities in watersheds where there's no conservation authority—mostly in northern Ontario—may be given authority commensurate with expected responsibilities under Bill 43. In particular, section 23 of the bill authorizes the minister to enter into agreements with such municipalities to prepare source protection plans for a source protection area. This type of authority is not available under the bill to municipalities in southern Ontario, where most of the conservation areas are located. OMWA and OWWA recommend that the application of section 23 be expanded to the whole province, not just to those parts of the province where there currently is no conservation authority.

The next one of our recommendations for change is to create an appropriate financial engine to ensure that source water protection occurs. There is municipal concern about the costs associated with implementing

source protection measures. Much depends on the nature and extent of the proposed municipal authority under section 47 of the bill to impose fees with respect to regulation of drinking water threats and what the province proposes under the Sustainable Water and Sewage Systems Act. First, there are potential constraints under sections 9 and 10 of SWSSA—which is the acronym for that act—on the level of fees that municipalities may charge with respect to source protection. Secondly, the generality of the language used in section 47 makes it somewhat unclear as to the activities with respect to which municipalities may impose fees, particularly if there are activities already regulated by the province.

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Finally, section 47 does not address the situation of municipal costs in relation to measures to clean up or otherwise control orphaned or abandoned sites, and by definition will not have anyone upon whom the municipalities will be able to impose these costs for source protection. We recommend that Bill 43 and/or SWSSA regulations must address which source protection costs should be linked to drinking water supplies—and conversely which should not—and where revenue should come from to support the necessary programs, including those in relation to orphaned and abandoned sites.

A further component of the cost issue relates to the need for the agricultural community to adopt certain measures in order to achieve certain source protection objectives. OMWA and OWWA agree with the rural and agricultural community that Walkerton inquiry recommendation 16, which states that the province should establish a system of cost-share incentives for water protection projects on farms, is not reflected in Bill 43. We recommend that this be included.

Mr. Holme: Wayne Stiver will now speak.

Mr. Wayne Stiver: Thank you. We are concerned about existing activities that could pose drinking water threats if section 49 in Bill 43 does not apply to them. As the standing committee is aware, section 49 cannot prohibit drinking water threats identified in the source protection plan if the threat existed before the coming into force of the plan. We recommend that section 50 be amended to require any activity listed by regulation, identified in an assessment report, located in surface water intake and wellhead protection areas, pursuant to section 49—because it is an existing activity that cannot be prohibited under section 49—be listed, regulated and, if necessary, prohibited pursuant to section 50.

We also are concerned that more provincial laws should be listed in section 96(2) as being trumped by Bill 43 in the event of conflicts that currently are identified in that section. It is apparent that in the event of a conflict, the provision of Bill 43 only prevails over instruments issued under the Nutrient Management Act, 2002, and not over instruments under other provincial laws. Accordingly, we recommend that Bill 43 be amended to allow it and source protection plans issued thereunder to prevail over instruments issued under other provincial acts or regulations.

The last point we want to make applies to the right measures for protecting source water. OMWA and OWWA are further concerned that Bill 43 contemplates establishment of raw water standards by regulation. Neither organization supports the establishment of raw water standards because they are not consistent with the multi-barrier approach. Source water protection is one of the multi-barriers necessary for the protection of safe drinking water. However, source water protection is not intended to replace the other barriers, such as water treatment. If raw water standards were established, their existence might compromise the multi-barrier approach by leaving the impression that the other barriers, such as treatment, are not required.

Existing MOE guidelines and programs point to an approach that is superior to establishing raw water standards. A comparable approach in the United States supports the multi-barrier approach because it requires treatment methods appropriate to the particular raw water quality in question after characterization of the water supply and the monitoring of trends have occurred. We therefore recommend that references to raw water standards be removed from Bill 43.

In conclusion, Bill 43 adds to the foundation of a sound regime of drinking water protection in Ontario and we, both groups, strongly support it. Adoption of the amendments proposed by the OMWA/OWWA for Bill 43 would further advance the goal of delivering safe drinking water to the Ontario public.

At this time, we will be pleased to answer any questions from the members of the standing committee.

The Vice-Chair: Thank you both, Ontario Water Works Association and Ontario Municipal Water Association. Now we open the floor for questions. Mr. Tabuns.

Mr. Tabuns: Yes. Can you tell us what you think the implications would be for this act if your recommendations aren't adopted?

Mr. Stiver: Well, a lot of the recommendations are for clarification, so it's hard to say what will happen. But as far as the funding and the standards and what have you, we just think it strengthens the act. What would happen if they weren't implemented? I think we would have a weaker piece of legislation.

Mr. Tabuns: The cost of regulation monitoring, enforcement: Do you have a sense of what it would cost to actually implement these measures in your municipalities, in municipalities in this province?

Mr. Walton: I can probably speak to that because I am from Oxford and we were mentioned in the minister's speech. I think the costs for what we've done in Oxford are properly put out by the government, but what aren't in there are the things we talk about today, things like the orphan sites and those other measures. We don't have a good handle on what they're going to cost and we think it should be more of a provincial responsibility as to how we get at these sorts of measures and other sources of revenue that can be brought into this so that the taxpayer or water ratepayer isn't the only one paying for the whole cost.

Mr. Tabuns: Do you deal with the orphan sites now?

The Vice-Chair: Thank you, Mr. Tabuns. Parliamentary assistant?

Mr. Wilkinson: Just on the question of section 96, you've raised the concern that somehow section 96 doesn't have primacy over all other acts. My reading of it states that there is primacy. Though nutrient management is covered specifically under subsection (2), it doesn't preclude the fact that Bill 43 has supremacy. I'd be interested in your opinion on that.

The Vice-Chair: Can you state your name, sir?

Mr. Joseph Castrilli: Yes. My name is Joe Castrilli and I'm counsel to both organizations. It's very clear from a reading of subsection 96(2) that the only thing it applies to are instruments issued pursuant to the Nutrient Management Act, and that's where Bill 43 may trump an instrument. However, if an instrument—and what I mean by an instrument is a licence, permit or certificate of approval—is issued under any statute in provincial law other than the Nutrient Management Act, Bill 43 does not trump the instrument. It's very clear to see that when you compare subsection 96(2) with subsection 96(1).

Mr. Wilkinson: But in 96(1), if another instrument actually does a better job at protecting drinking water, the provisions that provide the greatest protection to the quality and quantity of water prevail. Why would we not assume that that would be the best thing for the public?

Mr. Castrilli: Subsection 96(1) only applies to other acts and other regulations; it does not apply to other instruments. Subsection 96(2) applies to other acts, other regulations and other instruments but only in relation to the Nutrient Management Act.

Mr. Wilkinson: We'll need clarification on that. Okay. Thanks.

The Vice-Chair: Ms. Scott?

Ms. Scott: Do you agree that the bill, as it's written, is going to have a very negative impact on rural Ontario?

Mr. Walton: I guess it's me who is going to answer that. I'm from rural Ontario, Oxford county. I don't think so. In Oxford county we've worked hard to make sure—and we're all on groundwater too—that our farming community can coexist with our municipal water supplies. We've been working on this for 10 years. What has to happen here is that we have a partnership that works forward on this together to make sure that implementation doesn't impact on farmers such that they can't do their business as well or it doesn't give municipalities the power to do the source water protection as well. So I think there are ways, and we've tried to find those in Oxford.

Ms. Scott: So do you think there should be provincial funding to help farmers in this situation implement some of the rules that are going to come with the Clean Water Act? I know there is expropriation without compensation in the Clean Water Act. Do you agree with that?

Mr. Walton: I'm not familiar with that section, the expropriation without compensation part of it. But I think there are a few things that have to work together here. There's the Nutrient Management Act, there's source

water protection and there's the whole provision of the Clean Water Act. It all has to work together for it to be successful. There is some tweaking of this, as we've stated, and funding from the province as a key cornerstone to this is fundamental.

The Vice-Chair: Thank you to all of you.

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ENVIRONMENTAL DEFENCE

The Vice-Chair: Now we'll move to Environmental Defence. I think they are here.

You can start whenever you are ready, and please, when you want to speak, state your name.

Dr. Rick Smith: Good morning. Thank you for the opportunity to present our views on this very important piece of legislation. My name is Rick Smith. I'm executive director of Environmental Defence. With me this morning is my colleague Heather Smith, our water project coordinator.

Before we begin, just a few words about Environmental Defence. We're a national charity dedicated to protecting the environment and human health. Our efforts to secure protection for Ontario's drinking water began in earnest with our submissions to the Walkerton inquiry. We've been actively involved in the development of the Clean Water Act since 2004, when we co-authored a statement of expectations for the act that was broadly subscribed to by citizens and environmental groups. Since then, we have maintained our efforts to help encourage and coordinate input to this act from a wide variety of organizations.

The latest product of these efforts you have in front of you, I hope. It is a joint statement released this morning, signed by 16 citizen and environmental organizations, that highlights the importance of passing this act as swiftly as possible, once a number of important changes have been made.

We believe this act to be essential for the long-term health of our communities and our environment. A province-wide law to protect our sources of drinking water was one of Justice O'Connor's key recommendations. It's now six years since the tragedy at Walkerton and, if anything, this law is long overdue.

In our presentation this morning we want to highlight four factors that we believe are critical to the success of the Clean Water Act:

- (1) The province must demonstrate a clear commitment to the goals of this act in interim land use decisions.
- (2) The act must serve as a launching pad to re-establish provincial leadership in Great Lakes protection.
- (3) The public needs to be thoroughly engaged in the act's implementation through education and outreach, and the province must provide meaningful avenues for public involvement.
- (4) There has to be long-term funding available for those entrusted with implementing the plans.

Ms. Heather Smith: I'll take over from there.

Today's land uses have a significant impact on tomorrow's drinking water supplies. There are sprawling housing developments, like the ones currently being disputed in north Leslie or the ones recently approved for construction on the Waterloo moraine. These can prevent water from recharging the aquifers that so many people depend on. There are also massive infrastructure projects like the infamous big pipe, which we heard referenced this morning, which can drain millions of litres of water every day from the aquifers that feed Toronto's major rivers. They have already resulted in the drying up of streams and some private wells in the region.

Developments like these can have long-lasting impacts on the quality and availability of our water resources. These effects are well known, as are the means of preventing them. Given the development pressures currently faced by many regions of the province, there is every reason to believe these effects will get considerably worse in the years it will take to approve the first source protection plans.

The province has a responsibility to support the goals of the Clean Water Act immediately by ensuring that its land use planning decisions prevent unnecessary irreversible impacts to the aquatic ecosystems that supply our drinking water. Not living up to this responsibility risks undermining both the act and the source protection plans by sending a clear signal about their lack of importance. Some elements of the development industry have a long history of fighting new restrictions on how and where they can build, and source protection plans will likely be no different. Taking a clear stance in support of water protection in the decisions made today will allow the province to begin defusing some of that opposition and provide source protection plans with the solid foundation they need to be effective tools for environmental protection.

One way of taking a clear stance in support of the act's goals would be to develop strict guidelines limiting the spread of impervious surfaces in key recharge areas. This would protect the aquifers that supply countless wells across the province by ensuring that sprawling development does not interfere with their replenishment. These guidelines should be published soon after the act's passage, and all new development applications should be required to demonstrate how they will meet those guidelines.

On a broader scale, the province can also build credibility and support for this act by using it as a stepping stone for renewed leadership on the Great Lakes. The lakes provide drinking water for 80% of the province's residents, and the province cannot claim to be protecting our sources of drinking water unless the needs of this vast majority are addressed. The act's current provisions for the Great Lakes are certainly welcome, but we encourage the province to go further. The act must include strong commitments to protect the Great Lakes, and the province must ensure that the goals of source protection are supported by all interjurisdictional agreements, particularly the Great Lakes Water Quality Agreement and the Annex 2001 agreements.

Dr. Smith: The next key step is to support local implementation through extensive and ongoing public education and participation. Frankly, the case for this has already been made by much of the inflammatory rhetoric about the Clean Water Act that has been circulated in recent months, some of the various apocalyptic assertions about this act that you will have seen in some newspapers and that doubtless you will hear through some of these committee hearings. These assertions are out there. Frankly, they're based less on an accurate interpretation of the act than on a politically motivated desire to tie this bill to the broader economic and social challenges faced by Ontario's rural residents, which are certainly real but on which this act will ultimately have very little impact.

A much greater problem, we think, than the fact that these erroneous assertions are being made is that some people have begun to believe them. One way to start dispelling these misgivings is to include meaningful avenues for public participation throughout the development of source protection plans. You will see some specific suggestions on how to do that in our brief today.

The last point I wanted to touch on is the fact that it's essential that there be a sustainable and reliable approach to securing funds for the implementation of source protection plans. The province is entrusting municipalities with the task of implementing the plans, and it must, therefore, be prepared to support them in these efforts. The long-term success of this act will depend on the province finding new ways to generate or reallocate revenue for its implementation. Fortunately, a range of options has already been identified. We don't need to reinvent the wheel. I would urge this committee to take a look at them.

The implementation committee for source protection identified several funding mechanisms in its report, including water-taking charges, water rates, pollution charges and a number of other things. The province has already committed to implementing water-taking charges and to reforming the framework for water rates under the Sustainable Water and Sewage Systems Act. These two initiatives are a good start, but there needs to be more in this regard.

In conclusion, by working to both create the best possible act and to lay the foundation necessary for its local implementation, the province stands to achieve meaningful, on-the-ground progress in protecting drinking water sources. If either aim is ignored, however, that protection will suffer. Six years after Walkerton, surely that is something that we can ill afford. Thank you for your attention.

The Vice-Chair: Thank you very much for your presentation. The parliamentary assistant?

Mr. Wilkinson: Just following up on the question of perhaps rhetoric being used injudiciously, I would ask research if you could provide a summary about the Expropriations Act, which is referenced in section 83, and about whether the Expropriations Act mandates expropriation without compensation. I don't think that is factually correct. I think the committee members should

ask for a summary of that so we can have that in front of us so we can deal with section 83 based on that summary.

Thank you so much for coming and specifically about your concern around the Great Lakes and how we need to integrate with both our federal and international partners. Could you just kind of flesh out your concerns about what we could do in this bill, because that's what's in front of us, to address those concerns?

Dr. Smith: We have some suggestions in the statement co-signed by 16 organizations that we've given you today. Two very quick things: The language connecting the watershed protection approach to the Great Lakes currently is somewhat permissive, and we would suggest that it be made stronger; secondly, that the act specifically mention some of the interjurisdictional agreements that Ontario is—

Mr. Wilkinson: A party to.

Dr. Smith: —a party to, or engaged with, right in the act.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today. It was brought up that there's a lot of talk in rural Ontario about the implementation of it. Do you think Bill 43 is the right approach to protecting municipal source water, especially if the municipalities and landowners—there are regulations to follow—are not given the proper tools, as in monies, really, to follow the Clean Water Act? Do you think it's actually going to be more—I think it's going to be more confrontation than co-operation, but I'd be happy to hear your views.

Dr. Smith: I don't think that this act sets up a recipe for confrontation. In fact, speaking as a non-profit organization engaged in this issue and working on a daily basis with other stakeholders engaged in this issue, what this act sets up is a rather lengthy implementation timetable—we think too lengthy—but it sets up a framework to allow various stakeholders in different watersheds to sit down around a table and to work out a game plan for that specific watershed. That seems to me to be a rather reasonable approach, one that has the potential to include the various voices that need to be there at the table. I don't see that as being threatening in any way.

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I regret the fact that some of these assertions in recent days have acquired, as I said, rather apocalyptic proportions. I would agree with you on the money side of things, and I hope we've made that rather clear in our presentation. The province needs to pony up the necessary money to make sure that this implementation happens and that those who are being asked to do the work have the resources to do the work. Again, we don't need to reinvent the wheel here. The implementation committee had a lot of great suggestions, and we think that's where the province should start.

Mr. Tabuns: Thanks for the presentation today. Can you give us a sense of the scale of expense that we're talking about from implementation and actual monitoring enforcement action, and where you see the large expenses coming from, given the earlier commentary that

Oxford county seems to be able to do this at a relatively moderate cost?

Dr. Smith: I'll take a stab at that and then pass it over to Heather.

I direct your attention to the implementation committee report. I would suggest it would be highly appropriate for this committee to take a look at the money side of the equation and provide some guidance. There's a variety of suggestions for mechanisms there. Certainly as the implementation proceeds, there will be some differences in resource requirements by watershed. Obviously, some are more stressed than others, so there would need to be a bit of an iterative approach, sort of a tiered approach to the expenditure of resources.

Ms. Smith: I think the presentation before us also highlighted a couple of issues that weren't addressed in those numbers that came out for Oxford county. Certainly some of the enforcement is going to be a big expense, like the mechanisms around the risk management plans, the joint agreements with the landowners as to what tasks they're going to take on. Those are going to absorb resources. The permit officials and the administration aspects are going to absorb quite a bit of resources.

The Vice-Chair: Thank you for your presentation.

ONTARIO MINING ASSOCIATION

The Vice-Chair: Now we move on to the Ontario Mining Association.

I wonder if you know the procedure. You have 10 minutes to speak and five minutes for questions. You can start when you're ready.

Mr. Chris Hodgson: Sure. Good morning, Mr. Chair, members of the committee. My name is Chris Hodgson, and I'm the president of the Ontario Mining Association, OMA. With me today are Jim Vincent, mine manager of the Canadian Salt Company; Rosanno Catalan, environmental scientist, fuel services division of Cameco Corporation; Liam Mooney, legal adviser for Cameco; and Adrianna Stech, the OMA environmental sustainability manager.

We very much appreciate the opportunity to appear today to address Bill 43, the Clean Water Act, which is of considerable interest to the members of the OMA and could significantly impact their activities.

The OMA was established in 1920 to represent the mining industry in the province and is one of the longest-serving trade organizations in the country. We have a long history of working in concert with government to ensure that the mining industry in the province is competitive and that Ontario is a leader in environmental protection. Our members have a vested interest in this. After all, they live with their families in the communities in which mines operate.

Needless to say, our members are supportive of the concept of source water protection and recognize that a quality water supply is essential for sustaining life, the health of Ontario citizens, and the protection of the natural environment within Ontario. However, in our

submission of February 2, 2006, to the Ministry of the Environment, we indicated that the Ontario Mining Association did not agree that the approach taken in Bill 43 was the correct approach to support these objectives.

As you must appreciate, our members are heavily regulated on water issues by not only federal and provincial laws of more general application but also regulations directed specifically at the mining industry. This legislative paradigm entails numerous detailed requirements for water use and quality that serve as a mandate for water protection at our operations.

This industry has for many years had in place regulation of water use and quality that meets or exceeds worldwide standards. Therefore, the creation of a new regulatory structure—that is, the creation of source protection committees with the power to identify members of our industry as significant drinking water threats, whatever that may come to mean—was not encouraging news.

I would ask you to put yourself in the shoes of our industry for a minute. After decades of development involving various government agencies, an efficient and impressive standard of water protection is now in place. We are now being told that this will be overlaid with a new and, as designed, overriding authority granted to members of a new committee and new designated provincial authorities. Many of these players will have no experience with our industry, no expertise in water protection issues and no appreciation of the regulatory structure already in existence. These persons are given extraordinary powers to create uncertainty and delay in our activities by identifying potential significant drinking water threats to source protection, raising issues that will doubtless take years to resolve. We are disappointed that this government does not recognize that for major industry sectors where water regulation is well developed and successful, handing over authority to those new to these issues poses an unnecessary risk and may not succeed.

I will now address three specific matters in the legislation before you. First, we continue to be concerned about the vagueness of the definition of a "significant drinking water threat," as well as the lack of timelines inherent in a process that could take years for the resolution of such a designation. Ultimately, such a threat could be found to be not significant or, even if significant, the issues could be dealt with by reduction of the risk.

While the OMA welcomes public participation under existing structures, it can be anticipated that such a designation could be used as a tool by some to oppose, delay or negotiate changes to existing or proposed mining operations. Again, I would ask you to put yourself in the shoes of our industry, as you pick up your national paper one morning and find that your company or operation has been identified as a significant drinking water threat, knowing that it is in full compliance with all federal and provincial legislation. Further complicating matters is the knowledge that the resolution of whether this designation is appropriate will take years to unfold.

You must recognize the chilling effect of the path that you are considering, particularly given that you are putting such a determination largely in the hands of non-experts.

Secondly, the OMA remains concerned about the large transfer of these environmental responsibilities to source protection committees and source protection authorities and, we now understand, creating a number of regional water risk managers and so on. We believe that an inordinate amount of responsibility is given to these entities and that there should be a scaling back on the powers given to these new entities in favour of established ministries and existing structures.

The OMA continues to ask why this new structure is necessary. The Ministry of the Environment is transferring its authority to plan and enforce source water protection to newly created bodies without the expertise or experience to manage such issues. While we recognize that the ministry retains an overview and approval responsibility for some of these activities, we are hard-pressed to see the benefit of such an approach.

Finally, the Ontario Mining Association submission, along with others, has called for a pilot study to ensure that this legislation is workable and to prove that our concerns are misplaced. We're disappointed that the indications to date are that this recommendation has not been accepted. We anticipate that the proposed structure will not be efficient and will cause the public of Ontario unnecessary concern about the protection of municipal water sources, as various committees and authorities take different approaches to these difficult issues.

Again, the OMA would like to emphasize our support for the concept of source water protection and our commitment to meeting the requirements of environmental protection. However, we believe that the concerns with the proposed bill identified in this presentation need to be addressed before this legislation is passed.

In closing, allow me to provide you with a brief overview of the value that mining brings to this province.

Province-wide, there are 43 mine sites, which produce gold, nickel, copper, salt, gypsum and a variety of other metals and industrial minerals that are valuable and essential for modern existence.

Mining contributes \$7.2 billion in added value to the Ontario economy.

Some 197,000 people are employed in the mining cluster.

The Toronto Stock Exchange is the mine-financing capital of the world, with 1,100 listed companies.

Safety performance in Ontario is among the best in any sector in the world, with lost-time injury frequency now below one per 100 workers.

The MISA sectors, metal mining and industrial minerals, are all over 99% in compliance with meeting the discharge limits set by the ministry; within that allowable discharge, our members on average run at about a quarter of the limits.

The OMA is also actively involved in environmental stewardship, including an innovative venture with the Ministry of Northern Development and Mines to fund the

rehabilitation of abandoned mine sites on crown land, for which our members hold no liability, but it's the right thing to do.

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In addition, mining makes critical contributions in areas such as skill development of human resources, the enhancement of communities, and spinoff economic activities and infrastructure support for communities. Given its value and growth potential, it is of interest to every Ontarian to keep mining in the province competitive in an uncompromising global market. In order to do that, we need to preserve our key advantage in the global market: clear and consistently applied laws and predictable costs.

Thank you very much for the opportunity to review the proposed bill and provide our comments.

The Vice-Chair: Thank you, Mr. Hodgson, for your presentation. We'll open the floor for questions. Mr. Barrett.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you for the presentation. As a committee, we're trying to determine if this bill is the best solution for some of the problems that are being defined during these hearings. In your view, do you feel this legislation, the way it's written, will adequately accomplish the stated intentions of the legislation?

Mr. Hodgson: The problem with this bill is that we don't know, because you're going to have inconsistencies across the province as different regions take different approaches. That's our concern. We recommend that if you want to take this approach, at least do a pilot study. Take one area, one region, and figure out how long it takes to bring the people up to speed with expertise and what funds are required to do a proper job to give industry that certainty of clear, consistent rules. That's been rejected, to try to do it all at once right across the whole province. But thinking about it, you could have two; you could have one run by the ministry and one run by a conservation authority. It might be the proper approach to see which one is more cost-effective and gives us clear and consistent rules.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you for your presentation today. Do you think Justice O'Connor was wrong in his approach to water protection?

Mr. Hodgson: I have no idea. I know that when we did the Oak Ridges moraine, we brought in for the first time a number of provisions to protect source water, along with making it so that you couldn't put storm water directly into the aquifer, doing an identification of the wellheads and making sure there were setbacks and protection. There are about five initiatives in that legislation.

The mining industry is what I'm speaking for right now. We're governed by not only a myriad of federal laws and provincial laws but also laws specifically in regard to regulations around water for mining. It's very complicated and precise. What we're worried about is that you'll hand this over to people who have no background in mining, this sector, and secondly no back-

ground in the expertise required to make determinations on this before they would just blanketly say, "It could be, potentially, a threat to source water protection." All of a sudden you've got to have full disclosure in publicly traded companies, and it has a chilling effect. We'd rather see that there would be expertise that we're comfortable with at the Ministry of the Environment, where we have people who are knowledgeable and viewed as experts in the world, actually, to make those determinations.

The Vice-Chair: Mr. Wilkinson?

Mr. Wilkinson: Thank you, Chris, and to the OMA, for coming in today. You have a unique insight into this, given your experience in this place. On behalf of the minister, I do want to thank the OMA for participating. I know that you sat on both the 2003 advisory committee and the 2004 implementation committee in regard to source protection on a watershed basis, and we appreciate that. We're glad that we're consulting with you and listening to your concerns.

This was raised previously by Dufferin Aggregates, the question of provincial standards: one-size-fits-all versus watershed-based. This bill definitely goes to watershed-based planning as being the appropriate method. Then you raised the questions of consistency and whether or not there's an overlap.

I do want you to know that in regard to your question of your being in compliance with everything, the province and federal, and then this comes along and throws that out, it is the government's intention that a risk-management plan, or if necessary an order, could only be used where there is no existing site-specific provincial approval to manage an activity that poses a significant risk to the drinking water source. Obviously the employees of the mine who drink the water nearby are not going to want a significant threat to their municipal source. Also, it's the government's intention to ensure that a risk-management plan is only imposed on a person responsible for an activity that poses a significant risk as a last resort.

So if we could provide greater clarity on that, would that help assuage some of your concerns?

Mr. Hodgson: Definitely. That's our whole concern, the uncertainty of it. We agree with the watershed approach. We just want to make sure that the people in there are up to speed in the expertise required to make those determinations.

Mr. Wilkinson: Particularly in your industry, as opposed knowing that everything is right scientifically on the watershed, but also how your industry fits into that.

Mr. Hodgson: Exactly.

The Vice-Chair: Thank you, Mr. Hodgson, for your presentation, and thank you to all of you. The time is over.

REGIONAL MUNICIPALITY OF WATERLOO

The Vice-Chair: Now we're going to go to the regional municipality of Waterloo. I believe you know

the procedure. You have 10 minutes to speak and five minutes for questions. You can start when you're ready, sir, and please, before you start, if you can state your name for Hansard.

Mr. Ken Seiling: My name is Ken Seiling. I'm the chair of the regional municipality of Waterloo. With me are Thomas Schmidt, commissioner of transportation and environmental services, and Eric Hodgins, who is the manager of water resources protection.

We've been a long-time leader in the area of source water protection, and we understand the importance of this and fully support the efforts of the government to move to it. When Justice O'Connor was doing his travels around the province, he actually came to the region as his first stop, and many of his recommendations and concerns are incorporated into his report, which we took away from the region of Waterloo.

We have had a long history of this. We've invested almost \$20 million to date in doing groundwater protection. So we come here as a friend of the intent of the act, but we also come here to raise some concerns about the implementation of the act and have some serious concerns about the implementation areas.

We are the largest community in Ontario to rely predominantly on groundwater, and that explains our interest in this particular topic. Our vulnerable areas cover approximately 65% of the three major urban areas of the region.

We've done this because, as some of you may recall, back in 1989 the Uniroyal groundwater contamination was the first loss of a major water supply in Ontario through a large-scale industrial contamination. Since that time, we've dealt with nitrate contamination in wells; more recently an urban well field in the city of Kitchener has been shut down, with 1,4-dioxane; we've also worked very hard at reducing salt levels in the water supply, because we see that as an increasing issue for us.

To do that, we've developed programs. These include a comprehensive database with mapping and data gathered, about 30,000 pieces of information, which are used daily for planning, public health and water services within the region. Our rural water quality program was started in 1998, after the province had abandoned the field at that time. We began to put municipal money into groundwater protection and actually extended the program into Wellington county, on behalf of our people. It was used as the basis for the development of the subsequent provincial program and also the GRCA work. We've done mapping and wellhead protection policies and incorporated these into our regional official policies plan and are actively diverting growth away from wellhead areas and protecting them. We've had a policy of developing alternatives and reduce road salting. I think our track record in this area goes unchallenged internationally and nationally. People come to our region to take a look at the programs, and we've participated with the province in the development of much of this work.

There are some general observations we could make, though, in that regard, and one is that the one size doesn't

fit all, even within a watershed. We are concerned that the application of the watershed principle in fact could hurt and hamper efforts, particularly in the region of Waterloo, if it's not managed in the correct way. We need to look at all barriers, not just groundwater protection. There is a variety of barriers that can be used in the protection of drinking water, and you really need to understand your sources better to have the appropriate goals. In that context, our responses are largely issues of implementation. We fully support the intent of where this is going, but we are very much concerned with some of the implications of implementation that we think could be damaging to the programs in the region of Waterloo and actually set us back.

The concept of source water protection makes sense. We want to make sure that we protect these resources, so there are a number of points we make here. First of all, and one I heard just a little bit earlier, the act is deficient in that it doesn't define what constitutes a significant threat. That will be developed later, but it is problematic that it isn't there. Without a definition, municipalities cannot assess the implications. Significant threat is the trigger for mandatory risk management and access to the permitting and notice provisions in the bill. We are concerned that if the definition is too broad, encompassing so many threats, implementation will not be achievable economically or practically, or if it's too narrow, that municipalities would be unable to access the provisions. Also, there is no clear indication of what level of action will be required to reduce the risk to an acceptable level. Ideally, the use of the permitting and notice provisions in the act should not be mandated or linked to a definition of "significant threat," and the decision to use these provisions should be left solely to the municipality. Municipalities should have the authority to determine for themselves the greatest threats to their water supply and to focus on these first.

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Secondly, the Clean Water Act and source water protection is but one step, albeit a key part of the multi-barrier approach. It makes little sense to mandate the expenditure of significant resources on source water protection, to the neglect of water treatment or other barriers. Cost and practicality must be considered when determining the effective allocation of monies to source protection and treatment. Given the uniqueness of each municipality's water supply, municipalities need to have the authority to determine where resources are best spent, where we get the best bang for the buck in terms of our water supply and ensuring safe drinking water. The act should appropriately recognize that source protection is one barrier in a multiple-barrier approach and that the economical provision of safe drinking water requires that municipalities decide which barriers warrant the most attention and funding.

Thirdly, the responsibility for implementation and impacts of any source water protection initiatives will reside primarily with the municipalities. Accordingly, the assessment of risks and the development of source

protection plans should also be done by those most impacted: the municipalities. The role of the SPC, the source protection committee, should be to ensure that watershed-based information is available and shared between municipalities, coordinate plans between municipalities if overlap exists, and provide technical assistance, as required. If SPCs are implemented as currently envisaged, then the internationally recognized program being implemented by our region could be sidetracked or diluted by a legislative requirement to reach agreement amongst stakeholders that would not be impacted by the region's wellhead program.

If I can give that to you in simple terms—we've discussed this with the minister in the past—if we do this on a watershed basis, theoretically the committee has 16 or 20 members. The way it's constituted, the region would have one person on that committee, and the 19 people from the rest of the watershed could in fact change the program for the region of Waterloo even though it doesn't suit the region of Waterloo. So we're very much concerned that this cookie-cutter approach to these SPCs in fact could be very damaging to our groundwater protection efforts in the region of Waterloo. That's a simplistic version, as I understand it. We've worked with the GRCA on leading-edge stuff, and we believe there should be flexibility in the way this is crafted so that we can have the outcomes that are necessary for our programs.

Fourthly, a mechanism for providing long-term, sustainable and predictable funding is needed. The province has only committed to providing funding for the planning component, not implementation. The funding being provided is one-time funding for specific projects rather than sustainable and long-term funding that will allow municipalities to develop meaningful source protection programs. The current funding approach frequently requires municipalities to shift priorities and spend funds over a very limited period of time that may or may not be a priority for them. Water user fees should provide a significant portion of the funding for source protection, but there should be a provincial funding component.

The definition of "significant risk," which the province intends to develop in the regulation, could have significant financial implications for some municipalities. We believe there should be some recognition for those municipalities that have done good work already. I've said here at committees before that quite often we reward people for not doing things, then penalize those who have done the good work. I think that's a case in hand here where a number of us—an officer was here before us—have spent considerable resources, and we believe that should be recognized. At least do not force us to do the work all over again and force new expenditures on us. So we're very much concerned with how the funding mechanisms work and how people are treated in the overall implementation.

Finally, the current approach to only enable use of the permitting and notice provisions for significant risks may have considerable economic consequences for the region

and for other communities. We went through an extensive plan in 2000, mapping and proposing changes in our official plan. I can tell you that the interest in how one property is treated versus another created some significant issues. For example, if you begin to sterilize whole communities or don't allow for other mitigation measures, it has significant economic impacts on communities and they may never be able to develop lands or areas economically in their communities. We need to be aware of that and make sure this isn't so ironclad that we straitjacket people by not finding other solutions or dealing with some other economic issues.

One further issue is that in the past, contamination issues such as gasoline have seen the implementation of provincial standards. We believe that the province should also be doing that in other areas, for example, TCEs, which is a very common one because it's found regularly.

I think I've gone through the bulk of the points. We really want to say that we think there needs to be some coordination with other provincial legislation and that there needs to be some flexibility for those communities that are doing good work. They don't need to have the clock turned back on them.

Everything is summarized here. I think I've used up my time. Thank you very much.

The Vice-Chair: Thank you for your presentation. Now we open the floor for questions. First, Mr. Tabuns.

Mr. Tabuns: Thanks for coming down today and making this presentation. Your efforts were cited in the minister's comments earlier today about the cost of implementation at about 75 cents per month per household. Do you see significant change in the cost to you if this bill were implemented as written?

Mr. Seiling: Maybe I'll let the staff answer, but our concern is that if these committees develop new guidelines or a new plan for the region—or the province develops new plans—and say, “You've done it this way but we want it done another way,” then we have to go back and do everything over again or we're set back a couple of years in our progress. That's our concern.

Mr. Eric Hodgins: We do see additional expenditures being required. The current 75 cents per month that was quoted does not include a lot of the regulatory components, the monitoring components, the inspection or the enforcement components. None of the part IV components are in there, and we have not as yet implemented any extensive land use purchasing programs, so that would substantially increase costs, should we need to do that, around some of our more sensitive areas. We expect, based on the legislation and depending on the definition of “significant risk,” considerable additional costs.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thanks, Your Worship, for coming in; we appreciate that. On behalf of all of us, we want to commend the region of Waterloo for being such a leader in this province. I think you're concerned to make sure that this bill does not make you have to reinvent the

wheel, where you've actually been the leader for the province, as well the county of Oxford, which the minister also mentioned. You're asking that the definition of “significant drinking water threat” be included in the bill. Our concern would be—right now we're saying we're contemplating that that would be through regulation. What is the operating premise that your region uses in regard to what you consider to be a significant drinking water threat? Can you give us an example of where your paradigm is, in your region, as to what is significant? You're asking us to define it, so I wonder how you define it.

Mr. Hodgins: Our definition of “significant threat” is derived largely from our monitoring of our drinking water systems. When we identify, let's say, that we have nitrate problems in some of our supply wells, then we will look at the nearby, adjacent farms to try to see which ones of those are implementing the necessary appropriate management practices to deal with things. Our take is that most of the significant threats are already in the groundwater in our environment, that the significant threats—the chlorinated solvents, the nitrates put on the farmers' fields—were put in decades ago. We have deep municipal systems. So the idea of an acute, significant threat that we would need to take action on immediately—we don't feel that there are very many of them. But depending on the formula that's derived through the regulation, we could be forced to implement action even if we don't feel that there's actually a significant threat existing.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you for your presentation. You indicate that municipalities like yours should have the authority to determine what the greatest threats are. Twenty per cent of your water comes from the Grand River. I imagine for the city of Kitchener-Waterloo probably 100% comes from the Grand River.

Mr. Hodgins: Twenty per cent; it's a mix.

Mr. Barrett: Twenty per cent in the city as well; okay. The question is a supply question and a quantity and a quality question. The region of Waterloo projected growth for the next 25 years is something like another 200,000 people. Can the Grand River handle that? Can the wells in your area handle another 200,000 people in that part of the watershed that you share?

Mr. Thomas Schmidt: We have done significant study in that area and completed a project in 2000 that looked at our growth requirements to 2041. Now, with Places to Grow, that has actually shifted to 2031. We developed a plan that uses our local resources and will allow us to grow until about 2035 using local resources for both water and waste water. We are looking in the longer term at the possibility of a pipeline to one of the Great Lakes, whether that be Lake Erie or Lake Ontario. So we do have enough at least for the growth that's projected in Places to Grow with our local resources, and for growth after that we may be looking at resources from the Great Lakes.

Mr. Barrett: Would that pipeline be available for other centres beyond the major city, say irrigation-based agriculture or other smaller towns?

Mr. Schmidt: Definitely smaller towns. If we're going to Lake Erie, there are other communities along the way, so we'd be looking at a plan that includes Brantford, Guelph and other communities as well. It would not just be a region-of-Waterloo solution; it would look at the watershed as a whole.

The Vice-Chair: Thank you for your presentation.

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CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Vice-Chair: The Canadian Environmental Law Association? I believe you know the procedure: 10 minutes for speaking and five minutes for questions. You can start whenever you are ready.

Ms. Jessica Ginsburg: Good morning. My name is Jessica Ginsburg, and I'm a lawyer with the Canadian Environmental Law Association, also known as CELA. CELA is a public interest group established in 1970 for the purpose of using and improving laws to protect human health and the environment. CELA is also a legal aid clinic which represents low-income citizens and groups in environmental cases.

For the past two decades, CELA's casework and law reform activities have focused on drinking water quality and quantity issues. More recently, these activities have included:

- representing Concerned Walkerton Citizens at the Walkerton inquiry;
- preparing issue papers for part 2 of the inquiry;
- convening public workshops on source protection across Ontario;
- facilitating the development of an Ontario-wide network of interested NGOs; and
- participating as a member on Ontario's source protection advisory committee and implementation committee.

I'm here today to speak with you about the importance of passing and implementing this much-needed legislation as soon as possible. The events at Walkerton were primarily caused by insufficient regulatory oversight of Ontario's drinking water. However, the immediate problem ultimately began at the source: A shallow municipal well located next to a farmer's field was infiltrated by E. coli, which then entered the town's water supply. The results, as all of you are no doubt aware, had devastating impacts on this community. It is worth noting that Justice O'Connor's first recommendation in part 2 of the Report of the Walkerton Inquiry concerns the need to protect drinking water sources across Ontario.

Over the course of the next week, you will be asked to consider dozens of technical amendments to Bill 43, supported by a wide range of differing perspectives and rationale. From our perspective, the issue is actually quite straightforward: The purpose of the bill is to protect

existing and future sources of drinking water. Any amendments which weaken this bill will weaken protection of Ontario's drinking water.

In particular, any weakening of the conflict provisions contained in part III of this act would undermine the effectiveness of the act as a whole. Part III specifies that in the case of conflict with another law, the provision which provides the greatest level of protection will prevail. This and other conflict provisions provide the minimum framework necessary to ensure the act is applied in a consistent and meaningful manner.

While the importance of maintaining the act's current protections cannot be overstated, there are certain provisions which should be amended to provide stronger, more complete coverage. I will discuss three such amendments in relation to the precautionary principle, public participation and timelines.

First, the precautionary principle: Justice O'Connor recognized that the precautionary principle should play an integral role in risk management decisions affecting the safety of drinking water. Furthermore, the final report of the advisory committee specified that all watershed-based source protection plans must take a precautionary approach. Despite these strong recommendations, the Clean Water Act does not include a single reference to the precautionary principle. As you heard from Minister Broten this morning, the Clean Water Act is intended to be inherently precautionary. While this is a welcome message, it is not enough. We recommend that the precautionary principle be explicitly added to the act as both a guiding principle in section 1, and as an operationalized component of the source protection plans in section 19. The recommended language for these amendments is included in your handouts. The amendment to section 19 is particularly important, as it provides a concrete way for the principle to be used in managing local threats. The precautionary principle is also relevant in the context of stronger Great Lakes protections, since our scientific understanding of cumulative effects and invasive species is still evolving.

Now, on to public participation: The success of source water protection rests with the rural and urban citizens of Ontario. It is the public who is best able to identify local threats and propose workable solutions. Members of the public should therefore be engaged early and often. The legislation is weak in this regard, since it contains few mandatory provisions around public participation. Specifically, it fails to provide the public with an opportunity to comment on the proposed terms of reference and assessment reports before these documents are finalized. The public should also be guaranteed the opportunity to participate on source protection committees in a meaningful manner. The act and regulations should include commitments to public education. Finally, the public requires transparency in order to fully trust, understand and contribute to the process. Transparency, in turn, demands public access to all relevant documents as well as clear information on how and why risk management decisions are being made.

Finally, I'm going to quickly address timelines. This act has been a long time in coming. The need for source protection was explicitly identified four years ago by Justice O'Connor, and many municipalities, as we've heard today, have been working hard to pursue source protection as best they could under existing legislation. In order to ensure that source protection becomes a reality before another Walkerton has a chance to occur, this act needs to be passed as soon as possible. Furthermore, timelines need to be inserted into the act so that the process does not stall as a result of local politics or competing priorities.

You already heard from the Ontario Medical Association this morning regarding the need for timelines to be addressed in section 48. We would take this a step further and recommend that, at a minimum, timelines be set for establishing source protection committees, completing terms of reference, assessment reports and source protection plans, and implementing risk management responses. There should also be factors included which govern situations in which the minister may grant extension of these timelines.

Through CELA's involvement at the Walkerton inquiry, we have seen first-hand the devastating effects which contaminated water can cause in a community. The economic burden alone is staggering. There have been increased health care costs, water treatment expenses, employees who are too sick to work and disrupted businesses. There were also extreme human costs: Seven people died; 2,300 became ill. Many of these illnesses are long-term and the effects are still felt today. Clearly, neglecting source protection comes at a high price.

You will hear concerns voiced repeatedly over the next week about the financial costs of implementing source protection. Municipalities require support for the added responsibilities they'll be assuming, and land-owners require compensation for the improvements they'll be required to make. While these costs are substantial, they do not begin to compare with the costs of doing nothing. It is therefore critical that the province identify a sustainable and reliable source of funding.

Fortunately, the implementation committee identified a number of new, viable funding mechanisms which would help cover the costs of source protection. These mechanisms include water-taking charges, water rates, pollution charges, incentive programs, general revenues and stewardship approaches. Many jurisdictions have already adopted these tools with successful results. For example, a form of pollution charges has already been implemented by a large percentage of municipalities in Ontario whose sewer use bylaws require emitters to pay a surcharge for extra-strength sewage. Pollution charges have the dual advantage of raising revenues and decreasing harmful pollutants.

The act should be amended to include a dedicated fund for source protection implementation. Additionally, government should develop a sustainable and reliable approach to funding which utilizes the range of new tools identified.

With appropriate funding and a strong commitment by government, the Clean Water Act can significantly improve the condition of Ontario's watersheds and drinking water supply. For this reason, CELA would like to express its support for the overall direction taken by this bill and urge you to consider strengthening the bill through the amendments proposed.

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The Vice-Chair: Thank you for your presentation. Parliamentary assistant?

Mr. Wilkinson: Thank you, Jessica, for coming. It's good to see you again, and particularly, on behalf of all of us, thank you for the work CELA has been doing since Walkerton, assisting the province and all residents in trying to come up with the best way of protecting our drinking water.

I guess my concern is about the question of transparency and public education. Specifically, you're asking for us to get into the legislation the need to make this public. My understanding and my reading of the bill is that the proposed legislation contains requirements for the source protection authority to ensure that the terms of reference, the assessment report and the source protection plan are all made available to the public. So that's right in the bill. But you're saying that in the bill we need to go beyond that. We've always said that it's our intention to work with the local source water planning committee so that this information can be shared appropriately, based on every watershed, as opposed to a top-down requirement on that. Are you afraid that the source water protection committee will somehow do this in secret and only tell people after the fact what they've decided?

Ms. Ginsburg: My concern is, I guess, twofold. First, while it is certainly our hope that the source protection committee will interact with the public in a meaningful manner and include public representation, that is not currently in the act. There needs to be both public representation on the committee but also, hopefully, on any working groups or subcommittees which inform the various parts of that committee's work. Secondly, the source protection plans, as currently described in the act, are made available for public comment prior to being finalized. However, the assessment reports and terms of reference are not; they're made publicly available after the fact, which, in my mind, is not appropriate and not consultative enough to fully gather the public input on those documents.

Mr. Wilkinson: So you want an assurance—because that goes to the minister—that after it becomes public but before the minister makes a decision, there should be an avenue for the public to have input.

Ms. Ginsburg: Right. Essentially, the specific amendments which I've recommended in the text provide a parallel process.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you to CELA for testifying to your section on public participation. We know there's a protest group against this piece of legislation outside right now. I don't think they'll be participating in these

hearings today, anyway, but five days have been slated for hearings. There is a concern in rural Ontario, farm Ontario, that hearings are being held in August. It's very difficult for rural people, especially people working on the land, to come into the city or other cities during that time of year.

I contrast that with the nutrient management hearings. By the time that legislation was passed, this Ontario Legislature and the government of the day had conducted 18 days of hearings. How does that square with your call for public participation?

Ms. Ginsburg: I would say that it is unfortunate that certain groups and individuals did not have an opportunity to present. I must admit, though, that the government has been extremely consultative leading up to these hearings. We've been consulted numerous times by the minister's staff both as a group and as a larger network of environmental and citizens' groups. So I would say that, yes, while it is unfortunate that these hearings could not have been longer and that the timing was such that some of the farmers were not able to attend in person, hopefully they do have an opportunity to submit written comments. I must say that I'm pleased that the hearings are at least being held at some point this summer, because I'm very anxious for this bill to be passed as soon as possible.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Ms. Ginsburg, thanks very much for coming in and testifying today. One of the concerns that I have with this bill is the lack of definitions for some really key pieces here. Was that considered by your organization? Do you have suggestions to the government for actual definitions?

Ms. Ginsburg: Yes, it has been considered by CELA. In fact, a number of years ago, when the first draft of this legislation was put onto the EBR for public comment, we submitted comments to that posting which included draft legislation including a lot of our suggested definitions. Many of those definitions are not currently in the act; hopefully, they will be adequately dealt with in the regulations. However, yes, it would be a preference that those key definitions be included, according to our submissions made at that time.

The Vice-Chair: Thank you, Ms. Ginsburg, for your presentation.

Thank you, Mr. Tabuns, for that question.

FRIENDS OF THE EARTH CANADA

The Vice-Chair: Now we have Friends of the Earth Canada.

Before you start, please state your name. I guess you know the procedure.

Ms. Christine Elwell: Thank you, Mr. Chair. My name is Christine Elwell. I'm a lawyer and senior campaigner with Friends of the Earth Canada. In view of the approaching lunch hour, I promise to keep my remarks brief.

Friends of the Earth Canada is a charitable, national non-profit organization with a mission to protect the environment and work with others in research and advocacy. Friends of the Earth Canada is a founding member of the largest international network, Friends of the Earth International, in over 71 countries, with 1.5 million members. Many of them work on water campaigns, but none has the opportunity that we do today to support and improve this bill. I'm going to touch on a couple of matters: early implementation date; the need for water conservation plans; environmental principles; source water protection; and public participation.

Allow me to emphasize that FOE Canada does support the bill and seeks its early implementation. The five-year implementation date that's been suggested does not seem to be appropriate, given the critical nature of the topic. We would ask that it begin to go forward as soon as possible, indeed as early as two years from its enactment.

On the need for water conservation plans, allow FOE to join with Sierra Club of Canada and others in supporting the need for water quality and quantity to go together, particularly in view of climate change and increasing demands on sources of water. We need to be setting up a flexible system that can adjust source protection plans to compensate for changes of level, and in the public interest. Again, we would support amending section 13 so that assessment reports in crafting water budgets take into account the need for and implementation of robust water conservation plans.

FOE Canada also joins with my colleagues; you've heard today all of us speak on the need for basic environmental principles to be included in the act. Indeed, Minister Broten today said that the bill is based on concepts of pollution prevention and the "precautionary principle." We need to put that in the bill. Indeed, Justice O'Connor was pretty clear that that needed to happen, yet right now the only reference is in section 98 under "Technical rules." Rules and definitions may be developed later that might include basic principles as a guide for conducting, for example, risk assessments. But let me submit to you, honourable committee, that the entire purpose of the act could be defeated without reference to how the act is administered.

For example, local permit officers appointed by municipalities to conduct and approve risk management plans—these plans and these approvals by permit officers could allow for activities to occur in vulnerable areas. Unless that local permit officer is directed by administration of the act to have precaution and cumulative impact prevention in mind, what's to guide that permit officer in approving risky activities?

To summarize, we would suggest amendments to section 1 of the bill to say that the purpose of the act and its administration is to protect based on the precautionary principle, taking into account pollution prevention and cumulative adverse ecological and human health impacts for existing and future sources of water.

I'll now turn to source water protection for Ontario. I submit that this is fundamentally a serious problem with

the bill. The very first recommendation that Justice O'Connor made in the Walkerton inquiry is, "Source protection plans should be required for all watersheds in Ontario." Indeed, Minister Broten today said that all people deserve clean water; clean water is a "fundamental right." Sadly, however, the scope of Bill 43 very narrowly focuses on municipal drinking water sources where there are conservation authorities, leaving individual well users and entire areas of central and northern Ontario unprotected from source water threats. The constituencies of your colleagues in central and northern Ontario deserve the same fundamental right to source water protection as your constituents do here in southern Ontario. This legislative gap exposes a serious environmental justice issue. Constitutional challenges based on equity and equal protection under the law are surely anticipated.

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While the bill does leave open the possibility that the minister "may," by regulation, establish source water protection areas and "may" designate a source protection authority where a conservation authority does not exist, it is submitted that this possibility does not meet Justice O'Connor's or the Ontario public's expectations. When I asked officials why the gap, why the discretion, why the discriminatory treatment between southern, central and northern Ontario, the answer was, "Ah, we'll phase it in. It's too much all at once. We'll see in five years." I'm sorry; you don't phase in fundamental rights. You either have them or you don't. As you roll out the act and in the administration of the act, if some areas can prosper and develop quicker, fine; if others take longer, fine; but don't start off with express legislative language that disenfranchises 80% of Ontario.

While Conservation Ontario has made some preliminary proposals to establish new conservation authorities, they're in draft, more public consultation is necessary and they clearly do not cover the entire province. Our recommendation is that you amend section 5 of Bill 43 and make it mandatory that the Minister of the Environment establish source protection areas for all watersheds in Ontario providing drinking water and actively serve as a source protection authority where no current conservation authority exists.

It follows that section 24 of the bill be amended so that there is a mandatory—as opposed to the current discretionary—duty on the minister to confer, indeed the minister has a constitutional obligation to consult, with First Nations and their governments on the establishment of source water protection areas and plans for watersheds where there are no current conservation authorities. If you hear nothing else, this is the point to be made today about amending section 5.

Let me turn, then, to public participation and education. Justice O'Connor was convinced that the local planning process was the key to effective implementation. The bill does provide some opportunities for the public to participate in the appointment of committees and draft plans. However, these measures are not enough.

We make a number of specific recommendations to the bill on page 6. You'll see that the flaw of not providing source protection for all of Ontario then permeates through the rest of the bill; there's a big chunk: sections 7 to 22. All the public input parts don't apply if there isn't a current conservation authority. So I would ask you to look at that carefully.

Let me take the last minutes I have to talk about the need for an office of the public adviser. Justice O'Connor was clear that the public needed to be informed in order to have meaningful participation. Indeed, we ask that the Minister of the Environment establish an office of the public adviser under the auspices, perhaps, of the Environmental Commissioner of Ontario.

The public needs information and assistance to be able to identify vulnerable source protection areas as well as threats to those drinking water sources. I recall Bruce Davidson of Concerned Walkerton Citizens saying, "We're going to need to go town hall to town hall to town hall to educate people on how to engage." So this recommendation on an office of the public adviser may seem ambitious, but I think it's necessary so that the public has the capacity they need, including landowners and including rural Ontario and farmers. Make it a neutral office that can provide the kind of information, capacity and assistance each of those constituents will need to be able to manage this portfolio.

Allow me to conclude. Again, let me say that we support this legislation. Our recommendations are intended to be helpful. We'd be happy to help with assistance on drafting amendments. Let me say also that this consultation process has been very good. I'm very impressed with the amount of outreach that we've had, but it's time to move on and implement as soon as possible.

Thank you. I'll take any questions.

The Vice-Chair: Thank you, Ms. Elwell, for your presentation. We'll start with Mrs. Munro.

Mrs. Julia Munro (York North): Thank you for coming here today. I wanted to ask you a question. I'm asking for a response, really, with regard to some of the issues that other groups have raised. You alluded to the whole issue of part of the province in, part of the province out. There's been some conversation amongst the presenters with regard to the role of the conservation authorities versus the municipalities, and obviously across the province we have municipalities. So I wonder if you could comment on what you see as your position on the issue of the administration and governance side in terms of the authorities and the municipalities.

Ms. Elwell: I think it's important that the source protection committees include representation from all sectors, including the conservation authorities, municipal representation and others. I think that's the governance mechanism that will get the right people at the table to be able to move it forward. However, the problem is that you can't always hope that municipalities will form clusters and look after source protection areas outside of their boundaries, as the bill currently allows. So I think

that the groups will need direction from the government in establishing excellent source protection committees that can move that forward. In areas where they're non-organized, in northern Ontario, for example, you're going to need a tripartite committee that includes federal and provincial government representation, First Nations peoples and their governments as well as other stakeholders, to be able to set up the kinds of committees we're going to need to move that forward.

I hope I've answered your question.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Christine, thanks for the presentation this morning.

This has come up a number of times, this whole question of public input. You seem to be satisfied with the consultation to this point. Can you talk about your concerns regarding public input for source protection committees and the expansion of those?

Ms. Elwell: If you look at footnote 20 on page 6, there are very modest opportunities for public participation where there isn't a mandatory need for a source protection area. If it's discretionary when the minister decides whether she wants to establish one or not, the public doesn't have the same rights as the public that lives in an area where there's a conservation authority. It seems to me that there's a bald discriminatory statutory feature of this bill that probably isn't intended. I can't imagine what possible government purpose would be served by allowing 20% geographically of the province to have these rights to input to the authority and 80% not. Some people have speculated that the reason for this two-tier approach to clean water is because government itself doesn't want to have to review its instruments—its permits, licences and approvals—through the source protection plan process, so that there may be an inherent conflict of interest or problem. But surely that wouldn't stand up to constitutional scrutiny. Let's start with a fundamental right for public input as well as the people to source water protection, and then let's roll it out in a way that makes sense. But to build in this discrimination—I can't imagine any purpose is served.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you so much for coming. Following on this point, just for a point of clarification, O'Connor in recommendation 2 was very clear that about 80% of the people live on 20% of the land mass and are in conservation authorities, and he thought that was a wonderful way for us to be able to deliver this across the province.

Your contention is that for the probably less than 20% of the people who live in probably more than 80% of the province, given our geography, somehow they're being treated differently. I think you're aware of the fact that the ministry has spent money canvassing all municipalities in those parts of Ontario that are not covered by a conservation authority to help them self-identify issues so that they would have similar treatment.

My concern is whether your request is practical and whether or not we're going to get to what O'Connor was

talking about, which is the human interaction with our sources of drinking water.

Ms. Elwell: I hear you, and if they're consulting, that's wonderful. But let's say "mandatory." Don't leave it as a discretionary matter: "The minister may establish source protection areas where there isn't a conservation authority." Put in the language "You shall," and it will give impetus for the municipalities to organize themselves and self-identify, as you suggest.

The problem is, if you look at what Conservation Ontario is proposing—there are a couple of new conservation authorities—basically from Lake Simcoe north, it's unorganized. Cottage country: I can't imagine you're not getting lobbied by cottage country that they want the same rights. It's not just the outreach posts of northern Ontario; we're talking a huge constituency that is disenfranchised by this bill. I hear you: Let's work it out as self-identified. But leaving it as a discretionary matter is just asking for a constitutional challenge.

Mr. Wilkinson: We haven't passed the bill yet, so we haven't used that as an excuse not to move forward and spend good money on behalf of the people of Ontario to make sure that all those municipalities that don't fall within the catchment area that O'Connor said would be the best way to do it, through the conservation authority, are being dealt with. I definitely will raise this issue with the ministry.

Ms. Elwell: We did identify—

The Vice-Chair: Thank you, Ms. Elwell.

Ms. Elwell: Please: We did identify 14 regions that could be easily converted into a source protection area—footnote 12.

The Vice-Chair: Thank you. Thank you very much to all the people who attended this morning session with us. Thank you to the presenters. Thank you to all the members from the three parties, and I'm also talking to the Hansard clerk and research.

Now we can recess until 1 o'clock.

The committee recessed from 1202 to 1304.

LAKE ONTARIO WATERKEEPER

The Vice-Chair: Good afternoon, everyone. According to my watch, I guess we're 1 o'clock exactly.

We have with us, I believe, Lake Ontario Waterkeeper. Sir, you have 10 minutes for your presentation and five minutes for questions. You can start when you're ready. Please, before you start, state your name for the committee and Hansard. Thank you.

Ms. Laura Bowman: I thank you for the opportunity to give this presentation today. I'm Laura Bowman. I'm an articling student with Lake Ontario Waterkeeper, and this is Mark Mattson, our president.

Lake Ontario Waterkeeper is a grassroots environmental organization that works to protect the rights of Ontarians to clean water. We're a member of the New York-based Waterkeeper Alliance, with over 100 members worldwide. Waterkeeper is akin to an environmental Neighbourhood Watch program. Waterkeepers are part

investigator, scientist, lawyer and advocate for watershed users.

We thank the standing committee on social policy for the opportunity to give this presentation, and we would like to advise you that our written submissions are forthcoming. They're not available at this time, but we've handed out speaking notes for your reference.

I would like to begin this presentation by emphasizing that Lake Ontario Waterkeeper wants to like Bill 43. We believe that everyone in the Lake Ontario watershed has a right to clean drinking water. However, after careful consideration of the bill, we believe that it will not effectively protect drinking water in Ontario.

Bill 43 is not environmental legislation; it is a planning tool. Bill 43 impacts only drinking water threats to municipal water systems predominantly in southern Ontario. In Ontario, we already have wonderful environmental laws that can protect drinking water quality, and they are not well enforced. Bill 43 has the potential to undermine what we already have.

For example, the Environmental Protection Act prohibits the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect. The Ontario Water Resources Act also makes it an offence to discharge any material of any kind into any waters or in any place that may impair the quality of water or any waters.

These acts protect our rights not only to clean drinking water but to clean water. These acts already prohibit activities that might be drinking water threats under Bill 43. Bill 43 merely subjects some of these activities to risk management plans. Under Bill 43, only those activities that may cause adverse effects to drinking water will mean municipal drinking water systems will require a permit.

Bill 43 will make it harder to enforce the Ontario Water Resources Act and the Environmental Protection Act. The source protection plans created under Bill 43 for the protection of drinking water may give the appearance that conservation authorities and municipalities are addressing Ontario's water contamination problems. However, Bill 43 only requires source protection plans to address localized threats to municipal water systems. It will not protect the public's right to fish and swim in Ontario waterways. Lake Ontario Waterkeeper is also concerned that Bill 43 may come to replace the Ontario Water Resources Act and Environmental Protection Act.

Compliance with a source-water protection plan under Bill 43 may give offenders under other acts a due diligence defence. This will mean that contamination of water that impacts swimming and fishing in a waterway without impacting a municipal water system may be difficult to prosecute.

The assessment reports—

The Vice-Chair: Could I ask you to move a little bit further from the mike? It's making some noise. We have a sensitive mike. Whenever you move, it'll catch it.

Ms. Bowman: Okay. The assessment reports under Bill 43 will also potentially politicize pollution. Under

Bill 43, the source protection committees must identify activities as threats and single out vulnerable areas in the assessment report as a prerequisite to regulation under the legislation. These assessments are subject to review by the director.

For contamination issues not identified in the assessment report, this sends a signal that an activity impairing water quality is unimportant because it doesn't contaminate a municipal water system. In the end, this process may produce a political document pointing out priorities that masquerades as a scientific evaluation of what is contamination and what is not.

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Lake Ontario Waterkeeper also submits that Bill 43 is unworkable. There are many drafting problems with Bill 43, but most importantly, it fails to include a reasonable, workable definition of "significant drinking water threat." This term is the heart of what Bill 43 is about. The definition of "significant drinking water threat" requires that a risk assessment be prepared concluding that something is a significant drinking water threat. However, no risk assessment is required unless something is already identified as a significant drinking water threat in the assessment report. As it currently stands, this definition means that no permits can be required for any activities under the act.

Furthermore, failure to identify an area or activity in an assessment report places it outside the scope of Bill 43 from that point on. Once approved, the assessments made in the assessment report are binding on the source protection plan. However, some drinking water threats may not be foreseeable at the time the report is made. The public is unable to comment on the assessment report and therefore cannot draw attention to any issues overlooked by the source protection committees.

To summarize, Bill 43's scheme is narrow and confusing. Instead of imagining an Ontario with clean water, it is a bill that focuses on deciding how little we can get away with to protect drinking water. Lake Ontario Waterkeeper believes that there is nothing wrong with helping conservation authorities identify priorities for ensuring that Ontario watersheds are clean. We are committed to working with Ontario to achieve a better understanding of the state of Ontario's watersheds, but there is a better way. Under the Conservation Authorities Act, conservation authorities can already do research about the state of water quality. Many have already done so. Conservation authorities can also be permitted to regulate local drinking-water quality issues by adding this to subsection 28(1) of the Conservation Authorities Act. This could be accomplished with little difficulty.

Honourable members of this committee, we submit to you that Ontarians deserve clean water for fishing, swimming and drinking. The Ontario ministry has not made the most of existing legal tools to protect our water. Bill 43 is about identifying the bare minimum protections. Bill 43 asks, "What is the least we can do?" We submit to you that Ontarians deserve better. The Clean Water Act could represent a new beginning, but new

clean water legislation will only benefit Ontarians if it goes beyond what we already have. We support clean water protection in Ontario and we hope that this committee will have the vision to imagine a better Bill 43. We urge this committee to reconsider this bill. We urge this committee to take a serious, hard look at what this act represents for Ontario's water quality.

We thank you for this opportunity and we look forward to presenting you with our written submissions, which we remind you are forthcoming.

The Vice-Chair: Thank you, Ms. Bowman, for your presentation. Now we are open for questions. Ms. Scott.

Ms. Scott: Thank you very much, Laura. You did an excellent presentation. We also believe that the Clean Water Act is not going to be implemented or be able to do what it is supposed to do.

You mentioned the EPA and the OWRA, the Ontario Water Resources Act, and you mentioned the Conservation Authorities Act, that there could have been changes made in that instead of bringing a whole new level of bureaucracy.

You also spoke a lot about funding and how we're going to enable municipalities and the agricultural community etc. to accomplish what we all want, which is source water protection. Should the government be establishing a stewardship fund, do you think, to facilitate these changes they want to bring in to assist municipalities and stakeholders?

Ms. Bowman: Conservation authorities are already undertaking this type of research, and while we support funding for adequate research I don't feel really prepared to comment on the actual implementation of this particular piece of legislation.

Ms. Scott: Right, and it's true. I don't think anybody really knows—or if the government knows, it's not giving us the information—how much it's going to cost municipalities or landowners, any ballpark of what it might cost to implement it. And if you can't implement it, then we can't get our source water protection accomplished the way we want to.

Thank you for appearing here today. I look forward to your amendments.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation. It may be the most fundamental root-and-branch critique that we've heard on this bill. Have you had your legal assessment peer reviewed by others in the environmental law field?

Ms. Bowman: Have we had our legal assessment peer reviewed?

Mr. Tabuns: You're saying here that implementation of this act may in fact make it more difficult to act through other legislation, that it would weaken protection of the environment or have the potential to weaken protection of the environment. Have you had other legal opinion review your assessment?

Ms. Bowman: No, we don't have other environmental groups review our legal assessment of the legislation. We read the legislation and we determine from that reading what the law appears to be.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you so much for coming. There are a number of things. One, I say to my friend the critic for the opposition, is I that believe it was your colleague Mr. Yakabuski who said in debate that he thought he had heard from reliable sources it would be \$7 billion to implement. We've been very clear that we don't know that because we're doing the science, but if you have a report that shows it's \$7 billion, we'd love you to table it with the committee because we'd all like to take a look at it.

In my analysis, from what I've heard, this is going to be the most progressive piece of legislation in all of North America. I understand your concerns that it should be made better, but just so that we go on the record, the Clean Water Act will not diminish the powers that the province has under both the Environmental Protection Act and the Ontario Water Resources Act. I know some of us on this committee were part of the process that actually strengthened that act. Though, I guess, hypothetically, one could say that you could use Bill 43 as a reasonable defence for somehow discharging a contaminant into a watercourse, I personally do not see how one could reasonably use that as a defence, to say that somehow you weren't liable for contravening the Ontario Water Resources Act. I can assure you that we've said in this bill that what has primacy at all times is whichever act does the best at protecting drinking water. But that does not absolve people from their requirements under those two very powerful pieces of legislation that have been strengthened.

I do hear, and many have commented, about the need for clarity around the significant drinking water threat, and we appreciate that. It's something that we're looking at. I know that the assessment report, also the terms of reference and the source water protection plan will all be made public so that people will be able to see that. Because it's with the Ministry of the Environment, all those things will have to be posted on the Environmental Bill of Rights registry, which is common practice and legislatively required here in the province.

I do acknowledge your comments about the fact that one can always go further, but we are completing a process that was started by Justice O'Connor and our focus is on being able to do that and moving forward with his recommendations in regard to source water protection. As the minister said at the beginning, that frames the context. We'll be in Walkerton tomorrow. I think all of us in this House feel an obligation to talk there, and right across the province, about the fact that the legacy of that can be transformed into safer drinking water for all Ontarians.

The Vice-Chair: Thank you very much for your presentation.

Mr. Mark Mattson: I think, if Waterkeeper could have an opportunity to respond to my friend from the Liberal Party just briefly, it's that—it was a question. It was question time; no response to the question.

The Vice-Chair: If there is acceptance from all the members, I wouldn't mind—

Mr. Wilkinson: Well, I know you're going to give me a submission.

The Vice-Chair: Also, we have so many speakers who want to present to us and we have many different people, so we are restrained by time.

Mr. Mattson: It's just really important that there be a response to the comment.

Interjections.

The Vice-Chair: Okay.

Mr. Mattson: Thank you very much. I'm not sure who we're supporting here at this point, but just briefly on those two points. There's one way to correct the legislation currently if it's not going to be used as a defence. You can have that brought before the Attorney General's office and ensure that there's a clause put in there that indicates that this is not used as a due diligence defence if in fact there's a breach of other legislation—the Ontario Water Resources Act and EPA. It's not currently in the legislation. Secondly, Justice O'Connor did talk about mandatory enforcement, moving from voluntary enforcement, of the Ontario Water Resources Act and the EPA as well. Really, that's an important part of what protecting the environment in Ontario is about.

This legislation is a nice thing to do. There are real concerns with respect to drinking water in Ontario, and you need to plan to protect that, especially those areas that are most at risk. But at the same time, we're very concerned that, the way it has been drafted, it tends to take the emphasis off those other areas protected by the EPA and the Ontario Water Resources Act. That's our concern. Thank you.

The Vice-Chair: Thank you very much for your presentation.

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ONTARIO FEDERATION OF AGRICULTURE

The Vice-Chair: Now we'll call on the Ontario Federation of Agriculture.

I'm wondering if you know the procedure. You have 10 minutes to speak and five minutes for questions.

Mr. Ron Bonnett: Plus about two extra minutes, isn't it? Anyway, my name is Ron Bonnett. I'm president of the Ontario Federation of Agriculture. I think most of you know that we represent about 38,000 farmers across the province. You have a written presentation. I'm not going to stick strictly with that; I'll make my comments around the key points.

I guess the first thing I wanted to say is, listening to the minister this morning, I think there is a real urgency for this committee to take a look at the recommendations that are being put forward and recognize that this legislation could have a major impact on farm and rural communities, from my perspective. The amendments are necessary in order to make sure that you have effective results.

At the outset, I can clearly say that the farm community supports initiatives on clean water, but we have to have an approach that's effective, an approach that works. Our history has been that, working with things like the environmental farm plan, the nutrient management plan and stewardship initiatives, where we provided the incentive and the tools, we've been really effective at putting in things that were designed to mitigate risk. That's one of the concepts that we have to get around if this whole process is designed to mitigate risk. Even with some of the terminology that you've used, I think we have to bear that in mind.

Going to the specific points in the presentation, in the first one, we talk about the purpose statement and multi-barrier approach. It all gets to the focus of what the legislation is about. O'Connor was fairly clear, and I think we, from the farm community, are fairly clear, in saying that the focus has to be on municipal drinking water sources. If you design things too broadly, you're likely not going to address the target you want to address. Sure, there are lots of private wells in the province that need some work done on them, but you use a different tool box for that. You do not use a 9/16-inch wrench to fit a 3/4-inch bolt; you've got to make sure that you have the proper tools. This tool kit should be designed strictly to address municipal drinking water issues.

The whole idea of the purpose statement is to focus in on the fact that it's to look at municipal drinking water sources. It's designed to make sure it's a science-based approach to dealing with those risks. It should be stated that it's clearly designed to make sure that there's funding and research, and it should be clearly stated as well that the whole multi-barrier approach is really looked at. Just to say that source water protection would protect drinking water is not right. We could have source water protection legislation in place designed for looking only at the source, and that wouldn't have solved the problem in Walkerton. There was a well there located in the wrong place, there were chlorination devices that weren't working and there were a number of other things with regard to staff. If any of those are not working, it's not right. So I think at the start the purpose of the bill has to clearly state that it's about source water protection, but there are also a number of other multi-barrier issues that have to be addressed.

Moving into definitions, the terminology has to be very clear. We heard from presenters earlier this morning that consistency was a real concern: How is it going to be applied across the province? If you go through terms like "exposure," "risk," "pathway"—even the term "precautionary approach": There are all kinds of different interpretations of what that means. If it means putting something in place that's going to assess risk and try to take steps to avoid it, that's one thing; but if it means trying to exclude all of this, that's likely not possible. So I think we have to be clear, that those terms are really clear.

The issue of appropriate levels of compensation has been mentioned a number of times. I think, from the farm

community side, there are two aspects: (1) What is the direct cost going to be to the individual farmers affected? (2) As a general taxpayer, what is going to be the cost to rural Ontario communities?

I think one of the things that really brought it to my mind was that a few weeks ago as I was flying into Toronto during a rainstorm. As I flew over miles and miles of farmland, what I saw was water going on that earth and slowly percolating and filters that went to the aquifers. At the same time, any runoff was going through wetlands, bush and streams, with a purification process that's designed to purify the water going into the Great Lakes. At that same time, I was flying over an urban centre that had the rooftops and the storm sewers and parking lots where all that water was being funnelled straight into the lake.

On the issue of compensation, the principle has to be: All of Ontario society is benefiting from this. Ontario rural communities, especially farmers, are providing that filtration and the clean water so that they have that clean water to build those communities. There has to be a mechanism to get that money back, and we're proposing some type of a stewardship fund.

Permits, inspections and enforcement: We're concerned with the whole permit approach. I was pleased to hear the minister say this morning that they're moving toward a risk officer type of approach. That actually fits in with the types of approaches we've used in the past, and we find that they work. If you go to a permit type of approach, you're setting it up that it's regulations, rules and confrontation. If you go with a risk management approach, you're working with something that, "Let's see what we can design to make it work."

Consideration of social, cultural and economic impacts: This is one of the things that I think should be included in the terms of reference in the bill. The terms of reference really have to clearly look at what the total costs are going to be. This isn't unusual. We have a Drainage Act that talks about a process that's defined so that all of the economic, cultural and environmental considerations are made. This act should be clear in defining how it moves ahead as well so that we don't need to get into that situation where there's one kind of a source water protection plan in one community and a different type in another community.

The interim period: Right now, there are provisions in there for an interim period. It's our belief that there are already tools under the Environmental Assessment Act to deal with something that's an immediate threat. If there's something that could pose a risk, why wouldn't you use the process defined to use that risk and maybe use it as the pilot as you move ahead?

Authority of source water protection committees is another issue of concern. We have some confusion as to whether the conservation authorities have a lead role or a subordinate role toward the source water protection committees. In our view, those source water protection committees should be the ones in charge. The Conservation Authority should have a supportive role in

making sure it's happening, because it almost creates a conflict if you have the people driving the process as the ones who are going to implement it in the end. I think that would clearly define the roles for those.

As well, with the source water protection committees, one of the other issues that come up is that there may be an ongoing role. If they design a plan and the conservation authorities are responsible for implementing it, who's going to make sure that they follow through on that implementation? We don't see that addressed as one of the issues.

One more issue that came up in our review of the legislation—and again, it goes to the broader context of the legislation—was how conservation and water efficiency are dealt with. That should be inherent in any source water protection plan: the activities taken by municipalities to ensure that they reduce the amount of water used. If they don't do that, it makes a tremendous impact on what type of an area has to be protected. All of a sudden, if you're doubling the water consumption, it's going to have an impact on the source area that's going to be required to be protected. So you have to take a broad, overall view.

Finally, the appeals process: We believe that there has to be a rigorous appeals process, as these plans come through, to make sure that all things are addressed from the concerns of cost, environmental sustainability and making sure that the communities can implement what's needed.

With that, new Chair, I'll turn it over for questions.

The Acting Chair (Mr. Parsons): Thank you, Ron. We have five minutes for questions, and we will start with the third party.

Mr. Tabuns: Thank you for coming in today. I appreciate your commentary.

Water efficiency and conservation: What drove you to put this in your recommendations?

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Mr. Bonnett: One of the key things is that we do have a staff hydrogeologist who works for our organization, and one of the things that came to their mind is that when you're trying to define a protection area, one of the critical things that determines that area is how much water you're drawing. The harder you suck, the farther back you've got to go in the system to protect that water. They saw it as very unusual that you'd be putting a source protection plan in place that looked at consumption of water and not take a look at what you could do to reduce that consumption. That's why it came forward very quickly.

The Acting Chair: The government?

Mr. Wilkinson: Thank you, Mr. Acting Chair. I just want to thank the Ontario Federation of Agriculture for coming today and note that the OFA and other farm organizations, but particularly the OFA, have been very, very helpful to the government of the day over this whole process, having input and representing the interests of farmers in Ontario. It's much appreciated. I know some of the work that you're in support of is because of the

strong advocacy of the OFA in the past and that you're working with us right now.

On the question of compensation, I just want to get a comment about recommendation 16. O'Connor was quite clear, I thought, that when you look at the question of stewardship, really, the lead on that would be OMAFRA, supported by the MOE, as opposed to the MOE supported by OMAFRA. Would it be the OFA's position that OMAFRA would be in the best position, as the government ministry, to define what a farmer is and bring in those kinds of stewardship tools that we're using in other parts of agriculture, environmental farm plans and things like that?

Mr. Bonnett: Actually, it hasn't been discussed as a policy, but my personal opinion is, I don't think it matters that much where the funding comes from. My initial response would be that if the money is to support an environmental initiative, it should come from the Ministry of the Environment. There are a number of drains on the agriculture ministry already that are outside of the environmental field. I think we have to start looking, when we're looking at funding agriculture, at the health benefits agriculture provides, at the environmental benefits that agriculture provides, and fund them out of the appropriate ministries so that some of those core things that we have in the Ministry of Agriculture and Food are protected.

That being said, I think the Ministry of Ag and Food should be involved in helping design the funding programs that are there, and we might be able to use some of the current infrastructure to help flow the funds. We have soil and crop associations that are set up and delivering environmental programs. We could use those as mechanisms to help flow that funding.

The Acting Chair: The official opposition?

Mr. Barrett: Thanks to the OFA for the testimony. As you point out, this legislation makes no mention of any funding assistance. There are lots of sticks in this legislation and no carrots. The lack of funding does contradict one of Justice O'Connor's recommendations. This is important. In fact the parliamentary assistant, in the last testimony, talked about a \$7-billion price tag. I'm not sure where that's coming from, but we do know that in the province of Manitoba there's the Manitoba water stewardship fund. That has been written right into the legislation. It's a separate water stewardship trust fund available for not only water management but water quality. There's no mention of that in this legislation. It is in the Manitoba legislation, as you've pointed out. Will you be putting forward a specific recommendation or amendment to this legislation to include something like that?

Mr. Bonnett: Actually, we had put forward that there would be something along the lines of a stewardship fund put in place. This stewardship fund too, I think, has to go not only for implementation, but we also have to look at the funding that's being provided for the source water protection planning. There has been significant funding granted to conservation authorities and the committees,

but the reality is that the way we see this planning process rolling out is that when you get down to the individual wellhead, there's going to have to be a large number of working groups put in place. Right now there's no mechanism to make sure that those people who are participating in those working groups are funded. This is why it's critical to have a stewardship fund put in place to pay for the implementation side. But we also have to take a look at the planning side and make sure that funding extends far enough so that we can get really good, solid advice at ground level when we break down from a watershed level to the wellhead level and determine exactly what should be done there.

The Acting Chair: Thank you. We're out of time. Thank you for presenting.

CITY OF TORONTO

The Acting Chair: Our next presentation is the city of Toronto, Shelley Carroll, councillor. I believe you're probably aware that you have 10 minutes, followed by five minutes of questions. When you start, if you would state your name into the record for Hansard, please.

Ms. Shelley Carroll: Good afternoon. My name is Shelley Carroll, city councillor and chair of the Toronto works committee, to which Toronto water services reports. I'm joined today by Bill Snodgrass, who is senior engineer at Toronto Water. I may be relying on him when we get to questions and answers.

We thank you for giving Toronto an opportunity to provide comment on the clean drinking water act. I'm here on behalf of Mayor Miller, but also on behalf of Toronto city council as a whole and of course our residents.

Toronto's only source of drinking water is Lake Ontario, and that's the crux of our position. For us the development, content and effectiveness of the Clean Water Act are crucial.

Firstly, I want to congratulate all those who worked on the Clean Water Act. As it stands today, the act represents the progress we've made towards protecting groundwater quality. It's an excellent start, but we must take the Clean Water Act further, in our view. In the presentation today, I'll outline the city's concerns with the act in its current form and make suggestions for ways to improve it.

As you know, Toronto is a large urban centre that's ever-growing. Today we provide drinking water, waste water and storm water management services to two and a half million residents inside Toronto as well as 400,000 residents in York region. We support the provincial policy statement Places to Grow and we've accommodated its population projections in the official plan.

We continue to provide safe, clean and reliable drinking water to all our residences and businesses. Like many other North American cities, we're also faced with the challenge of renewing and replacing aging infrastructure at an aggressive rate. This is key to providing high-quality drinking water and it is certainly our largest cost pressure.

Our water mains and waste water pipes placed end to end could stretch across Canada and back again, with pipes to spare. That's the sheer volume of our projects. The job of maintaining, repairing and renewing Toronto's infrastructure is a massive responsibility. The replacement value of all of these assets is estimated to be \$27 billion. But not all assets can be quantified in dollars.

Although it is our main priority to commit to infrastructure renewal, we're also very committed to protecting the lake and continuing to provide a safe drinking water source that we can rely on for generations to come. That's why the city has taken an active role in implementing some leading environmental initiatives like the sewer use bylaw, one of the first and strictest bylaws in Canada, which prevents pollutant discharges into our source waters. The wet weather flow management master plan is a 100-year plan to protect our environment and sustain healthy rivers, streams and of course the lake. The city's salt management plan is a very good example. Its goal is to minimize the amount of salt discharged to our source waters.

With these ambitious initiatives, we hope to limit the negative impacts of urbanization and ultimately preserve our lake and protect our source water. But we can't do this alone.

The Great Lakes is the water source for 75% of Ontario's population throughout 95 municipal systems. For Toronto, Lake Ontario is the only source of drinking water. As a result, a more comprehensive Clean Water Act must also seek to protect the Great Lakes surface water.

The Clean Water Act is a great piece of legislation for groundwater sources. It focuses on rural communities and the protection of groundwater. It also implements many of the Walkerton inquiry's recommendations. It recognizes that safe, high-quality drinking water sources are fundamental to public health and the environment. But the act does not protect Great Lakes source waters. For this reason, we're extremely concerned about potential threats to our drinking water source and also to our public health and the environment. Threats to Toronto's source water are illustrated on the next three slides. I'm making sure that Bill is keeping up with me, because these are the big slides.

Toronto has two source waters to be concerned about. You'll see the nearshore zone and the watersheds that discharge to the nearshore zone. You're looking at an aerial shot now, and it shows you the impacts of urbanization on the Great Lakes. The purple areas on the slide represent urban areas and the green represents the wooded areas. The city of Toronto's intake pipes are located in the nearshore zone along a very narrow band five to 10 kilometres from the shore. Physically, Toronto's critical source water zone is that nearshore zone. The dominant threats to these source waters are the pathogens from both rural and urban areas and the expanding watershed area that is covered now by urbanization. As population grows around the lake—you'll see those purple areas—the chance of additional pollution reaching the Great Lakes source water increases.

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On the next slide we show that the northern nearshore zone of Lake Ontario now stretches over 200 kilometres. There are many watersheds along it, small and large. Each watershed is empowered by the current act to develop its own source water protection plan. However, we believe we need one organized body to develop a source water protection plan for all watersheds around Lake Ontario to address the cumulative effects of the runoff.

Major pollution sources to the nearshore zone include river and stream flows, discharges from waste water treatment plants, overflow discharges from storm and combined sewers, and of course agricultural runoff. The question is, how far away from our water treatment plant intakes do these threats originate? Is it two kilometres? Is it five? Is it as much as 30, or along the whole north shore of Lake Ontario? This is our fear. Our photo shows the plume from the Humber River. You'll see that it stretches six kilometres long, much larger than the primary protection zone, notice, which is one kilometre around the treatment water plant intakes.

To limit pollutants, the city of Toronto developed a wet weather flow master plan. It was developed on a watershed basis. The plan will help us control wet weather flow from combined sewer outflows and from storm water discharges. The objectives of the plan are to improve water quality in six watersheds, improve water quality all along the waterfront, reduce flooding and stream erosion, and restore aquatic habitat. The wet weather flow master plan, which cost \$4 million to develop, could provide an excellent foundation for the development of a basin-wide source water protection plan.

Right now, we're part of a municipally led partnership called the Lake Ontario consortia. This body is working to develop a source water protection plan for mainly the western end of Lake Ontario. The objectives are highlighted in the slide above; I won't read all the way through them. In addition, Toronto also is partnered with York, Peel and Durham in a groundwater consortium which has developed some of the fundamental groundwater knowledge and tools needed for groundwater-focused source water protection plans. But the Lake Ontario consortia is a potential model for all Great Lakes. We need an expanded legislative framework to complete the potential of this partnership.

The graphic you're looking at now shows the multiple numbers of pollution sources from land-based sources that must be considered by the Lake Ontario consortia. Members of the Lake Ontario consortia now include nine municipalities, nine conservation authorities, the MOE and, of course, Environment Canada. In addition, taste and odour and algal threats originate in the lake and move towards our intakes; they're also noted here. These threats generated within Lake Ontario must be addressed by the provincial and federal government in legislative framework.

In closing, you'll see our comprehensive request:

—Engage municipalities in consultation to amend Bill 43 to address the Great Lakes source water issues;

—Lead the development of a unified and integrated basin-wide source protection strategy and actively involve the other municipalities;

—Fund the implementation and development of a plan, recognizing, as we recognize, that municipalities will be ultimately responsible for its implementation.

Institutionally, we need the basin-wide approach to be led by the Ontario MOE, but also involving municipalities, CAs and provincial and federal governments. We note that the current conservation-authorities-led source water protection boards are appropriate for largely ground-watershed-focused issues, but their scale of interest is too small for the nearshore zone of Lake Ontario. The province has allocated about \$600,000 already for phase one of the Lake Ontario consortia investigations, and our consortia have applied for another \$1.2 million for phase two to develop that source water protection plan.

We look forward to working with the province, our municipal partners and others in the development of this plan. We believe that with your leadership, municipalities can take an even more active role in source water protection through their councils for the benefit of all Ontarians. Thank you.

The Vice-Chair: Thank you very much for your presentation. We move to the question period. We'll start with Ms. Wynne.

Ms. Wynne: Thanks for being here, Shelley.

Ms. Carroll: You bet.

Ms. Wynne: Bill 43 gives the minister the ability to set up advisory committees to advise on issues surrounding Great Lakes water and to prepare reports. Now, you're asking for something that goes beyond that. Can you talk about what you think the federal government's role should be in that conversation and that facilitation?

Ms. Carroll: Simply that the scope of it is such that it should be a federal issue because we are talking about the whole Great Lakes system. When you think of Lake Ontario covering drinking water for 75% of Ontarians, then clearly the Great Lakes issue should be important to the federal government. You'll hear the broader scope from the Great Lakes and St. Lawrence Cities Initiative in the next deputation. Our experience developing the wet weather flow master plan tells us that the cost is something that should be shared. But we're looking to the MOE in Ontario to provide that leadership and use us as an example, because we're already down the road on it. The city of Toronto alone, as we ramp up that plan, is already spending in the neighbourhood of \$15 million year; we'll soon be at \$40 million a year to do the implementation. I don't think it's unreasonable to ask both of these orders of government to help us with the development of that broader plan.

Ms. Wynne: You know that the issue of funding has come up a number of times, and you talk about funding implementation. You're talking about having a longer-term discussion about what that model might look like

because that implementation money is not—we don't know what it will be at this point.

Ms. Carroll: Certainly we're in a different situation than some of the smaller municipalities. Initially, what we're looking at, what we feel is most crucial, is the development of the plan. It's going to be easier to get going on an urgent basis if we don't spend the first year working on the issue of how we are going to fund the development, because the development of the plan is costly in and of itself. But we, the major municipalities around the lake, are all rate-supported water services, so there's the possibility that that conversation could come once the plan is in hand.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: I appreciate the city of Toronto testifying. You indicate you're committed to protecting the Great Lakes. Further to funding, you identify sources of pollution, river and stream pollution; you list agricultural runoff. In today's Toronto Star there's a quote that this legislation is "a draconian piece of legislation." But the point I want to make is that this legislation will impose severe hardship on farmers across the province. If, say, a farmer on the Humber River does not make the investment to clean up his operation that affects Lake Ontario and theoretically affects the city of Toronto water, does your commitment also include a commitment to assist with funding to ensure that the pollution source that may be affecting Lake Ontario, and hence Toronto's water, is cut off?

Ms. Carroll: I think our commitment has already been demonstrated in terms of getting our own house in order. We've developed the plan with our own funds and we're already involved in implementation. Some of the implementation of protection of Lake Ontario's sources began in the early 1990s, before the wet weather flow master plan was even developed. So I think our commitment is clear. We are a rate-supported service and we do go to our residents for the funding whenever we can, and many of the funds are used in this vein. The question is, in order to develop a plan—

Mr. Barrett: The source.

Ms. Carroll: Yes. The question is, in order to develop a plan that really requires partnership, we actually welcome some of the format that's explained in the act, because it's a format in which we work, which is co-operative partnerships where municipalities and regions need to work together, simply recognizing what is a scientifically obvious fact: that we have to work together; it's one body of water serving 95 water systems.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming down, Shelley. Two questions for you: Do you have any concrete amendments to the act that you want to bring forward, and secondly, can you tell us roughly what water quality source protection costs the city of Toronto? You list a number of environmental stewardship initiatives that you have that protect the quality of the water.

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Ms. Carroll: In terms of what we're doing already, you'll know that we're already involved in the storm-

water management ponds along the lake within our own city limits, and each of those is in the range of \$7 million to \$8 million to develop, right off the bat. So we're already at a point now where we're spending about \$15 million a year, and that's simply in the early stages of starting on the wet weather flow master plan.

Over the next five years, there's money committed in the capital budget, where we're doing source water land acquisition that stretches north and beyond our own city limits. But because it's important to what ends up at Ashbridges Bay, we're committing the funds to it and working in concert with our conservation authority.

So as I say, we will very soon—I think it's two years out from now—be spending \$40 million a year out of Toronto water services' budget on this.

The Vice-Chair: Thank you, Ms. Carroll.

GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE

The Vice-Chair: Now we move to the Great Lakes and St. Lawrence Cities Initiative.

You can start whenever you are ready. You know the format; I guess you have heard it many different times: 10 minutes for presentation and five minutes for questions.

Mr. David Ullrich: Very good. Thank you very much, Mr. Chairman and members of the committee. My name is David Ullrich. I am the executive director of the Great Lakes and St. Lawrence Cities Initiative; I'll refer to it as the Cities Initiative because it's a bit of a mouthful. We have approximately 85 participating cities from the United States and Canada, with roughly an equal split between our two countries. We have three primary goals of our organization. The first is to get a seat at Great Lakes and St. Lawrence decision-making tables. Secondly, we are working diligently to advance the protection and restoration of the resource. Third, we are doing our best to promote best practices among cities who share this wonderful resource of ours.

To begin, we also focus on three primary areas where our goals are established. One is for water quality, second is for water conservation and, third, waterfront vitality. Almost all of our activities are focused in this direction.

We applaud the efforts of the Legislative Assembly to move forward with this legislation and make sure that all Ontarians have clean, fresh and safe drinking water available to them at all times. There's really nothing more fundamental to life than this resource, and events like the Walkerton incident certainly bring to our attention the vulnerability of the resource and that we cannot take it for granted. We have this tremendous resource and we must take steps to make sure that the abundant supply is kept that way.

The basic approach of Bill 43 is fundamentally sound. Having assessment reports to look at the threats and the risks and source protection plans, if done properly, should identify the risks to the water and the actions to reduce those risks to acceptable levels or eliminate them

completely. The conservation authorities are in an excellent position to work with the municipalities on a watershed basis to do these assessments and develop the plans, especially where the source drinking water is ground water. Those plans must include the types of actions that municipalities are in a position to take so that the protections can be put in place.

The bill also includes a section on Great Lakes agreements and requires consideration of those agreements in preparation of assessment reports and the plans. The connection with those agreements is good, but the Great Lakes, as a source of drinking water, need far more protection and a more comprehensive approach to assessment and protection under the bill to be effective. The Cities Initiative is concerned that Bill 43 does not provide the level of protection needed for the Great Lakes as a source of drinking water to 75% of the people of Ontario. Although consideration of existing agreements on the Great Lakes is a good place to start, there must be much more prescriptive and comprehensive requirements to meet the letter and spirit of those agreements. In addition to provisions that deal more specifically with the threats that create significant risks to the drinking water values of the Great Lakes, it's simply not possible for any group of conservation authorities and municipalities alone to address effectively the protection of a resource the magnitude of the Great Lakes. The province and the federal government must do so, with strong participation from cities and conservation authorities.

Municipal waste water discharges, especially those from combined sewer overflows and sanitary sewer overflows, are a major problem across the basin. As you've just heard from Councillor Carroll, cities have worked hard and spent major sums of money on sewers and treatment plants, but much more needs to be done to solve the problem. The province and the federal government need to make more significant investments in this area.

Stormwater runoff from urban and agricultural lands that is not captured and treated by sewer systems is also a serious problem that needs attention. Municipalities and conservation authorities have worked on this problem as well, but again, more direct investment and participation from the province and the federal government are needed.

Invasive species are a pervasive problem across all of the Great Lakes. Over 180 have been introduced already, and new ones arrive at the rate of almost one every eight months. Most of these are broader threats to the Great Lakes' ecosystems, but specific ones such as zebra mussels have caused serious problems on drinking water intakes and have been associated with taste and odour problems. In addition, there is a serious concern that pathogens could be introduced to the lakes from ship ballast water and contaminate water supplies. Much stronger action, particularly at the federal level, is needed.

Toxic pollutants have contaminated the water and the fish to the extent that advisories are in place in every

lake, limiting the consumption of many species of fish. Mercury and PCBs are some of the major problems, but the presence of other toxic contaminants, plus such things as pharmaceuticals, are real threats that must be addressed.

On a more general level, the precautionary principle is an important concept that needs to guide all of the efforts under the Clean Water Act. The principle needs to be incorporated at the operational level as well.

Ontario is uniquely situated as the Great Lakes province of Canada to provide strong leadership in protecting the resource through this bill, and also in the context of renegotiation of the Canada-Ontario agreement on the Great Lakes and the review and possible revision of the Great Lakes Water Quality Agreement. The cities stand ready to work closely with the province and the federal government on all these important efforts.

The Great Lakes and St. Lawrence Cities Initiative appreciates this opportunity to provide you with our comments, and we look forward to working with you in the future. I would be happy to answer any questions that you might have.

The Vice-Chair: Thank you very much for your presentation. Now we move on to a question period with Ms. Scott.

Ms. Scott: Thank you for appearing here before us today. It has worked well that you followed the city of Toronto, because you were sending out similar messages, and with the Great Lakes being such a draw on our drinking water. My colleague from Haldimand-Norfolk-Brant mentioned communities, municipalities upstream that also feed into them, and you mentioned that we need tools in place to all work together.

What do you think the province's responsibility is to establish a fair funding compensation, or a partnership with municipalities or with the federal government, which you mentioned? Is there an example out there that you might have seen before that you can use?

Mr. Ullrich: I don't have any specific examples in mind right now, but it does seem that with the resource, the magnitude of the Great Lakes, even looking at Lake Ontario specifically, when it is shared by two countries, many state or provincial jurisdictions and then many municipalities as well as First Nations, it does require a collective investment effort at all levels of government to really tackle a problem of this magnitude.

The US has provided substantial funding, for example, for combined sewer overflow and waste water treatment really extensively since 1972. Canada and the provinces have provided some as well. But it seems that to really get at the problem of protecting this water, most importantly as a source of drinking water, it is going to take more in the future.

As to a specific approach, I really don't have any particular one in mind.

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Ms. Scott: But you advocate a strong provincial role.

Mr. Ullrich: Yes, and I think Ontario, with boundaries on all of the Great Lakes, is in a unique position to do this.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming here and making a presentation today. In your presentation, you note that consideration of existing agreements around the Great Lakes is a good place to start; there must be much more prescriptive and comprehensive requirements. Do you have exact wording, exact sections of the act that you believe need to be changed?

Mr. Ullrich: No, we have not developed that. But it might be a good place to start as opposed to just considering these requirements, to comply with the requirements of these agreements. There would obviously need to be much more wordsmithing to come up with everything right.

Mr. Tabuns: Yes, exactly.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you, David, for coming in. We really appreciated it, and it is timely after hearing from the city of Toronto. How does the Clean Water Act, this piece of legislation, stack up compared to other jurisdictions to the south of us? I've seen some comparison of where we are with other provinces, and it seems to be groundbreaking. Is this groundbreaking also in the Great Lakes basin? If so, is this something you would promote, that other jurisdictions that we're sharing this source of water with also move in step with what we're doing here in Ontario?

Mr. Ullrich: I have some familiarity on the US side with source water protection efforts, primarily under the Safe Drinking Water Act on the US side, a federal provision. Most of this is in the planning of various source water protection approaches. I haven't had an opportunity, really, to do a side-by-side comparison. But my guess is, as with many environmentally related provisions, we usually have much to learn from one another. Particularly because of the Walkerton incident, which precipitated the action here in Canada, my guess is that there are probably some real groundbreaking approaches here. So I think there are some things that could be learned from the source water protection efforts on the US side, but likewise the US could learn from here.

Mr. Wilkinson: It's my understanding that everything on the other side of the border in other jurisdictions is voluntary, everything: "This is what you should be doing, but it's up to you." I think you're right: Given the context here in Ontario, we're taking that next step by saying, "No, this is something that has to be done; we have to work together locally to make it happen"—

Mr. Ullrich: Definitely.

Mr. Wilkinson: —"but the goal of having it happen is something that's actually in legislation. It may be something that we can, through your good offices, work on with the other jurisdictions that we're sharing our drinking water with and try to move that standard up throughout the whole basin. I think that would be helpful.

Mr. Ullrich: We'd be happy to do that.

The Vice-Chair: Thank you very much for your presentation.

Mr. Ullrich: I did want to point out quickly that Mayor Miller is the chairman of our organization this year. Mayor Daley is our founding chairman, but Mayor Miller is providing excellent leadership for us.

The Vice-Chair: Thank you very much for the clarification.

ONTARIO CHAMBER OF COMMERCE

The Vice-Chair: Now we'll move to the Ontario Chamber of Commerce.

Mr. Crispino: First, welcome. You know the procedure, I believe: 10 minutes for a presentation and five minutes for questions. You can start whenever you're ready.

Mr. Len Crispino: Yes. Thank you very much, Mr. Chairman. Good afternoon. I'm Len Crispino. I'm president and CEO of the Ontario Chamber of Commerce. With me are Stuart Johnston, our vice-president of policy and government relations, as well as Mary Hogarth, senior policy analyst.

We thank you for the opportunity to provide the Ontario Chamber of Commerce's perspective and suggestions with respect to Bill 43, an important and worthy piece of legislation. I've provided the clerk with our submission and we'll be happy to keep our remarks as brief as we can.

For those of you who may not know, the Ontario Chamber of Commerce membership consists of 160 local chambers of commerce and boards of trade across the province, representing some 57,000 companies of every size and from every sector. Our membership resides in the very communities that Bill 43 will directly affect and, therefore, it is an issue of great importance and concern to our membership.

As I stated earlier, the Clean Water Act is an important and worthy piece of legislation. Protecting our water must and should be a priority of this and every government. Both our rural and urban business owners throughout the province care about the quality of life in their respective communities, including the safe and reliable supply of water.

As such, the OCC is fully supportive of Bill 43's stated intentions and goals, broadly speaking. However, we also recognize that the road ahead, while paved with good intentions, can sometimes be laced with the occasional pothole. This is potentially the case with the Clean Water Act in its current form. Therefore, we would like to offer to you what our members believe should be considered before the bill comes into law.

There is, in our opinion, much ambiguity with respect to Bill 43, particularly as it relates to three main areas of our submission: costs related to the public and private sectors; accountability and responsibility; and definitions of language. The OCC recommends that, either through the bill or regulation, such ambiguity be eliminated and replaced with the clarity of language that legislation of this importance requires. Let me explore the issue of costs for a moment.

Bill 43 imposes an obligation towards landowners, business owners and farmers that could potentially affect how they use their land and conduct their business. Existing businesses and agricultural producers that are working under today's standards of due diligence may find that their current activities will not meet the potentially new, higher standards set out in Bill 43. The OCC and its members believe that today's land users should not bear the sole financial burden of reaching this new benchmark when it is in the interests of all Ontarians to have safe drinking water. Land users need to be assured that they will not have to compensate for the cost of alterations made to the land use beyond normal due diligence.

This same recommendation was made in January of this year by the Water Well Sustainability in Ontario report. In this expert panel report, it was stated that, "Land users need to be assured that any alteration in land use beyond" normal "due diligence will be compensated as the alterations are done in the interest of the public good."

Indeed, the agricultural community in particular is vulnerable to cost increases. Bill 43 threatens to create an additional cost burden for some farmers at a time when they can least afford it. In fact, farmers practising under today's standard of due diligence should not be penalized for a change in best practices that is for the benefit of all Ontarians. Fair and equitable compensation must be established in order to ensure that our agricultural producers can continue to feed the province.

The same issues can be applied to our municipalities. The Clean Water Act assigns new responsibilities to municipalities without a similar allocation of funding for the implementation, administration and enforcement of such responsibilities. At a time when energy rates and property tax rates are skyrocketing, taxpayers and local businesses can ill afford yet another local tax burden. While the potential costs of such measures contained in Bill 43 are at this point unknown, the Association of Municipalities of Ontario fears that they could indeed be very substantive.

We recognize that the government has already committed a reasonable sum to finance technical studies and other costs relating to the drafting of source water protection plans, but source water protection is and should be a provincial responsibility. So, as a recommendation, the OCC suggests that Bill 43 be amended to explicitly include a fair and reasonable cost-sharing and/or compensation system. This will serve to assist all land users, including municipalities, to overcome the potential financial burden of meeting the requirements of new water standards.

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Let me now turn to the issue of accountability and responsibility. Section 7 of the legislation refers to a source protection committee. The legislation is vague on how exactly the source protection committee members are chosen or by whom. Given the importance of the work the source protection committee will oversee, it is

important to ensure that it has equal representation from all affected parties.

We therefore recommend that prescriptive and explicit language be included in the bill, outlining the composition of the source protection committee. In addition, the government must ensure there is local representation from all sectors, such as municipal, industry and consumer.

The legislation also grants the source protection committee the task of preparing a drinking water source protection plan under the appropriate lead of local conservation authorities. Unfortunately, it is unclear as to how these plans will be drafted in a consistent and reasonable manner throughout the 400 affected municipalities across Ontario. This could potentially create patchwork plans across the province, a situation that in our opinion should be avoided.

We recommend that the government explicitly mandate that clear and concise, science-based criteria be used as the basis for the operation and plans of the source protection committee. This, in our opinion, will ensure that a fair and consistent planning method is used throughout the province.

Our final point today involves the ambiguous nature of the terms and definitions contained in the Clean Water Act. We have concerns that some of the language used in Bill 43 is broad and subjective in nature. Specifically, the legislation provides definitions for “drinking water threats” and “significant drinking water threats.” Unfortunately, it is our opinion that such definitions are too broad, to the point that our members fear that almost anything could be interpreted as a threat under these definitions. We believe that such ambiguity should be avoided, not only to ensure a consistent application of standards across Ontario, but to ensure that real, specifically defined threats are both prevented and removed from our water sources.

It is our recommendation, therefore, that the government revisit the definitions in order to set specific measurable standards and criteria for “drinking water threats” and “significant drinking water threats.”

On a related matter, Bill 43 does not recognize an appeal process for the landowner from decisions made by a source protection authority or permit officials. With broad, subjective definitions being used to measure threats such as “drinking water threats,” it is only fair that the landowner be able to appeal a decision if he or she thinks it is unjust.

The legislation also gives the MOE the authority to override all current land use planning statutes. We are concerned that the bill does not allow for statutory appeal from this overriding decision-making power by the MOE.

It is our recommendation that an appeal mechanism be established in order to provide a fair and just system.

In conclusion, the Ontario Chamber of Commerce strongly supports initiatives aimed at source water protection and broadly supports the Clean Water Act in principle. If you adopt the suggestions we have made

today, we believe the proposed legislation will be stronger and will truly ensure that our valued water resources are indeed protected. Thank you for your time.

The Vice-Chair: Thank you, Mr. Crispino. We'll start with Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today; such a good presentation. I know that my local Kawartha Lakes chamber of commerce and Amy Terrill did a great presentation to us on the Clean Water Act.

You mentioned a lot of good points. What I want to ask about has a lot to do with costing. Do you think that when the municipalities are going to have to pay for this—it's going to be downloaded from the province. What type of actions will you see, what businesses may go out of business, taxes go up? Can you give us an idea of the impact if this legislation goes through the way it is, the effect on municipalities and businesses?

Mr. Crispino: I'll pass it over to Stuart Johnston because I know he's done a fair amount of work in this area, and then I'd be happy to elaborate further.

Mr. Stuart Johnston: Thank you for the question. In terms of the specific dollars, the specific impact and magnitude of the impact, it could very well vary across the province, because we don't know how these plans are going to unfold and the specific impacts. We all know—I think it's a given in this room—that the property tax system is overburdened. Last week's announcement by the Premier with the MOU to investigate the service costs and delivery of local systems—they're working with AMO on that—just demonstrates that there's too much burden on the property tax.

Going specifically to Bill 43 and the impact on the municipalities, it's not unreasonable to envision a significant cost placed on the municipalities to upgrade their infrastructure, to add new technologies—whatever the plan calls for. That in fact is an inherent cost, a significant cost that we don't think could be borne specifically by that local region and those local taxpayers. They're already overburdened enough. So it is our opinion that since source water protection is indeed a provincial responsibility, a pool of money should be available for municipalities to tap into on an as-needed basis, given stringent criteria and whatnot. We also believe that the private sector should be able to tap into such funding as well, because we don't want to put them out of business, but we want to help create a safer water source. It is our opinion that their funds should be available from the province and not the local area.

Mr. Tabuns: Thank you for coming today and making this presentation. You raised this whole question of lack of clarity with definitions, and that's a concern, I think, around this table; maybe not completely around the table but part of the table, anyway.

Interjections.

Mr. Tabuns: Okay, so I can't speak for the government.

Have you spent time thinking about what reasonable definitions would be for a significant water threat?

Mr. Crispino: To be quite honest, no, we haven't looked at the operational definitions, how you would define it. But from our standpoint, as we look at the legislation and the number of different ways in which some of the pieces can be interpreted—farmers in particular bear the brunt of so many issues in our economy and are going through some major difficulties. We believe that this adds just another level of uncertainty. It's not only the real uncertainty but it's also the perceived uncertainty in terms of what may happen tomorrow. It's very difficult for them to plan ahead, because the definitions are simply unclear.

The Vice-Chair: The parliamentary assistant?

Mr. Wilkinson: Thank you for coming in. I'm sorry that I won't be in Stratford tomorrow for the small business agency in my riding, but we'll be in Walkerton on the committee. Again, thank you for your comments about being more specific in regard to definitions. We're hearing that from some other people, so we appreciate the fact that that will be on the minister's radar.

You were concerned about 400 different affected municipalities trying to figure this out and about lack of coordination. I can just share with you that there will be about 19 regional planning authorities, which is an amalgamation of some conservation authorities. All of these things—terms of reference, assessment reports, source water planning report—have to be approved by the minister. It will be the minister's responsibility and her undertaking that there will be the kind of coordination and clarity that obviously business would seek.

Just to be clear, in all of the process, people have the right to go to the Environmental Review Tribunal, which is a quasi-judicial body that deals with this. That is available under the law, and that isn't being circumvented.

Just to the question of costs, as a certified financial planner and a member of your association, you're saying that basically this should not be on the individual and it should not be on the property taxpayer, so therefore it should be uploaded to the province. Are you saying that beyond the fact that we've already budgeted money for all of this science—and obviously that has money budgeted for, going into the future—that provincial income taxes should go up to cover this? Not the people who are actually drawing the water but all 12.5 million people, those provincial taxpayers, should be paying more so that some people have this compensated, or should it be user pay? I'm just wondering where you land on that.

1420

Mr. Crispino: We're never in favour of increased taxes.

Mr. Wilkinson: I know, but since we both know money, it's going to come from somewhere. So your submission is where it should come from and—

The Vice-Chair: Thank you, Mr. Crispino, for your presentation.

Before we start the next presenter, Ms. Scott has a request. Go ahead, Ms. Scott.

Ms. Scott: Since we're talking about clarification of definitions, I just wanted to know if I could request of the researcher—this morning, the minister in her comments referenced the “precautionary principle.” I wondered if the researcher could find out for the committee what the minister meant by that term.

Mr. Wilkinson: There was a lack of clarity there?

Ms. Scott: It seems to be a theme through the whole bill.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Vice-Chair: Now we go to the Canadian Institute for Environmental Law and Policy.

You can start when you're ready.

Ms. Anne Mitchell: Thank you very much, Mr. Vice-Chair and committee members, for letting me come here today. My name is Anne Mitchell. I'm executive director of what's called the Canadian Institute for Environmental Law and Policy, also known as CIELAP. CIELAP is an independent think tank which has been providing advice to Ontario governments for over 35 years. You have copies of our submission. There are some specific recommendations in it, even with wording that could be put into the act to amend it.

Clean water is vital to life. You don't miss clean water until you don't have it, and I'm sure the citizens from Walkerton, from other communities, from many of our First Nations communities will attest to that, and I will too after working for two years in a rural community in Africa with no clean drinking water: You appreciate it, but only when it's gone.

The Clean Water Act, 2005, is a good act. It's an essential piece of legislation. Our submission actually addresses three areas of concern, and we think that if the Ontario Legislature, the government, can address these three areas of concern, it would be an even better act. Our first area, or one of our areas, is, who will pay? Where is the money going to come from? That is a big question, and it is something that has to be resolved soon. Our second concern is getting local community buy-in so that you're not always going to have these demonstrations outside, but that the community will be in and involved. The third area of concern is, when in doubt, being careful, or adopting the precautionary principle.

I'm going to start with being careful. If we are uncertain, then we should be using caution and the precautionary principle. There is no reference to the precautionary principle anywhere in the drinking water act. We think it should be in the statement of principles in the preamble and also as part of the implementation. There should be a reference to “precaution” somewhere in the Clean Water Act.

Our second concern is involving local communities. Source water protection won't work without the involvement of local communities in the planning and the implementation. Their involvement will lead to a better outcome, so somehow or other there has to be local com-

munity, multi-stakeholder representation on these committees, and their participation needs to be paid for. Local community and environmental non-government organizations don't have, in most cases, the core funding to engage in these issues.

But probably the most important issue that needs to be addressed is, who is going to pay and how are we going to get the funding for this act? Clean water does not come cheap. Users have to pay and, in a way, the more you use, the more you have to pay. Full-cost pricing mechanisms could be—we've a number of a suggestions, or there are a number of mechanisms that could be used. You probably heard some from the Canadian Environmental Law Association this morning. I'm just going to mention three, and there are more details on these mechanisms in our submission.

Full-cost pricing—that's the first one: So, in fact, having water rates where we're paying the real cost of getting the water to us and the sewage and all the rest of it.

Levies for taking water for commercial use: If industry, if business, is drawing water from the Great Lakes for commercial use, there should be levies on this.

The third mechanisms that we looked at was levies on fertilizer and pesticide use.

The Clean Water Act is essential. Clean water is vital to life, and having access to clean water isn't cheap. So the Clean Water Act, in our view, would be a better act if there was clarity about the funding mechanisms and who will pay, if local communities were involved from the beginning in planning and implementation, and when we're in doubt about threats to our water, we are cautious. Thank you.

The Vice-Chair: Thank you for your presentation. We have a lot of time for questions.

Ms. Mitchell: I didn't think you'd want me to read the presentation, which you've got. I would rather hear from you.

The Vice-Chair: No problem. We'll start with Mr. Tabuns first.

Mr. Tabuns: Thanks for coming in, Anne. Great to hear from you.

Ms. Mitchell: A pleasure.

Mr. Tabuns: In terms of funding and cost, do you have a sense of the kinds of costs we're talking about?

Ms. Mitchell: We haven't done that kind of work. We'd be happy to do that kind of work, but we haven't.

Mr. Tabuns: Okay.

Ms. Mitchell: Obviously, it's not going to be cheap and we've got to look at different mechanisms to fund it.

Mr. Tabuns: Just to make my colleagues over there happy, I'm also going to ask you—there are a number of definitions that are missing in this act—have you considered those definitions? Would you be in a position to bring forward legal definitions that we could put forward as amendments?

Ms. Mitchell: We could. They're not in our submission, but we certainly could do that.

Mr. Tabuns: In terms of what you've brought forward, what do you see as the most crucial change or amendment that is needed with this bill?

Ms. Mitchell: We have three, specifically. One is incorporating precaution and the other one is suggested amendments to allow for more public participation, and we've got specific amendments in our submission related to that.

The Vice-Chair: Parliamentary assistant?

Mr. Wilkinson: Welcome, Anne. You are a legend, and it's wonderful to have you here.

Ms. Mitchell: Thank you.

Mr. Wilkinson: We appreciate the work that you and your organization have been providing with our ministry over the last few years as we've worked together on this.

Ms. Mitchell: It's 35 years.

Mr. Wilkinson: We haven't had this one for 35 years.

Ms. Mitchell: No, we haven't had this one for 35 years.

Mr. Wilkinson: That's right. Let's get into that question of public participation. We and the minister have stated clearly about how this will be in regulation and you're asking us to put that in the legislation, and we appreciate that.

On the question of cost, we just had the Ontario Chamber of Commerce here and they were saying, "Don't put it on the property taxpayer, don't put it on the water user, don't put it on the individual. Put it on the province. They'll magically come up with the money. Don't raise taxes to do it." You're taking the policy position that what's important is user pay because that generally encourages the right environmental response from people in regard to the economics of it, doing the right thing.

Our position has been that after we do all of the science, get all the work done, obviously there can be cases of hardship and then we'll look at that; we just can't define it yet. Would you agree with me in the sense that, one, it should be user pay, but there could be some metric that would say there's a cost that is unsustainable by the user but for the public good the province needs to then delineate that as hardship because of the inability of the user to pay for it reasonably? One then has to look to the province, perhaps in conjunction with the federal government, to provide funding so that we have equity protecting our water.

Ms. Mitchell: There will have to be some reallocation to produce some kind of equitable costing, obviously. That could be done in a number of ways, whether it's incentives for conservation or whether it's reduced costs for some water uses, if these are in fact in the public good, reduced costs for some amount of water for individuals so that we all can, in fact, afford some water. If you are in your big monster home and you are watering your garden and you are filling up your pool and you are washing your four cars, then pay for it. So it's that kind of incremental.

I think, too, there should be costs for commercial use but, yes, we would have to look at if we are in a society

that does want to protect the most vulnerable of our citizens, and we have to do something for that. There may be uses as well. Agricultural uses: We've heard about that. There may be specific fire protection. Obviously, we're going to have to figure out ways of making sure that water is available for some of these essential services.

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Ms. Scott: Thank you very much for appearing here before us today. We've talked a lot about costing, and we need provincial participation, no question, representing a rural riding. The infrastructure alone that the municipalities are going to have to look at to service some of their small communities—and I have communities that have price tags of \$35,000 a house to put a water system in at present. So it can grow from there, just to put a little bit of a rural perspective on it.

We talked about a stewardship fund that the Manitoba government put right in their legislation. Are you concerned that there isn't a water stewardship fund within the legislation, as it exists now, to assist municipalities, landowners, farmers etc.?

Ms. Mitchell: I think the issue of where the money is going to come from needs some careful thought. I think all levels of government have a responsibility, including the federal government. I noticed that in the US and EPA, there is, in fact, a drinking water state revolving fund, where the federal government was providing funding to state municipalities to implement some of the things that they have to do.

I think there are some jurisdictions in Canada and in other parts of the world that have done things like full costing of municipal water. There are several OECD countries that have adopted a full-cost pricing system. In fact, Ontario has embarked on this path with the Sustainable Water and Sewage Systems Act. But regulations haven't been made, so it has not come into force.

There has also been some talk within the ministry. It was announced in December 2003 that it intends to apply charges to water-takings. Again, several jurisdictions have, in fact, done this. BC, Saskatchewan, Manitoba and Nova Scotia have implemented a charge for water-taking, and so has Minnesota and the United Kingdom. There are exemptions—and these will have to be discussed—like, as I said, fire protection, agriculture and wildlife habitat.

The fertilizer and pesticide levies which we are suggesting: I wondered if that would be controversial. But again, Wisconsin, Iowa, Minnesota and Oregon have, in fact, assessed surcharges on fertilizer and pesticide sales and charged producers or distributors directly. So there are some states. California, Minnesota and Iowa have adopted nominal pesticide taxes. Kansas has a fertilizer registration fee program. So there are a number of precedents out there in other jurisdictions, and I really think the sooner the province starts figuring this out, the better. You're revolving your stewardship funds. There will need to be something.

The Vice-Chair: Thank you, Ms. Mitchell, for your presentation. Thank you, Ms. Scott, for the question.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Vice-Chair: Now we call on the Association of Municipalities of Ontario.

Mr. Doug Reycraft: Good afternoon. My name is Doug Reycraft. I am mayor of the municipality of Southwest Middlesex, a Middlesex county councillor and, as of five days ago, president of the Association of Municipalities of Ontario.

The Vice-Chair: Congratulations.

Mr. Reycraft: With me this afternoon is our policy director, Brian Rosborough.

I'm pleased to be here this afternoon to discuss Bill 43 with you. AMO has been involved in this issue right from the outset: at the hearings in Walkerton and as an active party on both the advisory and implementation committees. We have provided municipal perspectives and positions to all the government releases, from the white paper to the proposed legislation. Our message has been consistent and clear, but we have not been heard on three fundamental issues, which I will get into in a moment.

Before I get to those issues, let me just say that we do believe that the government has genuinely good intentions to protect sources of water, and the municipal governments in this province share those interests. Municipalities, though, have fundamental concerns around the current structure of the proposed legislation. There is a lack of decision-making at the front end of the process and at the development stage of the source water plans. However, subsequent to plan development and approval, they face increased costs and exposure to liability in plan implementation. The legislation fails to address funding for a mandate that goes on in perpetuity.

AMO has reiterated its concerns with the issue of roles and responsibilities from the beginning. Unfortunately, we have not been heard. AMO continues to have substantive issues with the lack of a municipal role in the areas of source water policy development. At the other end of the spectrum, in the area of implementation, municipalities will be given a substantive, but apparently unfunded, mandate.

In respect to municipal decision-making, municipalities do not have a leading role in the development of any of the work leading to the development of the source water protection plans or the decisions on the plans. The responsibility of preparing the terms of reference, assessment reports and the development of the source water protection plans falls to the source water protection authorities, conservation authorities or the source water protection committees. Not only is there a lack of a direct decision-making role for municipalities, there is also very limited representation for any one municipality on either of the two leading source water groups: the source protection committee and the source protection authority.

More importantly, municipalities will not have the responsibility of making any decisions within the boundary of their municipality affected by the work being done for the plan, the scope of work, the science or the

policy. We agree that it's the minister's responsibility to approve the source water plans, but we also believe that municipalities, as elected bodies of government, should have the opportunity to make decisions, not just comment on plans earlier in the process. Municipalities should, at a minimum, have the ability to set a minimum area of protection of what happens to our wellheads or intake areas. AMO is suggesting text changes to the proposed legislation, which we will submit to you in the near future.

The second area of concern, one which has been repeatedly voiced, is that of liability. Municipalities have a limited role in the development, and no role in the approval, of source water plans, but they face high costs, including a high level of liability, in fulfilling their implementation responsibilities. To move forward, municipalities need liability protection under part IV of the proposed act or the liability consequences for municipalities will be unmanageable.

It is imperative that the province retain the permitting official function unless an individual municipality requests those powers. Some of the larger municipalities may request this role and should be delegated those responsibilities when it's requested, but the majority of municipalities in the province will likely not be in that position for a long, long time.

Further, the bill should set out that risk assessments are to be undertaken by qualified professionals, not municipal staff. Most municipalities do not have these resources and should not be forced to take on the resulting liability.

Finally, the bill should be amended to state that section 19 of the Ontario Safe Drinking Water Act does not apply to matters covered under Bill 43 to further protect municipalities, their officers and officials from inadvertent liability exposure.

The third area of municipal concern is cost. While municipalities have no apparent role in decision-making at the front end of the process, as I've said, they are required to take on new and substantive responsibilities of implementation. These new responsibilities will be costly and ongoing. The resource implications of the implementation requirements have not been assessed. While the Ministry of the Environment has been forthcoming in providing funds for the preparation of the technical reports and the source water plans—some \$67 million, I think—there has been no apparent commitment to implementation costs.

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AMO has stressed to the ministry on many occasions our concern that the lack of funding for implementation would constitute a very large unfunded mandate. We have requested the establishment of a sustainable, long-term funding program for implementation, and that continues to be a major issue.

For starters, official plans and zoning bylaws must be updated to conform to source water plans. The policy development and defence in the OPs and zoning bylaws appear to be the sole responsibility of the municipality.

For those familiar with the planning process under the Planning Act, it will come as no surprise that development of policy, any policy, requires extensive consultation, deliberation, staff resources and frequently arbitration before the Ontario Municipal Board. Beyond the document update, municipalities may have impacts on their municipal services and may be required to upgrade their infrastructure, including, but not limited to, water and waste water treatment plants, which can have a very significant cost.

The most significant new direction relative to implementation is in the mandatory requirement to regulate activities and land uses. Part of this new mandate is the requirement to establish permit officials and inspectors with the power to regulate activities. The actual extent of the permitting responsibilities will not be known until the regulations are in place. However, it is quite clear that these positions will carry a great deal of responsibility. Our first concern is with a municipality's ability to resource the position of the permitting official and those of the inspectors. Our second concern is in respect to the cost, which will be ongoing and substantive.

No one has been able to provide any credible estimate of the cost of implementing the legislation. The ministry has stated that in Oxford county similar activities, including land acquisition and wellhead protection, cost only \$1.62 per household, per month over a 10-year period. That may not sound like a lot of money, but it's over \$5 million in the case of Oxford county. What would that mean if extended province-wide? There are 4.5 million households in Ontario. Based on the ministry's figure of \$1.62 per household, per month, that's about \$875 million in additional costs for municipalities over 10 years, or \$87 million a year.

That's not an AMO estimate. We're not suggesting that this is even an accurate estimate. It may be high or low; it's impossible at this point to be sure. But that is what \$1.62 per month, per household would mean province-wide. Frankly, it's impossible for us to estimate what this might cost and that's very troubling for municipalities and property taxpayers.

AMO is requesting that the proposed bill be amended to ensure that there be no appeal of official plan amendments and zoning bylaws which are undertaken to conform to source water plans. Further, AMO is requesting that a stable source of provincial funding be provided to municipalities to cover the cost of the conformity initiatives and impacts on municipal services such as upgrades to water and waste water treatment plants. Should the bill not be amended as suggested in respect to the provincial retention of the permitting official and inspector functions, then a stable source of provincial funding must be secured to cover the cost of this function and the associated costs relative to liability protection.

Thank you, Mr. Chairman.

The Vice-Chair: Thank you, Mr. President. Now we go to the parliamentary assistant for questions.

Mr. Wilkinson: Welcome, Doug, and on behalf of all of us, congratulations on your recent electoral victory.

Not all of us are acclaimed in this business, so congratulations.

Mr. Reycraft: It was nice.

Mr. Wilkinson: That's a testament to what you've been doing for the municipalities of Ontario.

Just to clarify on the question of liability: My understanding is, consistent with other legislation, that the bill would employ the good-faith principle, protecting municipal staff or their delegated authority, which they may have under this bill if it's passed, during the execution of their duties under part IV of the legislation. The bill would also relieve municipalities or their officials from liability associated with decisions by a permit official to issue or not issue a risk management order following the approval of an assessment report under the bill, and Bill 43 does not require that identified threats to drinking water be reduced to zero risk. It requires that every significant threat ceases to be significant, which is different than bringing it to zero. Can you give us some more clarity on that question, that you're afraid of that liability? In our opinion, we don't see that concern, but obviously you do, so greater clarity would help us on that.

Mr. Reycraft: I appreciate the fact that the sections you quoted are in the draft legislation. I'm head of a municipality that just experienced an 84% increase in our insurance premium this year, an additional \$95,000 in a municipality where 1% on the tax rate raises about \$17,000. That was a result of litigation that was brought against the municipality for something that I believe is unjustified. I feel that the municipality was fulfilling its obligations with respect to road maintenance at the time; however, that didn't prevent the litigation. That's our concern around this piece of legislation: Despite the assurances that you've attempted to provide for us in the legislation, there inevitably will be litigation as a result of it.

I also commented on section 19 of the Safe Drinking Water Act. It does make officials and directors of a municipality—of the owner of a drinking water system, I guess—personally responsible when there are inappropriate actions. I mentioned in the presentation that we would like to see an exemption to ensure that we aren't drawn into that same kind of liability in the Safe Drinking Water Act.

Mr. Wilkinson: Even for those not acting in good faith?

The Vice-Chair: Thank you, Mr. Wilkinson. Ms. Scott.

Ms. Scott: Thank you very much for your presentation today. It reflects what I hear, from my municipalities and municipalities across Ontario, that there's a downloading of legal and financial responsibility in regard to the Clean Water Act by the McGuinty government. Do you think that some municipalities are going to face financial hardship and could probably go bankrupt if the Clean Water Act is implemented the way it stands now?

Mr. Reycraft: As I said in the presentation, I think it's impossible to estimate what the costs of imple-

mentation are going to be at this point. We will need to see the regulations and fully understand those before we can even begin to draft what might be accurate estimates of costs.

Ms. Scott: We heard from the Ontario Chamber of Commerce that taxes could go up. Municipalities just can't afford the costs that are going to go with this.

Mr. Reycraft: If I could just comment on that, I think the issue of who pays for this is one that we're having trouble dealing with. Not all residents of all municipalities are customers of drinking water systems, so it doesn't seem logical to me to assume that we can follow the user-pay principle that someone here earlier this afternoon talked about in applying the cost to customers of drinking water systems. That leaves property taxes as the only other source of revenue we have, so it has to have a negative impact on those.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation today, and congratulations.

Mr. Reycraft: Thank you.

Mr. Tabuns: How do you believe your members would respond to being given the power to set water-taking charges, or to the idea of increasing the cost of water supplied by the municipality as a way of dealing with these costs?

Mr. Reycraft: I'm hesitating because there is not a common template for the acquisition of raw water across the province, nor for the way in which it's treated and distributed to customers in municipalities. Generally, it would add to the cost of water; that's something that we wouldn't look on favourably. I guess at this point that's not something we would encourage.

Mr. Tabuns: Do you think we should be spending more money on protecting water?

Mr. Reycraft: I think that the recommendations in Justice O'Connor's report are sound and they needed to be acted on. We agree with the principle behind this legislation, that the sources of drinking water must be better protected.

The Vice-Chair: Thank you very much for your presentation.

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ONTARIO STONE, SAND & GRAVEL ASSOCIATION

The Vice-Chair: For technical reasons, we'll allow the Ontario Stone, Sand & Gravel Association to do their presentation before the Friends of the Rouge Watershed.

You know the procedure: 10 minutes for the presentation and five minutes for questions. You can start when you are ready.

Ms. Carol Hochu: Thank you very much. Good afternoon, ladies and gentlemen. My name is Carol Hochu, and I am president of the Ontario Stone, Sand & Gravel Association. You may be more familiar with our previous name, which was the Aggregate Producers' Association of Ontario. Joining me today is Greg Sweetnam of James

Dick Construction and chairman of the board of directors of the OSSGA, along with Stephen Hollingshead of Gartner Lee Ltd., a hydrogeologist and special adviser to the OSSGA board on water matters.

We thank you for the opportunity to speak to you today on this important matter of public interest. Our association has been pleased to sit at the table during the development of this legislation, both on the advisory committee and the implementation committee. We appreciate the province's recognition of our industry's leading role in water stewardship.

Together we would like to share with you a number of key points regarding Bill 43 and answer any questions you may have.

Let me start by saying that our association supports the purpose of this bill to provide clean drinking water for the citizens of the province. In fact, we believe that the operation and rehabilitation of pits and quarries in Ontario is compatible with and in many ways complementary to the protection of drinking water sources.

Our industry makes a vital contribution to Ontario. Everyone in this room and indeed in the province is a user of aggregate. Whether it's the road that you travelled on today, the school that your children or grandchildren attend, the hospital that cares for your ailing family members or your local drinking water treatment plant and distribution pipes, all of these sectors, and more, depend on a vital supply of close-to-market aggregate. Unfortunately, these supplies are now diminishing. Therefore, Bill 43 must be implemented in a way that protects the safety of drinking water but does not unintentionally or unnecessarily reduce or restrict access to valuable and finite aggregate resources.

Aggregates and water are both essential rural resources to the citizens of Ontario; the province must manage both wisely. Planning decisions must seek balance. If the authority to prepare and implement source water protection plans must be given to local agencies, then it is imperative that the government set clear scientific regulations and guidelines to ensure fairness and consistency. We agree with Justice O'Connor that the province must retain ultimate responsibility for protecting water resources.

We understand that communities resist change. Whether it is a new pit or quarry, a wind farm or intensified residential uses, concerns are sometimes raised, and often those concerns relate to perceptions about water. However, decisions as important and fundamental as drinking water protection should be based on scientific facts, not on perceptions or biases that may be unrelated to the science.

Mr. Stephen Hollingshead: Aggregate resources occur by virtue of geology and are not distributed evenly across the province. By their nature, they also coincide with many areas that are groundwater aquifers and recharge areas. This should not be viewed as a problem, however, since aggregate extraction is entirely compatible with source water protection.

Aggregate producers are good stewards of the province's water resources. Of the thousands of pits and

quarries in Ontario's history, we are not aware of any that have ever depleted or contaminated a public water supply.

There are many examples of municipal waterworks and wells in or adjacent to pits and quarries in Ontario without any history of significant problems. For example, a 30-year history in the town of Caledon, with a major regional water supply sandwiched between two large operations, is touted as the highest-quality drinking water in Peel region. This well is currently undergoing an expansion by the region.

Aggregate extraction is not a threat to deplete or contaminate drinking water supplies. Although the industry handles large volumes of water in some of its operations, virtually all of that clean water is recycled or returned directly to the local watershed. The industry does not consume water.

Aggregate extraction is also a clean industry, as proven by the government's own extensive MISA studies. Aggregate is produced mechanically by crushing, screening and washing; no chemicals are added to the products or to the water. Fuels and lubricants for the machinery are the only chemicals used or stored at most pits, under very strict provincial regulations. Pits and quarries are not sources of bacterial contaminants, such as the type that caused the Walkerton tragedy.

Mr. Greg Sweetnam: One of our major concerns with Bill 43 is the prospect of unnecessarily duplicating existing provincial regulations. We are already highly regulated by the province when it comes to protecting water resources.

Aggregate producers cannot obtain a licence for below-water extraction under the Aggregate Resources Act until professionals carry out a comprehensive assessment of water resources. Drinking water supplies are addressed. Many other jurisdictions that have already implemented source water protection programs have concluded that aggregate extraction represents a low or negligible risk.

I would like to read you excerpts from a conclusion reached recently in a New York state hearing: "[M]ore than 300 sand and gravel mines operating in the state mine aggregate below the water table. In its experience, no such mining activity has ever resulted in the contamination of a drinking water supply.... A comprehensive review of the scientific literature, field interviews with water supply managers, and an examination of case studies from New Hampshire, Ohio and New York, concluded that they had 'found no scientific documentation containing evidence that excavating gravel above or below the water table was detrimental to an underlying aquifer.'"

Pits and quarries are interim land uses. Rehabilitation can create drinking water reservoirs. Pit and quarry lakes increase water storage in the watershed. They can help to regulate stream base flow and shorten natural drought cycles.

It concerns this industry deeply that, through this bill, source water protection plans and the local agencies that

prepare them will effectively regulate land use in Ontario, bypassing and overriding the normal checks and balances already established under the Planning Act, with no assurance of recourse to an independent hearing before the OMB. The so-called “primacy clause” in subsection 35(4) of this bill only heightens our concerns.

Furthermore, we believe that the proposed act could be misused by local authorities to implement polices that are even more restrictive than intended by the government. We urge the province to re-examine the bill and consider changes suggested by us that could alleviate these potential problems.

The government must move immediately to provide interim guidance to local authorities that are already creating source water protection plans in advance of the province’s own legislation, regulations and guidelines. A recent example includes the Grand River Conservation Authority, which has passed a resolution that would effectively place a moratorium on below-water-table aggregate extraction in the entire watershed. It is our belief, based on consultation with the Ministry of the Environment’s staff, that these are not consistent with the upcoming source water planning guidelines.

Ms. Hochu: In summary, then, the OSSGA, along with its members, who are producing essential building materials across the province, support clean drinking water for all the citizens of Ontario. We will continue to collaborate with the government to ensure that we are part of the solution. Our industry is producing its own studies to contribute to the science, and we look forward to sharing those results with you.

We believe that effective source water protection plans can be developed if, but only if, the government sets out clear, consistent scientific regulations and guidelines for local authorities to follow. The province must retain overall responsibility for the plans.

Among our major concerns with the bill is the integration of the source protection plans into local official plans. This is a complex aspect of the bill that, in our opinion, still requires careful and thoughtful revisions to ensure that the management of provincial resources such as aggregates and water are properly balanced, without duplicating existing legislation or overriding due process that currently exists under the Planning Act.

We appreciate the time to speak to you today. We’ll ask you to consider these points and others that will be set out in more detail in our written submission, which will come before the August 28 deadline, and we look forward to answering any questions you might have.

The Vice-Chair: Thank you for your presentation. We’ll start with the parliamentary assistant.

Mr. Wilkinson: Thank you for coming in. I know one of your members, Dufferin Aggregates, was in at the beginning of the day—and we appreciate it—raising some concerns.

Let me just make sure I’ve got this in my head straight: You say that particularly for aggregate extraction, specifically underwater extraction, reading the Dufferin Aggregate submission and yours, based on

science, it isn’t a threat to drinking water. So if this whole process is based on science, then you should be assured by that. I think we’ve been very clear about that.

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But I think you’ve gone beyond that by saying you’re concerned that municipalities, doing their source water protection, could jump ahead of this scientific assessment and just have a land use ban of one of your activities that would be in contravention of our provincial policy statement about making sure that aggregate supply stays close to where the work is being done. If I’m right, then, you’re calling on us at this stage to actually clarify that now to alleviate the fear you have that this could be widespread. Have I got that right?

Mr. Sweetnam: That’s right. Our primary focus is that, given that aggregate extraction is currently governed by provincial licences and provincial permits, it would just add another layer on top of that.

As you may know, aggregates can be termed “locally unwanted land use” in some circumstances where a local council may not be supportive of an aggregate application. One of the tools that they’re getting to regulate the industry here is the fact that they may have to issue a permit to that gravel pit to operate.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing before us here today and for your presentation. I see that you’ve taken a lot of initiatives on your own and you’re producing studies to contribute to the science side of the analysis. I’m wondering if you could elaborate a little bit more on the studies that you’ve been conducting.

Mr. Hollingshead: Yes. In fact, maybe I’ll just make mention of three very quickly. First of all, the industry itself has commissioned a study on water consumption to hopefully demonstrate and clarify for people that the industry isn’t a consumer of water, simply a handler of water. That study has been released in the last week. Secondly, we’re part of an MNR research study that’s going on that will bring forward case history and literature on source water protection and aggregates in other jurisdictions and hopefully carry on case history examples in Ontario shortly. Lastly, the industry funded a study in the Mill Creek watershed here in Ontario to look at cumulative effects and how those may or may not impact on source water. We’re pleased to say that the results are very positive.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for coming today and making a presentation. You note in your presentation that the Grand River Conservation Authority passed a resolution to put a moratorium on below-water aggregate extraction. Can you tell us why they took that step, what their public reasons were?

Mr. Hollingshead: I think the background to it is that the Grand River Conservation Authority were concerned about cumulative effects where there are more than one operation happening in a watershed. Both the Ministry of Natural Resources and the industry feel that the work that’s currently being done in Mill Creek watershed,

though, has answered that question sufficiently, and we don't necessarily agree that there's a need to have a moratorium at this time. In fact, the Ministry of Natural Resources has asked to have that removed.

The Vice-Chair: Thank you very much for your presentation.

FRIENDS OF ROUGE WATERSHED

The Vice-Chair: Now we're going to go back to the Friends of Rouge Watershed. I hope they are ready technically. I believe their presentation will have printed copies for all the members in a few minutes.

Sir, when you are ready, you can start.

Mr. Jim Robb: I might just need technical assistance for making sure that the machine is operating.

Thank you, Mr. Chairman and members. It shows the significance of this legislation that we're having hearings in the summertime. People have come back from holidays and things to be here.

While that's warming up, and hopefully starting, I'd just like to thank all of those involved in the preparation of the draft Clean Water Act. In particular, I think that groups like the Canadian Environmental Law Association and Environmental Defence and the coalition of groups and interests that have tried to bring forward comments together have done a really good job. I'd also like to see the draft legislation implemented promptly with some strengthening of certain sections of it so that we can get on with the source water protection plans.

Friends of the Rouge would like to support the joint statement by the coalition of groups that have brought their work to you, including the adoption of the precautionary principle. I think a lot of people who don't work in science a lot may think it's a precise thing and that ecology and hydrogeology are precise. They're far from precise, and it's really important that we have a precautionary principle within the legislation. I was a vice-chair on the Environmental Review Tribunal for several years and did hearings on these matters; as well, I've worked at the grassroots. Each year Friends of the Rouge plants about 25,000 trees and wildflowers with about 3,000 community members and schools. So I've worked from the top to the bottom and I can tell you that where the water meets the land, a lot of things go on that are difficult to predict, even for good scientists. So the precautionary principle is very important.

The involvement of First Nations should be a given. The courts have ruled on that many times.

Sustainable funding will be key for the program. I'd like you to suggest that you need to have the Ministry of the Environment and the Ministry of Natural Resources better funded, not just the conservation authorities. There's a need for more provincial leadership. I see a bit of a delegation down to the conservation authorities and municipalities. That definitely is where the water meets the land and where the plans are developed and they deserve some leadership, but we need the province to show leadership too. I think Walkerton happened parti-

ally because the province withdrew too far from the review process and there weren't enough checks and balances. So we need the province involved.

Ministry of Natural Resources involvement is really important in terms of wetlands and forest protection. Conservation authorities do that also, but we need to realize that a lot of the strength of our water protection lies in our natural forests and wetlands. If you look to cottage country, you'll understand that where there's lots of forests, the water is cleaner. Scientific studies have also shown that watersheds that are forested will be buffered against the effects of climate change much more effectively. Watersheds that have enough forest cover in them—Environment Canada says, a minimum of 30%—will be less likely to suffer extreme shortages of water that will occur in watersheds that are primarily urban or agricultural.

The rest of them you've already heard, so I'll just go through, but we're supporting the joint submission.

I'd like to see some principles more strongly incorporated into the Clean Water Act. I think the avoidance of adverse effects to human and ecosystem health should be really clearly stated, particularly not just human health but ecosystem health, because that's the front line. In a train of prevention or avoidance of impacts, if you just look to people and human impacts and the Ontario drinking water objectives, you will actually be one step back from the front line, which is the protection of the provincial water quality objectives, surface water and fish habitat. They are the indicators that will first show you the trouble signs.

Also, cumulative effects or creeping effects: Often changes occur slowly and in many different areas over a period of time and you don't observe them if you're not specifically looking for cumulative effects.

Public awareness, involvement and empowerment is really important. One of the things that troubles me a bit is I saw the ability to appeal decisions to the Environmental Review Tribunal for directors' decisions and, I think, the person who administers, but I didn't see a public provision for appealing permits to take water and those things to environmental tribunals under a particular type of condition, and I think that's really a necessary check and balance.

I've addressed the precautionary principle.

Issues of carrying capacity and sustainability: In a given watershed—the GTA watersheds are already overstressed and it really is a question of just how much more we can grow, even with improved technology and improved best management practices, and still protect our water quality and our health.

As I said earlier, restoration of forest cover, wetlands and buffers is really important. That's your natural way to purify water. The United Nations has released papers actually suggesting that communities should look at increased forest cover as one way to protect water quality for developing nations, but it also applies—New York City governs large watershed areas to protect its aqueduct and water supply, and they're way in upstate New York.

Water quality trends and reporting are important.

I think the Environmental Commissioner should have a very strong role in reviewing what's going on with the source water protection plans and permits to take water—I don't believe he has that capacity right now—and give you reports on it.

1510

I want to show you an example of a problem. It's the York region big pipe, and to me it's kind of undermining the province's commitment to clean water and water protection. The orange there is the proposed doubling of the big pipe, all the way from up near Lake Simcoe at East Gwillimbury down into Ajax and the water pollution control plant at Pickering. This is a two- to three-metre pipe. Imagine this: We're trying to protect water quality, and right now York region is building a two- to three-metre sewage pipe designed to conduct 700 million litres of human sewage a day right in the middle of an inter-regional drinking water aquifer which many communities such as Stouffville, King City, large parts of Aurora and Newmarket rely on for water. Right in the middle, 40 metres deep in a groundwater aquifer that supplies drinking water, you are putting a huge sewer. If something goes wrong with it—and they all leak over time—it's very difficult to detect and fix before the horse leaves the barn, so to speak. It's 40 billion litres of groundwater that have been removed already. That's enough to supply the eight billion people on earth with five litres for every man, woman and child. And it's polluting wells and streams.

That's not the pipe, but that's how big it is. That's a three-metre pipe. Those are councillors Erin Shapiro and Elio Di Iorio of Markham and Richmond Hill standing in an example of it.

Again, does it make sense to pipe large amounts of human sewage through a major inter-regional drinking water aquifer? This aquifer extends from all the way up near Alliston to near Lake Scugog to all the way over to the Niagara Escarpment, and this is where we're putting this huge sewer pipe, right through the middle.

Ontario's Environmental Commissioner has addressed this at a meeting of Toronto council last fall. He said that there are real issues and real problems here because the environmental assessment process hasn't been followed, and in fact it's been abused and circumvented.

York region has put the cart before the horse. Before they even got permission to double their capacity at the sewage treatment plant on Lake Ontario in Ajax, they've begun building large sections of the pipe. Before they even know they've got approvals for the treatment plant, they're building the big upstream sections of the pipe, and they plan to take 700 million more litres of sewage to the Ajax area. Those beaches in the vicinity of that plant were closed the whole of last summer and, by latest reports, all of this July, by E. coli contamination. The town of Ajax is very concerned. They've asked the province to actually bump it up from a class EA to an individual EA because of the pollution.

In the Rouge, we've taken water quality samples and sent them to expert analytic companies, one used by the

province too, probably. They've found 10 times the provincial limits of E. coli in streams in Markham. In fact, if you were to wade in that stream, and I have, to take samples, you get infections.

This is the water being wasted: Up to 30 million litres a day of clean water is being taken from the ground to lower the groundwater to construct the pipe. More than half of that was being discharged into the sewer. Enough to supply the needs of 60,000 people, or half of the entire Rouge River's flow, is being dumped in the sewer.

This is the impact area. It extends all the way from the top of the Oak Ridges moraine and Whitchurch-Stouffville all the way down into Toronto, all the way from Pickering to Richmond Hill. By allowing this, it's undermining the promise to protect the moraine and to implement the Walkerton recommendations.

That's a sample of it. You can show the overlay of the Oak Ridges Moraine: a 10-kilometre-radius impact area.

The aquifer in York region has already dropped 40 metres in the last 40 years just because of groundwater withdrawals for the growing communities of York region. Forty metres in 40 years: That's a 14-storey-building drop.

This is the drop in the Stouffville well near the headwaters of the Rouge. It's gone down 15 metres just since the start of the construction of the big pipe. Over 150 wells have run dry.

This is an example of damage to one of the Rouge streams, a blatant violation of the Ontario Water Resources Act. The MOE studied it for nine months and concluded that it was a violation but didn't take any action. The Department of Fisheries and Oceans investigated and concluded there was a violation but didn't take any action.

There's a wetland—they're environmentally sensitive areas—just dried up because of the water table lowering. No action was taken.

There's the Little Rouge River, just about running dry. Here's the headwaters, down 25 metres. Here are the TRCA reports on the declines in the stream.

Experts have said it's profoundly flawed, that it's going to have adverse effects, that the region is not following the EA process, that there's harm to fish habitat.

I just wanted to show this as an example of the problems. There are serious problems out there. Because the conservation authorities in this area are funded by municipalities and the municipalities have a big stake in development, the issues of water protection, both quality and quantity, are taking a back seat.

The Vice-Chair: Thank you very much for your presentation. Now we open the floor for questions. I think we start with Ms. Scott.

Ms. Scott: Thank you for appearing here before us today and all the work that you've done on your presentation. I want to go back to one of the things you said at the beginning on the precautionary principle, and we've already brought it up today. Could you tell me

your interpretation of the definition of “precautionary principle”?”

Mr. Robb: Well, it’s erring on the side of caution. If there’s a great deal of scientific uncertainty or if there’s a strong debate, you choose the most cautious course that will protect the resource and human health and ecosystem health.

Ms. Scott: And that’s your tie-in with the big old pipe. Predominantly, the background that you gave us is that you didn’t feel there was a proper assessment done.

Mr. Robb: Ontario’s own commissioner said that this was a flawed assessment. Top engineers have said that York region circumvented the act. So, no, there wasn’t a proper assessment.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Jim, thanks very much for that. Would this act, as written, prevent the problems that you’ve shown today?

Mr. Robb: I would like to believe it would, but I have a feeling that politics often overrules science, and in this case the political imperative of helping the developers open up land, accommodating growth in the GTA, really trumped the caution and the science that some people at the conservation authority and the Ministry of the Environment and outsiders may have raised. So it’s a difficult question. I think in too many cases politics does trump science.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks so much for coming in today and raising this issue. Of course, we’re dealing with the Clean Water Act, and you’ve raised that about the level of confidence of the public in the process. I wonder if you could comment, as we struggle and deal with the question of implementing the Clean Water Act as it’s stated, on your advice to us as to the best way to make sure that we keep the public engaged in the entire process so that it is transparent and accountable to people.

Mr. Robb: Thank you for that question. One way is that you need to make documents freely available to people. A lot of the stuff on the big pipe was withheld from the public or released only after freedom-of-information requests. Some of it was characterized by York region as proprietary or contractor interest, so you have to make sure the public has access. I think the government has tried very hard and done a pretty good job of involving the public in this bill and getting stakeholders to the table. That will obviously have to be continued within the source water protection plans.

The systemic problem I was trying to raise is that conservation authorities like the Toronto region are trying to do a good job, they’re trying to apply science, but most of their funding comes from the municipalities. Often, development decisions are already made and then they’re asked to not raise too many concerns, and their decision-making body is mainly municipal politicians who have already made commitments on development. So it’s very difficult, I think, unless you have more independent reviewers, to get the quality of science that you need and to avoid the political trumping of science.

The Vice-Chair: Thank you, Mr. Robb, for your presentation.

FRIENDS OF RURAL COMMUNITIES AND THE ENVIRONMENT

The Vice-Chair: Now we are going to move to the Friends of Rural Communities and the Environment.

You can start whenever you’re ready.

Mr. Graham Flint: Good afternoon, everyone. My name is Graham Flint. I am the chair and spokesperson of Friends of Rural Communities and the Environment. I thank you for giving me the opportunity to speak with you today.

I want to start out by being very clear that we are in full support of this legislation, in contrast to some you may see today who think this proposed legislation is unworkable or unreasonable. We support its timely passage and the extensive consultations that have taken place on such things as the draft legislation, the minister’s expert technical and implementation committee reports, and last winter’s regulatory discussion paper.

1520

We have identified a number of key areas, some of which we just want to further emphasize our support for and some that we believe would require further attention before the bill’s passage. We cannot address all these issues and details at this time, but we will highlight them today and follow up with our written submission. We also want to note that we share many of the same, common positions as the signatories to the ENGO source water protection statement of expectations.

FORCE was established in June 2004 as a federally registered not-for-profit corporation. We are a citizens’ advocacy group with hundreds of supporters in rural Milton, Burlington and Hamilton. We are professionally and substantively opposing an application for a greenfield aggregate development in the natural heritage system of the greenbelt protected lands. We are not anti-aggregate nor anti-road, but we do have substantial concerns about this particular development at this particular site for what we believe are substantive reasons.

Current studies project an impact on up to 3.6 million gallons a day from the proposed quarry operation. This quarry operation goes into the same aquifer that feeds the municipal water system of Carlisle, a community of 3,000 people. Its water use is only 500,000 gallons per day. It is estimated that the level of the groundwater table could be affected up to 2.5 kilometres away from the site. This hydrogeological impact will negatively affect a broad range of existing features and land uses, including the municipal wells of Carlisle, the hundreds of residential wells that surround the site, several communal wells in the area, and numerous environmentally sensitive and provincially significant wetlands.

On the next two slides in the handout I’ve given you, I’ve shown you in diagrammatic or illustrative form the features I’m speaking about. The first diagram shows the wellhead protection zones that came out of the municipal

study of the protection zones for the municipal supply for Carlisle. The next diagram is the result of our own work and research, showing a GIS output with the various features that I've commented on. On that area, you see the rectangle sort of in the centre of the screen with a purple line. Those are the boundaries of the proposed quarry site. The green areas are the environmentally sensitive areas. The red blobs are the provincially significant wetlands. The blue areas are the regionally significant wetlands. You'll also see an overlay of that same wellhead protection zone on the diagram, the hatched area that runs through the proposed quarry property, as well as all the purple squares, if you will, representing people's homes. You can assume there's a well associated with each one of those homes, since they're all on private systems outside the community of Carlisle.

The act currently contains many important provisions regarding its integration with existing laws, policies and plans. We completely support that whenever conflicts arise, the highest standard of protection for drinking water should prevail. If drinking water is irreversibly harmed, it cannot be rectified or replaced. We support a scientific and data-based approach to the source protection plans, but we'd also like to echo the precautionary principle: Where there are risks or threats of significant or irreversible damage to existing or future sources of drinking water, a lack of 100% scientific certainty should not be used as a reason to postpone or avoid prevention activities to that risk or threat. Just because you can't be 100% sure, that doesn't mean you shouldn't avoid the risk. The possible negative outcomes of such threats are simply too great to take that chance.

The current form of the act is very weighted around municipal drinking water systems. We do understand the realities of implementation, that there are limited resources, and that achieving the greatest protection for the greatest population—the biggest bang for your buck, if you will—is desirable. But we think some reasonable amendments would afford greater protection to those with private systems.

Under current provisions in subsection 8(3), a municipality can pass a resolution to add drinking water systems that are not yet existing or planned municipal drinking water systems to a risk assessment report. It would be advisable, in our opinion, to add other mechanisms such as public petition or ministerial order—all subject, of course, to certain explicit criteria—that would allow additional clusters of source water locations to be part of an assessment plan. The intention of the cluster amendment would be to try and capture those residential densities and groundwater usage densities that approximate or begin to approximate those of rural settlement areas.

Many provisions within the act limit the ability to prohibit, regulate or restrict land uses to only those of significant drinking water threats such as to surface water intake protection zones and wellhead protection areas. We feel this should be reviewed and broadened to

include areas such as groundwater recharge areas as well as highly vulnerable aquifers.

We are fortunate in our particular situation to have a good working relationship with the local individual farmers and with our regional federations of agriculture. The farming community is as concerned as we are about having plentiful and safe drinking water for their use as well as for use in their operations. They are very sensitive to the blame game post-Walkerton. Source water protection will succeed if we work together as partners. As such, we feel that source protection committees should include farm community representation.

In addition, risk assessment reports and source protection plans need to recognize and appropriately value the practices and processes that are already in place. Examples would include environmental farm plans, best management practices and sound nutrient management plans.

Sections 83 and 88 deal with expropriations and limitations on remedies. Some wellhead protection areas and other vulnerable areas may require lands to be taken out of agricultural production or experience changes in production for source water protection purposes. These sections should not preclude any of the kinds of land leases such as used in hydro rights-of-way and other similar circumstances. These approaches, in our opinion, would engender support from the farm community for source protection initiatives. As a theme, we feel that source protection plans need to reflect a stewardship and partnership orientation while still carrying a regulatory impact.

We understand that the regulations in this act, rather than the legislation itself, will prescribe how activities and land uses will be regulated. However, it bears repeating that aggregate development, despite the prior speakers, while important to our everyday activity and our provincial infrastructure in general, poses a risk to source water and drinking water and should be prescribed as subject to risk and subject to management prohibition and regulation. This is particularly true for those operating below the established water table.

Many groups such as ours will be watching to see how the government responds to the aggregate industry's efforts to avoid or minimize the regulatory burden that is put on that sector. We will also be watching to make sure that the transition regulations for sections 49 to 51 are not so broad as to provide loopholes from source water protection plan obligations for existing or pending applications.

The Ministry of the Environment's expert technical committee included aggregate development, notably that which is below the water table, on the list of provincially significant risks. We support that work. Aggregate development is inherently a risk for both the quantity and quality of water. This is due to the opening of pathways to drinking water sources and due to the inherent nature of on-site activities. I would suggest to you, by the way, that blasting, which is the first step in most quarry operations, does introduce chemicals into the environment.

While we support regulating drinking water threats, we do have some concerns about the permit approach that's currently proposed. In our opinion, the permit approach does not seem feasible, and this will be of concern to many sectors, and I believe you've heard some of that feedback. We feel that a risk management plan approach that is legally binding and backed with orders for noncompliance would be consistent with the proposed interim protection measures and would be more reflective of a partnership and stewardship approach to source water protection.

The Acting Chair (Mr. Ernie Parsons): One minute.

Mr. Flint: Individual landowners, farmers and other operations would be able to evaluate their risk profile in relation to the vulnerable areas that are identified, and then evaluate a range of risk management strategies and develop a plan that is most effective and cost-efficient for both them and the public. This approach would allow for appeals to the Environmental Review Tribunal but also carry strong enforcement.

Protecting source water is an immediate imperative. There should be no delay in the way we do this, but we do realize that study is required in order to do this protection appropriately. The act requires a bunch of promising measures now, but we think there are more things that can be done.

In our particular situation, we have the authorities involved in source planning work. The Grand River Conservation Authority is quite advanced, but the Hamilton and Halton conservation authorities are much earlier in their work. We doubt whether they'll be able to be done by 2009. So this leaves us at risk.

We believe that the following three basic actions should take place—

The Acting Chair: We're out of time.

Mr. Flint: Okay. Then all I'll say, in wrapping up, is that we believe that this act is critical in protecting our drinking water, we think its passing should be immediate and we strongly support it. We appreciate the time to speak to you.

The Acting Chair: Thank you. We have five minutes for questions. I believe it's the official opposition first.

Ms. Scott: Thank you for appearing here before us today. I know it's a large bill to decipher and give us 10 minutes' feedback on, but I appreciate some of the points you made.

You talked about more of a risk management approach, and I've been speaking with a lot of farm groups and they want a proper appeal mechanism. Is the Environmental Review Tribunal where this appeal mechanism should go? There are agriculture or farm tribunals that exist now, and there is more of a co-operative atmosphere. Do you think that might be a better approach to take?

1530

Mr. Flint: I think that is the theme of the feedback I was giving in that area. A pure permit approach that's either "yea" or "nay" with no ability to engage in subsequent conversation, appeal or discussion is a risk. I

think a much more partnership-oriented approach, where there's a variety of plans, a consultative period, you try to resolve the issues, and then if not, you go to some sort of appellate process—yes, we would recommend that.

The Acting Chair: Third party?

Mr. Tabuns: I have a question, but first I just want to say that it would be useful for me if you would take your recommendations and put them in legislative language, so that when I make amendments, I've got things right at my fingertips. Having said that, the question I have about this permit approach versus a risk management plan, I have concerns about a risk management plan getting to be soft, maybe even soggy. Why do you think it's a better approach?

Mr. Flint: I think our concern really derives first from just the volume that might happen in the permitting approach. It could be overwhelming with the number of permits that will be applied for in a short period of time, as the legislation is rolled out and enacted. We think that what we really should be doing is, rather than dealing with all things that would need to be permitted, big or small, riskful or non-riskful, we should identify those high-risk areas, try to do plans around managing that risk and then work at it through that way in a more consultative process. I think it's a logistics thing that brought us to this thought process that it would just be overwhelming to try to handle the number of permits we expect might be applied for.

The Acting Chair: The government side? Ms. Wynne.

Ms. Wynne: Thank you very much for being here. I just wanted to make sure you knew that this morning the minister did talk about the fact that we're looking at risk management plans as a—

Mr. Flint: I did not know that. That is wonderful.

Ms. Wynne: Yes; she did talk about that.

The second thing: You talked about the restrictive land use and regulated activity, sections 49 and 51. I just wanted to clarify: You think they're fine the way they are?

Mr. Flint: I think they're fine the way they are, but they need to go broader. Right now they're limited to surface water intake areas and wellhead protection zones. We think significant at-risk aquifers and recharge areas should also be included in those prescriptions. So I like what's there; I think it should apply to other hydro-geological features.

Ms. Wynne: Okay. And the third thing I wanted to say: You didn't quite get your presentation finished. Was there anything else you wanted to add?

Mr. Flint: Just that it's very important that this happens. We're in a situation right now where we're finding that the regulatory bodies which we think should be protecting us from some testing that's going on in relationship to this development seem to feel that they can't do what they need to do. We've got a groundwater recirculation system where they're proposing to pump water that enters the quarry back into the aquifer, and we're going, "Whoa, isn't that nervous?" MOE says,

“Yes.” Thermal plumes and bacteria: There are a lot of issues. The only tool that seems to be available is a permit-to-take-water refusal, and that only kicks in if they take enough volume of water. If they’re under the volume of water, 50,000 litres or whatever the value is, then they don’t even need a permit for that. So my last point was going to be that something needs to be done, that right now we think our sources of drinking water are threatened. There isn’t an appropriate framework in place today, and this legislation is needed.

Ms. Wynne: You think it’s a good start. Great. Thank you.

The Acting Chair: Thank you for presenting to the committee.

ASSOCIATION OF LOCAL PUBLIC HEALTH AGENCIES

The Acting Chair: We will move next to the Association of Local Public Health Agencies, represented by Linda Stewart. Good afternoon. You have 10 minutes, followed by five for questions.

Ms. Linda Stewart: Thank you. Good afternoon. My name is Linda Stewart, and I am executive director of the Association of Local Public Health Agencies, also known as ALPHA. With me today is Ralph Stanley. He is a supervisor of public health inspectors with Peel Public Health. ALPHA represents the interests of boards of health, medical officers of health and affiliate groups who work in public health. I’m pleased to be here this afternoon to address you on the very important issue of source water protection in Ontario.

Ensuring safe drinking water has long been a mandate of public health under the Health Protection and Promotion Act. We have a strong interest in source water protection and are very pleased to see Bill 43 put forward to ensure the safety of existing and future sources of drinking water. This proposed legislation goes a long way to protecting sources of drinking water in Ontario, thereby protecting and influencing the health of Ontarians.

The existence of Bill 43 reminds us that we cannot take sources of drinking water for granted. When I think of the things that are most important to sustain human life, safe drinking water is very close to the top of the list. A person can survive for a couple of months without food, but only a few days without water. As an essential element of human survival, access to safe drinking water is a basic human right.

I haven’t told you anything you don’t know. Even though we all understand this, other priorities are sometimes put ahead of maintaining sources of drinking water. This is evidenced by the pre-existence of legislation that contains environmental and source water protection elements. These acts are listed in section 35 of the proposed legislation and include the Oak Ridges Moraine Conservation Act, 2001.

I happen to live in the community of Markham, and I remember the sense of panic in that community when

citizens became aware that the Oak Ridges moraine and the source water there was in danger. You will recall that it was necessary to pass legislation to put a six-month moratorium on development until the government could create a plan for the moraine. I can tell you that citizens in Markham continue to keep a watchful eye on this important resource and have a new respect and appreciation for the role of conservation authorities.

It’s hard not to review Bill 43 with the eyes of a citizen but, in my professional role, I have reviewed the draft legislation with a public health eye to the potential implications for public health units across Ontario and, specifically, for boards of health and medical officers of health.

The proposed act is comprehensive and enables excellent processes for risk assessment, planning, monitoring and follow-up regarding source water protection.

The first comment I would like to make is in regard to the consultation processes for the development of the terms of reference, assessments, and plans for the source protection authorities and the drinking water source protection committees. The proposed legislation stipulates that the municipalities falling within the geographic boundaries of the source protection authority be consulted during the development of these key documents. It should also be mandated that consultation with boards of health be part of these processes. In this way, boards of health and medical officers of health will be fully informed and will be able to lend their considerable expertise to the processes involved.

Given that boards of health are one of the options in the proposed legislation for the monitoring of any approved source water protection plan, it stands to reason that they should be involved in the front-end process. Boards of health should also be consulted on any amendments to the terms of reference, assessment or plan.

The second area I would like to address is that of issues identified during the assessment work described in the proposed legislation. Where an assessment identifies a significant threat to source water, especially where that threat poses imminent drinking water safety concerns, the medical officer of health should be provided with the information in a timely fashion. Under the Health Protection and Promotion Act’s mandatory health programs and services guidelines, boards of health are responsible to ensure that community drinking water systems provide safe drinking water. It is imperative that the medical officer of health be informed of any known threats so that he or she may do their job to minimize water-borne illness.

I am sure you’re aware that currently a number of agencies play a role in ensuring the safety of drinking water in Ontario. It is important that these agencies continue to work together. Public health units already have working relationships with many of the players involved in protecting drinking water. These relationships should be encouraged through the legislation. In addition, ongoing working relationships between all the ministries

involved in the protection of drinking water should be encouraged through the legislation.

The last item I'd like to address is that of resources. The establishment of source protection agencies, drinking water source protection committees—you might want to streamline that name—as well as the carrying out of assessments and ongoing monitoring, is going to require an increase to both financial and human resources for the organizations involved. The proposed legislation, if passed, will carry with it a significant front-end resource burden to establish agency and committee infrastructure and to carry out the initial assessments across the province. I would ask that the government recognize this front-end requirement and ensure that appropriate levels of funding are in place when the act is passed and comes into force. Ongoing funding to support the work of the source protection authorities also must be established.

1540

I'd like to close by sharing a recent experience with you that really brought home for me the importance of protecting source water and drinking water. My step-daughter has been living in Indonesia for the last two years. In July, she and a friend visited my home for a few weeks. When she first arrived, she thought she would play a joke on her friend. What she did was go over to the cupboard, pull out a drinking glass, fill it with water from the tap and start to drink. I watched as her friend looked confused and concerned, and then of course when they figured out the joke, laughed. In Indonesia, this act would have been a silly act. This act would have been a guarantee that she would have been sick. In my Ontario kitchen, it was a safe, simple, everyday act, a simple act that most of us take for granted. Bill 43 is important. It recognizes that source water protection and clean drinking water cannot and should not be taken for granted.

Thank you for your attention.

The Vice-Chair: Thank you for your presentation. We have enough time for questions. I believe we start with Mr. Tabuns.

Mr. Tabuns: A number of people who have spoken today have called on the government to incorporate the precautionary principle directly into the language of this act. I assume that your organization would support that insertion as well?

Ms. Stewart: Yes, I think that would be a very important addition.

Mr. Tabuns: There have been some questions around the table about what is the precautionary principle. Maybe you could just speak to it very briefly.

Ms. Stewart: Actually, it depends on precisely what precautions you want to take. I think of it in terms of public health, and I think of the precautionary principles around ensuring that, as I've said, the medical officers of health are informed of issues and that they are involved in the planning processes. Actually, you might be able to add a bit.

Mr. Ralph Stanley: Yes. From a public health standpoint, if you don't always know the science or the literature, you have to take a precautionary approach

when you're dealing with something. It could be drinking water; it could be high tension lines for a hydro corridor. If you don't know the exact outcome, sometimes you have to take a slow approach, review the research and, if research isn't there, you have to take an approach that is probably a little more prescriptive than you would normally do.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you so much for coming in. Since we're sharing, I can tell you of my own personal experience with our own medical officer of health, Dr. Rosana Pellizzari, in Perth county. Unfortunately, as a community, it was discovered that chemicals had been injected into our water system, and our medical officer of health was a tremendous leader in keeping our community safe and making sure that people didn't become ill, because the things that were supposed to happen, happened, like things that we learned from Walkerton.

Going beyond that, I just want to let you know that, as we mentioned to the Ontario Medical Association, section 80 of the bill does require that the ministry be notified by anybody acting in an official capacity who sees that there is a threat to drinking water. The assumption would be, of course, that the ministry would tell the local medical officer of health. It usually goes the other way, because of our spills action reporting centre. So I guess your position would be we should make sure that there is some redundancy there, to make sure that it must happen. We're glad that that was brought up.

About your question about the role of medical officers of health, do you think they should be on the committee or do you think we should make them ex officio to all the committees, so that they're there as the expert as opposed to being one of the participants, having a vote and going to these meetings? Or should the medical officers of health actually be put in so that they're ex officio? Do you have a comment about that?

Ms. Stewart: This is an issue I have given some thought. I believe that the ex officio role is the more appropriate one, that they be there as a resource. Further, I would suggest that they also be given a choice as to whether or not to participate or to send a delegate, depending on the level of expertise that any individual medical officer of health might have on the specific issues.

Mr. Wilkinson: Great. Thank you.

The Vice-Chair: If there are no more questions, that's good. Thank you very much for your presentation—oh, my apologies.

Ms. Scott: No problem.

The Vice-Chair: It's all yours.

Ms. Scott: I could not agree more with your statement that the front line of our health is the water system and to have safe, clean drinking water—there's no question about it—which brings us to the concerns that you mentioned about costing. How do you feel about—the municipalities are really going to bear the burden of the cost of the implementation of this, and the liability also? We've brought this up many times today, but I want to

reinforce the point that I don't think we can accomplish source water protection in the Clean Water Act without more provincial involvement. Do you think it's possible the way it is? Do you think that the province should have more of a role in the Clean Water Act?

Ms. Stewart: I would like to see the province have more of a role. I agree with you that it's not going to be possible to achieve everything, given the current state of resources. Certainly, we know that there are shortages of inspectors in all areas. There are shortages of other key staff who would be needed to implement some of these things. Having said that, I still think it's extremely important to move ahead with the act and get something in place that will provide a framework, if you will, to get things moving.

I wouldn't want to see a large burden fall on municipalities. They already think they have a large burden with public health, and I'm well experienced in what that has done. I tend to be a person who likes to see a sharing of responsibility happen, especially when it's a local initiative and a local issue, although there is clearly a strong role for the province, especially up front.

Ms. Scott: Thank you very much. I appreciate your being here today.

The Vice-Chair: Have you finished your questions? Thank you, Ms. Scott.

Thank you very much for your presentation.

NORFOLK FEDERATION OF AGRICULTURE

The Vice-Chair: Now we have, I believe, the Norfolk Federation of Agriculture. Are they with us? Welcome, sir. You can start whenever you're ready. As you know, the procedure is 10 minutes for the presentation and five minutes for questions.

Mr. Vic Janulis: Very good. Thank you, sir.

My name is Vic Janulis. I'm with the Norfolk Federation of Agriculture. I'm also a director with the Ontario Federation of Agriculture. At our county in Norfolk, we've been working on a lot of self-management systems. In one of them, we implemented an irrigation advisory committee, a pilot we started about three years ago, which is a farmer self-management system of water use in irrigation. The irrigation advisory pilot for self-management of agricultural water users within the Big Creek water basin is a committee to provide a source of organization, education, co-operation and mediation for agricultural water users so they may best manage the available water resources amongst themselves without disrupting the natural functions of the streams during dry periods.

This irrigation advisory pilot project has been a great success. The agricultural water users have been organized into functioning working groups, and co-operation has been fostered within these groups. The irrigation advisory committee has been a tool for dissemination of information and education, such as best management practices and other things amongst agricultural water

users within the water basin. The IAC has shown its ability to mediate disputes within the farming community. But above all, the IAC has been shown to be a tool for the agricultural water users to manage the available water resources amongst themselves without disrupting the natural functions of the local streams. This is just an example of how we can self-regulate water resources.

To further expand the IAC—irrigation advisory committee—idea, we've partnered with the Oxford, Brant and Elgin federations of agriculture, along with the Long Point Region Conservation Authority, the Grand River Conservation Authority and the Catfish Creek Conservation Authority, to expand the irrigation advisory idea into those counties to help them coordinate their water use. This is just an example of how we can, and do, self-regulate.

Down on the farm, we live where we work. We drink the water that sits below our soil. We eat the food produced on our land. Today you can track a single apple in a grocery store back to its producer. You can track milk back to the cow it came from. You will be able to track vegetables back to the actual field they came from. A steak can be tracked to the actual animal it came from. Most of these changes have been brought about voluntarily within the farming community because this is what our customers are asking for. Farmers have always been on the cutting edge of adaptation to new techniques and technologies.

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All this, and Bill 43 basically tells us that you cannot trust us to be vigilant stewards of the land and water we use. You say we need to be further regulated, and if this regulation causes undue hardship through restriction of land use and devaluation of property values, you say we are not entitled to compensation.

In Norfolk county, we sit on what is called the Norfolk sand plain. So basically this piece of legislation would de facto affect the whole county by way of the way this bill is written.

You have already heard the key concerns the Ontario Federation of Agriculture has with this bill and the amendments it recommends be made to the bill before its final passing. The Norfolk Federation of Agriculture and I wholeheartedly endorse these recommendations and hope that you do implement them before the bill is law.

The bill states its purpose; it says, "The purpose of this act is to protect existing and future sources of drinking water"—at first glance a noble sentiment but a statement whose implications in Norfolk could be disastrous under a regime where restrictions could be imposed county-wide without compensation or recourse to appeal.

Should the precautionary principle and not science-based common sense be used to impose any restrictions on land use in our county? I'm afraid that the discontent in the rural communities that is out there now may continue to boil over even more.

You say this could never happen, that something could cause us a concern. When petty bureaucrats are given

free rein, abuse is sure to follow. You only need to look at Windsor and that egg salad boondoggle, where bleach was poured on sandwiches by health inspectors because they were overzealous and the legislation empowered them to become so. I foresee the proposed permit system open to such forms of abuse.

If you are to impose restrictions on farmers who have a proven record of being excellent stewards of the land and water they themselves live on, these impositions need to be based on cold, hard science, and the onus should be on the ministry to prove that these impositions are warranted. Failing that, full compensation needs to be attached to any and all impositions.

In Norfolk, our trust in the Ministry of the Environment's ability to be fair in its dealings with farmers has been sorely tested. There is a regulation that farmers who use irrigation water are required to have a permit from that said ministry to take water. This spring, after processing of the permit-to-take-water applications, a number of farmers were shocked to find that their 10-year permits were reduced to two. Some of these permits the ministry approved were on water-retention structures that were built with co-funding from the ministry. Permits were sent out at busy times of the year, with a window of appeal of only 14 days, which included mailing time and weekends. Luckily, two of our farmers managed to react in time to appeal their permits through a formal hearing process. But this hearing process is very daunting; as the ministry told these two farmers, "You'd better have yourself a good lawyer."

In Norfolk, we have been proactive in our county by organizing clinics in partnership with the Ministry of the Environment to see that all irrigation users in the county abide by regulations and get all proper permits in place. Our reward for being good, law-abiding citizens? A moratorium on the issuance of new permits to take water, be they municipal, commercial or agricultural. Some bureaucrat in the ivory towers of Toronto decided that we are using more than 10% of the available water resource in our county, and therefore a moratorium is called for. However, extensive hydrogeological studies funded by that very same ministry to the tune of several million dollars clearly shows that at best we are only using 7% of the available resource.

We currently have a fish farmer wishing to sell his operation, but because existing permits cannot be transferred and new ones will not be issued, he is caught in a classic bureaucratic Catch-22.

Needless to say, our local farmers and municipal councillors are upset. We are currently going through a rationalization of the tobacco industry and looking to vegetable processing and other industries to further diversify our economy. Many of these new industries require access to abundant sources of clean water. From one side, the face of the powers that be is telling us, "Yes, diversify. Do other things," but from the other side they're saying, "No, there will be no new development of your county because you will not be allowed any new permits."

The goal of clean, sustainable drinking water from now into the future is a commendable one. However, history has shown us that bureaucratic abuse of process is prevalent and ongoing. Our mistrust of the ability of the Ministry of the Environment to be fair and impartial is science-based. They have proven that they cannot do so. So I urge you to make the amendments to the bill that the Ontario Federation of Agriculture is proposing. The wording of this bill needs to be tightened up, or abuse of process will occur. Do not pass a bill that allows de facto annexation of private property without compensation.

Thank you for listening.

The Vice-Chair: Thank you for your presentation. Parliamentary assistant?

Mr. Wilkinson: Thanks, Vic, for coming in. We appreciate it. Ron was here earlier on behalf of the Ontario Federation of Agriculture, and we appreciate the fact that you're here.

I was wondering if you could just give us some more background about your local initiative in regard to irrigation. It sounds similar to my own county of Perth, where we have our peer review committee, which is made up of farmers. You were talking, and the minister mentioned it again this morning, about how we all recognize that farmers are the best stewards of the land and water because it is their life, their lifeblood, and they're attached to it, unlike some of our friends from urban Ontario, who are a little bit more detached from it, as you and I know. So can you just tell me about how that works? They'll be struggling with models about making sure this is fair and how to implement, but who picks up the cost? Are people volunteering their time to serve on this?

Mr. Janulis: Because this would be requiring someone to leave their premises during the busy time of year to go out and mediate a dispute or whatever, we have acquired funding from different sources to pay people to do this. They will have to walk away from their operations when they are working to go and do a mediation. To ask them to do this voluntarily is grossly unfair.

Mr. Wilkinson: Is it the county or OMAFRA? Who helps you with that?

Mr. Janulis: We have funding from the Canada-Ontario water supply expansion program, COWSEP, so that's where the funds are coming from for the next two years. With those dollars, we are expanding into the three surrounding counties.

Mr. Wilkinson: And a model like that, you think, is where we should be going to make sure we have that local buy-in and that people are working together.

Mr. Janulis: It's good because, if there is a problem between farmers, we can go out there and resolve it before it becomes an issue where the ministry has to be involved. It's much better that we can go in, we can talk, without somebody coming in with a big stick. We're strictly giving advice. It's not mandatory that they take it.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thanks, Norfolk federation. Being from the area, I do know a bit about the self-regulation pro-

gram where a number of farmers, say, on one stream—seven or eight farmers—have a subcommittee and they coordinate access to the water to ensure that the one furthest downstream gets access to good-quality water. It's a system I've seen in Indonesia, for example. This is an ancient system in many parts of the world. In fact, irrigation-based agriculture, whether it's carrots or potatoes or tobacco, has been present on that sand plain since at least the 1950s.

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We have encouraged farmers, through government, to get these permits to irrigate. Many farmers have updated their system; they've co-operated with the government and the conservation authorities. To have a moratorium brought in based on a kind of top-down decision that was made prevents any access to new water for, say, fruit and vegetable processing. Very simply, on that Norfolk sand plain, which covers a number of counties—Oxford, Elgin, Brant, Norfolk—if you don't have a permit or if you are not allowed to irrigate, you do not farm. It is that simple. It's irrigation-based agriculture. There's no other way you can grow these crops on that sand without irrigation. It's a very serious situation.

It's an excellent pilot project where farmers pulled this together themselves through the Ontario Federation of Agriculture, the conservation authorities and the Ontario government. We have a situation now where we can learn from this model. But, essentially, the people down there now are the canary in the coal mine. If they have this permit yanked, they're done, the land is worthless, because you can grow nothing there without irrigation.

Obviously, the Norfolk federation supports the OFA. Again, I don't know whether you have any specific local recommendations. We do know that the OFA wants any reference to "permits," "permit official" or "permit inspector" taken out as far as their application to agriculture.

Mr. Janulis: The whole idea that someone would have that type of power over your operation, that some bureaucrat can basically tell you yes or no as to what your livelihood is or can be, is frightening. No, it's not something we could endorse in any way, shape or form.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming down here today to make the presentation. The whole question of compensation for land whose use may be changed by this act: Is that in very many ways the central question for the farmers?

Mr. Janulis: It is, because if a municipality wants to, say, set up a new well source or whatever, I don't see why the surrounding farmers need to be imposed upon. If they want to set up this new system, why don't they just get control of the land, be it long-term leases or something else, so that they have absolute control of the whole area that comes into question? Why do we have to suffer, not due to our own fault? We're not doing anything wrong.

The Vice-Chair: Thank you, sir, for your presentation.

HALTON REGION FEDERATION OF AGRICULTURE

The Vice-Chair: We have right now the Halton Region Federation of Agriculture, if they can come forward.

You can start whenever you're ready.

Mr. John Opsteen: Thank you, Mr. Chairman, committee members, ladies and gentlemen. My name is John Opsteen. I am currently the president of the Halton Region Federation of Agriculture. The Halton Region Federation of Agriculture consists of about 400 member farmers and their families.

Bill 43, the Clean Water Act, will greatly affect the farming community as to how we farm and how we do our business. There are many technical questions that need to be addressed about the details and the all-encompassing effect on farming in Ontario, but my presentation today will be addressing a more ideological concern about the act and its process. The three main topics that I will attempt to pass along to the committee are the timing of the process, the issues surrounding enforcement, and compensation.

I know that this has been a long day and a long process, but the timing of these hearings in late summer is very difficult. Farming is not a 9-to-5 job, as you probably all know, and at this time of year farmers are still on the land, harvesting grains, making hay and working long hours. There are only so many hours in the day, and the legislation is going to have a very profound effect on farming. It's a shame that farmers, the most greatly affected, would have trouble being part of this process. I know the old joke in Ontario is that there are two seasons—winter and construction. In the farming community, that's also the case. We have two seasons: the farming season, basically most of the spring, summer and fall; and then we have the meeting season, which is most of the winter. Hopefully we can get more discussion of these kinds of things during that time, when more farmers are available.

Secondly, the issues surrounding enforcement: It's a different world that we live in now. Twenty years ago, "biosecurity" was a word that was only used probably in high-level labs, but today in agriculture it's commonplace. Because of issues like avian influenza—myself, I'm a chicken farmer, and I must document all visitors to my farm to ensure they're safe to come into my controlled access area around the barn. I keep the barns locked to ensure that no one brings disease into my farm. Other types of farmers have similar concerns; for example, weed transfer etc. Allowing enforcement officers to come onto farms without proper understanding of these issues could lead to very serious problems for farmers and for the agricultural economy in general. Biosecurity must be addressed in the enforcement of this act.

Lastly, the issue of compensation: I'm aware that you've heard many delegations today, and you will hear many more over the next week, so I'll try to put a little

bit of a different slant on it for you, about the lost opportunity because of further restrictions.

If you'd all just imagine that we are at a party—and not a political party; kind of a fun party—

Ms. Wynne: There is a difference.

Mr. Opsteen: There is a difference, definitely.

Someone has the idea to order pizza. So the party's host—and we'll say the government is the host today—gets some input from some of the guests on what toppings to order on the pizza. Then the host takes that input and makes the call on what to order and where to order it from. Now, if it's like the parties I have been to, when the pizza does arrive, folks basically attack it and grab the boxes and you have the delivery man left standing there, still with the bill. But again, at the parties I go to, everyone throws in a few dollars and no one is left holding the bag and having to pay for the whole shot.

This process is a very simple form of something we are discussing today. However, instead of passing the hat and society as a whole sharing in the cost here, the farmers, through added restriction on their own land, are being forced to foot the bill while society enjoys the pizza. I don't really feel that this is fair. If a farmer has restrictions placed on his or her farming operation, and these restrictions are in place for the betterment of society, and these restrictions cause financial losses, then it makes sense that society should reimburse the farmer for those losses. For example, in an area of a municipal well, if a farmer may not use his land or may not use fertilizer or has other restrictions, it would be expected that there would either be no yields or yields would be much lower and quality would suffer. Should not the farmer be entitled to fair compensation?

I look at this compensation as preventive maintenance. In my barn, I fix things, hopefully before it's needed, and I update equipment regularly because I don't want to get into those bigger problems later. As a chicken farmer, with that great heat, I'm glad I had the generators and the good fans and things like that which I have updated. I think the money that I spend is money well spent, and I think that compensating the farmers is also money well spent for the government and for society at large.

When we look at these kinds of things—we have the Expropriations Act. I don't know a lot about it, but the way I understand it is that the government would take ownership of a piece of property, compensate the owner, and the government takes control of it for the public good. They can also take control over property for the public good without taking ownership, through restriction, without having to compensate the owner. It's a very fine difference between those two things, but the government still has control over that property for the public good. Just because the law, as written today, doesn't require compensation doesn't mean it can't compensate farmers. I think it should be added to the Clean Water Act. There are many ways to figure out this compensation and many ways to figure out where that money comes from. I heard the discussion earlier, and I'm not sure where that goes. It depends what side of the table

you're sitting on, I guess. But I do endorse the Ontario Federation of Agriculture's thoughts on compensation discussions that way.

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In conclusion, I'd just like to say that with all these issues I've brought up, I don't think it will hinder the government's ability to do what is best for society now or in the future; I think it allows the province to do it in a more responsible manner. As farmers, we are concerned about water quality because our families drink from wells and our livestock need high-quality, good water to be healthy. We're willing to pay our fair share, but so must all Ontarians. The costs, both real and opportunity, should not be left for the small minority, the farmers, to bear while the majority of society gets to—I'm going back to my earlier thing—eat the pizza.

I hope you take my comments into consideration, and I'll be happy to answer any questions. But I also would agree with my colleague from Norfolk county. I do agree with the recommendations for the amendments from the Ontario Federation of Agriculture. I didn't hear all of their presentation, but I have looked it over. Thank you.

The Vice-Chair: Thank you, Mr. Opsteen, for your presentation. Now we have time for questions. Mr. Barrett.

Mr. Barrett: I thank Halton federation for coming forward. There's no question that toward the end of the summer is the last time someone working on the land would be able to come out or consult, even before coming out to a meeting like this.

As you know, this legislation has nothing in it as far as compensation. There is nothing written within the legislation, in contrast to, say, Manitoba, which has, right in the legislation, the set-up for a trust fund, if you will, to assist people to clean up where need be to ensure people in town have clean water.

The other side of the compensation that you were referring to is where you have these kinds of restrictions on what you do with your land, again, to protect water for people in town. I know the OFA has made some suggestions of how that can be done rather than essentially a taking. In the province of Ontario we do not have property rights, so government can take and rezone, can greenbelt or whatever, as you may know in your neck of the woods.

The one proposal is—I think of the town of Simcoe. Water supply is based on wells. To protect the area, years ago they bought the land where the wells were. More recently, that land got sold for some reason, and now it's back on the private landholder to provide the assistance.

Do you see it as a viable situation for municipalities, if they want to protect the water, to either purchase that land or, if the landowner doesn't want to sell, to at least lease water rights to protect it?

Mr. Opsteen: I think those options of long-term leases are a possibility. The previous speaker spoke about long-term leases. The farmers are providing that service in that restricted area for the good of everyone. I think in

general that everyone can pitch in a little bit to help out for those opportunity costs lost and actual costs.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks very much for coming down and making a presentation today. This whole question of biosecurity is an interesting angle; I haven't heard it from others. How do you suggest it be addressed in the bill?

Mr. Opsteen: Well, that's a tough one. I know when the generic reg. discussion was happening at the conservation authorities, I went to a couple of meetings and brought up the biosecurity issue with their officers, and I was greeted with a few blank stares and they weren't really sure. We talked about it after, and there are ways that the farming community and enforcement officers can work on this. It's not going to be cost-against-cost or anything like that; it's just taking the time to think, contacting people, making sure you're wearing clean clothes and things like that. I think in the act, just to state that biosecurity of farms will be respected, something to that effect, makes all the conservation authorities take notice of that and investigate.

Mr. Tabuns: That's good. Thank you.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming, John, and thanks for the leadership role you're playing in Halton.

At the beginning of the hearings this morning, the minister was here, and I just want to quote what she said. I'm sure it will make your members happy: "We will introduce changes"—which means the government will propose amendments—"that will require officials and inspectors to have a specified set of qualifications, including training in biosecurity and the appropriate health and safety protocols, in order to be appointed to their jobs."

We appreciate the fact that farm organizations such as OFA and OFAC have all been telling us that this is important. We're hearing it from the ground from your federation. So we appreciate that.

The minister also mentioned, I'm sure you'll be happy to know, that we're looking at the question in regard to permit officials, that they become risk management officers; in other words, risk management, working consultatively, collaboratively, first as the—I think ultimately the government has to have some power to enforce when someone is not having any care about allowing a significant drinking water threat to be on their property, but that should be the last resort. I think we're going to clarify that.

I guess my question, though, for you would be centred around the question of compensation. We've had some debate on this. Would you see that as being a shared responsibility by the people who are drinking the water, by the municipality, which is everybody in the municipality, or the provincial government and/or the federal government? Where do you see the money coming from? What do you think is fairest?

Mr. Opsteen: What is fair?

Mr. Wilkinson: I know you don't want—

Mr. Opsteen: I'm willing to pay my fair share, that's for sure, but same as all Ontarians. We all use water. I'm not saying user fees or anything like that, because from the province's side you're probably thinking, "The municipalities can handle it." Municipalities are probably thinking the province can handle it, and it goes back and forth. But I think just putting in the act that we're going to consider compensation, we're going to look at that because we understand that is an issue and there is going to be a cost to farmers—we can work on the details in the future.

I agree with you: Through consultation and discussion—I know you talked about the irrigation committee—all those kinds of things where farmers and politicians and townspeople can work together, we can come up with sensible, logical plans that will achieve the goal. I think when you're looking at legislation, yes, we do need the sticks, but we also need the carrots. We can't put all the money into the super-heavy-duty stick and not put money into the carrots.

Mr. Wilkinson: The whole process starts from the community up. Instead of being prescriptive from the ministry, what O'Connor told us that we should do is make this based on local communities that share water coming together as the first step.

Mr. Opsteen: I would agree. If you want the buy-in from everyone about acts, if it comes that way, it always works better than the down—

Mr. Wilkinson: From the groundwater up.

Mr. Opsteen: There you go.

The Vice-Chair: Thank you for your presentation, sir.

ASSOCIATION OF IROQUOIS AND ALLIED INDIANS

The Vice-Chair: Now we have the last group, the Association of Iroquois and Allied Indians. They can come forward and present to the committee.

Grand Chief Denise Stonefish: Good afternoon. The Association of Iroquois and Allied Indians is a political organization that advocates on behalf of eight First Nations in Ontario, with a membership of approximately 18,000 people. We are comprised of three distinct groupings of peoples, which are the Haudenosaunee, which you may know as the Iroquois Nation; the Anishnawbek; and the Leni Lenapi Nations, who do have aboriginal and treaty rights.

The issue of clean drinking water and the need to protect drinking water sources is an important issue for First Nations, and we can all agree that there is a need for better protection of these water resources.

Earlier this month, our association also made a presentation to the Assembly of First Nations in Canada, which had formed a joint panel that is looking at the issue of safe drinking water for First Nations and will be submitting their findings to the Minister of Indian Affairs at the end of this month.

The message that we urged the panel to bring forward to the federal minister was that both the federal

government and the government of Ontario need to meet on a government-to-government-to-government basis with First Nations to look at regulatory frameworks for drinking water and source water protection that may impact on First Nations.

The reasons for this are:

(1) The crown has a constitutional duty to consult with First Nations who may have rights and interests.

(2) There are larger environmental objectives that the federal government needs to be aware of such as the various Great Lakes water agreements in which the Great Lakes basin is viewed as one large hydrologic cycle and that this had to be considered in any federal regime applicable in Ontario.

(3) We also noted to the panel that the province of Ontario was undertaking actions to ensure safe drinking water through Bill 43 and that the Minister of Indian Affairs needed to be aware of this.

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Today the Association of Iroquois and Allied Indians will advance their concerns regarding Bill 43, and in doing so, we note to the standing committee that neither our organization nor our First Nations that we represent have received additional funding or capacity from Ontario or the federal government to examine this bill. As a result, our analysis is incomplete, and the result is that we can only flag issues and do not have specific answers or solutions proposed at this time.

However, the lack of First Nations consultation in developing this bill is our first concern. In part 2 of the Walkerton Inquiry, Justice O'Connor made specific recommendations with respect to safe drinking water for First Nations in Ontario. We would like to highlight two recommendations from Justice O'Connor's report.

Recommendation number 88: "Ontario First Nations should be invited to join in the watershed planning process outlined in chapter 4 of this report."

Recommendation number 89: It is encouraged that "First Nations and the federal government ... formally adopt drinking water standards, applicable to reserves, that are as stringent as, or more stringent than, the standards adopted by the provincial government."

In examining these two recommendations and in light of the lack of consultation to date, the association—we'll shorten it down to AIAI; sometimes it's a mouthful—is of the view that Ontario is moving ahead without First Nations with respect to Bill 43. First Nations have not been adequately engaged to date, although ministry staff have been in contact with us at different points. Ministry staff may be aware that there is a need to include First Nations, and there may be a lack of political direction to do a better job in consultation with First Nations. However, this does not negate the legal duty for Ontario to consult First Nations. The Ontario Regional Chief, Angus Toulouse, also sent a letter to the minister stating that ministry efforts in seeking First Nations input were inadequate.

In looking at Bill 43, First Nations are written right out of existence. Sections 4 and 5 of the bill identify

jurisdiction and how conservation authorities are going to be taking on jurisdiction and that the minister may become involved in those arrangements. First Nations would like to know how the province has acquired jurisdiction over these waters and how this can now be conferred to the conservation authorities by the minister. Further, in conferring this jurisdiction to the conservation authorities, the province has not identified how it will ensure that the conservation authorities will conduct adequate consultation with First Nations groups which may be affected by source protection planning efforts.

Based on the current absence of First Nations references in the bill, it appears that the drafters of the legislation also intend to reinforce a jurisdictional gap with respect to safety standards for First Nations, and this is totally inconsistent with Justice O'Connor's recommendations. The recommendation from Justice O'Connor was for the province to seek co-operative arrangements with First Nations and Canada insofar as it involved protecting First Nations' interests. Therefore, we make the following recommendation as an alternative to reinforcing a jurisdictional gap whereby First Nations' drinking water and health and safety are not protected by regulation or no other appropriate arrangement is being sought.

AIAI's recommendation number 1 is: At a minimum, the legislation should enable and require the minister to have high-level discussions with First Nations and Canada in order to arrive at a mutually agreeable arrangement for First Nations that includes Canada's involvement in the protection of source water. There should be a set timeline for these discussions, and the minister should be required to pursue contribution arrangements with Canada for this process.

Our rationale for that recommendation:

(a) Ministers of other ministries have often lamented and told us that they would like to discuss issues with First Nations that require attention, but alas, they are limited by their legislation, which already prescribes the law which he or she must follow. It has also been our experience in Ontario that despite the number of court cases stating that governments must negotiate with First Nations, the Ontario government repeatedly refuses to do so. The judge in the injunction case involving Platinex mining and the Kitchenuhmaykoosib Inninuwug First Nation—I won't go through that again; I'll shorten it later on to "KI"—also made note of this behaviour.

Our second rationale:

(b) Under the recently signed Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, there are provisions for including US tribes and First Nations. It was the First Nations and Indian tribes in Ontario, Quebec and the United States that pressed for wording to recognize and include these tribes and First Nations within this agreement, given our unique status. These agreements also contain non-derogation clauses with regard to First Nations' rights. We view Bill 43 as Ontario's fulfillment and implementation of its commitments made under this recently signed agreement. Therefore the honour of the crown must be upheld in

implementing these commitments made with other governments, including the upholding of First Nations' rights. Further, the crown must show due diligence in its implementation agreements, ensuring that, in fact, it will not violate First Nations' rights.

(c) There are Supreme Court of Canada cases that state that governments must consult with First Nations where First Nations have rights or interests. Further, First Nations do not necessarily have to prove the right or interests in order for governments to consult with First Nations. AIAI First Nations assert before this committee that its member nations do have such interests.

(d) As we all know, the events at Ipperwash, Caledonia and Grassy Narrows—in other words, the First Nations' protests—are indicative of the urgent need for Canada and the provinces to forge new relationships with First Nations. Historically, only certain line ministries and departments have dealt exclusively with First Nations and aboriginal issues; however, we strongly suggest that all ministers must be enabled to have relationships with First Nations, and this should be encouraged in this legislation.

(e) As already mentioned, the Minister of Indian Affairs is already looking at a regulatory system to ensure safe drinking water for First Nations, and it is timely for both levels of government to pursue intergovernmental discussions.

Just one quick recommendation, item number two: We strongly urge that a non-derogation clause be included in this bill so as not to derogate, abrogate or extinguish aboriginal and treaty rights. An adequate non-derogation clause, accompanied with recommendation number 2, may better meet everyone's needs, as it demonstrates Ontario's good faith with respect to First Nations and their interests and the intent to deal with them instead of precluding or ignoring them.

We do have more in our presentation. We will be formally submitting it before the deadline.

The Vice-Chair: Thank you, Mrs. Stonefish, for your presentation. Now we have time for questions from Mr. Tabuns.

Mr. Tabuns: Thank you very much for that presentation. Have you had an opportunity to meet with the minister at all to discuss this?

Grand Chief Stonefish: No, I haven't personally had that opportunity yet.

Mr. Tabuns: So you're hopeful that you'll be able to have that meeting in the future?

Grand Chief Stonefish: I'm hoping to. At least, if anything, we will probably still forward our concerns directly to her.

Mr. Tabuns: Okay. The non-derogation clause would be inserted fairly high up in the legislation so it governed all the—

Grand Chief Stonefish: Yes.

Mr. Tabuns: Great.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you, Grand Chief, for coming in. It's an honour to have you here. We appreciate that.

Grand Chief Stonefish: Thank you.

1630

Mr. Wilkinson: First, I just want to say, in regard to chapter 15 and the six recommendations of O'Connor, that our government is committed to that. I'm sure you know that. I just thought we might start with that.

The second thing is, I know the white paper provided for a seat at the table in each watershed. This is a starting point for First Nations, assuming that the First Nations are in a watershed. If you're in a watershed on one of these authorities, there is a seat at the table so that you're involved in the process while we explore—as you've said, we've got that tripartite of the province, the federal government and our First Nations having to make sure that we can have a fuller consultation, taking into account everybody's responsibilities constitutionally. First Nations can contribute, in our opinion, traditional knowledge and a unique perspective while we consult more broadly with First Nations, and we work of course with our conservation authorities and source water planning committees.

I have a summary from the ministry about the consultations to date with First Nations. I'm trying to figure out why you don't fit into this. I'm just going to run through it. When Minister Dombrowsky set up the implementation committee on source protection, there were two people on the advisory committee. The Chiefs of Ontario sat on that committee and, on the technical experts committee on source protection, the Ontario First Nations Technical Services Corp. sat on the committee. There was a round table with First Nations in Thunder Bay in February 2005. On March 3, Minister Broten met with the Chiefs of Ontario to discuss First Nations involvement. In April, she met with First Nations representatives, including Chiefs of Ontario, Metis Nation of Ontario, Ontario Metis Aboriginal Association and the Ontario Federation of Indian Friendship Centres to discuss source protection. On June 9, she met with the Ontario Regional Chief; on November 9, a meeting with representatives from First Nations and, I thought, including the Association of Iroquois and Allied Indians—yours. On November 14, she attended a meeting of the Political Confederacy of regional chiefs in Toronto. There was a meeting with our ministry with Chiefs of Ontario, the Union of Ontario Indians and the Mohawks of Akwesasne. Again, on March 10, the Chiefs of Ontario, and then on July 12 there were three teleconferences. Can you help me, Grand Chief, about where we are catching you in this process?

Grand Chief Stonefish: Yes and no.

Mr. Wilkinson: Can you help me with that? I'm lost.

Grand Chief Stonefish: In terms of the meetings that were held with the Chiefs of Ontario, that's sort of globally and regionally, where there are common issues. However, at the same time, not all of our issues are directly carried forward, because it probably would not be considered, overall, to have some commonalities. Just like any of your municipalities or cities or whatever, each and every one of them is different, so each and every one

of the First Nations in Ontario has its diversity and different way of doing things.

Yes, we are part of the Chiefs of Ontario process, but again, we wanted to come here also to express the association's interest and concerns regarding safe drinking water in our communities.

Mr. Wilkinson: Great. Thank you.

The Vice-Chair: Mr. Barrett?

Mr. Barrett: I thank the association for coming forward. I heard two different messages, whether there was consultation or not. But I think your concern is more future consultation if this law passes. The question I would have, as far as the formal consultation—I know I wasn't invited to any of those meetings. I don't know whether I was invited to any of the other consultations that I've heard about here. But what I do know, as far as public consultation, is that there are five days. I don't know whether five days is enough. You're here today. I don't know whether there will be representatives of other communities at the other hearings this week.

We've been hearing from farmers. It's very difficult for them to come at this time of year. We would hope there would be further meetings in the winter, when people can come out. We would hope that, if this particular bill does become law—and I can't give you a guarantee whether there will be mention of native people in the legislation. Apparently there isn't now. But after that, regulations would be written. I would hope that there would be public meetings—I know there are a lot of side meetings with different groups—to determine whether people's advice is being tapped on all the regulations that usually come along later from legislation. It sounds like there have been meetings to date—

Ms. Wynne: Consultations.

Mr. Barrett: I'm sorry?

Ms. Wynne: Consultations.

Mr. Barrett: I think that's what I'm saying: "meetings," "consultations"; they're pretty well the same word.

I guess my concern is, are your needs not being met? Are you planning some further action to try and draw attention to lack of consultation?

Grand Chief Stonefish: I think two things. Number one is that we do have correspondence that the regional chief did send off to the minister where we were offered \$20,000 for our input on the Clean Water Act. That's just not sufficient to adequately get the input from the four political territorial organizations and some represent-

atives from the independents. The other one is that we also realize that this isn't going to happen overnight, having clean water in our communities. It's going to take some time. This is something that probably should have started maybe two or three generations ago, especially with the agreements for the Great Lakes' water. I think that should be taken into consideration too, because eventually, if you don't start to do something about that now, there's not going to be any water, or we're going to have the water and everybody else is going to want it and we're going to have to fight for it. I don't think that we should be in a position to do that. Again, that's talking about privatizing water, and I don't think that's an area that we need to go in right now.

I think there still needs to be more discussion. First Nations do not have the scientific expertise at this particular moment in time. That's something that we need to look at, and we need to try to access even those types of resources, and you know that's going to cost money.

We're in the same position as the rest of the people who made presentations today, from the farmers to the people living in the cities. We want the same: We want clean, safe drinking water, and we're also concerned about the quantity.

The Vice-Chair: Thank you very much for your presentation. Thank you, Mr. Barrett. Thank you to all the presenters today, and this last presentation. I guess we listened to all the people who came before this committee today.

Interjection.

The Chair: Go ahead.

Mr. Wilkinson: It's a point of clarification, just so that the Grand Chief knows. When the minister was here this morning, she said, "Where First Nation communities wish to participate in the process, we are considering amendments to the legislation that would ensure First Nation drinking water systems can be protected under Bill 43." She said that this morning, just so that you know.

Grand Chief Stonefish: I was here.

The Vice-Chair: Thank you, Mr. Wilkinson.

I also want to thank all the members and the clerk, Hansard, research and all the people who attended this meeting today.

We are going to adjourn until tomorrow at 10 o'clock in Walkerton.

The committee adjourned at 1639.

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Mr. Peter Tabuns (Toronto–Danforth ND)

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Also taking part / Autres participants et participantes

Mrs. Julia Munro (York North / York-Nord PC)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. David McIver, research officer,
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