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Intergovernmental Relations and Partnerships Branch (ERO-026-0302)
Ministry of Municipal Affairs and Housing (ERO-026-0301)
13th Floor, 777 Bay Street
Toronto, ON M7A 2J3

By email: IRPB-MMAH@ontario.ca
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Re: ERO-026-0302 and ERO-026-0301: Proposed Amendments to the Municipal Act, 2001 and the Safe Drinking Water Act, 2002 Respecting Communal Drinking Water and Wastewater System Municipal Consent Requirements (Schedule 4 of Bill 98, the Building Homes and Improving Transportation Infrastructure Act, 2026)

Dear MMAH Team:

The Ontario Rivers Alliance (ORA) is a not-for-profit grassroots organization with a mission to protect, conserve, and restore Ontario's rivers. ORA intervenes in federal and provincial regulatory processes and advocates for effective policy and legislation to ensure development affecting Ontario rivers is environmentally and socially sustainable.

ORA submits this letter jointly in response to ERO-026-0302 and ERO-026-0301 as part of a coordinated response to the Bill 98 legislative package. ORA addresses both postings in a single submission because they cannot be evaluated in isolation: together they reveal an internal contradiction in government policy that neither posting, reviewed alone, discloses. ORA has also submitted separately on ERO-026-0315 (April 24, 2026), ERO-026-0313, and ERO-026-0300 (both May 14, 2026), which address overlapping elements of this package.^{5, 6, 7}

ORA's core concerns with ERO-026-0302 are that it would incrementally privatize water and wastewater service delivery for new communities, and that it proposes to obligate municipalities to consent to non-municipal communal systems before the criteria that determine when consent is mandatory have been developed, consulted, or enacted. These concerns are compounded by the irreconcilable contradiction between ERO-026-0302 and the companion posting ERO-026-0301, addressed below.

1. A Government at Odds with Itself: The Contradiction Between ERO-026-0301 and ERO-026-0302

ERO-026-0301 proposes amendments to the Water and Wastewater Public Corporations Act, 2025 that explicitly prohibit private ownership of new water and wastewater public corporations.⁸ The rationale embedded in that prohibition is clear and correct: water and wastewater infrastructure is a public trust that must remain under public ownership and control. The government acknowledged, through that explicit prohibition, that allowing private entities to own water systems serving Ontario communities is incompatible with the public interest.



ERO-026-0302 proposes, in the same legislative package posted on the same day to the same Ministry on the same floor, to require municipalities to consent to non-municipal communal drinking water and wastewater systems, systems that are by definition operated outside the municipal public sector, and that may be owned and operated by private developers, private utility companies, or other private entities not subject to the public accountability obligations that apply to municipal water systems. These are not small or remote systems serving a handful of rural properties. They are infrastructure intended to serve new housing developments in growing communities.

These two positions are irreconcilable. ERO-026-0301 says water infrastructure must remain publicly owned. ERO-026-0302 states that municipalities must approve non-municipal water infrastructure, potentially privately owned and operated, on demand once prescribed criteria are met. A government that prohibits private ownership in one part of its water policy framework while mandating municipal approval of private systems in another is not following a coherent policy direction. It is advancing the incremental privatization of water and wastewater service delivery, one subdivision at a time, under a framework designed to make each individual approval appear routine.

ORA submits this letter to both contact addresses, the Intergovernmental Relations and Partnerships Branch for ERO-026-0302 and the Local Government Policy Branch for ERO-026-0301, precisely because the government's fragmented consultation structure has ensured that neither branch is required to evaluate what the other has posted. These two offices are on the same floor of the same building in the same Ministry. The contradiction between their respective proposals is invisible to the process that is supposed to catch it. ORA is placing it before both branches simultaneously so that it cannot be evaluated in the absence of the other half of the picture.

Water and wastewater service delivery is a fundamental public health service with direct implications for the freshwater ecosystems and drinking water sources that Ontario communities depend on. It is not a commodity to be disaggregated to accommodate housing development. The appropriate response to the housing supply challenge is investment in expanded public capacity to serve growing communities, with accountability to the residents those systems serve, not the mandatory approval of privately operated alternatives before the terms of that approval have been defined.

2. The Blank Cheque Problem: Mandatory Consent Before Known Criteria

Section 93 of the Municipal Act, 2001 currently requires that a person obtain a municipality's consent before establishing a non-municipal communal drinking water or wastewater system (a public utility) within that municipality.¹ This consent requirement reflects a longstanding recognition that the presence of a non-municipal communal water or wastewater system within a municipality's territory has direct implications for that municipality's infrastructure, public health obligations, land use planning, and long-term fiscal exposure. Municipal consent allows local governments to evaluate whether a proposed system is appropriate for local conditions before it is constructed and operational.

The proposed amendments would create regulation-making authority to establish criteria under which a municipality would be required to give consent if those criteria are met. The legislation imposes the obligation to consent; the regulations establish the terms. Those regulations do not yet exist. There is no indication of what the prescribed criteria will require, what conditions municipalities will be permitted to impose, or how the criteria will account for local infrastructure



conditions, watershed characteristics, or the cumulative effect of multiple communal systems within a single service area.

ORA submits that this sequence is fundamentally flawed. The legislative obligation to consent is permanent and binding once enacted. The regulatory criteria that determine when that obligation is triggered can be amended by Cabinet without public consultation under normal procedures. Municipalities are being asked to accept an open-ended mandatory consent obligation whose operative terms are entirely outside their control and, at this point, unknown to anyone. This is not a regulatory framework that protects the public interest in water system integrity. It is a blank cheque.

The government's rationale is that mandatory consent will give housing developers greater certainty. ORA does not dispute that certainty in infrastructure planning has value. However, the mechanism for achieving that certainty should be well-defined criteria established through a transparent public process, not the permanent removal of municipal discretion in advance of those criteria. The order of operations matters. Consent obligations must follow from established criteria, not precede them.

3. Drinking Water as a Public Trust: Why Municipal Discretion Matters

Drinking water is a public trust resource. Ontario's *Safe Drinking Water Act, 2002 (SDWA)* provides provincial oversight of drinking water systems to protect public health.² The proposed amendment to section 53 of the *SDWA* would deem consent given under the amended Municipal Act provisions to constitute consent under the *SDWA* as well. This coupling means that mandatory municipal consent under the new framework will automatically extend to *SDWA* approval, without any separate provincial health-and-safety review of whether the proposed system meets standards appropriate to its specific local context.

Municipal consent currently functions as a locally grounded checkpoint: the community whose residents will be served by the system and whose existing infrastructure may be affected by it has an opportunity to evaluate the proposal before it proceeds. Municipal officials and planning staff have direct knowledge of local watershed conditions, aquifer characteristics, existing system capacity, and development pressures that provincial regulators do not hold at the same level of specificity. Mandatory consent removes this locally-informed layer of review for any system that meets the (as yet undetermined) prescribed criteria.

Ontario's Provincial Planning Statement (PPS), 2024, requires that planning authorities protect "*the quality and quantity of water,*" using the watershed as the ecologically meaningful unit of assessment.³ Non-municipal communal systems that draw from the same aquifer or surface water source as adjacent municipal systems, or that discharge to the same receiving water, affect water quality and quantity at the watershed scale. A municipality's assessment of whether a proposed communal system is consistent with watershed integrity and long-term water resource sustainability is a planning judgment that the PPS expressly requires. Making consent mandatory, before criteria are known, removes that judgment from the municipalities best positioned to exercise it.

4. Wastewater System Integrity: Inflow, Infiltration, and the Cost of Undermining Progress

4.1 What inflow and infiltration means for Ontario communities

Inflow and infiltration (I&I) refers to the entry of stormwater and groundwater into sanitary sewer collection systems through deteriorated pipes, improper connections, roof drains, sump pumps, and inadequate on-site drainage. I&I is not a minor maintenance issue. During extreme rain



events and spring snowmelt runoff, excess I&I can overwhelm the hydraulic capacity of wastewater treatment facilities, forcing municipalities to bypass treatment and discharge raw or partially treated sewage directly into rivers, lakes, and streams. These sanitary sewer overflow events are a documented, recurring water quality crisis in Ontario communities and a direct threat to freshwater ecosystem health.

The *Ontario Provincial Climate Change Impact Assessment (OCCIA) 2023* identifies wastewater infrastructure as facing heightened and intensifying risk under climate change, with more frequent and more extreme precipitation events projected to worsen I&I loading and overflow frequency across the province.⁴ Communities that have invested in I&I reduction are building resilience against exactly these risks. Communities that have not yet addressed I&I face compounding vulnerability as climate conditions intensify.

4.2 Sudbury, Toronto, and the value of progress made

Greater Sudbury has been making sustained and measurable progress in reducing I&I through a multi-year infrastructure rehabilitation program targeting deteriorated sewer mains, illegal connections, and aging lateral pipes. This work represents a significant and ongoing municipal investment in wastewater system integrity, overflow reduction, and the protection of the Vermilion River Watershed, French River watershed and other receiving waters that drain the Sudbury Basin. Allowing the approval of non-municipal communal wastewater systems that do not meet equivalent I&I prevention standards would be directly counter to the environmental progress the municipality has been making, and would set back, at public expense, an investment that took decades of municipal and taxpayer commitment to achieve.

Toronto faces analogous challenges of even greater scale. Significant portions of Toronto's older urban core are served by combined sewer systems that carry both sanitary sewage and stormwater in a single pipe. During heavy rain events, combined sewer overflows (CSOs) discharge directly to the Don River, Humber River, and Lake Ontario. Toronto has invested in wet weather flow management and long-term CSO reduction for decades, at substantial public cost. These are not merely engineering projects; they are municipal and taxpayer investments in the ecological integrity of receiving waters that serve millions of people.

The I&I and CSO challenges facing Sudbury, Toronto, and many other Ontario municipalities with aging sewer infrastructure are not unique to those cities. Dozens of Ontario communities live with the consequences of infrastructure built before modern I&I standards and exacerbated by decades of development that did not consistently require on-site stormwater controls. The path to resolution is sustained, long-term investment in rehabilitation and prevention. New development that adds to I&I load, rather than reducing it, sets that path back.

4.3 How non-municipal communal wastewater systems can undermine this work

Non-municipal communal wastewater collection systems serving new development can contribute to I&I in adjacent municipal systems in several ways. Collection pipes that are inadequately designed, poorly constructed, or poorly maintained allow groundwater to enter through joints and cracks. Improperly separated connections allow stormwater from roof drains and foundation drainage systems to enter the sanitary collection network. Where communal systems connect to municipal trunk sewers for treatment, their I&I load becomes part of the municipal system's hydraulic burden. In communities already managing tight treatment capacity margins, additional I&I from a communal system can tip the balance from managed overflow risk to uncontrolled bypass.

Municipalities currently have the discretion to refuse consent to proposed non-municipal communal systems whose design does not meet I&I prevention standards equivalent to those



required for municipal infrastructure. They can also require, as a condition of approval, that communal system operators maintain their systems to standards that protect the municipal network from infiltration loading. If consent becomes mandatory when prescribed criteria are met, and if those criteria do not include I&I prevention standards as stringent as those that apply to municipal systems, municipalities will lose both the ability to refuse inadequate proposals and the leverage that consent provides to impose adequate conditions.

ORA notes, as it did in its submission on ERO-026-0300, that the prohibition on enhanced development standards in that posting removes the other primary tool municipalities have to manage I&I from new development: site-level drainage controls imposed as conditions of development approval.⁷ These two proposals, the loss of EDS authority in ERO-026-0300 and the loss of consent discretion in this posting, compound each other's effect on the capacity of municipalities to prevent the I&I loading that drives wastewater bypass events. Neither posting, reviewed in isolation, reveals the combined effect. This is precisely the consequence of fragmenting a related legislative package across simultaneous, uncoordinated ERO consultations.

5. Long-Term Municipal Liability: Communal Systems That Fail

Non-municipal communal drinking water and wastewater systems have a documented history of failing in ways that ultimately require municipal intervention. Private operators may become insolvent, withdraw from the market, or simply cease to maintain systems that have become uneconomic to operate. When communal systems fail, the residents they serve do not lose their right to safe drinking water and sanitary waste disposal. Municipalities, as the governments of last resort for these services, frequently end up assuming responsibility for systems they did not build, did not approve on their own terms, and were not resourced to maintain.

Reserve funds can mitigate the immediate capital cost of assumption, but they do not address the ongoing operational liability that municipalities inherit when they take over a poorly designed or poorly maintained system. A communal wastewater collection system built without adequate I&I protection, and assumed by a municipality during a system failure, becomes a permanent source of I&I loading in the municipal network for the life of those pipes — often measured in decades.

The proposed mandatory consent framework does not address this liability risk. If a municipality is required by regulation to consent to a proposed communal system, and if the conditions it is permitted to impose are defined and limited by regulations not yet written, the municipality may be unable to require the design standards, maintenance obligations, and financial assurances that would protect it from foreseeable future liability. The long-term cost of these failures is borne by municipal ratepayers, not by the provincial government that mandated the consent.

6. Recommendations:

ORA respectfully submits the following recommendations, addressed to both branches receiving this submission:

1. Reject the mandatory municipal consent obligation in ERO-026-0302 entirely. Municipal consent is not an obstacle to housing; it is a public trust safeguard ensuring that the communities that will live with a communal water or wastewater system, and whose existing infrastructure it will affect, have a meaningful role in its approval. Converting that safeguard into a mandatory approval mechanism does not streamline development; it transfers foreseeable risk from private developers to municipal ratepayers and public freshwater systems.



2. Reconcile ERO-026-0302 with ERO-026-0301. The explicit prohibition on private ownership of water and wastewater public corporations in ERO-026-0301 reflects the correct principle that water infrastructure is a public trust. That principle must extend consistently to communal systems serving new development. The Ministry should not prohibit private ownership in one regulatory instrument while mandating public consent to private systems in another.
3. If mandatory consent is nonetheless advanced, do not impose the obligation until the regulations establishing the prescribed criteria and conditions have been developed, publicly consulted, and enacted. The obligation and the criteria that determine when it applies must proceed together, not in sequence. Municipalities should not be required to accept an open-ended consent obligation whose operative terms are unknown.
4. Preserve unconditional municipal discretion to refuse consent where a proposed non-municipal communal drinking water or wastewater system would compromise existing municipal water or wastewater infrastructure integrity, including systems engaged in active inflow and infiltration reduction programs or combined sewer overflow management. A municipality's investment in I&I reduction is a public asset that mandatory consent must not be permitted to impair.
5. Require that any prescribed criteria for mandatory consent include minimum I&I prevention standards for communal wastewater collection systems that are no less stringent than the standards applicable to new municipal sewer construction in that municipality. Communal systems that cannot meet those standards should not qualify for mandatory consent, regardless of whether other criteria are satisfied.
6. Ensure that the conditions municipalities are permitted to impose on consented systems include, at a minimum: design and construction standards preventing I&I; ongoing maintenance and inspection obligations; real-time reporting requirements for overflow events; independent performance audits at defined intervals; and adequate reserve funds covering decommissioning and municipal assumption costs in the event of operator failure. These conditions must be established in regulation before any mandatory consent obligation takes effect.
7. Commission a cumulative environmental and infrastructure assessment of ERO-026-0302 alongside ERO-026-0300 and ERO-026-0301 before proceeding. The combined effect of removing enhanced development standards authority, mandating consent to communal wastewater systems, and restructuring the water and wastewater public corporation framework has not been assessed in any single regulatory process. The cumulative risk to municipal wastewater system integrity and public water ownership is greater than any of these postings individually discloses.

Ontario's drinking water and wastewater systems are among the most fundamental public trust assets that municipal governments hold on behalf of their communities. The progress that municipalities like Greater Sudbury and the City of Toronto have made on I&I reduction and overflow management represents decades of municipal investment, careful engineering, and sustained public commitment to protecting receiving waters. That progress is fragile. It can be set back by a single generation of development that does not meet adequate drainage and system integrity standards.



The proposed mandatory consent framework, enacted before criteria are established and conditions defined, creates exactly the conditions for that regression. More fundamentally, a legislative package that explicitly prohibits private water ownership in one posting while mandating consent to private systems in another has not resolved its own internal contradiction.

ORA calls on both branches to address that contradiction before either posting proceeds. We submit that the integrity of drinking water and wastewater systems is not an appropriate domain for blank-cheque legislative obligations or incremental privatization by subdivision.

Thank you for this opportunity to comment!

Respectfully,

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EndNotes:

1. Municipal Act, 2001, S.O. 2001, c. 25, s. 93. <https://www.ontario.ca/laws/statute/01m25#BK106>
2. Safe Drinking Water Act, 2002, S.O. 2002, c. 32, s. 53. <https://www.ontario.ca/laws/statute/02s32>
3. Provincial Planning Statement, 2024, Ministry of Municipal Affairs and Housing, effective October 20, 2024. s. 4.2.1 (protect quality and quantity of water using the watershed as the ecologically meaningful scale of assessment). <https://www.ontario.ca/page/provincial-planning-statement-2024>
4. Ontario Ministry of the Environment, Conservation and Parks. *Ontario Provincial Climate Change Impact Assessment (OCCIA)*, January 2023. Technical Report prepared by Climate Risk Institute. Wastewater infrastructure identified as facing heightened risk from intensifying precipitation and extreme weather under climate change scenarios through mid-century. <https://www.ontario.ca/page/ontario-provincial-climate-change-impact-assessment>
5. Ontario Rivers Alliance. Submission on ERO-026-0315: Consultation on Upper-Tier Official Plans, Secondary Plans, and Site- and Area-Specific Policies. Submitted April 24, 2026. <https://www.ontarioriversalliance.ca/ero-026-0315-consultation-on-upper-tier-official-plans-secondary-plans-and-site-and-area-specific-policies/>
6. Ontario Rivers Alliance. Submission on ERO-026-0313: Streamlining the Information and Material That Planning Authorities Can Require as Part of a Complete Application. Submitted May 14, 2026. <https://ontarioriversalliance.ca/blog>
7. Ontario Rivers Alliance. Submission on ERO-026-0300: Proposed Planning Act, City of Toronto Act, 2006, Building Code Act, 1992 and Municipal Act, 2001 Changes (Schedules 1, 2 and 7 of Bill 98). Submitted May 14, 2026. <https://ontarioriversalliance.ca/blog>
8. Water and Wastewater Public Corporations Act, 2025, S.O. 2025, c. 14, Sched. 16; proposed amendments under ERO-026-0301, posted March 30, 2026. The proposed amendments explicitly state that no new water and wastewater public corporation may be privately owned. <https://www.ontario.ca/laws/statute/25w01>