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Sarah Nugent, Water Resources Coordinator  
Ministry of Natural Resources  
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Dear Ms. Nugent:

**Subject: Disposition of American Eel at Chats Falls Generating Station**

The Ontario Rivers Alliance (ORA) is an organization with a focus on healthy river ecosystems throughout the Province, and represents some 30 organizations across Ontario. Therefore, we wish to comment on the current Public Notice regarding the Disposition of the American Eel (*Anguilla Rostrata*), and the Chenaux Generating Station.

**Recommendation:** The ORA has noted previously that upstream and downstream passage should be pillars of all waterpower agreements involving eels. The agreement should be re-written with more careful and clear approaches that meet the tests of OReg. 242; otherwise the ministry may be unnecessarily subject to strong challenges. We have previously suggested ways of doing this in our response to the recent EBR posting on waterpower agreement.

**Public Notices:** ORA notes that public notices for these waterpower agreements have been very poorly advertised, making us wonder whether our input will even be considered. The ministry does have the option of taking the appropriate amount of time by refusing to sign this agreement by June 30, 2011.

**Proposed Agreement:** The ORA is pleased to see that after allowing a century of impacts that contributed to the complete extirpation of the species in many parts of its range, the government finally is requiring the effects of such facilities on this unique and important species to be mitigated. However, waterpower agreements appear highly variable in effectiveness and consistency, and the agreement at Chats is no exception.

While the agreement at Chats exhibits somewhat better initial monitoring approaches than some other agreements, we remain very concerned that this agreement will be ineffective. The ORA has written previously that upstream and downstream passage should be the cornerstones of all waterpower agreements involving eels, but there is no indication that upstream and downstream passage will be a

requirement for the life of the 30 year agreement. This leads us to question if the agreement is valid? The motives behind this agreement appear questionable when the main requirement seems to be monitoring to assess the abundance. MNR already knows that eels exist above and below the facility, but are in low abundance (that is why the species is endangered!); and that eels are being harmed, harassed and/or killed by the facility. The agreements for all waterpower facilities involving eels should clearly state that efforts to install permanent, safe and adequate upstream and downstream passage will continue through the life of the agreement, and that some form of permanent passage will be installed. The ORA recognizes that the first few years may be used to determine the best site to provide more permanent upstream passage, but an upstream and downstream passage must also be actively attempted through the full 30 years to assist adaptive management to determine the most appropriate technique, otherwise the agreement may not meet the spirit and intent of OReg. 242/08 and should not be signed.

**Cumulative Effects:** Chats is a large facility in a long series of waterpower operations that kill and otherwise harm or harass eels on the main stem of Ottawa River, and the cumulative effects should have been effectively considered prior to developing this agreement, but there is no indication that the cumulative effects have been effectively considered, much less incorporated. The cumulative effects have been large and ongoing, but the efforts to mitigate passage appear at best to be a token for upstream passage and only for 3 years; yet the exemptions from the ESA are for 30 years. Please describe how the cumulative effects were considered and the rationale for issuing the agreement in light of the cumulative effects.

**Trap & Transfer:** While the trap and transfer may be attempted for large eels, it appears to be only for eels captured downstream of Chats and therefore will not mitigate turbine mortalities at this facility. Moreover, the term “consider the feasibility” is a weak term at best, and it is clearly feasible as it has been employed at Saunders and elsewhere in the world for decades. The Trap and Transfer effort appears to be the only mitigation attempted, and it is only marginally used to temporarily provide upstream passage. No mitigation of turbine mortalities/effects will be attempted for eels upstream of Chats. How then can the ministry suggest “that the operation of the facility will not jeopardize the survival and recovery of American Eel if the conditions of the Agreement are adhered to” unless there is assurance that both upstream and downstream passage will continue to be attempted throughout the life of the agreement?

If a trap and transfer approach is conducted with sufficient effort it should be a good initial approach to providing downstream passage and mitigate effects of turbines. An effective trap and transfer program should include catching eels upstream of Chats and moving them below Carillon. However, other more effective means to mitigate turbine mortality must be found eventually so this should be clearly noted as an interim approach.

**Upstream & Downstream Passage:** Like the agreements for the Chenaux and Mississippi Rivers, the agreement at Chats does not commit to ever attempting to provide downstream passage, nor continuing the token attempts at upstream passage to mitigate through the 30 year agreement. It is unclear how the ministry can say that this agreement if complied with will not jeopardize the survival and recovery of eel. This situation can be easily solved by inserting a statement about permanent attempts to provide upstream and downstream passage throughout the 30-year agreement. The agreement for Chats gives us no hope that the two fundamentals of recovery of eels will ever be provided (i.e. upstream and downstream passage), and it is questionable that it even meets the spirit and intent of the ESA nor OReg. 242/08.

This agreement, if it contains no more than what was provided to the public, appears weak and ineffective using such language as “consider” and “if studies merit”, and does not appear to even attempt to mitigate known turbine mortalities. Moreover, the agreement does not even guarantee that any sort of passage will be provided at the end of three years, despite the fact that the agreement is for 30 years. As noted earlier, there is insufficient information on the monitoring program to comment effectively. It is unclear who will be conducting the work to ensure it unbiased, and it is unclear what information will be available, or its quality at the end of the three years. There is no information provided on what the targets are (if there are any), nor is there information pertaining to the governance structure of the agreement to enable unbiased evaluation.

It should go without saying that the Chats facility is a major impediment to eels moving upstream to take advantage of the abundant, productive and diverse habitats of the vast Ottawa River watershed. Chats is the third large waterpower facility on the main stem of the Ottawa River upstream of its confluence with the St. Lawrence River. It generates millions of dollars of revenue/year on the Ontario side alone, it is a major impediment to migration of eels, it appears to kill, harm and/or harass eels on an ongoing basis, and yet it has never been required to even attempt to mitigate these problems. After almost a century of apparently ongoing impacts, strong attempts to mitigate are long overdue.

**Monitoring & Management Program:** A sound and effective monitoring and adaptive management program will be critical to find passage solutions, but the description of the monitoring program is inadequate to enable much comment. It is also not clear how the terms “feasibility” and “studies warrant” is to be assessed and this is very critical – who determines this, how is it determined and will there be an opportunity for public comment when this is assessed?

Visual observations of eels will not provide sufficiently reliable information, and other methods of monitoring must be used as well. What are the targets for reductions in turbine mortality and enhancing upstream passage? Please describe the governance structure to be used to oversee the agreement, how public consultation will be included, and if/how an adaptive management approach will be used.

A poor monitoring program will reveal no eels, leading the proponent to argue that an agreement is not even needed. As it is not clear that the attempts to mitigate the impacts of the facility will continue throughout the life of the agreement, please provide the rationale for how these agreements will meet the four legal tests for waterpower facilities outlined in Regulation 242 made under the ESA.

**To summarize:**

- There is no valid attempt to mitigate turbine mortalities by providing safer downstream passage
- There is only a token attempt to provide upstream passage, and only for a few years
- There is no assurance that even attempts to provide upstream and downstream passage will be undertaken throughout the 30 year term of the agreement
- We would like to be shown clearly how an agreement like this complies with the ESA and OReg. 242

If this agreement is a typical example, then Ontario appears to continue to take an unnecessarily weak approach to the impacts of waterpower on biodiversity. The ORA would have expected a better effort from a huge corporation like OPG. Good, reliable information seems not to be a priority and for this reason the ministry is unnecessarily exposed to twisted and knotted debates and challenges.

Please register ORA as a stakeholder in this issue, and place us on your mailing list to receive all related information, notices and decisions. Thank you!

Respectfully,

A handwritten signature in black ink, appearing to read "L. Heron", with a long horizontal flourish extending to the right.

Linda Heron,  
Chair, Ontario Rivers Alliance

Cc: The Honourable Dalton McGuinty, Premier of Ontario - [DMcGuinty.mpp.co@liberal.ola.org](mailto:DMcGuinty.mpp.co@liberal.ola.org)  
The Honourable Linda Jeffrey, Minister of Natural Resources - [ljeffrey.mpp.co@liberal.ola.org](mailto:ljeffrey.mpp.co@liberal.ola.org)  
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