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Mrs. Gillian Marshall
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Dear Gillian:

**Re: Disposition of American Eel (*Anguilla Rostrata*)
Chenau 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 American Eel (*Anguilla Rostrata*), and the Chenau Generating Station.

Recommendations: This agreement must provide for permanent upstream and downstream passage to be installed at a specified time within the 30-year agreement, otherwise the ministry is committing the minister to an agreement that may not meet all tests of OReg. 242 for a 30-year period! This agreement does not even give a remote perception of assurance that the two fundamentals of recovery of eels will ever be installed, i.e. upstream and downstream passage.

Public Notices: It is important to note that public notices for these waterpower agreements have been very poorly advertised, which makes one wonder whether public input and consultation is a priority, or whether input will even be considered. It certainly makes one wonder about the sincerity of the ministry in attempting to incorporate public comments into these agreements. The ministry does have the option of refusing to sign this agreement by June 30, 2011, and to give the public input you receive strong consideration.

Upstream & Downstream Passage: The agreement at Chenau (and at all other waterpower facilities impacting eels and fish) must ensure effective, permanent, adequate and safe upstream and downstream passage at this facility, and there should be no possibility for deviation. This should be a requirement throughout the 30 year Agreement, recognizing that the first few years of the implementation plan may be used to determine the best site to locate a permanent location/means for upstream and downstream passage. But the first few years should also be used to test upstream and downstream passage options like trap and transfer so that mitigation of upstream and downstream passage is seen to be occurring throughout the period of the agreement; otherwise the facility will continue to jeopardize survival and recovery of American Eel in Ontario and therefore should not be

signed. It is critical to ensure permanent upstream and downstream passage at this facility within the life of the agreement; despite questions and debates of eel presence that may arise because of the quality or type of information that may be available (the ESA clearly speaks to the importance of the precautionary principle when dealing with species at risk¹). Eels occur near, and are impacted by, this facility; provision of some form of improved upstream and downstream passages are pillars to ensuring their recovery and survival.

Cumulative Effects: The decline of American Eel to near extirpation in Ontario is a matter of strong public interest and concern. Cumulatively, waterpower facilities have had major negative impacts on American Eel in Ontario by preventing adequate access to important historical habitat and by killing significant quantities of eel as they attempt to migrate back to sea to spawn. These impacts have persisted on an ongoing basis in Ontario for almost a century. Chenaux, as a very large facility spanning the entire river poses serious challenges for eels and other migratory fish species inhabiting the river. This facility has been permitted to operate on the river for many decades with no requirements to mitigate its effects on fish passage.

Chenaux is an important facility in a long sequence of hydro-electric plants along the Ottawa River, and eels appear to be continually killed by hydro-electric facilities in this watershed. The cumulative effects of Chenaux, Chats, Chaudiere and Carillon stations must be considered when determining the potential for survival and recovery of the American Eel.

Monitoring & Management Programs: It is clearly stated 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 and this is an important component of OReg 242/08. As there appears to be no certainty that effective upstream or downstream passage will ever be required in this agreement, we seriously question that the ministry can state this, as the impacts could theoretically continue for the remainder of the 30 years. This will be especially true if the monitoring is poorly executed. For instance, poor monitoring programs conducted at the wrong times, using the wrong gear etc. may not find eels, potentially leading to arguments that an agreement is not even needed. Moreover, there is no attempt to mitigate downstream passage in the first three years. We therefore request that the ministry provide the rationale for how these agreements will meet the four legal tests for waterpower facilities outlined in Regulation 242 made under the ESA.

The governance of the agreement is a critical factor in implementing adaptive management but the "further information" does not describe its structure nor how adaptive management will be implemented. There is no monitoring at all upstream of Chenaux and no trap and transfer even attempted of eels from above Chenaux. It appears, from the information provided, that the monitoring plan will be insufficient to determine effectiveness of the weak mitigation of passage that seems to be attempted (if the agreement contains no more than what was provided to us). There appears to be no concerted effort at mitigation of passage during the first three years, nor is there any guarantee that upstream or downstream passage will ever be supplied. Visual observations of eels from shore are not likely to provide sufficient, reliable information. Consequently, the ministry could be confronted with considerable debate and push back without any meaningful data. Please provide more details of this very important component of all waterpower agreements (Implementation Plan), including targets for reductions in turbine mortality and how adaptive management approaches will be implemented to mitigate upstream and downstream passage.

Mitigation: We note that there is no attempt to mitigate turbine mortalities at Chenaux, even though eels are known to occur upstream of the dam and carcasses have been found immediately downstream of the facility during the downstream migration period. We are surprised that there seems to be no

effort to mitigate neither turbine mortality nor downstream passage in the first 3 years. There does not appear to be any assessment/netting upstream of the facility in the first three years,¹ leading to question if there is any intent to even move in the direction of providing downstream passage. With no attempt to mitigate downstream passage, nor any guarantee that permanent upstream passage will ever be provided, how can the ministry infer "the operation of the facility, if the agreement is complied with, will not jeopardize the survival and recovery of American Eel"?

Millions of dollars have been invested in these facilities, millions of dollars of revenue have been generated annually, yet there has been no effort nor money invested to alleviate their effects on fish passage in Ontario at any facility but Saunders. The Chenaux GS is a prime example of unmitigated waterpower operations in Ontario that have been ignored, despite the known impacts and despite strong federal and provincial legislation that should have prevented it.

In Summary: This agreement does little to mitigate upstream passage, does nothing to mitigate downstream passage and does not appear to even attempt to mitigate turbine mortalities. Nor is there any 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. From the information provided, it is unclear who will be doing the work and whether there is potential for real or perceived bias. Moreover, it is unclear what information will be available, and it is not possible to assess its potential quality at the end of the three years. There is no information provided on what the targets are (if there are any). In addition, there is no information concerning the governance of the agreement, whether the public will be consulted, nor how adaptive management will be implemented.

Hydro-electric facilities such as Chenaux have generated power and earned large sums of revenue for many years, it is now time to make significant changes to ensure safe passage and a healthy return of eel populations.

Please register ORA as a stakeholder in this issue, and place us on your mailing list to receive all related information, notices and decisions. Again, thank you for this opportunity to comment. I look forward to your response!

Respectfully,



Linda Heron,
Chair, Ontario Rivers Alliance

Cc: The Honourable Dalton McGuinty, Premier of Ontario - DMcGuinty.mpp.co@liberal.ola.org
The Honourable Linda Jeffrey, Minister of Natural Resources - ljeffrey.mpp.co@liberal.ola.org
Gord Miller, Environmental Commissioner of Ontario - commissioner@eco.on.ca

¹ The United Nations Convention on Biological Diversity takes note of the precautionary principle, which, as described in the Convention, states that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.