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23 May 2011

Sarah Nugent, Water Resources Coordinator
Ministry of Natural Resources
10 Campus Drive
Kemptville, Ontario
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E: sarah.nugent@ontario.ca

Dear Ms. Nugent:

Re: Disposition of American Eel (*Anguilla Rostrata*)
Gananoque Dam and Hydropower Facility
Public Notice & EBR: 011-3334

The Ontario Rivers Alliance (ORA) is an organization with a focus on healthy river ecosystems throughout the Province, and represents the interests of some 30 organizations across Ontario. Therefore, we wish to comment on the current Public Notice and EBR posting regarding the Disposition of American Eel (*Anguilla rostrata*), Gananoque Dam and Hydropower Facility, on the Gananoque River.

First of all, please note that your system of EBR postings and Public Notices needs significant improvement so stakeholders and the public are effectively made aware of these important issues, and have sufficient time to provide comments. This Public Notice was a very small ad posted in a small local newspaper, which conveys the message that the waterpower industry and MNR are not really interested in public input or dialogue on this issue. Waterpower agreements have a long-term impact on the aquatic ecosystems and biodiversity of Ontario, and we are entitled to know what choices are being made on our behalf, and be given the opportunity for meaningful input. Minimal communication effort is not acceptable, especially when an issue of considerable public interest is in the balance. Those affected by proposed changes must have access to information and opportunities to provide effective input to decisions that affect us. The process established for waterpower agreements does not instill confidence that the government of Ontario is serious and open to public input on an important matter such as this.

However, it is encouraging to see the government of Ontario is finally requiring mitigation of the devastating effects of waterpower facilities on the American Eel after more than a century of unmitigated cumulative impacts.

The Waterpower Agreement process outlined in Regulation 242/08 of the ESA is one means of ensuring effective mitigation. However, the Gananoque Agreement falls far short of being an effective means of protection and recovery of the American Eel, and gives the appearance that waterpower developers

have too much influence in negotiating effective agreements. A much stronger agreement should have been possible given that the ministry has had three years to negotiate it.

The ministry has somehow made the determination that “if the agreement is complied with the operation of this facility would not jeopardize the survival or recovery of American Eel in Ontario”. We would be interested in the rationale behind this decision, how did the Ministry come to this conclusion? There seems to be no opportunity for the public to neither understand nor debate this critical point.

The Gananoque Dam and Waterpower facility effectively blocks the entire Gananoque River and any access to its watershed, which once supported an abundance of eels. We are especially concerned that not even upstream passage is a certainty. This is not acceptable. If the facility meets the criteria: “operation of the facility will not jeopardize the recovery of eels” then permanent provision of some form of upstream passage should be mandatory in the agreement with no exception. The best form of upstream passage can be determined through studies, but permanent provision of passage should be noted as a requirement within the Agreement within the first five year term. Otherwise we see no way the agreement can comply with Regulation 224 and the ESA; recovery and survival of eels will continue to be jeopardized, and there is no indication that the operation will even head in the right direction.

Also, 5 night-time shutdowns per month appears to be insufficient to effectively mitigate turbine mortalities, but we were not given the details of the operating regime to comment further. There must be a process established which involves stakeholders, government experts, and independent external experts in selecting the most effective mitigation options.

Monitoring must provide sufficient data to ensure mitigation measures are effective, and whether structural or operational adjustments are required. Visual observations of the presence or absence of eels once per week is hardly sufficient or reliable in determining the effectiveness of the mitigation measures. Monitoring the effectiveness of mitigation measures is a critical component of the Agreement, but there are very few details of the monitoring plan, so it is unclear what the intentions of the Agreement are, and therefore we cannot effectively comment. This is a problem that must be rectified, so we are requesting more detail on the monitoring plan.

Considering the dire status of the American Eel in Ontario, and in consideration of the long duration of past and ongoing impacts of this dam, more effective actions and monitoring must be required. Furthermore, given the fact that this facility effectively closes off the rest of the watershed to the movement of eels, this only emphasises the importance of providing safe and effective upstream and downstream passage very quickly.

If the ministry is serious about an effective and transparent process then the actual wording of the Agreement should be made available for comment. Currently this notice and information provided, and even the process itself, does not offer an opportunity for meaningful public input. We are still unclear whether the provisions in this Agreement will only continue to put at risk the survival of the American Eel in Ontario. We recommend an independent expert be consulted to assist in making the decision on whether this Agreement is sufficient.

Consistent with the ministry’s Statement of Environmental Values, the ORA recommend the MNR staff

exercise caution and special concern for natural values such as the American Eel, in the face of uncertainty. We recommend an ecosystem and precautionary approach in implementing the act, as well as consideration for the cumulative effects. There is little evidence that these principles are being applied in this agreement, but again we are not provided with enough detail.

The mitigation measures contained in this Agreement are inadequate, especially if a basic requirement like a permanent upstream passage is not a clear requirement, regardless of eel abundance. It is also doubtful the monitoring as described will provide much useful information to enable better decisions for eel survival.

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, Premiere of Ontario - DMcGuinty.mpp.co@liberal.ola.org
The Honourable Linda Jeffrey, Minister of Natural Resources - ljeffrey.mpp.co@liberal.ola.org
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