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3 December 2013

Ian Kerr, Manager
Ministry of the Environment
Environmental Programs Division
Modernization of Approvals Branch
135 St. Clair Avenue West, Floor 4
Toronto, Ontario
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Re: EBR Registry Number: 012-0290 Coordinated Policy Guidance for Waterpower Projects

Dear Ian:

It was a pleasure to meet with you to discuss the Coordinated Policy Guidance for Waterpower Projects. While I agree with streamlining the approach within the two Ministry's, I note the following gaps or omissions that have arisen in my review of two Environmental Reports submitted under the Class EA for Waterpower; I feel strongly that some guidance should be provided within the Coordinated Policy document that addresses these gaps:

- A) The implementation of the ER is frequently carried out within the conditions of approval of LRIA or Permits to Take Water, yet I have noted a disturbing trend to defer detailed discussions or analyses of important matters to future discussions or analyses to a point much later in the permitting process, well after the notice of completion. This does not provide the public with meaningful opportunity for consultation. Indeed, most conditions of approval are discussed behind closed doors between developers and agencies, leaving agencies open to lobbying and other industry without the opportunity for input from public, and the conditions of permit approvals are rarely made public. This situation is unacceptable, either all important matters should be clearly resolved within the ER as intended so that development of permit approvals can take place with little debate, or the development of conditions of permit approvals should be open to further public input. This is a major issue and flaw in the current approval process for waterpower; many of these unresolved matters (such as ramping rates, environmental flows, provision of effective fish passage etc) can be of intense interest to other stakeholders and the general public, and should be resolved with adequate consultation and transparency to the public. I prefer the former option of clearly resolving all matters pertaining to the ER, within the ER; and this should take place prior to any permit approval. Because many of the conditions of permit approval can be of little public interest, I worry that the opening up the permit approval process to public consultation will unnecessarily bog the process down, but the current process clearly is dysfunctional. This policy document can be used to clearly resolve this serious matter.
- B) While the LRIA clearly provides authority for the Ministry to require fish passage, there is no mention of it in the current coordinated policy document. In our meeting it was mentioned that

the Ministry prefers to refer fish passage to DFO, yet the revised Fisheries Act clearly notes the need for fisheries management objectives to deal with such matters. As MNR is responsible for fisheries management, then the development of these objectives falls to MNR, as this involves the disposition of a Crown Resource (ie fish), the Class EA for Resource Stewardship should apply and the development of these fisheries management objectives should be open to meaningful public consultation and transparency. Decisions relating to fish passage are serious matters that should be resolved transparently within the ER; they should not take place behind closed doors with agencies and proponents for reasons mentioned earlier. I also worry about deferring such decisions to DFO for many other reasons noted in the attached letter I wrote some years ago. It was mentioned in our meeting that some sort of protocol between the two agencies; however, I am unaware of any consultation with the public that has taken place in the course of the development of any such protocol

- C) It is well known that waterpower projects can have significant cumulative effects aquatic ecosystems and migratory fish species, and the SEVs clearly set out the need for Ministry's to take an ecosystem approach. The recent divisional court decision pertaining to Lafarge makes it clear that assessing cumulative effects are responsibility of ministries, as does the Class EA for Resource Stewardship. Yet most Environmental Report barely consider cumulative effects. I know there is form that most managers tick off the boxes relating to the consideration of the SEVs, yet I fail understand how managers can sign off on these forms for waterpower projects without the provision of adequate cumulative effects analyses. As waterpower can have devastating cumulative impacts on fish species; it is often mentioned as key reason for the listing of fish species as species at risk, and one of the principal threats to the recovery of these species. I suggest that the need for effective cumulative effects assessment be included within the Coordinated Policy document as no waterpower facility should be approved without this serious issue being examined. I have included a document prepared for the world bank that describes a well thought out process for cumulative effects assessment.

I realize that this submission is a few hours late but hopefully will agree to consider them and that you find them helpful as intended. Thank you for the opportunity to comment. I support the continued development of the coordinated policy document, but feel the aforementioned gaps need to be addressed clearly before they are approved.

Sincerely

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2 attachments