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11 July 2016

The Honourable Glenn Murray  
Minister of Environment and Climate Change  
77 Wellesley Street West  
11<sup>th</sup> Floor, Ferguson Block  
Toronto, ON  
M7A 2T5  
By email: Minister.MOEC@ontario.ca

Re: Wabagishik Rapids Generating Station  
Minister's Decision on Part II Order Request

Dear Minister Murray:

I am writing on behalf of the Ontario Rivers Alliance (ORA) and the Vermilion River Stewardship (VRS) in response to your decision letter dated 18 May 2016, regarding the proposed Wabagishik Rapids Generating Station.

It was very surprising and disappointing to read your decision letter; however, it was somewhat understandable when the Minister's decision was based upon inaccurate and unsupported responses contained within the Ministry Review (Review) document, Xeneca Power Development Inc.'s (Xeneca) correspondence, and the Environmental Report (ER).

In our correspondence to Minister Jim Bradley – both our Part II Order request dated 1 November 2013, and our 6 February 2014 response to Xeneca, we clearly demonstrated that nowhere in Xeneca's 20 December 2013 60-page response to our Part II Order request were there any detailed references offered to direct the reader to a specific page number within the ER and associated studies, that might verify their claim that water quality and geomorphic studies were conducted on Wabagishik Lake.

Your decision is especially disappointing in light of an internal MOE NR document regarding the Wabagishik Rapids Final ER, dated September 2013 (Letter of November 25, 2013 to Xeneca) which reflected many concerns contained in our Part II Order request, and revealed that “*NR's review of the ER indicated that **in several instances, the proponent has not met the requirements of the Waterpower Class EA**. Where this is the case, is it appropriate for the Ministry to impose conditions setting out detailed requirements and in some cases methodologies requiring proponents to fulfill requirements of the Class EA? (Or is it more appropriate to advise the proponent to re-do its project planning?)*”. This document even went so far as to say, “*If MOE provides detailed direction to the proponent, as described above, does this expose the Ministry to any risk (ie: other proponents seeking the same level of direction during the proponent-driven EA process, or liability issues if the approach taken leads to unforeseen negative impacts on the environment or other users)*”.



ORA and VRS addressed this document and our concerns in a 16 June 2014 correspondence to Agatha Garcia-Wright, and subsequently met with MOECC staff to make a comprehensive presentation that set out our concerns regarding heavy metal contamination - including the downstream bay area where there were very deep and concerning contaminated sediments.

Instead of using the precautionary approach, you have decided to err on the side of a proponent that lost the trust and confidence of our community right from the very beginning of the consultation process. It is very likely that if you checked with the Ministry of Natural Resources and Forestry (MNRF) and MOECC staff who dealt with this proponent, that they would admit relief in the news that all of Xeneca's 19 FIT Contracts have been terminated.

ORA and VRS are writing out of concern for a process that puts the interests of a proponent before the interests of the community and the environment. The Minister sets a very dangerous and potentially costly precedent, in facilitating a proponent that has continued to ignore the best advice and recommendations of MOECC and MNRF staff, and has left major portions of the Zone of Influence (ZOI) without proper study and assessment.

This very lacking ER went from the MOECC staff's assessment of not meeting the requirements of the Class EA for Waterpower, to the Minister deciding to approve the ER with conditions, and without the benefit of additional studies. Serious environmental concerns and deficiencies were to be left to the MNRF to sort out during the permitting process.

It is our submission that there are a number of points in which the Minister's conclusions have been based upon incorrect information. The most serious of these errors is the claim that geomorphology and water quality studies were conducted on Wabagishik Lake. In fact, **geomorphology and water quality studies were not conducted on Wabagishik Lake, despite what the proponent claims, or what is stated in the Review document.**

What follows are some key errors that seem to have been the foundation for this decision.

1. ***Geomorphology, hydrology, water quality, and aquatic habitat studies were carried out for Wabagishik Lake.***

a. **Geomorphology:**

The Review stated, "A geomorphic study including erosion potential was included in the Environmental Report. The study concluded that the Project will not disturb sediment in Wabagishik Lake or downstream of the Project." **The geomorphic study did not conclude that the project would not disturb sediment in Wabagishik Lake.**

The Parish Geomorphic Assessment report clearly stated that, "**Due to time constraints and access issues, sediment data for reaches W1, W2 (Wabagishik Lake), and W7 was not collected.**"<sup>1</sup> Also, "**Due to time constraints and access issues, reaches W1 and W2 were not visited as part of the field program.**"<sup>2</sup> (W1 is defined as the Vermilion River below Lorne Falls Dam, **W2 is defined as Wabagishik Lake**, and W7 represents the lake/pool area before the confluence of the Vermilion with the Spanish River).

Yet, Xeneca responded in their Overview response to ORA that "Extensive study of the lake was carried out as outlined in the ER, including geomorphology, hydrology, water

<sup>1</sup> Annex 1, Vermilion River Hydroelectric Project Geomorphic Assessment, Wabagishik Rapids, 3.3.1, Bed Material - P-14

<sup>2</sup> Annex 1, Vermilion River Hydroelectric Project Geomorphic Assessment, Wabagishik Rapids - P-17



*quality, aquatic habitat and other studies.*<sup>3</sup> This claim is not reflected in any of the supporting ER studies, and the proponent offers no indication of exactly where in the ER that claim can be substantiated.

Please show us where in the ER documentation these claims by the proponent are supported?

**b. Water Quality:**

Hutchinson Environmental Solutions Ltd. (HESL) reported, that “HESL understands from Xeneca that the facility will not impound water in Wabagishik Lake.”<sup>15</sup> Consequently, **“the pre-development water quality samples were collected immediately downstream of the proposed facility (Figure 5). There are no features that could differentially affect the water quality in the project area such as wetland drainage, appreciable flow changes or contaminant point sources. Therefore, only one sample location was required to define the ambient water quality flowing through the project area at baseline. The baseline results from this one location will provide a temporal reference for all post development monitoring.”**

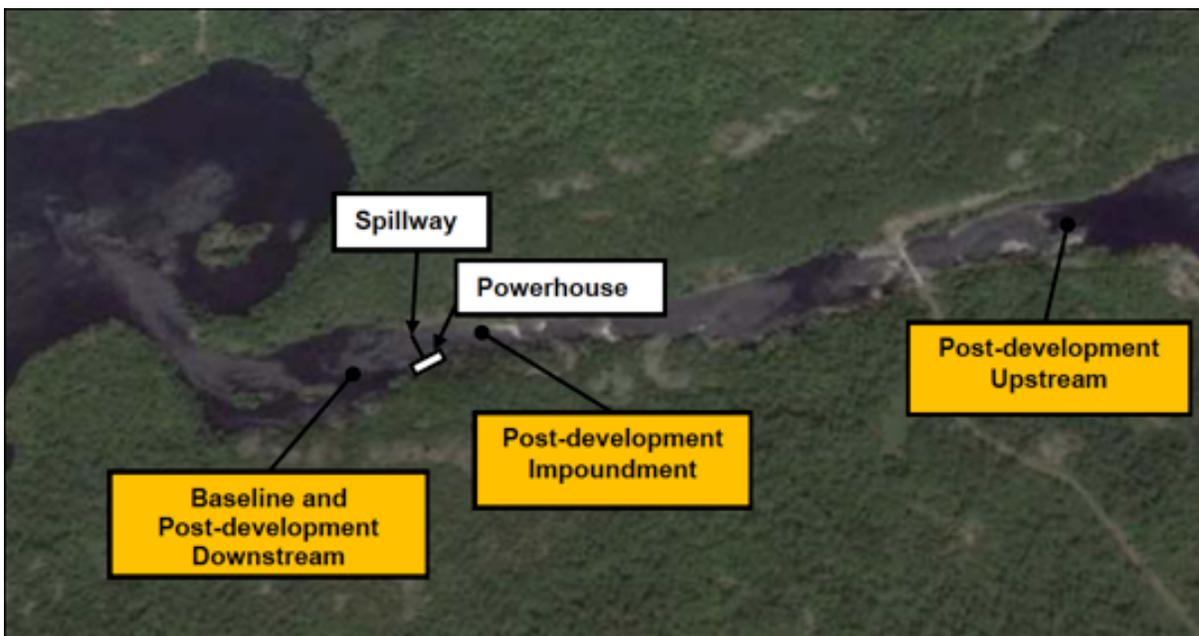


Figure 5. The pre- and post-development water sampling locations.

The HESL Report clearly did not consider the lake when it reported that “The baseline sample location is downstream of all inputs to the Vermilion River from the facility’s limit of inundation to its proposed powerhouse tailrace, and represents the most stringent baseline reference. The baseline samples represent the pre-development water quality immediately downstream of the proposed facility and in the proposed inundation area, and should have water quality similar to the future upstream reference site which will be unaffected by the proposed facility.” Also, “Post-development reference water quality

<sup>3</sup> Wabagishik ORA Quick Reference – Xeneca Overview Response Chart, P-3



*samples will be collected upstream of the limit of inundation in the southwest bay at the outlet of Wabagishik Lake [this is at the outlet, not within the lake]....”<sup>4</sup>*

This is as close to the lake as the water sampling got – but it was at the outlet of Wabagishik Lake, not within the Lake. Xeneca erroneously claims, “*Nonetheless, the lake has been included in the baseline study program for water quality...*”<sup>5</sup>; and the Review states “*The daily release of water from the Project is not expected to impact drinking water quality. **The Environmental Report establishes a baseline water quality assessment...***”; however, the Hutchinson Report makes it clear that the only pre-development baseline sample site was immediately downstream of the dam. The lake was not studied because Xeneca informed Hutchinson that the lake would not be used as a headpond.

Whether there is no new inundation or not, the dam would block flow and exert influence on Wabagishik Lake levels and flows on a daily basis by up to 10 cm – and perhaps more when considering the wave action and seiche effects. Water quality baseline and geomorphology studies should have been done on what was at least identified in the ER as a Zone of Influence. If not for a lake coupled design, the project would likely not be economically viable. The proponent has consistently misled stakeholders and the Minister regarding whether water quality and geomorphic studies were completed with regard to Wabagishik Lake.

Neither the proponent, nor the Review provides any indication of where in the ER documentation the proponents claims are supported; however, we have supported our claims and position through actual quotes from the ER.

**Please indicate where in the ER it states that water quality and geomorphology studies were conducted on Wabagishik Lake?**

**2. *Ministry technical staff have reviewed the Project documentation and concluded that it is unlikely the contaminated sediment from the bottom of Wabagishik Lake would be disturbed and transported downstream...***

We made it very clear in our Part II Order request that we were also **concerned about the bay area just downstream of the dam, but this was ignored in the review, and in the Minister’s decision.**

Our Part II Order request said,

*“Downstream of the dam, this peaking operation will operate within an operating band of 30 cm, and on a daily basis large sections of the river would be dewatered only to be flushed with a wall of water when the turbines are turned on at peak demand hours, and flow velocity would instantly jump from the environmental flow of 5, 6.5 or 8 cms to 25, 26.5 or 28 cms [environmental flows mentioned as possibilities in the ER]. This rush of water flooding out from the turbines would be like turning a fire hose on a garden. Xeneca states that this is within the “natural fluctuations” in flow velocity, but natural fluctuations do not occur daily to this extreme, nor do they create an instant wall of water.*

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<sup>4</sup> Annex IV, Wabagishik Rapids Surface Water Quality & Fish Sampling Guidance, Hutchinson Environmental Sciences Ltd., P-5

<sup>5</sup> Wabagishik ORA Quick Reference – Xeneca Overview Response Chart, P-4



*In the downstream bay area identified as W4 and W5 in the geomorphology report is where the greatest potential for erosion exists. W4 is described as a “sediment sink” and W5 was “primarily comprised of fine silts and sands or coarse gravel”<sup>6</sup> in this report. This bay area is filled with very fine silt that would very easily be disturbed and churned up with rapid flow velocity changes – Xeneca does not address this in the ER.*

*It is our position that due to the operation of this peaking facility, with rising and falling water levels and rapid increases in flow velocity, that there is potential for considerable erosion, sedimentation and scouring of the substrate, that would send severely contaminated sediment and soils downstream. This would have serious repercussions for all downstream aquatic life and habitat, as this heavily contaminated sediment would eventually end up in the North Channel of Lake Huron.”<sup>7</sup>*

The Vermilion River system has already been highly compromised by over 100 years of mining waste, and a long history of 10 upstream wastewater treatment facilities releasing treated, undertreated and untreated effluent into its waters. In March of this year alone, over 268,000 m<sup>3</sup> of undertreated wastewater was bypassed into the Vermilion River system because of heavy rain events.

A 1986 MOE Sediment Study for Wabagishik Lake underscores this history when it reported contaminated sediment containing heavy metals such as nickel, copper, lead, arsenic, iron, and manganese, many times over “**severe effect levels**”, and zinc, chromium and cadmium at elevated levels. On several occasions the Vermilion River Stewardship has requested that Xeneca undertake sediment sampling on Wabagishik Lake and downstream in the bay area where silt and sediment have collected over the years, in an area that is very vulnerable to the extremes of flushing, dewatering, erosion and scouring from a waterpower facility. Xeneca was made aware of this study in the spring of 2013, and yet none of its findings were reflected or addressed in the Environmental Report (ER).

Additionally, the “**Environmental concerns in the Spanish Harbour Area in Recovery** were linked to the impacts from the Espanola sewage treatment plant, past log-driving operations, effluent from the pulp and paper mill in Espanola (Domtar Inc. Eddy Specialty Papers; formerly E.B. Eddy Forest Products Ltd.), and discharges from past and ongoing mining, milling and smelting activities in the Sudbury area. The Vermilion River, which enters the Spanish River above Espanola, drains the Sudbury basin and carries contaminants from these and other sources into this Area in Recovery.”<sup>8</sup>

This very lacking Environmental Report and project were approved in spite of the potential for sending **heavy metals at severe effect levels** downstream into the Spanish Harbour of Lake Huron. This is especially surprising and concerning in light of the recently proclaimed Great Lakes Protection Act, 2015 (Act), with its purpose to protect and restore the Great Lakes-St. Lawrence River Basin.

The aptly named “sediment sink” in the bay area of the Vermilion River, just downstream of the proposed dam, contains very fine and deep sediment, and would easily be disturbed by the sudden surges of water coming from the turbines whenever they were started up each day to

<sup>6</sup> Annex 1, Part 2 – Geomorphic Assessment - P11 & 12

<sup>7</sup> ORA & VRS Part II Order request on Wabagishik Rapids GS Environmental Report, 1 November 2013.

<sup>8</sup> Spanish Harbour Area in Recovery, Status of Beneficial Use Impairments, September 2010. ISBN: 978-1-100-18058-8, Cat. No.: En164-22/10-2011E-PDF, PIBS:8227e, Published by Environment Canada and the Ontario Ministry of the Environment.



produce power during peak demand hours. The flushing action of the turbines would have great potential to send significant additional loads of heavy metal contaminated sediment, at severe effect levels, downstream into the Spanish Harbour.

It is ORA and VRS's position that the proposed project would not have supported the Province's efforts to restore the Spanish Harbour of Lake Huron, and is not in alignment with the purposes of the Act.

### **Terminated FIT Contracts:**

In March of 2015, Xeneca informed stakeholders that it would be restructuring, and that it would cancel some of its Feed-in-Tariff (FIT) contracts. ORA attempted to obtain a list of terminated FIT Contracts from the IESO; however, we were informed that this was proprietary information and was not available to the public. Consequently, in February of this year, ORA filed a Freedom of Information Application (FIPPA) with the IESO to obtain a list of terminated FIT Contracts. On the 28<sup>th</sup> of May 2016 we received a partial list of 16, and on the 8th July 2016 we received the completed list of all 19 of Xeneca's terminated FIT Contracts.

It is very disappointing that our organization had to resort to filing a FIPPA in the first place, considering this government ran on a platform of providing an open and transparent government. However, this important information was withheld from the public, as well as from the MNRF, and apparently the MOECC as well. ORA checked with the IESO, and the Manager of Renewable Energy Contracts informed us that once a FIT Contract is terminated, it cannot be reinstated.

The list of terminated FIT Contracts revealed that the last of Xeneca's 19 FIT Contracts were terminated on 9 July of 2015, only 2 days after the Blanche River ER was formally rejected by the MOECC. Surprisingly, it appears that the MOECC and MNRF staff have continued to work on Xeneca's project files for a year when there was no possibility of any of their 19 projects proceeding, and stakeholders have been left to twist in the wind for all that time.

### **Conclusion:**

It was encouraging to know that stakeholders would at least have been part of a Steering Committee that would have been given some sort of a voice throughout the permitting process; however, allowing this project to proceed would have set a very bad precedent. It would have encouraged other proponents to ignore MNRF and MOECC advice and recommendations, to fast-track and gloss over important studies required to properly assess key zones of influence, and would have condoned unacceptable behaviour that undermines confidence in the entire process.

In our opinion this decision had nothing whatsoever to do with providing clean or green renewable energy, and a project of this nature would not have been for the betterment of the people of Ontario. Instead, it was simply a politically expedient decision that sets a bad precedent, and would have placed the environment and communities at serious risk.

As was evidenced in the 23 Part II Order requests that were submitted to the Minister on this ER, this particular project raised a great number of red flags, and serious concerns with local stakeholders. We submit that none of Xeneca's proposed waterpower projects were predictable, repeatable, nor mitigable, and did not meet the standard of practice and social licence that the MOECC should be ensuring.

We are encouraged that the federal government has decided that a complete overhaul of environmental assessment and regulatory mechanisms is necessary in order for the public to have



confidence in the safety and sustainability of any new or upgraded developments going forward. Streamlining and fast tracking erodes public and First Nation confidence and actually slows project development down. The only way forward is to take measures which will restore confidence in a very broken, dysfunctional and expensive environmental assessment process. The Minister's decision is contrary to its mission to provide healthier communities and to protect Ontario's water.

ORA would be very pleased to meet with you to discuss a more sustainable and confident way forward.

Respectfully,

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