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1 February 2017

The Honourable Glen Murray
Minister of Environment and Climate Change
77 Wellesley Street West, 11th Floor
Toronto, Ontario
M7A 2T5
By Email: Minister.MOECC@ontario.ca

Kathleen Hedley
Ministry of the Environment and Climate Change
Environmental Approvals Branch
135 St. Clair Avenue West, 1st Floor
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By Email: Kathleen.Hedley@Ontario.ca

Town of Erin
5684 Trafalgar Road
Hillsburgh, Ontario
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By Email: Dina.Lundy@Erin.ca

Re: Town of Erin
Hillsburgh Dam and Bridge Class EA
Notice of Study Completion
Part II Order Request

Dear Sirs:

The Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several stewardships, associations, and private and First Nation citizens who have come together to protect, conserve and restore river ecosystems all across Ontario.

ORA appreciates the opportunity to comment on the Hillsburgh Dam and Bridge Class EA Project File Report.

As ORA noted in our 20 June 2016¹ comment letter, the West Credit River is a highly valued coldwater brook trout fishery, that has been in decline because of a series of dams, including the Hillsburgh dam, that have caused thermal warming, degraded water quality, and blocked fish access to important habitat and spawning areas. These impacts and more will only be

¹ 20 June 2016 comment letter from Ontario Rivers Alliance to Paul Ziegler, Triton Engineering Services Limited and Dina Lundy, Town of Erin, Re: Hillsburgh Dam and Bridge, Upper West Credit River.



amplified with the predicated increased frequency and magnitude of droughts and extreme rain and flooding events that climate change will bring in the years to come.

According to a recent NASA and National Science Foundation funded study of more than half of the world's freshwater supply, climate change is rapidly warming lakes and rivers around the world, and threatening freshwater supplies and ecosystems. ²

"Climate warming will adversely affect water quality and water quantity, as well as the magnitude and timing of river flows, lake levels and water renewal times." ³ Drought conditions could place additional stress on riverine ecosystems, while more extreme rainfall will heighten the risk of dam failures (14 dams were breached in a South Carolina flood in October of 2015) and rapid release of high volumes of water.^{4,5} *"Climate will interact with overexploitation, dams and diversions, habitat destruction, non-native species and pollution to destroy native freshwater fisheries."*⁶ We must recognize the hazards of infrastructure that would degrade water quality, threaten our fisheries, or that jeopardize the ecosystem services that healthy rivers provide during times of drought and flooding.

It is imperative that the Town of Erin examines every means possible to make its community more resilient to climate change, and most importantly, to protect its finite freshwater resources and its fishery. In fact, consideration of climate change was not even mentioned within the EA documentation, and ORA sees this as a major flaw, when it should have been included as a key consideration in the Scoring Matrix.

Additionally, the Ministry of Natural Resources and Forestry has partnered with several other organizations to remove two upstream dams which would facilitate the implementation of the Credit River Fisheries Management Plan (OMNR and CVC, 2002), a multi-species ecosystem-based recovery initiative, and the West Credit River Subwatershed Background Study and Impact Assessment (1998, 2001).

The Natural Environment Report supports these initiatives when it reports, *"The analysis concluded that either Alternative C - Option 2 or Alternative D - Option 2, which includes the construction of an offline pond, are the preferred alternatives from a natural heritage perspective. These alternatives have the least negative impacts to the natural heritage features and provide positive benefits to the Natural Environment in the long term"*⁷.

However, the conclusion of the Class EA Project File Report, was to rehabilitate the dam and reconstruct the bridge (Alternative B, Option 1), and does not support these important initiatives.

² Study: *Climate Change Rapidly Warming World's Lakes*, 16 December 2015.

³ Schindler, D.W., 2001. *The cumulative effects of climate warming and other human stresses on Canadian freshwaters in the new millennium*. *Canadian Journal of Fisheries and Aquatic Sciences*. 58: 18-29.

⁴ Dams fail, death toll rises as flood flows east in Carolinas. <http://wbtw.com/2015/10/08/dams-fail-death-toll-rises-as-flood-flows-east-in-carolinas/>

⁵ Colorado flood: Dams break in Larimer and Adams counties; overflowing in Boulder. http://www.denverpost.com/environment/ci_24080336/dams-break-at-rocky-mountain-arsenal-and-larimer

⁶ Schindler, D.W., 2001. *The cumulative effects of climate warming and other human stresses on Canadian freshwaters in the new Millennium*. *Canadian Journal of Fisheries and Aquatic Sciences*. 58: 18-29.

⁷ Hillsburgh Dam, Town of Erin, *Environmental Assessment – Natural Environment Report*, 6.0 Conclusion, October 13, 2016, AA12-137A. P-65.



Unfortunately, Alternatives C and D were removed from the Shortlisted Comparison Ranking Alternatives.⁸

ORA submits that the process appears to be flawed, as there is a lack of traceability and transparency by way of documentation to reveal the steps taken by the Town of Erin and Triton Engineering Services Limited in moving from the preferred Alternative C or D, Option 2, as set out in the Natural Environment Report, in March⁹, and October of 2016¹⁰, to the final recommended preferred alternative, Alternative B1, in November of 2016¹¹. It is especially puzzling when the letter from the County of Wellington, expressing their “strong preference” to rehabilitate the dam and reconstruct the bridge, was dated July 26, 2016¹² - long before the October, 2016 Natural Environment Report.

In fact, this correspondence was listed as the reason when it reports,

*“Therefore, as the Town does not have access to this property, it is impractical for the Town to proceed with considering Alternatives which will require access to and impact the pond property. Based on this, the Project Team reassessed the list of alternatives to include only those options which remain feasible for the Town to implement without impacting the adjacent pond owner. This will allow the Town to determine a permanent solution for the Hillsburgh Dam and its associated bridge without affecting the pond property and ultimately select an alternative solution for which they have the ability to implement and construct.”*¹³

Thus, the remaining shortlist excluded Alternative C and D, Option 2. However, there is no documentation to demonstrate what steps were taken to determine that riparian rights trumped all other purposes in the Lakes and Rivers Improvement Act (LRIA), or that would indicate whether the Town of Erin ever sought MNR guidance with regard to the possibility of proceeding with decommissioning in spite of the County’s position to keep the dam and reconstruct the bridge.

When interpreting the LRIA, it is important to take into account all of its purposes when assessing the feasibility of the various Alternatives, and that protecting riparian rights is only one of several important criteria. Riparian rights should not be considered paramount over all of its other important purposes:

The Purposes of this Act are to provide for,

- a) *the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them;*

⁸ Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, Section 5.5 Shortlisted Alternatives, Project File No.: A4685E, November, 2016. P-39.

⁹ Draft – Hillsburgh Dam, Town of Erin, Environmental Assessment – Natural Environment Report, 6.0 Conclusion, March 15, 2016, AA12-137A. P-53.

¹⁰ Hillsburgh Dam, Town of Erin, Environmental Assessment – Natural Environment Report, 6.0 Conclusion, October 13, 2016, AA12-137A. P-65.

¹¹ Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, 7.0 Recommended Preferred Alternative, Project File No.: A4685E, November, 2016. P-45.

¹² Appendix F-2, July 26, 2016 correspondence from Gary Cousins, County of Wellington, to Paul Ziegler, Re: Hillsburgh Dam and Bridge Municipal Class EA. P-111/161.

¹³ Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, Section 5.5 Shortlisted Alternatives, Project File No.: A4685E, November, 2016. P-38



- b) *the protection and equitable exercise of public rights in or over the waters of the lakes and rivers of Ontario;*
- c) *the protection of the interests of riparian owners;*
- d) *the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;*
- e) *the protection of the natural amenities of the lakes and rivers and their shores and banks; and*
- f) *the protection of persons and of property by ensuring that dams are suitably located, constructed, operated and maintained and are of an appropriate nature with regard to the purposes of clauses (a) to (e). 1998, c. 18, Sched. I, s. 23.*¹⁴

Additionally, all legislated criteria under LRIA should have also been considered and included in the Scoring Matrix, and they were not.

ORA submits that there appears to be a lack of due diligence in assessing all the purposes of the LRIA before making a final decision to exclude Alternatives C and D, Options 1 and 2 from the recommended preferred alternatives.

ORA also notes that Section 4.1.4 indicated that access to the pond and surrounding shoreline property was not granted, so physical analysis of sediment quantity and quality was unattainable¹⁵; however, it is our understanding that the County of Wellington took ownership of the pond area prior to May 19, 2016¹⁶, so there should be no reason that a sediment survey and geomorphological investigation could not have been completed before the November 2016 Project File Report. This would have provided information on the quantity and quality of sediment within the Hillsburgh Pond, as well as any impacts or benefits with the introduction of a naturalized channel.

If the excuse is that the County of Wellington wouldn't allow it, then it is difficult to understand how sediment monitoring and dam safety can be properly addressed by the Town of Erin when it apparently does not have permission to access the pond and surrounding shoreline. The liability and associated costs presented by the Hillsburgh Dam, is already classified as having a High Hazard Potential and risk to life and property, due to its size and proximity upstream of a series of downstream dams. However, the documentation does not reveal whether the County of Wellington has agreed to share in safety and maintenance responsibilities, or whether they are willing to share in the liability in the event of dam failure.

ORA submits that the decommissioning alternatives should not have been removed from Table 5.6 – Shortlisted Comparison and Ranking of Alternatives¹⁷, until after the sediment survey and geomorphological investigation had been completed, because its ranking would likely have been very different in the Scoring Matrix.

¹⁴ *Lakes and Rivers Improvement Act, R.S.O. 1990, CHAPTER L.3, Section 2, Purposes of Act,*

¹⁵ *Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, 4.1.4 Sediment Transport, Project File No.: A4685E, November, 2016. P-14.*

¹⁶ *Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, 5.5 Shortlisted Alternatives, Project File No.: A4685E, November, 2016. P-38.*

¹⁷ *Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, Table 5.6 – Shortlisted Comparison and Ranking of Alternatives, Project File No.: A4685E, November, 2016. P-39.*



Documentation must also be provided to demonstrate some type of an agreement by all dam owners on dam safety and monitoring, as well as the sharing of liability.

Finally, the Hillsburgh Dam presents a full barrier to fish passage, and the EA indicated that if the Hillsburgh Dam is rehabilitated and the pond maintained, that it would recommend mitigation measures be investigated to determine the efficacy and feasibility of a bottom draw dam design to minimize thermal impacts to the downstream watercourse, as well as a fishway to allow fish passage and mitigate the impact of fish barriers¹⁸. However, there is no firm commitment to these mitigation measures, only a promise to recommend their investigation.

ORA submits that in consideration of the Credit River Fisheries Management Plan (OMNR and CVC, 2002), and the West Credit River Subwatershed Background Study and Impact Assessment (1998, 2001), that at a very minimum, these fish passage and bottom draw mitigation measures, while not perfect, should be mandated if a dam rehabilitation project does proceed.

It is also difficult to assess whether stakeholders were properly consulted when key considerations could not have been communicated at the 19 May 2016 Public Information Centre. Key considerations and criteria that led to the final decision in November of 2016 were unknown at that time, so could not have been communicated.

Conclusion:

After having carefully reviewed the information as presented in the Hillsburgh Dam and Bridge Class EA Project File Report, and in consideration of the above-mentioned observations and concerns, ORA submits that there is a general

- lack of due diligence to fully explore all criteria; and a
- lack of a clear and traceable path to show exactly what transpired leading up to the final decision to exclude Alternatives C and D, and recommend Alternative B-1.

Consequently, the ORA requests that the Minister issue a Part II Order to elevate the Municipal Class Environmental Assessment to an Individual Environmental Assessment, and to include consideration of Alternatives C and D, and their coinciding Options 1 and 2 in that Assessment.

An Individual Environmental Assessment would ensure that all pertinent information is included and properly assessed, and provide all stakeholders with a fulsome and evidence-based decision.

ORA looks forward to your response.

Respectfully,

Linda Heron
Chair, Ontario Rivers Alliance
(705) 866-1677

¹⁸ *Town of Erin, Draft Hillsburgh Dam and Bridge, Class EA Project File Report, 4.2.2 Aquatic/Fish Habitat, Project File No.: A4685E, November, 2016. P-18.*



cc: Mr. Paul Ziegler, Triton Engineering Services Limited – Pziegler@TritonEng.on.ca