



5 December 2019

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Strategic Policy Section, Policy Division
Ministry of Natural Resources and Forestry
99 Wellesley Street West,
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Toronto, ON M7A 1W3
Via Email: SIPB@Ontario.ca

Re: ERO-019-0545 - Waterpower Exemption from Permits to Take Water
ERO-019-0732 – Proposal to Amend the Lakes and Rivers Improvement Act to Give
Authority to the Minister to make a Regulation to Assess and Monitor Methylmercury

Dear Sirs:

The Ontario Rivers Alliance (ORA) is writing further to our [submission dated 22 November 2019](#) with regard to the above noted Environmental Registry postings. Please consider this submission to be an extension of it, where we laid out several concerns, questions, recommendations and supporting arguments. Underlining is meant to emphasize important aspects.

Given that Bill 132 was reported back to the Legislature without removing Schedules 9 and 16, the ORA is providing this supplemental submission to the above noted ERO notices.

It is our understanding that the Ministry of Natural Resources and Forestry (MNRF) will not hold additional consultations regarding the specifics of a potential new regulation under the *Lakes and Rivers Improvement Act (LRIA)*. If our understanding is accurate, ORA strongly recommends that the MNRF provide additional detail on any new regulation and an independent opportunity for the public to respond, if and when the Legislature passes Bill 132.

In any event, ORA outlines below our continued concern about the transfer of water management issues for waterpower away from the Ministry of the Environment, Conservation and Parks (MECP) and, if the transfer does occur, that more terms, conditions and requirements must be included in any new regulation.

ERO-019-0545 – Waterpower Exemption to the PTTW:

The ORA remains strongly opposed to any waterpower exemption to a Permit to Take Water (PTTW) under the *Ontario Water Resources Act*. The PTTW has been very effective in the assessment, monitoring, reporting, compliance and enforcement of the serious issues resulting from the operation of waterpower facilities and is by far the ORA's preferred option. The MECP already has in-house expertise in place for the protection of water quality and water quantity and is therefore the appropriate authority to manage it.



Under Bill 132, *Better for People, Smarter for Business Act, 2019*, and more specifically ERO-019-0732 stated that the proposed “*changes are designed to improve delivery of our mandate to clients, stakeholders and the public, while ensuring sustainable use of natural resources*”. It also goes on to state that the Bill “*if passed, would enact several legislative amendments that would support improving Ontario’s competitiveness, reducing unnecessary red tape and regulatory burden on business, without compromising safeguards that protect public health and wellbeing, safety and the environment.*”¹

These proposals are bad for communities and great for the waterpower industry. The proposed changes do not improve or strengthen the delivery of the government’s mandate to stakeholders and the public, instead it places the protection of the environment, safety and best interests of communities in the hands of the for-profit waterpower industry and individual waterpower facility owners. The proposed changes may cut red tape but at the same time they *compromise safeguards that protect public health and wellbeing, safety and the environment.*

Recommendation 1:

The MECP continue to regulate Waterpower through the PTTW program, under the OWRA.

We now turn our attention to the potential new regulation-making power for the Minister of Natural Resources and Forestry under the *LRIA*.

ERO-019-0732 - Amendments to *LRIA*:

The proposed legislative amendments to the *Lakes and Rivers Improvement Act (LRIA)* would “*create a new Minister’s regulation-making authority to allow the Minister to require some owners of electricity-producing dams to, where necessary, assess, monitor and report on methyl mercury related impacts to water and fish*” and “*amend an existing authority to incorporate guidelines by reference in the regulations.*” The proposal stipulates that this requirement would apply to the “*owners of the twelve existing dams that currently have mercury assessment, monitoring and reporting requirements established through the Ministry of Environment Conservation and Parks issued PTTW, and if regulations are made would continue these requirements under the authority of the Lakes and Rivers Improvement Act*”. The ERO proposal also goes on to say that “*new or significantly redeveloped electricity-producing dams may, if the regulation is made, require assessment, monitoring and reporting of mercury, where there is a new or expanded head pond area and/or where there are identified risks associated with human consumption of fish*”².

As stated in the current PTTW program, hydroelectric power generation is determined to be a Category 3 water taking, which has “*a greater potential to cause adverse environmental impact or interference*”³, and requires scientific studies and technical screening and evaluation carried out by the Ministry. The scientific studies are used to determine the potential impact of the proposed water taking on the aquatic ecosystem and other established in-stream uses and how the proposed taking should be designed and controlled to prevent or minimize the impact. If this government is truly serious about delivering on its mandate as described above, then it must take this responsibility seriously.

The ORA also wishes to make it clear that a waterpower facility must take water from the natural downstream flow and redirect it into the turbine/s where the force of that focused water turns the turbines to generate power. Without taking the water to turn the turbines, no electricity could be generated. Additionally, most hydroelectric facilities, even some designated as a run-



of-river facility, can and do hold water back in headponds/reservoirs so they can produce more power during peak demand hours. The IESO offers lucrative peaking bonuses to waterpower producers to generate more power during peak demand hours. These incentives encourage power producers to hold water back behind the dam for hours or days, so that more power can be generated during peak demand hours. Clearly, this is taking water from the natural downstream flow for the purposes of generating water power.

This type of peaking operation can and does result in numerous environmental impacts as referenced in our [22 November 2019 submission](#), and we also expressed a number of questions and assertions for why the current Water Management Plan (WMP) program under *LRIA* would be totally insufficient in its ability to capture the broad spectrum of protections provided under the PTTW.

The technical review and setting of stream flows and water levels based on the impacts of waterpower on the environment involves complex hydrologic modelling that the MECP has been responsible for up to now. However, if these decisions are left to the waterpower industry to determine, the flows and water levels are more likely to be based on the economic benefits of the facility instead of the *sustainable use of natural resources, without compromising safeguards that protect public health and wellbeing, safety and the environment*.

A water quality management policy must ensure the fair sharing, conservation and sustainable use of the waters of the Province, and consistent with that policy the MNRF must apply the following Principles:

- Principle #1: The Ministry will use an ecosystem approach that considers both water takers' reasonable needs for water and the natural functions of the ecosystem.
- Principle #2: Water takings are controlled to prevent unacceptable interference with other uses of water, wherever possible, and to resolve such problems if they do occur.
- Principle #3: The Ministry will incorporate risk management principles into the permit application/review process.
- Principle #4: The Ministry will consider cumulative impacts of water takings.
- Principle #5: The Ministry will incorporate risk management principles into the permit application review process.

These are all essential principles which help to ensure that waterpower is sustainable and environmentally responsible.

Recommendation 2:

In order to ensure "*the sustainable use of natural resources*", and that waterpower generation activities continue "*without compromising safeguards that protect public health and wellbeing, safety and the environment*", it is essential that, not just responsibility for methylmercury assessment and reporting be transferred over to the MNRF, but the full suite of protections, responsibilities and principles that the PTTW currently provides under the *OWRA*. Extensive terms, conditions and requirements must be included in any new regulation.



Waterpower Assessment and Compliance:

The MNRF will require a formal assessment and compliance program under the *LRIA*; however, the ERO posting goes into insufficient detail to understand the following:

1. Would MNRF undertake the monitoring, assessment and reporting of mercury related requirements and audit regularly for compliance to ensure it is being done correctly and completely?
2. Does the MNRF have the expertise for revising and/or making recommendations related to predictive modelling for mercury or will this responsibility remain with the MECP?
3. Would MNRF ensure risk management plans are being implemented and that impacted communities are adequately notified?
4. If the mercury risk management reports are determined to not be satisfactory (e.g. exceedances, insufficient modelling, monitoring or notifications). Then what? Would the MNRF ensure changes are made and implemented?
5. Would MNRF ensure a formal process is developed using a risk-based approach, with dedicated staffing and resources to regularly audit compliance of mercury and other *LRIA* related commitments (e.g. water levels and stream flows) made by waterpower facilities?
6. Would MNRF oversee compliance when the requirements are based on commitments made in Class EA for Waterpower? It seems unlikely that MNRF would want to be in a position of tracking and ensuring implementation of MECP's Class EA commitments; however, without a PTTW, MECP no longer has a legal instrument to do so.
7. So, then who would ensure compliance with the commitments made in the Class EA for Waterpower? Would this still be in MECP's domain?

Additionally, ORA is extremely concerned that any potential reliance on the Ontario Waterpower Association's (OWA's) best management practices (BMPs) for mercury would be used by government to make any decisions regarding methylmercury. The Waterpower Industry is a profit-oriented business, and OWA's BMPs are likely to be biased in the Industry's best interests, instead of the best interests of the public and their safety, and/or the impacts on Indigenous communities with their dependence on fish as a main staple of their diet. OWA's BMP has also had no public consultation or input.

Recommendation 3:

A formal methylmercury assessment, monitoring, reporting, compliance and enforcement program be established under the *LRIA*, using a science-based risk-management approach, including compliance auditing, enforcement follow-up, public notification and communication protocol.

Recommendation 4:

Methylmercury assessment, monitoring, reporting, compliance and enforcement program be applied to all new and upgraded hydroelectric facilities where it is determined, through science-based detailed mechanistic modelling, that there is an increased risk of methylmercury production and accumulation in fish tissue.

Recommendation 5:

The MNRF must be provided with adequate additional funding to employ the required scientific and technical expertise to assess, monitor, report and enforce the new regulation.



Public and Indigenous Consultation:

The ERO postings have been very lacking as to what exactly would entail if a new regulation under the *LRIA* is made, and it was very unclear whether there would be any further public and Indigenous consultation.

Recommendation 6:

There must be meaningful consultation with the public, Indigenous communities, the ORA and any other interested stakeholders, to ensure that all interests and perspectives are reflected in any new requirements under the *LRIA*.

In Conclusion:

No resources are more important to Ontarians than the abundant availability of fresh, clean and healthy water.

Strong environmental protections provide an insurance policy for people, our economy, and a sustainable future for our present and future generations.

ORA respectfully requests that these additional comments and recommendations be accepted, in spite of the comment deadline having passed.

The ORA looks forward to being consulted further on any proposed amendments under the *LRIA*.

Respectfully,

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Cc: The Honourable Minister John Yakabuski, MNRF – Minister.MNRF@Ontario.ca
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¹ *ERO-019-0732, Amendments to Three Statutes administered by the Ministry of Natural Resources and Forestry to support the proposed Better for People, Smarter for Business Act, 2019 and a proposal for a new regulation under the Lakes and Rivers Improvement*

² *Ibid.*

³ *Permit to Take Water Manual, April 2005, Ministry of the Environment, PIBS 4932e. P 7-8.*