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Senator Fabian Manning
Chair, Standing Committee on Fisheries and Oceans
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Dear Senator Manning:

SaskPower appreciates the opportunity to again participate in the review of Bill C-68 with respect to the *Fisheries Act*. Previously SaskPower has provided our comments and concerns related to Bill C-68 through the Canadian Electricity Association and the Canadian Hydropower Association.

SaskPower is the primary generator, transmitter and distributor of electrical power throughout Saskatchewan and is committed to operating our hydroelectric and thermal facilities in an environmentally sustainable manner. By 2030, we plan to reduce our greenhouse gas emissions by 40% from 2005 levels and achieve up to 50% of installed capacity from renewable sources. This is an ambitious goal and it will take a cooperative approach to achieve this commitment. SaskPower sees this goal as aligning with and contributing to Canada’s ability to meet environmental obligations and commitments in respect of climate change, but we must ensure that federal regulatory oversight does not limit our ability to achieve our environmental targets.

SaskPower believes the *Fisheries Act* and its regulations should clearly focus only on those projects and activities which have the potential to cause significant harm to fish and fish habitat, and that language in a revised *Fisheries Act* should be scoped accordingly. SaskPower continues to have significant concerns related to some of the amendments in Bill C-68. These include:

- the inclusion of water flow in the definition of fish habitat
- the purpose statement of the Act
- maintenance of the characteristics of water upstream of an obstruction
- administrative burden of notifying of fish kills under normal operations
- the potential effect of Bill C-262 to Bill C-68 and SaskPower operations.

The proposed amendment in subsection 1(10) adds the quantity, timing and quality of water flow to the definition of fish habitat. This creates potential for conflict between laws, authorizations or orders of authorities with jurisdiction over water flows and an order under the Act. Without cooperation between
the federal government and authorities with jurisdiction over water flows, (as proposed in relation to section 34.3), a party that is subject to the Act will face considerable regulatory uncertainty. Further, the legal basis for deeming water flows to be, “fish habitat”, under the Act is uncertain. SaskPower recommends deleting subsection 1(10) of the Act and re-inserting the provision as published in the first reading of Bill C-68 as, “fish habitat means water frequented by fish and any other areas on which fish depend directly or indirectly to carry out life processes, including spawning grounds and nursery, rearing, food supply and migration areas”.

SaskPower is concerned that the purpose statement of the Act, as proposed in subsection 2(1), establishes two clauses which are distinct and equal. Protection of all fish and fish habitat should not be understood as an end in and of itself. Clause (b) of the purpose statement referencing the, “conservation and protection of fish and fish habitat, including by preventing pollution”, should be tied to the higher-order purpose cited in clause (a), namely, “the proper management and control of fisheries”. SaskPower recommends revising subsection 2.1 to read as, “The purpose of this Act is to provide a framework for the proper management and control of fisheries with due consideration for the conservation and protection of fish and fish habitat, including by preventing pollution.”

The proposed amendment in subsection 34.3 (2) published in the first reading of Bill C-68 provided the Minister with sufficient authority to make orders to ensure the free passage of fish or the protection of fish and fish habitat in relation to an obstruction, including in relation to water flows. Of particular concern to SaskPower, in the amended version of subsection 34.3(2), is the power of the Minister to require the owner of an obstruction to maintain the characteristics of water upstream of an obstruction. In many cases, the owner of an obstruction will not have an ability to regulate water characteristics upstream of the obstruction. Further, it is unclear who determines the flow of water, “necessary”, to permit the free passage of fish and how this is determined, whereas in the version included in the first reading, it is clear the Minister determines such matters. SaskPower recommends revising subsection 34.3(2)(g) of the Act to read as, “Maintain at all times the characteristics of the water and the water flow downstream of the obstruction or thing that the Minister considers sufficient for the conservation and protection of the fish and fish habitat including within the reasonable ability of the owner or person who has the charge, management or control of the obstruction or thing.”

SaskPower is concerned that the proposed wording in subsection 38(4) would result in circumstances where, in the normal course of operations of a project or activity, a small number of fish may be killed. The requirement in subsection 38(4) to report such events would result in an unnecessary administrative burden. SaskPower recommends revising subsection 38(4) to read as, “Every person shall without delay notify an inspector, a fishery officer, a fishery guardian or an authority prescribed by the regulations of the death of fish that occurs outside the prescribed course of carrying on a work, undertaking, or activity authorized under the Act, or of the serious and imminent danger of such an occurrence.

Proposed amendments to the *Fisheries Act* in Bill C-68 continue to raise significant concerns for SaskPower, particularly related to the proposed definition of fish habitat and the uncertain scope of application of the Act. In addition to proposed amendments to the *Fisheries Act*, proposed Bill C-262 would require Canada to take all measures necessary to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous People. Bill C-262, when considered
with the proposed changes in Bill C-68, creates significant uncertainty related to the on-going operation of our existing operations. Potential modification of our current operations, or restrictions to future hydroelectric projects could limit SaskPower’s ability to utilize the clean energy generated from our hydroelectricity facilities, limiting our ability to achieve our greenhouse gas emission reduction targets.

SaskPower respectfully recommends the Senate consider our suggested changes related to Bill C-68.

Sincerely,

Tim Eckel, Vice President
Asset Management and Sustainability

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