SUBJECT: Committee Consideration of Bill C-68

I am writing with respect to Bill C-68 to reiterate my serious concern to the Senate Committee on Fisheries and Oceans with the proposed inclusion of the concept of water flow in the definition of Fish Habitat:

“Deeming — habitat

(2) For the purposes of this Act, the quantity, timing and quality of the water flow that are necessary to sustain the freshwater or estuarine ecosystems of a fish habitat are deemed to be a fish habitat.”

The OWA strongly recommends that this clause, which was not included in any of the government’s consultation, rather added after Third reading of the Bill, be removed. This provision is entirely unnecessary and, as outlined below, will have negative implications for the government’s broader objectives.

In Ontario, the operation of waterpower facilities with respect in particular to the management of water levels and flows is already regulated both through the provisions of the Lakes and Rivers Improvement Act (LRIA, Ministry of Natural Resources and Forestry) and the Ontario Water Resources Act (OWRA, Ministry of Environment, Conservation and Parks). The purpose of the LRIA includes “the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers”. Regulation under the OWRA requires the consideration of “issues relating to the need to protect the natural functions of the ecosystem, including, the impact or potential impact of the water taking or proposed water taking on habitat that depends on water flow or water levels.”

Perhaps most importantly, this amendment can be expected to have negative consequences on the stability of Ontario’s provincial energy grid and the federal government’s climate change objectives. In short, new water constraints on hydroelectric operations (i.e. reservoirs or downstream flows) will impact generators’ ability to respond to load demand (hydroelectric facilities play a key role in this regard, acting as a backstop to intermittent renewables like wind and solar generation). The cascading effect of such a change would place the supply gap burden on higher priced gas generation which, in turn, will lead to increases in GHG emissions.
The OWA recommends the legislation define Fish Habitat as:

“water frequented by fish and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas”

Further, the provisions of Section 34.3 (2) (Minister’s order), particularly with regard to the potential to require an owner, per (g), to “maintain at all times the characteristics of the water and the water flow upstream and downstream of the obstruction or thing that are necessary for the conservation and protection of the fish and fish habitat” should only be available once it has been demonstrated that the Minister has considered the regulatory requirements of the province in this regard. The OWA recommends the addition of a subsection such as:

“Before issuing an order pursuant to Section 34.3(2) (g), the Minister shall consult with any provincial government or any government department or agency with a regulatory responsibility for the management of water levels and flows”

Thank you for the opportunity to provide our input and advice.

Sincerely,

[Signature]

Paul Norris
President
Ontario Waterpower Association

Cc: Honourable John Yakabuski, Minister of Natural Resources and Forestry
Honourable Greg Rickford, Minister of Energy, Northern Development and Mines
Canadian Electricity Association
Waterpower Canada