



EXHIBIT No. _____

FILED ON _____

Ontario Waterpower Association Deputation to

Standing Committee on Justice Considering

Bill 198 – *Safeguarding and Sustaining Ontario's Water Act, 2007*

May 10, 2007

Thank you Mr. Chair and Committee members for the opportunity to speak to this proposed legislation. My name is Paul Norris and I am President of the Ontario Waterpower Association. We are a non-government organization representing the production and development of the province's primary source of renewable energy.

I am pleased to have the privilege today to provide input to your deliberations on Bill 198 - *Safeguarding and Sustaining Ontario's Water Act, 2007*. The Ontario Waterpower Association has been actively involved in contributing to the modernization of the province's legislative, regulatory and policy framework for water resource management over the past five years. Specific to a key element of this legislative proposal, I had the pleasure of participating on the Great Lakes Charter Annex Advisory Panel that served to inform Ontario's approach to the negotiations with the Great Lakes States and the province of Quebec. With respect to the implementation of the negotiated position through this proposal, I think it is important that the Committee recognize and appreciate that the position

was arrived at through a complex process of bilateral, multilateral, and internal discussions and dialogue. Members on Ontario's Advisory Panel brought an array of interests, experience and expertise to the negotiation process that resulted in an "mutually acceptable consensus" for Ontario's negotiators to consider. In my view, the legislation should respect the outcome of that process and any recommended changes carefully consider the wider implications for the negotiated agreement, both in Ontario and with respect to the approaches of other jurisdictions.

Of specific interest to our industry, however, are the proposed improvements that go beyond the immediate scope of the implementation of the Great Lakes Charter Annex. In my view, the opportunity provided by the intent to "modernize" the Act must finally address the equivalence in legislation governing water resource management for waterpower production.

In May 2002 – exactly five years ago, the government of Ontario amended the Lakes and Rivers Improvement Act to add a new provision with respect to water resource management. This new requirement, under Section 23 of Act provides the Minister of Natural Resources with the authority to order owners and operators of waterpower facilities to develop and comply with "Water Management Plans"

I'd like to point out two important facts related to the introduction of this new requirement. The first is that the province chose the Lakes and Rivers Improvement Act as the legislative vehicle by which water resource management

for dam owners would be regulated. There were other options available – for example – the Ontario Water Resources Act. The second is that the province has chosen to order the preparation of these water management plans only for rivers that produce hydro-electricity.

Over the past five years the province and the industry have collectively invested more than \$30 million dollars in implementing water management planning, with investment in new data collection, monitoring, evaluation and assessment ongoing over the next decade or more in preparation for the next iteration of planning.

In 2003, almost exactly a year after the introduction of Water Management Planning, the province posted on the Environmental Registry proposed amendments to regulation under the Ontario Water Resources Act and improvements to the Permit to Take Water Program. At the time, this proposal was directly linked to the government's "Clean Water Strategy".

In response to that posting, and to subsequent related policy and program initiatives, our Association has consistently observed and maintained that the introduction of water management planning under the Lakes and Rivers Improvement Act had been designed to achieve substantially equivalent objectives to those being proposed under the Ontario Water Resources Act.

Despite the apparent recognition of the unique position of our industry vis-à-vis regulatory equivalence, we have yet to see any targeted policy progress to address the issue. As a result, we are now dealing with permitting provisions related to water resource management issued under two separate pieces of legislation, with similar or identical requirements administered by two separate ministries. Let me give you a case example of a small waterpower facility in northern Ontario. The provisions of the Permit-to-Take-Water for the facility, posted on the EBR in 2005 are as follows:

- A minimum outflow of 8 cubic meters per second shall be maintained at all times
- Outflows shall be steady or rising between April 15th and June 15th
- No peaking of flows shall occur between April 15th and June 15th. Therefore, outflows must equal inflows at all times

Now, let me read you the provisions for the operating plan for the facility approved under water management planning, posted on the EBR in 2004:

- Outflows to be equal to or greater than 8 m³/sec at all times.
- Outflows will be steady or rising Apr. 15–June 15.
- No peaking of flows will occur Apr. 15– June 15 (i.e. outflows must equal inflows at all times).

I want to be clear that the industry has not suggested that we not be required to address the province's water policy objectives, rather that we substantially do, through a considered decision by the government to subject waterpower alone to

the provisions of Water Management Planning. It is clear that these provisions can and do meet pronial objectives.

Which brings me back to the current Bill. The province has clearly recognized in its communication of the proposed legislation and accompanying regulatory and policy framework the regulatory equivalence for waterpower facilities – most specifically in the design of the “conservation charge” and the appropriate proposed exemption of waterpower. As stated in the background material accompanying the introduction of Bill 198 “Hydropower production is largely an instream use of water that has minimal impact on water quantity and quality. In addition, many hydropower producers already pay a water rental charge (approximately \$130 million annually) under the Electricity Act, 1998 to the Ministry of Finance.”

As such, and as stated in our February 2007 EBR Submission to the posting of the proposed amendments to implement the Charter Annex Agreement it is recommended that the province take this limited window of opportunity to incorporate the following into section 34 of the Act – the section addressing the requirement for A Permit-to-Take Water. It is specifically proposed that a subsection be added to the existing exemption section as follows:

“Regulatory Equivalence”

(6) Subsection (3) does not apply to the taking of water with infrastructure regulated pursuant to Section 23.1 of the Lakes and Rivers Improvement Act or an equivalent.”

Alternatively, a regulation pursuant to Section 76 (a) of the Act that recognizes this overlap and duplication and is made effective before the new legislation is enacted could be used to achieve the same objective.

76. The Lieutenant Governor in Council may make regulations relating to this Act,

- (a) exempting any person, operator, licence holder, permit holder, licence, permit, activity, area, location, substance, material, water works, water service, sewage works, sewage service, well, discharge or thing from any provision of this Act or the regulations and prescribing conditions for the exemptions from this Act and the regulations;

Mr. Chair and committee members - made in Ontario waterpower has a critical role to play in addressing our electricity and climate change challenges. We have the resource, expertise and interest to increase the production of waterpower by more than fifty percent (50%) and position the province as a leader in renewable energy. But we need a rational and rationalized regulatory framework to achieve that objective. I urge you to take this opportunity to make the necessary changes within the Ontario Water Resources Act. Thank you. I'd be pleased to consider questions.