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International Boundary Waters
Waterways ✓
Waterpower - Out ✓
Niagara Falls ✓
Waterways - St. Lawrence ✓

W-114
(Encl.)

KENOGAMI (LONG LAKE) DIVERSION PROJECT

LEGAL POSITION

It might become useful in the debate to have in mind certain aspects of the legal position.

There is no need of an agreement with the United States in order to authorize the diversion itself into the Great Lakes. There is nothing in the Boundary Waters Treaty of 1909 to prevent it, and Canada can authorize it simply by approving the necessary works under the Navigable Waters Protection Act. (This was recognised by the negotiators of the unratified St. Lawrence Deep Waterway Treaty of 1932 when they inserted the special provision relating to such diversions. Article 8(d) of that Treaty did not talk about authorising such diversions or about any procedure for authorising them. It simply said that if such diversions were made the country doing it would retain the exclusive water-power rights as long as the diverted waters remained a part of the boundary waters.)

What Ontario and Canada really need, before diverting water, is an assurance that we can use the equivalent water for power production after the diversion becomes part of the boundary waters. That, in fact, would

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