



The St. Lawrence
Seaway Management
Corporation

Corporation de Gestion
de la Voie Maritime
du Saint-Laurent

Cornwall, ON

July 10, 2008

The Secretary, Canadian Section
International Joint Commission

Ottawa, ON

Dear Sir:

As a follow up to the presentation made in Kingston on June 24th, I am attaching the St. Lawrence Seaway Management Corporation's position paper as it relates to the IJC proposal for a new Order of Approval and Plan 2007.

This document outlines the concerns we have with respect to the impact on commercial shipping should the Commission proceed with the proposal in its current format.

I trust that our comments will be considered during your deliberations. Should you require any additional information or clarification on our position, please contact me at 613-932-5170, ext. 3606.

Yours sincerely,

Richard J. Corfe
President & C.E.O.

Canada



The St. Lawrence Seaway Management Corporation
Position Paper
on
IJC's Proposed New Order of Approval and Plan 2007

Since its implementation, regulation Plan 1958D with deviations as approved by the International St. Lawrence River Board of Control has generally met the needs of commercial navigation. Indeed, under the 1909 Treaty, commercial navigation needs are to take precedence over all other needs except for "uses for domestic and sanitary purposes."

It is the position of the St. Lawrence Seaway Management Corporation (SLSMC) that any move to Plan 2007 will cause some degradation of commercial navigation's interests and that any move towards Plan B+ will cause serious degradation of commercial navigation's interests, contrary to the conclusions drawn by the IJC.

IJC Economic Analysis Does Not Reflect Reality

SLSMC is of the opinion that the IJC's guide to the proposed new Order of Approval and Plan 2007, that shows overall positive economic results for commercial navigation when Plan 2007 and Plan B+ are compared to the simulation of the existing Plan 1958D with deviations, is inaccurate.

As stated by IJC representative Bill Werick, the theoretical economic improvements from the Study for commercial navigation with Plans 2007 and B+ compared to Plan 1958D with deviations, are primarily a result of fewer occurrences of velocities in the River upstream of the Moses-Saunders Dam that are unsafe for navigation. Mr. Werick created the "Shared Vision Model" to compare the various plans and their impacts on the interests. The Shared Vision Model makes an assumption that velocities would not be safe and navigation through that section of the River would have to be suspended when differentials between water level gauge stations exceed certain values.

The reality, however, is that winds often affect these water levels causing differentials to exceed the maximums, but navigation is not suspended in these instances because these wind-driven differentials are not indicative of unsafe velocities in the River. Seaway records indicate that navigation was suspended only once for a short period due to unsafe velocities in 1993 when it was necessary to stop navigation on alternate days to allow for increased flows to remove water from Lake Ontario after water on the Lake reached critical levels. It is our contention that the model inadvertently inflates the benefits of Plans 2007 and B+ and that these assumed benefits should be removed in light of the factual history of the last 20 years.

SLSMC has further concerns with the economic analysis, in particular with how the costs are calculated. It is our understanding that the analysis was limited to incremental costs of vessel transits from Becancour to Port Weller and not the total costs from origin to destination; that it only includes operating costs and does not include revenues; and that it does not consider potential modal shifts / loss of business as a result of prolonged periods of low levels or high velocities.

In addition, SLSMC is concerned that the output from the model developed by the Commercial Navigation Technical Working Group over 5 years was not input directly into the Shared Vision Model but that cost curves, developed for preliminary Plan options were used as approximations for input into the Shared Vision Model.

Frequency and Duration of Critical Flows and Levels is a Better Indicator

SLSMC contends that a more robust approach is achieved by comparing the frequency and duration of flows and levels that impact commercial navigation with different regulation plans under different supply scenarios, since this provides a better appreciation of the impacts than the economic analysis presented.

Using this approach, our analysis indicates that during dry supply scenarios, the simulation of Plan 1958D with deviations provides better water levels downstream of the Moses-Saunders Dam than Plan 2007, and Plan 2007 provides better levels downstream of the Moses-Saunders Dam than Plan B+. Since the Seaway, which extends from Montreal to the western end of Lake Ontario, is a continuum as far as commercial navigation is concerned, the lowest water level dictates the draft for the

entire system. Therefore, during dry supply scenarios, the current way of operating (Plan 1958D with deviation and under present institutional arrangements) is better for commercial navigation than Plan 2007, and Plan 2007 is better than Plan B+ for the entire system.

Another aspect of Plan 2007 that is of serious concern for commercial navigation is that it proposes lowering Lake Ontario for the March-to-July period in two (2) consecutive years once every twenty (20) years when Lake Erie outflows are low in the winter and it has no provision to stop trying to lower it if conditions turn wet. Higher flows required to lower Lake Ontario would lower levels upstream of the Moses-Saunders Dam and could create velocities in excess of those safe for navigation. Moreover, if the plan the IJC is proposing tries to lower Lake Ontario for two (2) years in a row and then supplies turn dry, it would cause critical low levels on the Lake and in the River.

Need For Timely Deviations

Under the current Plan, and with the present Board of Control, deviations from Plan are permitted within limits to provide minimum levels as required for commercial navigation in the St. Lawrence River and to raise levels downstream to help vessels coming into the Port of Montreal when other interests are not adversely affected. These deviations are typically short term and are reconciled when opportunities permit. During the fall of 2007, after the Seaway had already negatively impacted commercial navigation by reducing the maximum permissible draft by three inches, the International St. Lawrence River Board of Control agreed to "over-discharge" with respect to Plan over several months to maintain levels on Lac St. Louis at or slightly above a minimum level for commercial navigation through to the end of the navigation season. Such deviations are critical for commercial navigation in the Seaway to maintain levels sufficient for vessels operating at Seaway draft but have little effect on the level of Lake Ontario. If the deviations over longer periods are either not permitted or untimely, the delays and loss of carriage capacity will have a serious economic impact on the transportation industry.

New Order Of Approval Is Open-Ended

It is the opinion of SLSMC that the proposed new Order of Approval is very open-ended and vague, in direct contrast to the existing Order of Approval, which includes more specific criteria. Over time, the International St. Lawrence River Board of Control has recognized certain

elevations at key locations as minimal for navigation, and SLSMC is of the opinion that these minimum levels must be recognized in the criteria of the Orders, since they form the backbone of a dependable navigation system.

It is SLSMC's understanding that, under the new Order, the IJC would be able to change regulation plans when they consider it appropriate without having to change the Order of Approval. The proposed new Order of Approval states that the IJC will continue to abide by the Boundary Waters Treaty of 1909, Article 8, wherein there is an order of precedence which lists "uses for navigation, including the service of canals for the purposes of navigation" as second only behind "uses for domestic and sanitary purposes." The proposed new Order of Approval, however, does not provide minimum levels or maximum outflows required for commercial navigation.

SLSMC believes that this further dilutes the standing of commercial navigation and has the serious potential to run afoul of the order of precedence in the Boundary Waters Treaty of 1909. By moving the criteria that protect commercial navigation from the Order of Approval to the Plan, in this case Plan 2007, and at the same time announcing the intention to change the Plan as it feel appropriate, the IJC is proposing a scenario that creates an unacceptable level of uncertainty for commercial navigation.

SLSMC understands that it is the intention of the IJC to address the conditions for allowing deviations and the procedures for handling them in a separate directive to the new Board. It is not apparent how the IJC plans to insure that navigation remains second in the order of precedence as required by the Boundary Waters Treaty, nor that they will be able to factually demonstrate how the Treaty is being respected. If it is the intention of the IJC to use the economic improvements that are predicted with Plans 2007 and B+ to do this, SLSMC re-iterates its contention that, as stated earlier, these numbers are not good indicators for making comparisons between the simulated Plan 1958D with deviations and other regulation plans.

Further, given that the IJC has indicated their intention to move to a variant of Plan B+ that is yet to be determined, but which will likely be seen by commercial navigation as significantly less favourable than Plan 1958D with deviations, SLSMC is very concerned with the potential latitude being provided under this proposal to the IJC to eliminate further consultation with the various interests.

Environmental Impacts Are Too Limited

The majority of the environmental improvements provided by any of the plans are based on improvements to the wetlands around Lake Ontario. By focusing on this one area of environmental improvement, wetlands, the IJC ignores impacts on the environment at a macro level. With respect to emissions/air pollution, moving cargo over the water on ships uses less energy and creates less greenhouse gas emissions per ton-mile of cargo moved than either rail or truck. As a result, the proposal to move to a regulation plan that results in lower water levels in the Seaway and Montreal Harbor creates a significant negative impact on the environment, as it will likely move cargoes away from the waterway and they will have to be transported overland.

Further, when mitigation was discussed, the New York State Department of Environmental Conservation suggested mitigating low water levels in the Seaway by dredging and mitigating damages to homes on the shores of Lake Ontario by constructing seawalls. It is SLSMC's understanding that large scale dredging in the River, which would be necessary to protect commercial navigation under a plan that allows for significant variability in water levels, would not have the support of all environmental groups and may have a much more significant negative impact on the environment than limiting the range of water levels on Lake Ontario as has been done in the past. Furthermore, the Study showed that seawalls have changed the ecology of Lake Ontario by limiting the movement of sands and other shoreline sediments. Construction of additional seawalls, it seems, would further impact the ecology of the Lake.

Conclusion

1. The economic analysis for commercial navigation does not provide a valid comparison between Plan 1958D with deviations and the proposed plans. Measuring the frequency and duration of low water and high flow events that impact commercial navigation is a better way to compare plans. Theoretical 'gradient delays' should not be included unless outflows are high, because they may be due to wind and have no impact on navigation.
2. Neither Plan 2007 nor Plan B+ is better for commercial navigation than the current way of regulating outflows and levels. Plan 2007, however, creates fewer problems for commercial navigation than Plan B+ under dry scenarios.
3. Deviations from plan flows will be required for commercial navigation and other interests no matter what plan is being used to regulate the outflow from Lake Ontario, because the ability to accurately forecast supplies and conditions is limited. While the intent of not deviating is so that the environmental benefits of a plan are not lost, past deviations for navigation have had minimal impact on Lake Ontario levels. It would better serve all of the interests if the decisions to allow specific deviations and to determine if and when they had to be reconciled were made based on their impact on the level of Lake Ontario and on other interests and on maintaining the intent of the regulation plan. Reconciling the deviations within one (1) to two (2) weeks is not always possible and the procedure for longer-term deviations is not likely to produce timely results.
4. Any protection required to provide levels and flows that are safe and acceptable for commercial navigation need to be written into the new Order of Approval because those provided in the regulation plan and/or in a directive from the IJC to the Board can be readily changed by the IJC. The current Order of Approval has a Criterion J, which provides for a minimum water level on Lake Ontario during the Seaway Navigation Season. The current Board recognizes the need to maintain water levels at Long Sault at or above 72.50m and on Lac St. Louis at or above 20.60m during the Seaway Navigation Season and 9910 cms is recognized as the maximum safe flow for navigation in the Seaway.

None of these protections for commercial navigation are included in the proposed new Order of Approval. Furthermore, the IJC and Study

Board have been informed on several occasions that the Seaway Navigation Season is not the same as it was in the 1960's, however, they have not changed this in the proposed new Order of Approval.

5. The environmental impacts of regulation should be measured on a large/macro scale and should not be limited to areas immediately adjacent to Lake Ontario and the St. Lawrence River and the environmental impact of proposed mitigation strategies should be measured against benefits being realized in the marshes around Lake Ontario.
6. Under the IJC proposed move towards a Plan B+ variant, commercial navigation will suffer economically unless significant mitigation is put in place, and yet there has been no discussion of the impact, cost or feasibility of suitable mitigation for commercial navigation.
7. The proposed 'adaptive management strategy' needs to include monitoring and assessment of outflows and water levels that impact commercial navigation to determine whether anticipated outcomes are being realized.
8. SLSMC's position is that any proposed 'adaptive management committees' should include broad representation from commercial navigation and other traditional interests, as well as environmental interests.