



July 11, 2008

The Secretary, Canadian Section
International Joint Commission
234 Laurier Avenue West, 22nd Floor
Ottawa ON
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Email: comment@ottawa.ijc.org

RE: Review of the Lake Ontario - St. Lawrence River Order of Approval

Dear Secretary,

Thank you for the opportunity to comment on the International Joint Commission's (IJC) proposed New Order of Approval and Plan 2007 for regulation of Lake Ontario and the St. Lawrence River through the Moses/ Sanders Dam at Cornwall. Conservation Ontario (CO) is a nongovernmental organization that represents Ontario's 36 Conservation Authorities (CAs). The IJC led an inclusive consultation process and CA staff were pleased to participate in the Belleville, Kingston, Alexandria Bay, Port Jordon, and Massena, NY information sessions.

In addition, CO was pleased to present our attached positioning (Attachment 1) to the IJC at the June 24th Kingston public hearing. The attached positioning was developed with the input from 12 CAs along the Lake Ontario-St. Lawrence system. Attachment 2 includes the positioning from other agencies as presented to CO Council.

The following resolutions were endorsed by CO Council on June 23rd, 2008.

WHEREAS the International Joint Commission (IJC) established in December 2000 the International Lake Ontario and St. Lawrence River Study Board to comprehensively evaluate options for regulating levels and flows in the Lake Ontario – St. Lawrence River System beyond the current plan 1958-D which has been in effect since October, 1963.

WHEREAS the Study Board adopted a Vision to contribute to the economic, environmental and social sustainability of the Lake Ontario and St. Lawrence River System and a Goal – to identify flow regulation plans and criteria that best serve the range of affected interests, and address climatic conditions in the basin.

WHEREAS the Study Board was directed to consider six interests – 3 interests under Plan 1958D (commercial navigation, municipal – industrial – domestic water uses and hydroelectric power generation) and 3 new interests (wetlands/environmental, recreational boating/tourism and coastal processes).

WHEREAS the Study Board recommended three plans (Plan A+, B+ and D+) and associated recommendations on mitigation actions, adaptive management, St. Lawrence River Board of Control, and public outreach activities.

WHEREAS the International Joint Commission has carried out further investigations and analysis on the public comments on the Study Board’s plans and has released a new draft Order of Approval and Plan 2007 for public comment, through a hearing process and submission process by July 11, 2008.

WHEREAS Conservation Ontario advocates the need for implementation of “integrated watershed approaches” and the continued preservation and restoration efforts of the environment to ensure the sustainability of the Great Lakes Basin.

AND WHEREAS Conservation Ontario through its member Conservation Authorities has substantial interest in the environment and coastal wetlands as major land owners and resource managers on Lake Ontario and is concerned with the minimum environmental benefits of the proposed Plan 2007.

THEREFORE BE IT RESOLVED THAT Conservation Ontario commend the IJC for the significant improvements set out in the draft new Order of Approval and the commitment to an adaptive management program – a formal process for continually improving management policy and practices.

THAT Conservation Ontario does not support implementation of Plan 2007 either in the interim or long-term.

THAT Conservation Ontario continues to strongly support Plan B+ - Balanced Environmental, as the basis for regulation of outflows from Lake Ontario through the St. Lawrence with the IJC working with the other levels of government on concurrent mitigation plans and having the ability to consent to deviations in extreme high water periods to minimize shoreline loss until mitigation is in place.

THAT Conservation Ontario and the 12 Conservation Authorities along the Lake Ontario-St. Lawrence system will continue to support the Adaptive Management Approach as budgets permit.

AND THAT this recommendation be forwarded to the International Joint Commission

before July 11, 2008 and present Conservation Ontario's position to the IJC Commissioners at the June 24th public hearing in Kingston.

Again, thank you for the opportunity to provided comments on the IJC's review of the Lake Ontario – St. Lawrence River Order of Approval. If you require clarification on the attached positioning, please contact Bonnie Fox, Policy and Planning Specialist at (905) 895-0716 ext 223.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Pearson', written in a cursive style.

Don Pearson

C.c. Honourable Donna Cansfield, Minister of Natural Resources
 Rob Messervey, Ministry of Natural Resources
 All Conservation Authority General Managers/CAOs

ATTACHMENT 1: Conservation Ontario Assessment and Position

A key improvement over the existing Order is the separation of the Order and Plan which will allow the plan to be revised in future without reopening the debate on the Order. The proposed Order seems to focus on the previous interests and only “takes account of the environment and recreational boating.” Given that these interests were added by the IJC to the Study Board’s list of six interests to consider, the treatment of the environment in the Order is insufficient.

The Order also requires the Commission to conduct a review after two years and to implement a regulation plan based on Plan B+ if the Commission determines that measures to mitigate the additional risks to all interests (i.e. primarily Lake Ontario southern shoreline development) are in place. This is reliant on the initiative of other levels of government without means to require that the governments fund or implement such an initiative. As the responsibility for implementation leaves the control of the Commission, it is our belief that mitigation is less likely to happen to the extent necessary to implement water levels that are environmentally acceptable. Alternatively, it is suggested that the Commission could move to implement a regulation plan based on more natural flows such as Plan B+ with facilitation of the IJC with other government levels on preparation and implementation of a concurrent mitigation plan. This approach is supported by the flexibility the IJC has to consent to a Board deviation for extreme high or low water levels.

Overall, Plan 2007 establishes a minimum of environmental benefits; the key differences of Plan 2007 to Plan B+ are as follows:

- Plan 2007 provides marginal environmental benefits primarily in “wetland meadow marsh community”.
- Plan 2007 produces generally better results across all coastal interests by reducing high water levels during winter and spring storm seasons. However, the biggest benefit is in Lake Ontario with primary benefit to shore protection maintenance for those existing private property owners in the shoreline hazard and wave energy area primarily on the south shore of Lake Ontario.
- On commercial navigation, Plan 2007 does not produce the strong results Plan B+ does for the seaway and good results elsewhere.
- Hydropower – Plan 2007 provides substantially lower benefits to NYPA/OPG and Hydro-Quebec.
- Recreational boating – Plan 2007 produces slightly better outcomes for recreational boating, but still the smaller marinas under low water on Lake Ontario could experience a reduction of current regulation benefits.
- Plan 2007 in terms of water levels generally keeps the status quo with slightly lower fall and winter levels and slightly higher summer levels. Overall, this plan provides less variability in levels. This variability is critical for re-establishing coastal wetlands.

Plan B+ is better for the environment with the greater water level variability. The Lake Ontario and St. Lawrence shoreline provides a dynamic confluence of riverine, wetland, littoral, and lacustrine waters and habitats. It is within this system that Conservation Authorities are major landowners responsible for major wetland creation and rehabilitation projects and resource managers responsible for this system's health and contribution to a healthy Great Lakes ecosystem.

Plan B+ only performs poorly where existing development is in the shoreline hazard zone. The IJC has identified that mitigation of this limited extent of shoreline is possible with the partnership of the appropriate levels of government. The health of the overall river and lake environment should not be compromised because of this development. The monitoring and adaptive management approach is key to accessing the benefits of a new regulation plan and future refinements. It is recognized that there is a need to secure other government funding, in addition to the Commission's budget, to implement an adaptive management plan. Conservation Ontario and the 12 CAs could participate in the development of the adaptive management plan and offer monitoring data being collected within current budgets. Additional funding and partnerships may emerge in future as the new Board and senior governments develop the adaptive management plan. Meanwhile, Ontario's Conservation Authorities will continue to implement current shoreline management approaches and shoreline regulations that are compatible with Plan B+. On implementation, the new Order provides clearer direction for the new Board on short term discretionary deviations and emergency deviations. It is generally supported that deviations from the flows determined by the regulation plan must be minimized to realize the anticipated plan benefits.

The public outreach is supported through the proposed communication strategy which will improve the Lake Ontario – St. Lawrence public's knowledge on the regulations process, decisions and impacts.

ATTACHMENT 2: Other Agency Positions

The Ontario Ministry of Natural Resources, the New York State Department of Environmental Conservation, New York State Department of State, New York State Assembly, and numerous advocacy and environmental agencies are rejecting Plan 2007 and supporting Plan B+.

In the May 6, 2008 letter to the IJC, U.S. Congresswoman Louise Slaughter-New York State previously urged the IJC “to devise a final plan that contains criteria to mitigate potential flood and erosion damage along Lake Ontario’s south shore. I am disappointed that Plan 2007 fails to do so. I urge the IJC to meet with the State of New York and develop an environmental restoration and mitigation plan that will provide the necessary protections. As you have stated, implementing this kind of plan would allow the IJC to adopt Plan B+ which has been evaluated by the public and endorsed by stakeholders, including the State of New York and the Province of Ontario.”