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23RD DISTRICT, NEW YORK

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**Congress of the United States**  
**House of Representatives**

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The Honorable Irene B. Brooks  
Chair, U.S. Section  
International Joint Commission  
1250 23rd Street, N.W., Suite 100  
Washington, D.C. 20440

Dear Commissioner Brooks:

As you recall, I have previously corresponded with the International Joint Commission (IJC) numerous times as the Lake Ontario/ St. Lawrence River Study Board (Study Board) has analyzed the procedures and plans for regulating the outflows of Lake Ontario and the management from the Lake and through the St. Lawrence River. As the lone member of the United States House of Representatives with the distinct privilege of representing the entirety of the American span of the St. Lawrence River, as well as a significant portion of Lake Ontario, I cannot over-emphasize the importance of this issue to my constituents who live, work, and vacation along this waterway. On March 28, 2008, the Study Board formally proposed a new Order of Approval to implement a water levels management regime. I am writing to strongly urge the IJC to reject the proposed Order.

As you well know, the Great Lakes represent the largest supply of fresh water on the planet. This vast supply of fresh water flows out from its point of origin to the saltwater of the Atlantic Ocean via the St. Lawrence River. However, following completion of the St. Lawrence Seaway and the Franklin Delano Roosevelt (FDR) Power Project in the 1950's, there arose a need to "artificially" regulate this outflow. Unfortunately, the current water levels regulation plan – 1958 D with Deviations – has resulted in significant negative environmental impacts on fisheries and wildlife throughout the region.

As the IJC has acknowledged, the current plan capitulated to pressure from several interest groups, including the commercial shipping and power generation industries, and was deviated from for the sole purpose of protecting the concerns of property owners along the south shore of Lake Ontario. Indeed, this damaging situation was the major driving force behind the authorization of this study. That's why I was pleased to see that the IJC and the Study Board: 1) recognized that the current plan was no longer sufficient and needed to be updated; 2) undertook a comprehensive review of the current plan and offered alternative options; and 3) finally took into account the interests of the environment and recreational boaters – whose interests were completely ignored nearly fifty years ago.

While I was initially encouraged that the IJC and the Study Board might respond to these vital points, I must express my extreme disappointment with the integrity of the plan selection process. When I initially helped to secure funding for this study, the IJC ensured the public that a fair and transparent process, with opportunities for real stakeholder input by community members, would occur. In fact, the "new and improved" plan selection process, as developed by the IJC for Lake Ontario and the St. Lawrence River, is being touted as a model for future water regulations studies. Sadly, the promised transparency never materialized.

Since 2000, the IJC's International Lake Ontario St. Lawrence River (LOSL) Study has spent more than \$20 million in taxpayer money to develop an approach to water level regulation that would best suit the environmental and economic needs of this vital natural resource. Over the years, the IJC has devised plan after plan to achieve that goal – soliciting extensive public comment to fully vet these proposals with those residents most affected. Yet, for all of that effort, the IJC has instead chosen to cast aside years of research, squander millions of dollars in taxpayer money, and ignore significant public and state government comment by proposing a brand new water levels regime, "Plan 2007," which was largely created in the shadows and with little or no outside input.

Accordingly, I urge the IJC to reject proposed Order Plan 2007 on the premise it will do little, if anything, to improve either the environment or the economy of the region. Indeed, numerous scientists, as well as the New York State Department of Environmental Conservation, have evidence that Plan 2007 might well be worse for the local ecosystem than that of Plan 1958 DD.

Second, as the Study Board admits, Plan B+ is the best plan for the region. It seems illogical, therefore, to propose an Order that does not call for its immediate adoption. Delaying action on such a vital matter will only result in further harm that could take years and additional funding to counterbalance. I believe that the final Order must strive for the restoration of the natural ebb and flow of water levels to as close as possible to the pre-regulated river. I firmly believe that Plan B+ most closely adheres to these principles by offering the following advantages:

- It most closely follows Mother Nature's "natural rhythm" of the pre-project system.
- The average July 1 to November 1 decline in water levels is less when compared to the other plans.
- The average water levels remain higher during the late summer and autumn, thus, extending the boating season.
- It is the most positive overall influence on the environment when compared to the other plans.

Third, I am extremely disappointed that the Study Board has failed to clearly indicate the conditions that must be met under this Order to allow Plan B+ to be installed as the regime. In the past, the IJC has always informed communities and governments as to which mitigation activities might be implemented to allow for implementation. I strongly suspect that adoption of such an Order without this information would be in violation of the IJC's own treaty obligations to the citizens of the United States.

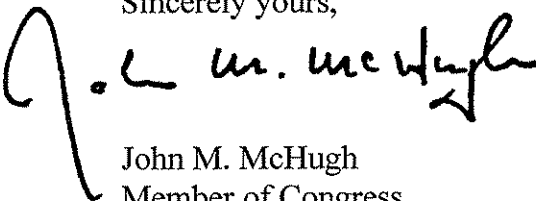
For your information, I am attaching a copy of the resolution I introduced before the House of Representatives regarding the ongoing plan selection process. The text of this resolution should be considered as part of my official comments.

In the final analysis, I am disheartened that the IJC has proposed an Order that is, at best, flawed and disregards the effort made by so many who thought they were participating in an open and transparent process. Sadly, many residents of the region now question the validity of the entire process.

Again, I urge you to reject the March 28, 2008 proposed Order of Approval. Only in this way can we forge a way ahead that truly represents the balanced interests of the region and restores the faith of so many who have been so disillusioned by the process to date.

With best wishes, I am

Sincerely yours,

A handwritten signature in black ink that reads "John M. McHugh". The signature is written in a cursive style with a large, looping initial "J".

John M. McHugh  
Member of Congress

JMM/ml  
Attachment

HRES 1146 IH

110th CONGRESS

2d Session

**H. RES. 1146**

Expressing the sense of the House of Representatives that the International Joint Commission should adopt a water level management plan for Lake Ontario and the St. Lawrence River that strongly takes into account environmental considerations and the concerns of the public and the affected States and maximizes hydropower production at existing facilities, and further urges the Secretary of State not to approve a plan that fails to do so.

**IN THE HOUSE OF REPRESENTATIVES****April 24, 2008**

Mr. MCHUGH (for himself and Ms. SLAUGHTER) submitted the following resolution; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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**RESOLUTION**

Expressing the sense of the House of Representatives that the International Joint Commission should adopt a water level management plan for Lake Ontario and the St. Lawrence River that strongly takes into account environmental considerations and the concerns of the public and the affected States and maximizes hydropower production at existing facilities, and further urges the Secretary of State not to approve a plan that fails to do so.

Whereas the United States and the Dominion of Canada signed the Boundary Waters Treaty of 1909 (the Treaty), which provided for the creation of the International Joint Commission (IJC) to help resolve and prevent disputes concerning water quantity and quality along the boundary between the United States and Canada throughout the Great Lakes and St. Lawrence River;

Whereas the Treaty states 'In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters flowing there from or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby';

Whereas the environment of Lake Ontario and the St. Lawrence River should be considered an interest;

Whereas the Order of Approval (the Order), which provides specific parameters for the water levels on Lake Ontario and the St. Lawrence River, was adopted by the governments of Canada and the United States in 1952 and amended in 1956 to reflect the development of power in the International Rapids Section of the St. Lawrence River;

Whereas the existing Order has resulted in the substantial derogation of at least 33,000 acres of wetlands, allowing a thick cattail monoculture to expand and replace large areas of biodiverse meadow marsh, resulting in the loss of habitat for a wide range of aquatic, avian, and upland species;

Whereas in 1999, it was recognized that the current Order was insufficient and therefore the five year, \$20,000,000 International Lake Ontario-St. Lawrence River Study was conducted, with the assistance of agencies, including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Fish and Wildlife Service, the Army Corps of Engineers, and Environment Canada;

Whereas on January 12, 2005, the International Lake Ontario-St. Lawrence River Study adopted the goal that 'decision-making with respect to the development of the Lake Ontario-St. Lawrence River System Criteria and Plans will be transparent, involving and considering the full range of interests affected by any decisions with broad stakeholder and public input';

Whereas on May 12, 2005, the Secretary of the United States section of the IJC, Elizabeth C. Bourget, and the Secretary of the Canadian section of the IJC, Murray Clamen, directed the Upper Great Lakes 'Plan of Study' Revision Team to 'incorporate lessons learned from the International Lake Ontario-St. Lawrence River Study';

Whereas on May 31, 2006, three proposed water level management plans were presented to the public for comment: Plan A+ proposed that the water levels of Lake Ontario and the St. Lawrence River be stringently regulated, Plan B+ proposed that the water levels be returned to a more natural rhythm which existed before the pre-project system, and Plan D+ proposed minor changes to the existing regulation plan to minimize losses to any one interest area;

Whereas the IJC conducted a public comment period on the three proposed plans which concluded on September 15, 2006;

Whereas on June 14, 2007, the IJC announced a new regime would be selected on September 17, 2007;

Whereas on September 10, 2007, the IJC announced that it would extend the period of consultation to allow more time for discussions with government in the Lake Ontario and St. Lawrence River basin;

Whereas on March 28, 2008, the IJC announced Plan 2007, which had not previously been submitted to the public for comment or fully vetted by the scientific community and the State of New York, as the proposed water level management plan for Lake Ontario and the St. Lawrence River;

Whereas all territory of the United States regulated by the Order is exclusively within the domain of the State of New York;

Whereas Plan 2007, which closely mirrors the existing regime, does not provide the same measure of environmental benefits as those proposed by Plan B+;

Whereas Plan 2007 does not allow for the same high levels of hydropower production as those proposed by Plan B+;

Whereas hydropower is a low-cost, abundant, and renewable source of energy for power generation; and

Whereas the approval of the Secretary of State, acting as the agent of the United States Government, is needed before a new water level management plan is adopted: Now, therefore, be it

*Resolved*, That it is the sense of the House of Representatives that--

- (1) the IJC's proposed Plan 2007 does not provide the necessary level of environmental protections and benefits for Lake Ontario and the St. Lawrence River;
- (2) the views of the public and the State which has jurisdiction of waters to be regulated must be fully considered when a new plan for the management of water levels is selected;
- (3) any water level management plan should make every effort to maximize hydropower production at existing facilities; and
- (4) the Secretary of State should not approve a water level management plan if the criteria set forth in paragraphs (1) through (3) are not met.

*END*