

**CITIZENS
CAMPAIGN**
FOR THE ENVIRONMENT



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Empowering Communities, Advocating Solutions.

July 11, 2008

The Honorable Irene Brooks
Chair, United States Section
International Joint Commission
1250 23rd Street NW, Suite 100
Washington, DC 20440
The Honorable Allen Olson
U.S. Commissioner
2401 Pennsylvania Avenue, NW, 4th Floor
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The Honorable Sam Speck
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The Honorable Herb Grey
Chair, Canadian Section
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The Honorable Jack Blaney
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The Honorable Pierre Trepanier
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Dear Commissioners,

Citizens Campaign for the Environment (CCE), supported by over 80,000 members, empowers communities and advocates solutions to protect public health and the natural environment. Restoring and protecting our Great Lakes is a top priority for our members. CCE has monitored the International Joint Commission (IJC) Lake Ontario-St Lawrence River Water Levels study since attending the public consultation meeting in Ogdensburg, NY in September 2002.

On behalf of CCE Great Lakes members, CCE appreciates the IJC holding extensive public information meetings held throughout our shoreline communities, including the state capitol, Albany, NY, as well as public hearings for the public to voice opinions directly to the Commissioners. CCE values the dedication, research, analysis, and effort by the IJC to revisit water level management for Lake Ontario and the St. Lawrence River to incorporate environmental health and quality in the new Order and Plan analysis and decision making process. The multi-year IJC Lake Ontario-St Lawrence River study, funded by United States and Canadian tax dollars, identified Plan B+ as the preferred management plan, which balances all interests including environmental health, hydropower generation, and navigation. One IJC stated objective for selecting a new management plan was to find a more balanced approach to regulating water levels on the

St. Lawrence River and Lake Ontario. **Plan B+ is the only proposed management plan option that would restore such a balance between the many users of the lake and river system, including the environment.**

Specific Comments on the Proposed New Order

- 1. Adaptive Management and Shoreline Protection Education.** CCE strongly supports the Commission finding “that it would be beneficial to all interests in the Lake Ontario - St. Lawrence River System to implement an adaptive management approach to regulation of the System.” To ensure an adaptive management approach is successful, CCE strongly supports a robust riparian education component to the adaptive management approach to assist with restoring the lake and river’s native riparian species and biodiversity with shoreline protection best practices that provide fish and wildlife habitat while buffering storm surges, storm water, and snowmelt events. **CCE recommends the newly established Lake Ontario-St. Lawrence River Board to work with local, state, and federal government agencies, academic institutions, non-governmental organizations (NGOs) and other interests to develop and implement a robust adaptive management and shoreline protection program to assist riparian interests adapt to more natural fluctuations in water levels as recommended in Plan B+.**
- 2. Ongoing information collection and analysis.** CCE strongly supports the IJC validating models through “monitoring, data collection, and assessment...to evaluate the effectiveness of programs designed to reduce the risk of damage or to provide benefits to interests affected by regulation, to analyze the effects of other changes, and to consider possible future improvements in system regulation.” **CCE believes ongoing information collection is critical to inform effective adaptive management strategies and supports the IJC Commissioners and Board working with government, academic, and non-profit partners to assist in monitoring, data collection, analysis, and providing recommendations.**
- 3. Risk of shoreline flooding and erosion.** CCE understands that regulation of water levels for the past 50 years of Lake Ontario has resulted in significant losses of wetlands; natural shoreline protectors. “The Commission finds that the risk of shoreline flooding and erosion on Lake Ontario increases under high water conditions during the fall, winter and spring, when seasonal storms can generate significant waves and surges. The shoreline impact can be reduced by better seasonal management of Lake Ontario high water levels and/or through mitigation.” **CCE recommends that the IJC Commissioners and Board develop a transition plan, upon consultation with governments, academia, riparian interests, and NGOs to implement Plan B+, which will help restore diverse wetland communities.** The Plan B+ transition plan should include a site-specific shoreline/infrastructure protection and mitigation plan designed to yield the most benefits for the entirety of the Lake Ontario-St. Lawrence system. CCE understands that the IJC can only aim for targets in context of water level

management of a very complex ecosystem and is unable to stop erosion completely and provide for guaranteed water levels. Furthermore, by restoring more natural water level rhythms to the system, the IJC is providing more natural shoreline protection, by reestablishing native, deep-rooted plant communities that are essential for biodiversity, but moreover for the well-being of people. Wetlands, commonly referred to as nature's kidneys, provide important benefits to people including buffering stormwater, filtering pollutants to improve near-shore water quality, and stabilizing erosion. **CCE strongly recommends that wetland restoration and sustainable shoreline education on best practices is a central component to any shoreline protection/erosion management decision and practice.**

4. **Establishing the International Lake Ontario-St. Lawrence River Board.** The board will consist of an equal number of members from Canada and from the United States of America and charged with executing commission instructions, ensure compliance with new Order, including hydropower compliance. Specifically, the Board is required, at a minimum, to establish "a monitoring and adaptive management committee," and develop and implement "a strategy for public communications." As discussed above, CCE strongly supports establishing the Board, the monitoring and adaptive management, and the strategy for communicating with the public. **CCE recommends the Board and its partners should be proactive with public communications: provide opportunities for hands-on learning for shoreline protection best practices and assist the public navigating mitigation programs potentially available from local, state, federal, and international entities.**
5. **Regulating Flow:** The proposed new Order states: "Consistent with other requirements, flows through the International Rapids Section of the St Lawrence River shall be regulated so as to protect the resiliency of wetlands and biodiversity on Lake Ontario and on the St. Lawrence River." Recognizing the drastic losses to wetlands communities and biodiversity resulting from the existing Plan and Order, CCE believes the IJC has an obligation not only to "protect" the resiliency of wetlands, but to provide for their "restoration" as well. **CCE strongly recommends that #7 in the Order should read: "Consistent with other requirements, flows through the International Rapids Section of the St Lawrence River shall be regulated so as to protect and restore the resiliency of wetlands and biodiversity on Lake Ontario and on the St. Lawrence River."**
6. **Flexibility of management based on three month forecast.** CCE believes providing the IJC with measured flexibility when the "Board's three month forecast shows a significant probability of the Lake Ontario level going above the 1% exceedance level, or going below the 99% exceedance level," and presents "...an analysis of system-wide risks to the Commission," the Commission may approve a one-month deviation from the approved regulation plan. **CCE believes this is a more fair and accountable system that should be part of any**

adopted Order. CCE further recommends that adaptive management and monitoring committee of the Board is tasked with providing analysis of the deviation impacts on the Lake Ontario-St. Lawrence system to inform future Commission decisions.

7. **Conditional implementation of Plan B+.** The new Order states that: “No later than two years after the effective date of this Order, the Commission will review the extent to which a monitoring program and mitigation measures have been implemented in the Lake Ontario-St. Lawrence River basin and will implement a variant of Plan B+ if it determines that such plan will satisfy all of the conditions, criteria and other requirements of this Order with such mitigation measures in place.” While CCE is disappointed that the IJC failed to recommend Plan B+ and is instead advancing Plan 2007, which fails to provide restoration of the decades of environmental degradation to Lake Ontario and the St. Lawrence River and increase clean, renewable hydropower production, **CCE is respectfully requesting that the IJC adopt a new Order that includes a firm deadline to implement Plan B+.** Plan B+ is a balanced plan that restores more natural water level fluctuations which promotes diverse habitat for key species; increases clean, renewable hydropower production; and respects the rights of all stakeholders. CCE is concerned that while the IJC speaks highly of Plan B+ and indicates that this plan, or something similar, could be implemented in the future—no firm deadline is in place for implementation. CCE strongly supports proactively addressing Lake Ontario-St. Lawrence River water level management to restore wetland diversity that filter near-shore pollutants, provide critical spawning and nursery grounds for aquatic life, and buffer erosion to benefit all lake and river users, dwellers, and enthusiasts. Without a firm deadline, the urgency and priority needed to develop, implement, and fund shoreline protection/adaptive management/mitigation measure is not a clear reality. Without a firm deadline, the mention of Plan B+, is just that: lip service and an empty promise to future generations and the restoration of our lake and river. **CCE recommends that the language read: “No later than two years after the effective date of this Order, the Commission will review the extent to which a monitoring program and mitigation measures have been implemented in the Lake Ontario-St. Lawrence River basin and will implement a variant of Plan B+ to satisfy all of the conditions, criteria and other requirements of this Order with such mitigation measures in place.”**
8. **Fifteen year Review.** CCE strongly supports reviewing the model, regulation plan, and its results on a regular basis. CCE requests a clear role for the public to comment on the Commission and Board findings and any recommendations and/or proposals resulting from such review. To that end, **CCE recommends that the Order state: “No later than fifteen years after the effective date of this Order, the Commission will conduct a review of the results of regulation under this Order to assess the extent to which the results predicted by the models used to develop the approved regulation plan occurred as expected.**

The IJC will present findings and consult with all stakeholders, including the public at-large.”

9. **New Yorkers Support Plan B+.** Almost 5,000 Great Lakes citizens living in Monroe, Ontario, Wayne, Cayuga, Onondaga, and Oswego counties have signed petitions calling for the IJC to adopt a firm deadline for implementing Plan B+. Hundreds of citizens have taken pen to paper and submitted their own comments to the IJC calling for a firm commitment for Plan B+ implementation. It is the IJC’s duty and responsibility to address environmental degradation and the interests of the entire Great Lakes basin community, making the IJC’s proposal of Plan 2007 unacceptable. By providing for more natural fluctuations in water levels, Plan B+ balances all interests on the lake and the river and provides a sustainable roadmap to restore ecosystem health. **On behalf of the New York’s Great Lakes residents and CCE’s more than 14,000 New York Great Lakes members, CCE urges the IJC to restore and protect Lake Ontario and the St. Lawrence River by adopting Plan B+ with an unconditional firm deadline.**

10. **Great-Lakes Basin-wide implications.** Although Lake Ontario and the St. Lawrence River are the bottom of the Great Lakes ecosystem, the Lake Ontario-St. Lawrence River Study will inform the Upper Lakes Study, which is already underway. CCE understands that 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.” **CCE recognizes the importance of precedent and urges the Commission to adopt Plan B+, which contributes the most to improving ecosystem health while balancing navigation, recreation, hydropower, and riparian needs through adaptive management and sustainable shoreline best practice education.**

In closing, as the Commissioners well know, the Great Lakes are at an ecological tipping point. The good news is there are manageable solutions to the problems, but they must be addressed now before the solutions become more costly. Plan B+ provides multiple benefits to the millions of people who depend upon the lake and river for recreation, jobs and homes by restoring a diverse wetland community that provides critical ecosystem functions such as buffering stormwater, filtering nonpoint source pollution, and providing nursery grounds and habitat for fish and wildlife. While concern has been expressed for the implementation of Plan B+, this highlights the need for a robust adaptive management plan, shoreline restoration and education programs to complement Plan B+. Since the adoption of the existing plan and order, the environment yet to be indemnified. **CCE believes these programs, developed and delivered through broad-based collaboration including local, state, federal governments, non-governmental organizations, academic institutions, and other stakeholders are consistent with requirements under the Boundary Waters Treaty of 1909, which require “suitable**

and adequate provision be made for the protection and indemnity of all interests on the other side of the line that may be injured by the project.”

It is clear that we, as a society, know more now about the environmental impacts of our choices than we did 50 years ago. Since the completion of the Moses-Saunders hydropower dam the Lake Ontario and St. Lawrence River ecosystems have suffered consistent losses to their globally significant biodiversity due to unnatural and damaging water levels regulation. The current regulation scheme has artificially constrained water levels, resulting in considerable damage to thousands of acres of the region’s coastal wetlands and significant impacts to many fish species and nesting water birds. **The IJC has a historic opportunity to restore our freshwater coastline, cease compounding problems, and rectify the environmental degradation caused to Lake Ontario and the St. Lawrence River by adopting a firm, non-conditional, date to implement Plan B+.**

Thank you for the opportunity to comment.

Respectfully Submitted,

Dereth Glance
Executive Program Director

Cc
Condoleeza Rice, Secretary of State
Governor David Paterson
Congresswoman Louise Slaughter
Congressman John McHugh
Commissioner Pete Grannis, New York State Department of Environmental Conservation