



International Joint Commission United States and Canada

September 4, 2008

The Honorable Condoleezza Rice
Secretary of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Rice:

This letter is to confirm discussions held on August 12, 2008 with representatives of the U.S. Department of State and the Department of Foreign Affairs and International Trade concerning the Commission's review of its Orders of Approval for Lake Ontario – St. Lawrence River levels and flows, and to propose next steps towards seeking the concurrence of the two federal governments as stated in our letter of April 15, 1999. After five years of study by a binational group of experts set up by the Commission, three further years of deliberations by the Commission, and discussions with governments followed by public comment and hearings this summer, we believe we are nearing completion of this review. We look forward to hearing your response to the next steps proposed below, and to a meeting in September with the federal Governments together with New York, Quebec, and Ontario.

The Commission released a proposed Order of Approval and related regulation plan (Plan 2007) for a 105 day public comment period on March 28, 2008. During that public comment period, we held 10 public information sessions and 10 public hearings throughout the Lake Ontario-St. Lawrence River basin. The public comment period closed in July. We have now completed our analysis of the hundreds of pages of testimony from the hearings, and the approximately 1,200 comments submitted outside the hearings. The hearings and public comments showed serious divisions by political unit and by interest, and there was little support for regulation Plan 2007. There was also a broad, strong interest in returning to more natural flows.

Taking this into account, the Commission has determined that Plan 2007 is not a practical option for implementation and concludes that the regulation of water levels and flows should be based on a revised set of goals and objectives and criteria, specifically moving towards more natural flows to benefit the environment, while respecting other interests.

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We would like to work with governments towards this goal of more natural flows while respecting other interests in a process discussed at the August 12 meeting and outlined below. It is, therefore, important that governments confirm, by the end of this September, their agreement to actively participate in such a process

With regard to process, the Commission proposes forming a small working group composed of IJC staff and representatives of the two federal governments and the governments of New York, Quebec and Ontario. In the Commission's view, membership should be limited to one representative plus an alternate from each entity. However, the working group would need to be able to draw from the broad, specialized resources of all the entities to address complex issues where necessary.

The group would advise the Commission on a regulation package, in combination with mitigation and adaptive management measures, that would meet a revised set of goals, objectives and criteria, and also be mutually acceptable to all federal, state/provincial governments and the Commission. The Commission would have the lead role in developing the new Order of Approval and regulation plan, and the working group would have the lead in developing the mitigation and adaptive management framework. There would be coordination between these two efforts.

The working group would have a mandate to develop these elements with enough detail to evaluate whether the Commission should submit them for concurrence by governments by June 2009. The Commission recognizes that all issues may not be fully resolved by June 2009 however, it believes that these issues can be adequately clarified by that time for the Commission to evaluate whether to submit some or all elements for concurrence.

In the interim, while the process is ongoing, the Commission believes it will be necessary for the Control Board to remain on the current regulation plan 1958 D with no change to the Commission's guidelines on discretionary deviations by the Board.

This will allow the Control Board to undertake discretionary deviations if they can produce benefits for one more interest without harming other interests. In determining whether a discretionary deviation is warranted, the Board may take into account all the information developed during the Lake Ontario Study, including the impacts of discretionary deviations on the environment.

The Commission looks forward to receiving a confirmation from the federal governments of their willingness to proceed in this new direction. We also look forward to working with you in coming to a timely resolution of this process to improve overall benefits connected with a new Order and regulation plan to Lake Ontario and the St. Lawrence River.

A similar letter has been sent to the Canadian Minister of Foreign Affairs by the Chair of the Canadian Section of the Commission.

Yours sincerely,

A handwritten signature in cursive script that reads "Irene Brooks".

Irene Brooks
Chair, U.S. Section

c.c. Ms. Beatrice Soila, Bureau of Western Hemisphere Affairs – Canada,
U.S. Department of State