

International Joint Commission

April 15, 1999

Honourable Lloyd Axworthy
Minister of Foreign Affairs
Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, ON K1A 0G2

Honorable Madeleine Albright
Secretary of State
Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Minister Axworthy and Secretary Albright:

It is becoming increasingly urgent to review the regulation of Lake Ontario in view of dissatisfaction, on the part of some interests, with the working of that system and in the light of environmental concerns and climate change issues. We would like to take this opportunity to provide some background information on this subject, inform you of recent decisions by the Commission, and request your assistance in pursuing further progress.

Background

In its 1993 report to governments on methods of alleviating the adverse consequences of fluctuating water levels in the Great Lakes - St. Lawrence River Basin, the Commission stated that it would review its study board's recommendations that the criteria of the Commission's Orders of Approval for the regulation of Lake Ontario be revised to better reflect the current needs of the users and interests of the system, and, in particular, that the criteria should be amended to address the annual flood discharge from the Ottawa River, concerns of recreational boating, and environmental interests. The Commission informed governments that, in carrying out this review, the Commission would be bound by the "rules or principles" set forth in Article VIII of the Boundary Waters Treaty of 1909.

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Two years later, on December 12, 1995, the Commission informed the governments that in accordance with recommendations provided by the study board, and because of continuing concerns about whether its Order of Approval made appropriate provision for all interests, the Commission's International St. Lawrence River Board of Control was undertaking two tasks:

- development of a definition of the work (Scope of Work) that would need to be undertaken to determine whether the study board's recommended amendments, or other amendments or additions, to the criteria listed in the Commission's Order of Approval are appropriate, and
- a review of alternative regulation plans for Lake Ontario outflows intended to meet the requirements of the current Order of Approval.

Scope of Work

Subsequently, in its letter of July 2, 1996, the Commission requested the views of the governments on whether to proceed with the studies described in an attached Scope of Work. The Commission said that, if a decision was made to undertake these studies, a detailed plan of studies would be developed to specify how they would be conducted. Moreover, it recognized that, while the studies described in the Scope of Work were meant to examine the criteria contained in the Commission's Order and determine whether additional regulation criteria were feasible and desirable, such a review could lead to changes in the entire Order.

Having not received a substantive reply from either government to its letter of July 2, 1996, the Commission informed the governments' representatives in Vancouver on October 9, 1997, that it had decided to direct its International St. Lawrence River Board of Control to proceed with the studies described in the Scope of Work as soon as funding permitted. Since that time, the Commission has explored ways of proceeding with the Scope of Work in small, separable segments as funding became available, but funding has not been available. The Commission has now concluded that the Scope of Work cannot be executed incrementally.

Review of Alternative Regulation Plans

In 1997, the International St. Lawrence River Board of Control completed its review of alternative regulation plans, referred to in the Commission's above-mentioned letter of December 12, 1995, and recommended that the Commission implement a new regulation plan, Plan 1998, which the Board had developed in the course of its review. The Commission, however, decided on January 12, 1999, not to adopt Plan 1998 for the regulation of Lake Ontario outflows at this time. After full consideration of issues raised

during public comment, the Commission determined that it does not have sufficient information on the environmental impacts associated with the proposed plan and that the plan would not constitute sufficient improvement over the existing situation. The International St. Lawrence River Board of Control will continue to manage the waters of the Lake Ontario - St. Lawrence River system according to Plan 1958-D with deviations, as is now the case.

Commission's Plans for Progress

The Commission is continuing to pursue support and funding for the development and execution of the more comprehensive studies outlined in the Scope of Work prepared by the International St. Lawrence River Board of Control in 1996. These studies are intended to address concerns with regulation of the Lake Ontario - St. Lawrence River system mentioned earlier and including consideration of:

- environmental factors, which were poorly understood when the current regulation plan was developed in the 1950s,
- recreational boating and related interests that have developed in the region,
- the combined effect of St. Lawrence River and Ottawa River flows during the Ottawa freshet,
- the full range of water supplies actually received, instead of the narrower range of anticipated supplies on which the current regulation plan was designed, and
- effects of climate change and climate variability.

As a first step, the Commission will constitute a binational work group to translate the Scope of Work into a Plan of Studies. Afterwards, subject to available funds, the Commission will carry out the studies described.

Requested Government Support

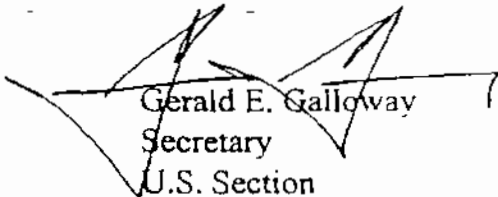
While no additional funding will be required to prepare the Plan of Studies, the Commission, as in the past, will require the services of personnel from appropriate departments to carry out this work. We would appreciate governments' support in seeking appropriate agency assistance for this effort. Once the Plan of Studies has been developed, significant funding will be required to carry out the studies described. We request that the governments, working within usual funding mechanisms, identify funding sources for the timely execution of the defined studies.

Upon completion of the study process, the Commission will consult with governments regarding its findings. The Commission recognizes the unique role that the governments played in developing and proposing the conditions that the Commission


adopted in its 1952 Order of Approval and that they also played in approving, in advance, criteria that the Commission proposed for addition to that Order in 1956. Accordingly, upon completion of the study effort, if the Commission concludes that a broader or adjusted set of goals and objectives, conditions and criteria for regulation is both feasible and desirable, then, consistent with established practice under this application, it will seek the concurrence of governments before incorporating such changes into the Orders of Approval. In this context, the Commission notes that the "no less protection" clause was added to the Order by the Commission on its own initiative.

We look forward to your response on this increasingly urgent matter, and thank you for your consideration of our request.

Sincerely,



Gerald E. Galloway
Secretary
U.S. Section



Murray Clamen
Secretary
Canadian Section

Attachment: July 2, 1996 Letter to Governments with Scope of Work

cc: Hon. Frank Loy, Under Secretary for Global Affairs, U.S. Department of State
Hon. Peter Romero, Acting Assistant Secretary, Western Hemispheric Affairs,
U.S. Department Of State
Mr. Victor Comras, Director, Office of Canadian Affairs, U.S. Department of State
Mr. David Preston, Canadian Ministry of Foreign Affairs and International Trade
General Hans Van Winkle, U.S. Co-Chair, St. Lawrence River Board of Control
Ms. Jean Murray, Canadian Co-Chair, St. Lawrence River Board of Control