

**Statement to the International Joint Commission
Regarding the
Proposed New Order of Approval and Regulation Plan
11 June 2008**

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I want to welcome you to the Rochester area of Lake Ontario and thank you for holding this hearing tonight and others throughout the basin on this important change in regulation policy.

It is encouraging that the IJC has recognized and affirmed the commitments made to the shoreline communities of Lake Ontario by the governments as part of the project approvals granted in the 1950's. The proposed Order explicitly recognizes these commitments, upon which property owners, local government officials and small businesses have relied for almost fifty years.

The proposed Plan 2007 provides many improvements over the existing Plan 1958D, including providing substantial environmental benefits. However, there are a number of elements and details of the proposed Plan and associated procedures that make it doubtful that regulation under the Plan provisions will live up to the commitments made in the Orders of Approval.

One example is the reliance upon estimates of economic damages instead of water levels in assessing the degree of protection provided to the various interests. While this is a good idea in theory, the conversion from water levels to economic damages involves the use of assumptions and models. It is widely recognized that the analyses being relied upon are flawed and incomplete, as clearly demonstrated in the Study Board Minority Report and in the independent review of the Study by the National Research Council and Royal Society of Canada. In fact, the NRC concluded that the modeling conducted was neither sufficient nor adequate upon which to base decision making. Yet, here we are with the Commission about to make an important change affecting millions of dollars worth of property based upon these unproven analyses.

It should be recognized that the 1956 Order of Approval established a four foot range as a target for the Lake Ontario water level. On this basis engineers, property owners and government regulators have relied upon this range for almost fifty years in the design of public infrastructure, such as sewer and water lines, located near the shoreline as well as in the design and placement of shoreline protection, boat launches and docking facilities.

An example is shown in the photographs I have distributed to the Commissioners with this statement. They show a marina gas dock located on Sodus Bay taken last month

when the lake level was 247.1 feet, still below the 247.3 foot upper end of the regulatory target range. It is clear that this facility was designed and constructed in reliance upon the upper range being at 247.3 feet or less and not the 248 + foot level that Plan 2007 would allow with no control action.

It is clear that these and other similar facilities can be retrofitted to account for the increased range to be allowed by Plan 2007, but there is a substantial cost involved that has not been accounted for in the Study economic analyses and for which no compensation or mitigation has been offered.

Therefore, I would encourage the Commissioners to take, at a minimum, two actions to modify the proposed Plan and technical documents.

The first is to delay the implementation of Plan 2007 until the monitoring portion of the adaptive management component of the Plan is in place so damages can be monitored and assessed in near real time.

The second is to allow for the possibility of deviations from the regulation Plan by the St. Lawrence Board to control levels whenever they are forecasted to be outside the existing four foot regulation range. Any such deviation would be subject to report and justification, as proposed under the new Criterion 10, with such request based upon the damage monitoring data.

In summary, I believe the Commission is being honest in its desire to honor the commitments made to the people of the basin and is not merely placating the communities through ambiguous wording. Please be sure that the implementation of a new regulation plan upholds this commitment.

I thank you for your attention tonight and in advance for considering any further written comments that I may submit prior to July 11.

