

REVIEW OF THE LAKE ONTARIO-ST. LAWRENCE RIVER ORDER
OF APPROVAL - PUBLIC HEARING IN JORDAN, ONTARIO, JUNE 9TH,
2008, 69 MIN.)

HERB GRAY (Chair, Canadian Section, International Joint Commission):
...meetings we're holding this month around Lake Ontario and the Saint
Lawrence. And I thought, to start things off, I'd take a few minutes with some
introductory explanatory remarks.

Now, as you may have guessed, I am Herb Gray, Canadian Chair of the
Commission. And with me tonight are my colleagues on the Commission, U.S.
Chair Irene Brooks, commissioners Jack Blaney and Pierre Trépanier from
Canada and commissioners Allen Olson and Sam Speck from the United States.

We are here to receive your comments on proposed changes to how water
is released through the Moses-Saunders dam on the Saint Lawrence River
between Cornwall and Massena. This affects water levels and flows on Lake
Ontario and on the Saint Lawrence as far downstream as Trois-Rivières.

These draft proposals were released by the IJC for public comment last
March of this year. Now, just a few words of history.

The IJC was created under the Boundary Waters Treaty of 1909 to help
prevent and resolve disputes over the use of fresh waters forming 40 per cent of
the 8,000-kilometer Canada-U.S. boundary.

In the 1950s, the two national governments asked the Commission to
approve a major dam in the international section of the Saint Lawrence. They also

asked the Commission to determine how flows through that dam could be managed to achieve certain objectives, and then approved criteria offered by the Commission to meet those objectives. They included reducing shoreline damage on Lake Ontario, in addition to enabling more hydroelectric power generation and commercial navigation.

For nearly 50 years, water through the resulting Moses-Saunders dam has been released in accordance with requirements set by the Commission in an order and a regulation plan issued in 1956, before the project was first built and began to be operated in 1960.

The Commission is now proposing changes to those requirements. It has issued for public comment a proposed new Order of Approval and regulation plan for this dam – in essence, a proposed new legal framework and a proposed operational plan to implement it.

Now our staff, as you may well know, held ten information sessions here in the region during April and May to explain the Commission's proposal and answer technical questions about its contents, so we're not here tonight to cover that ground again.

The purpose of tonight's hearing is for us to hear your comments about our proposal. However, our lead staff – and will the people, they know who they are, stand up please, so people will see you – they'll make themselves available during any breaks we take and will stay at the conclusion of this hearing to answer any remaining informational questions.

Now, I'd like to explain the procedures we'll be following this evening. Note that this is an international meeting in every respect. Whether you are from Canada or the U.S., we welcome your comments to help ensure that all relevant matters are taken into account.

If you wish to comment and did not so indicate in writing when you registered, please see our staff at the registration table just outside this room, and you can register to speak at any time during tonight's hearing.

Now, other than providing elected officials or their representatives with the courtesy of speaking first if they wish, we will turn to those speaking to us for the first time on a first-come, first-served basis. Now I'll announce whose turn it is to speak, and will also identify the next person or two at bat so they can be prepared. Our intent is to try to adjourn at 9 pm, as advertised.

Now when you speak, please state your name and let us know whether you are speaking as an individual or on behalf of an organization. We ask you to limit your oral comments to five minutes. Our secretaries will help you keep track of time by showing a yellow card when you have half a minute left, and a red card when your time is done.

If you want to submit written statements or presentations in addition to your oral presentation or to expand on it, in either paper or electronic format, please provide this to the secretaries. There will later be copies for all commissioners and the secretaries will make sure they are included in the official record.

Now if you have paper copies with you here tonight, secretaries can distribute them to commissioners now and you can refer to them as you speak, but please help us keep within the five minute limit so we can adjourn at 9 o'clock.

We are recording this hearing and all comments tonight will be part of a transcribed official record. Please use the microphone when you speak so that your comments can be included in the transcript. Transcripts from all ten hearings will be posted on the Commission's website once available.

Now this is not a debating process. It's a process for you to let us hear your comments, but we may ask a few questions, we the commissioners, particularly if we need clarification. Our questions and your responses will not be part of your allotted time. Commissioners may ask a few questions, particularly if we need clarification. Our questions, and your responses, will not be part of your allotted time.

Now we would appreciate one spokesperson for each organized group here this evening. Others in the group can make their own comments. However, in the interests of time, if you find that presenters before you have already made your points, please consider simply stating that you also support those points.

Now following the hearings, we will continue to accept written comments up to July 11th. We invite you, your friends and neighbours who could not be here tonight to send us any information or views that might be found helpful. Submissions can be made to either Commission secretary by email, fax, or

regular mail, and I assure you that anything you send us will be given full consideration and provided to all commissioners.

Now I want to make sure you understand we will not make any decision until after we have considered all public comments received. We have been consulting with the U.S. and Canadian federal governments through their departments of State and Foreign Affairs, including in meetings to which state and provincial officials have been invited. We will be holding further meetings with them prior to seeking the federal governments' formal concurrence on a final order and regulation plan.

This concludes my opening introductory remarks. And now, we can begin to hear from you, the important part of the evening. And the first person up is John Hall, and he represents a group called HHRAP. And just to be ready, the next person...now, after Mr. Hall, we should ask for the constituency advocate of Dean Allison, MP Niagara West-Glanbrook, but you proceed...

JOHN HALL (Hamilton Harbour Remedial Action Plan): The constituent representative could go first, and I suggest there's a few of us speaking to the Hamilton Harbour condition, and we've tried to coordinate our points so we don't double-team things. So I'd be quite happy to let the other gentleman go first.

HERB GRAY: Well, you're at the table, why don't you just proceed?

JOHN HALL: Okay, be happy to, then. My name is John Hall. I represent the Hamilton Harbour Remedial Action Plan, and I am also a former member of your Public Interest Advisory Group.

With me this evening, you'll hear from Tys Theysmeyer, aquatic ecologist with the Royal Botanical Gardens, and Jim Hudson, the Executive Director of the Bay Area Restoration Council.

A few words about the Remedial Action Plan to begin with. Hamilton is identified under the Great Lakes Water Quality Agreement as an Area of Concern, and as such, it has filed with IJC Stage I and II reports and is working on enhancements to Hamilton Harbour, with delisting as an Area of Concern targeted for 2015.

To date, we estimate close to \$1 billion has been invested in the remediation of the Harbour, with a total investment anticipated of 1.5 billion. And I'd certainly like to acknowledge the support of the IJC, and in particular, Chairman, the Right Honourable Herb Gray, who has assisted us securing funding in the past and also advancing many of our remedial actions.

Hamilton Harbour Remedial Action Plan took an ecosystem approach to its remedial action plan and is in fact one of the first areas to embark on remedial action planning and adopt such a principle.

One of the delisting criteria for Hamilton Harbour is the restoration of the Cootes Paradise Marsh and Grindstone Creek Estuary, both on lands of our partner, the Royal Botanical Gardens.

Our local analysis of Plan 2007 leads us to believe that the Cootes Paradise Marsh Wetland Restoration Project will be put in jeopardy and delisting of

Hamilton Harbour as an Area of Concern may not be possible if Plan 2007 is approved.

I want to speak to the Treaty and 1956 Board orders and interests. I quote from your press release of March 28th out of Cornwall: “The Commission must consider the requirements of the Treaty for protection and indemnification of interests that may be injured by the project.”

First of all, the Royal Botanical Gardens is a shoreline property owner of approximately 30 kilometres of shoreline and approximately 310 hectares of patent water lot. The interests of the Royal Botanical Gardens – and you’ll hear from Tys Theysmeyer on those directly – are therefore both of the environment and of a shoreline land owner.

The issue of compensation for shoreline erosion appears to have driven the selection of Plan 2007. Harmful environmental and financial effects are anticipated to the property of the Royal Botanical Gardens if Plan 2007 is approved.

The IJC does not appear to have recognized this as an issue and we question how it will deliver compensation to the Royal Botanical Gardens, a major shoreline land owner. The Royal Botanical Gardens made two submissions to the IJC and Study Board and will be submitting a third before the commenting deadline.

A little more on the potential economic impacts. Potential for increased revenue from visitation to a restored Cootes Paradise Marsh is substantial. For

example, Presque Ile, in Lake Erie, attracts...I believe it's approximately 4 million visitors per year, and Point Pelee attracts approximately 400,000 per year. A restored Cootes Paradise Marsh has potential to display a greater diversity of plants and animals than either of these sites.

The City of Hamilton has invested approximately \$60 million in wastewater infrastructure upgrades to support the restoration of the Cootes Paradise Marsh.

The City of Hamilton suffers economically from the image of a polluted city with a toxic harbour, and the delisting of Hamilton Harbour as an Area of Concern supports attracting the best and the brightest to Hamilton's changing and expanding economy.

A recent study by the York University Schulich School of Business identifies approximately \$1 billion of economic return resulting from remedial actions and delisting of the Harbour, and that's from this point forward. Not being able to delist Hamilton Harbour may have serious economic impacts to the City of Hamilton Harbour.

So what do we recommend? We recommend that you approve Plan B+, and if you can't approve Plan B+ at the present time, continue to operate under Plan 58D with deviations.

Second point, establish a system of adaptive management, continuing to examine the Lake Ontario-Saint Lawrence system and determine how to move closer to conformity with Plan B+.

Our third point, do not approve Plan 2007 as this will be very difficult to move away from. It will set a clear path entrenching errors of the past that allowed for properties to be built in locations susceptible to flooding and erosion. Plan 2007 will set a path that clearly compromises the environmental benefits of Lake Ontario and the Saint Lawrence River system.

Now we will be submitting to you written comments, but in trying to keep with the time limit, I've kept it to those bullet points, you might say. I'd be happy to answer any questions.

HERB GRAY: Do my colleagues have any questions for clarification?
Sam?

SAM SPECK (Commissioner, U.S. Section, International Joint Commission): (inaudible)...you indicated your concern about (inaudible)...you indicated your...does that help? Okay. You indicated your concerns about Plan 2007 and what it might do. I'd like to hear a little more about what in it would do what you don't want done.

JOHN HALL: You will hear...

SAM SPECK: Will we hear that from others?

JOHN HALL: Yes, you will, specific to the Cootes Paradise Marsh, which is part of our delisting requirement, to restore it.

SAM SPECK: Okay, then I'll pass on my question. Okay.

HERB GRAY: Okay. If there are no other questions of the kind Mr. Speck asked, I would thank Mr. Hall for his presentation. I wonder if Jennifer

Turner would, even though we said we might call her first, would allow us to Tys Theysmeyer of the Royal Botanical Gardens because his presentation will likely flow directly from Mr. Hall's, and we have Jim Hudson from the Bay Area Restoration Council. So can I ask Mr. Theysmeyer to come forward? And I assure Ms. Turner we haven't forgotten her.

TYS THEYSMEYER (Aquatic ecologist, Royal Botanical Gardens):
Thank you very much for the opportunity to come out and speak to you tonight. I am Mr. Theysmeyer from the Botanical Gardens. Just to give you a little introduction and overview, I have been working around Lake Ontario, well, actually almost all my life, but as the ecologist at the Botanical Gardens, since about 1994.

And basically, I live and breathe with how the waters go up and down and how the processes of life function in our sanctuary. Basically, we have 2,500 acres of land, including 30 kilometres of shoreline, and so basically our land is the transition from the Lake to the uplands, including all the way up to the escarpment, and we're actually on a sheltered inner bay rather than out in the exposed open lake, so we have escarpment and an ancient barrier beach that separates our property off from the big lake.

And as a result of that, you get all sorts of migratory birds, you get fish coming in, which is why, way back in the early days, back in 1927, making it one of the original sanctuaries protected, it was protected as a nature reserve by the government of Ontario, and particularly for migratory birds, because they prefer

to fly around the Lake and shelter in a sheltered bay rather than fly across the open lake and pick up some good eats there.

But since the RBG was formed in '42 and we inherited the property as the founding piece of our 2,500 acres, we have been trying to deal with the history of European colonization and infrastructure and things of this matter, and as a result of all of these things, certain introduced species have rose to dominance - one in particular, the common carp – but these were all spin-offs from changes to water quality and water level regulations. So these basic processes – clean water and regulated water cycles – lead to a whole new crew of organisms.

And so, as part of the Remedial Action Plan, we are definitely after improving water quality - as John Hall mentioned, 60 million put toward that so far – and when the review of lake levels came around, we were quite excited because this is something that goes on at the other end of the lake and yet affects our property at the very west end, and so we had suddenly looked at an opportunity to deal with the lake regulation and move towards something a little more favourable for our long stretch of transition property.

And so, in the process, we have independently submitted multiple documents. We looked at all of the proposed plans back in their infancy and put out some criteria for what we were looking for.

We were never looking for any of the extremes that used to occur on the Lake, we realized the Lake went extremely high and extremely low – this is what happens when you're at the bottom lake in the largest freshwater system.

And what we're really after is making sure the water arrives in this transition zone at the right time in the spring and leaves just the way it naturally would, so that all of these processes that one could really never begin to explain or even understand because they're all so interrelated, so that they could just go on in our property, which was set aside to be a biological repository, could do just its job.

So, let's see, basically what we're after is a plan which causes the water to come up in the spring with the runoff and fall away as the Lake heats up and the supplies go down, just the way it always would. And sometimes it's going to be really wet in the early spring and sometimes it's going to be a little later in the spring, and it's going to be variable, and that variability promotes the entire biodiversity that we have. And as long as we can see that variability and roughly appropriate timing, we're very happy.

And so when plans A, B, and D came out, we reviewed those as well and we stuck forward our same quote as always, Plan D does not cause the water level to rise in the spring, it rises in the summer, so it goes against the basic processes of life, and we can't make our marsh work or our transition zone work under Plan D, which became Plan D+, which, with some subtle modification, is now Plan 2007.

And we see it was done off a lot of involved modelling, and we believe that the core of that issue is derived from the fact that the modelling uses past

conditions that have occurred on the lakes and how the plan (?) communities have responded.

But these plan communities were always associated with water that rose in the spring and fell away in the summer, and under Plan 2007 it rises in the summer, and so you can't actually properly model something that doesn't naturally occur using past conditions because this fundamental piece, when the water is highest and when it cycles, just hasn't occurred.

Although it has, actually. I can give you some examples because under Plan 1958D, the last three years have given us both ends of the spectrum. We've had a plan in 2006 where modifications resulted in water levels that rose in July and August, so just like they would under Plan 2007. And in 2007, the year, they rose and fell away just the way they would under Plan B+.

And as a result, we were able to watch and document all of the consequences of what happened. Basically, the water cycles ended up about the same level; it's just one came up in July and August and one came up in May, and they all fell away.

And so, in 2006, under Plan 2007 style, so Plan D+, what we saw was there was no flooded shoreline vegetation whatsoever in the spring, in April or May, and even into late June, which resulted in an inability for any of the fish and wildlife to use this...it's basically the dead vegetation from the previous year. None of it was flooded, so we had a complete failure of amphibian and fish and birds right across the board.

And then it rose into the shoreline vegetation in July, and the species that actually was still around to reproduce at that time happened to be the introduced common carp. It went into...well, actually, we had our mud flats, they didn't have water in them, which meant they were going to grow plants, being up above the water level.

As soon as the water came up into them, which it normally wouldn't if they were growing plants, normally it would be falling away, all of these seedlings were about this big, and with a kilometre of fetch on them, the seedlings were just uprooted and tossed away. Or the carp, which spawn around that time, moved in and just trashed them all.

And so we lost our reproduction and we lost the plants that we otherwise would have gained, and the existing plants struggled because they had to have water on them instead of falling away from them.

In 2007, where we had a Plan B+ style, where water peaked out in May, we actually had the shoreline vegetation flooded with actually not that much water, only about a foot at best on the deep side, and we had the most amphibians and the most fish and the most everything we've ever had.

We got no seedling germination because there was no exposed mud flats, but that's fine. And the water fell away over the course of the summer and the existing shoreline vegetation grew and recovered everything we'd lost the previous year.

And actually, everything worked right, and it's like, that's exactly the way it's so easy to do my job, when the water comes when it's supposed to and when it leaves when it's supposed to, and all the processes of life that are hooked to this cycle of water just go on just fine and I don't need to be here, actually. I mean, I can actually just enjoy the world.

But anyway, ultimately, what we're after in the end, which doesn't come out in the model, we feel, is the timing aspect, not the extremes, but the timing, to have water when there should be water in the spring and when it falls away in the summer.

And, so what would I say, timing is everything in plant and animal life, and timing is the most fundamental element for the processes of life along the shores of Lake Ontario. I have watched the successes, as I've stated, when it was right and I have seen the failures when it was wrong.

And I am certain that if we go to plan D, we'll actually end up with multiple new introduced species to fill in the vacuum that we create by cutting away the spring species that are lost when we no longer have water in the spring.

And so, on behalf of the Royal Botanical Gardens, we're a major shoreline property owner and biological repository there, I am asking the IJC not to adopt Plan 2007.

And timing is everything in life, whether you're a plant, an animal or a person. And we will provide written submission detailing our concerns and what we'd like to see again. Thank you.

HERB GRAY: Can we check and see if any commissioners have information that they seek from this gentlemen by way of responding to a question for clarification? Well, I have one, just for clarification.

TYS THEYSMEYER: Certainly.

HERB GRAY: Are you suggesting that the modelling of the Study Board and the work of the Commission's advisors who developed 2007 did not cover water conditions in Hamilton Harbour and Cootes Paradise from and after 2006?

TYS THEYSMEYER: Yes. I am suggesting that the modelling is based on conditions and patterns of plant and animal movement that have water that rises in the spring and falls away. And if you try to apply Plan D, the water doesn't follow that pattern, and so anything you would spin off of that model doesn't actually...all of those consequences aren't actually going to occur because that's not the way it ever was to model off of. But 2006 and 2007 in particular?

HERB GRAY: As I used to do in Parliament, ask a supplementary question...

TYS THEYSMEYER: Yeah.

HERB GRAY: Very brief, and my colleagues will give me the hook if necessary.

TYS THEYSMEYER: That's fine.

HERB GRAY: Didn't plan 1958D involve water going up at one time of the year and down at another time of year?

TYS THEYSMEYER: Yes, it does. It cycles it up about 70 centimetres on average up and down on an annual basis, and that's another element that we're not fond about D, it goes up and down 90 centimetres, which is more extreme than the 70. Although, I mean, 70 is close to 60, that's just part of the cycle...

HERB GRAY: And finally, you are suggesting that Plan 2007 would not continue this practice?

TYS THEYSMEYER: No, I am suggesting that when it brings the water up is different than when it naturally would come up in the spring. It's just a difference of when the water arrives at its highest point.

HERB GRAY: Okay, thank you very much.

TYS THEYSMEYER: You're welcome.

HERB GRAY: I now call on Jim Hudson of the Bay Area Restoration Council.

JIM HUDSON (Executive Director, Bay Area Restoration Council): Thank you, commissioners, for taking the time to hear me. I am Jim Hudson, Executive Director of the Bay Area Restoration Council, usually more often known by our nicknames of BARC – nothing to do with trees or dogs, I assure you.

We are a non-profit organization based in Hamilton, Ontario. And though I am now focused on perhaps a Canadian piece of the body of water, I have spent much of my life also in Minnesota, where Commissioner OLSON is certainly

held in great reverence, and have experience dealing with international boundary waters there.

BARC is somewhat unique in terms of the RAPs that exist in the various AOCs that your organization has designated in that it was formed right at the time of the RAP as an intricate (sic) part of the RAP, to balance the work being done by the implementation team and to represent the community.

And when I say the community, our over 700 members don't represent just the citizens, you know, of the greater Hamilton and Burlington region, they also represent industry, both small industry and large industry, including organizations like U.S. steel.

We represent education at all levels, from primary through post-secondary. We interface with many agencies at many levels of government. And we also have very strong interface with academia, especially experts in aquatic science and human health aspects of the environment.

We have been working since 1991 to ensure continued progress in the restoration of Hamilton Harbour and its watershed. Like the IJC, we favour science-based decisions, public participation, and collaborative approaches to resolving environmental issues over advocacy, which we might call this, and legal proceedings.

We tend to be a fairly quiet organization, but there are times when we feel it's necessary to put on our watchdog hat and speak out, and we believe that the

appearance of Plan 2007 is one of those occasions. We believe it is a serious issue.

Our stakeholders have many concerns with the Plan. I will confine my comments tonight to only those relating to the environment and I will relate them to some of the community programs that we offer in an area of close to a million residents.

We deliver eight different programs to thousands of people across the watershed each year. Many of these programs are education, and I'll give you some examples.

This year, in one of our programs called Classroom Mini Marsh, we have approximately 10,000 students from the western suburbs of Toronto all the way to Niagara who are learning about wetlands.

They're growing in their classrooms a miniature marsh ecosystem using materials that we, BARC, along with the Royal Botanical Gardens, have provided to them. They even have the opportunity to bring those marshes back to Cootes Paradise and plant them if they wish.

In doing so, these 10,000 students are learning that marshes and wetlands are the kidneys of our Great Lakes, that they are buffers for major rain events, that they're important spawning grounds for many aquatic species, including many of the fish in western Lake Ontario, and they are habitat for many waterfowl. In short, they learn that marshes are not wasted land that should be filled in and paved over or let run dry.

We believe, based on the best advice we're able to obtain, that Plan 2007 will hinder many of the benefits of the marsh land, and I confine my comments to Cootes Paradise Marsh, but we believe it is typical of other coastal wetlands around Lake Ontario.

And one of the reasons it will do this is, as you've heard, is by delaying the timing of the high water into the summer. It will interfere with the restoration of this paradise, which is, as you've heard from Mr. Hall, an IJC-mandated requirement for the delisting of our AOC.

At this point, I really struggle with one question: what do I now go back and tell these 10,000 students and their families and their teachers who have given so much to this program not just this year, but over the past seven or eight years?

Another program that we're involved with, also with RBG, we call Marsh Volunteer Planting. Every year, our volunteers work with RBG staff to replant native aquatic species in Cootes Paradise. Thousands and thousands of hours of volunteer time of untold value have gone into this effort. These are efforts that would not be able to be funded by governments agencies because of the cost of it.

As we've heard, Plan 2007 we believe will hinder the propagation and regeneration of these plants. I think Mother Nature provided us in the years 2006 and 2007 what we might consider as a controlled experiment to show why Plan B+ is better than Plan 2007 in this regard.

Also, as you have heard, Plan 2007 we believe will favour late-spawning species such as carp, which have caused nearly the virtual destruction of Cootes Paradise. Much has been done over the last decade in terms of reducing the tens of thousands of carp down to a few hundred and we have seen the benefits in the restoration of Cootes Paradise and the return of more native species and the species that we would like to see and certainly our sport fishermen would like to see.

Quite frankly, I also personally fear spin-off effects in our volunteers. Many of the volunteers who have been involved in these programs also participate in other programs that are of, we believe, great value to Lake Ontario.

We operate one called Yellow Fish Road where we teach people not to dump toxic chemicals down their storm drains. We also have one called Adopt A Creek, which many of you can relate to in Adopt A Highway program, very similar. We also have started A Stream of Dreams program, thank you.

We worry that some of the volunteers may become disenchanted, and they provide a valuable service to all of us. We also sorry that students and volunteers will begin to question whether our words and our actions match.

In conclusion, we believe that adoption of Plan 2007 will do environmental harm to a very important wetland. It will retard delisting of Hamilton Harbour. It will undermine the environmental education and outreach we have done with thousands of people over 17 years that we've existed. It will

increase scepticism in the mind of young students about how much they should care about the environment.

We believe that 2007, in terms of our watershed, is a step backward, and we ask you to implement Plan B+. Thank you.

HERB GRAY: Now I want to ask people in the audience, I asked our staff to turn off the air conditioning because it was so noisy, at least at the front. Would you like us to turn it on or continue the way we are? Okay. And if anybody is still wearing their jackets, please feel free to take them off.

All right, any informational-type question that the commissioners want to ask, and I talk about information for them. Okay. Now, the next name I have here is Laurel Thompson, and it says here that Laurel Thompson is connected with BARC.

LAUREL THOMPSON (Bay Area Restoration Council): (inaudible)...

HERB GRAY: No, you have to come to the microphone, I'm sorry. We ask that only one person per organization make a presentation and others make a presentation in their personal capacity.

LAUREL THOMPSON: I can make this as a member of...just an individual. It's very brief.

HERB GRAY: Okay, all right.

LAUREL THOMPSON: I've written a letter to the Honourable Herb Gray and Irene Brooks and also to the commissioners. Dear Chairman Gray and

Chairwoman Brooks, we write as a concerned group of citizens who are both environmentalists and boaters in the Hamilton area.

Thanks to years of hard work, both by the public sector and the private sector, and the enthusiastic support of dedicated individuals who care about our city's environment, Hamilton Harbour has been returned from a state of absolute contamination to where it is reaching a delisting point in being rehabilitated.

Fish and wildlife have been returned to Burlington Bay and are thriving. Hamilton Harbour is a success story with commercial shipping, pleasure craft, and the environment all living together in harmony.

If the IJC continues with Plan 2007, all of these years of hard work from all levels of our community will be at risk. Cootes Paradise, a special area of wetlands at the west of end of the Bay, can be virtually destroyed, ending a most beautiful space for fish habitat and spawning as well as nesting grounds for one of the most diverse populations of birds in North America.

We urge the IJC very strongly to reconsider Plan 2007 and move forward with Plan B. The health and future of the Great Lakes is at stake. And I have over 350 names on this petition, and is it all right if I give them to your secretary?

HERB GRAY: Yes, please. Don't read them all out. (LAUGHS)

LAUREL THOMPSON: Oh, I wouldn't. Probably can't read half of them. Thank you very much.

HERB GRAY: Thank you. The last presenter talked about asking us to reconsider 2007. I want to stress that we published 2007 for comment; we have

not taken a final decision on it as yet. And I repeat, we won't until we have heard all the comments and have considered them and talked further with governments.

Now if I can invite Jennifer Turner, constituency advocate for Dean Allison, MP Niagara West-Glanbrook to come forward. I think she wanted to speak on the topic we have been hearing about.

JENNIFER TURNER (Constituency advocate for Dean Allison, Conservative Member of Parliament for Niagara West-Glanbrook): Good evening, Honourable Chair and commissioners. I just wanted to thank you for giving me an opportunity to speak to the Commission.

I am here on behalf of our elected member of federal Parliament Dean Allison, who is not able to be here this evening because Parliament is sitting this week, possibly next week as well. So he gives his regrets that he cannot be here. I am here solely to observe and to report back to Dean. And I thank you again for your time.

HERB GRAY: Thank you. Now I want to have my fellow commissioners help me. The next person is John Bacher and he represents an organization, if you come forward and identify your group and we'd be happy to hear from you.

JOHN BACHER: My name is John Bacher. Because I haven't had time to consult with my group, I'll speak as an individual. The group I work for as a researcher is the Preservation of Agricultural Lands Society.

Now I have been involved in the Niagara Restoration Council and quite involved in the Remedial Action Plan for almost ten years, but my remarks

tonight are more concerned with the estuaries that I have some familiarity with in the Niagara Peninsula, that, like, Cootes Paradise, are influenced by the backflow of Lake Ontario.

And from my experience, I can certainly underscore all the concerns that have been addressed from the people in Hamilton because we have, I think, more severe problems in the Niagara estuaries. They are compounded by the fact that there is not a regime in place similar...an institution similar to the Royal Botanical Gardens.

It's sort of appropriate that you're having this meeting here very close to the Twenty Mile Creek. That is an estuary which is, like Cootes Paradise, heavily influenced by Lake Ontario waters entering in, and the problems are much more severe. There's no program in Twenty Mile Creek of carp remediation, and carp are the dominant species there.

The biodiversity of all of these estuaries is - in addition to Twenty Mile Creek, very close to here, there is Sixteen Mile Creek, Eighteen Mile Creek, Fifteen Mile Creek - are very pathetic.

And the situation, I believe, is becoming worse because of global warming, which, to my view, shows the need for the approach of B+ enhanced environmental to this issue.

Because a member last week of the St. Catharines Game and Fish Association told me that for three years in a row, their organization was not able to do any fish introduction work into the Twenty Mile Creek because of the

problem of water levels, which, in his view, have become worse because of drought conditions.

So basically, I can just, you know, add from my environmental knowledge and involvement in Niagara that the situations that the people from Hamilton talked about are worse here, but they are more poorly documented because there is isn't this sort of intense environmental monitoring of these estuaries that the Royal Botanical Gardens does in Cootes Paradise.

HERB GRAY: Do the commissioners have any questions? Thank you for your presentation. Our next presenter is Doug Cuthbert, not representing any organization, but he comes to us from Burlington, Ontario.

DOUG CUTHBERT: Thank you, Chair Gray and commissioners. My name is Doug Cuthbert, I live in Burlington, Ontario, and I am known to some or most of you through my role as Canadian Co-Chair of the Study Board that delivered the five-year study and report on this topic to the Commission two years ago.

I am here today as an interested observer on the other side of the table and a member of the public. I have not participated in any way in the work of the Commission over the past two years in developing the new proposed Order and Plan 2007.

Seven and a half years ago, the Commission initiated the International Lake Ontario-Saint Lawrence River Study and commissioned a multi-disciplinary Study Board. Over five years, culminating in the delivery of the draft study

report to the Commission in December 2005, some 180 people in a number of agencies worked directly on that study.

Since then, the Commission has been publicly silent as to their deliberations and actions to this work (?). After two years of silence, the Commission has now released the draft new Order and Plan for public comment, but the plan is different from those forwarded to the Commission by the Study Board.

So my first comment therefore is a progress one...a process one, in that after five years of very open, publicly-interactive investigation, the subsequent two years of silence from the Commission raises suspicions by many as to how, why, and what the Commission have come up with, suspicions in the minds of people who have directly participated in the Study Board and also in the minds of the public and interest groups.

Had you been more open with the public over the past two years, in my opinion, as to your reasons and basis for developing a new Plan 2007, you might now have had a more receptive public response.

In the past years, the Commission and its boards have been subject to criticisms for making decisions behind closed doors. This recent experience does nothing to improve on the situation.

Now my second comment is a positive one, in that certainly, I'd commend the Commission and your support staff for the written and Internet material now

being made available on the new Order and the Plan, as well as the information sessions that preceded these public meetings.

I attended a April 29th information session here in Port Jordan and I must say that at that time, Tom McAuley and Commission staff were very open and effective in describing the proposed Plan 2007. I wish they had a larger audience, that was all.

I also commend the Commission on embracing adaptive management in the Order. Should, for example, there be significant meteorological science advances in forecasting six months water supplies, the incorporation of this information into regulation plans through adaptive management will hold huge promise of benefits for all interests.

I also agree with the Commission's proposed practice for fewer, more transparent deviations (inaudible)...and for restructuring the regulation board. The latter is long overdue.

As a third comment on the proposed Plan 2007, I believe I understand why the Commission directed technical staff to undertake further work to develop Plan 2007, but I do support previous speakers in their request to implement a B+ plan.

Where I believe the Commission's proposal currently is significantly deficient is the timeframe and process for a switch from Plan 2007 to a variant of Plan B+.

Plan 2007 provides little or no improvement to the environment over Plan D+, we've heard that before. The Commission, I believe, appears to recognize

this, and I quote from their statement in the material: “The Commission has a strong interest in providing additional environmental benefits at the level provided in B+ (inaudible) plans.” That’s excellent.

But the Commission’s proposal to implement Plan 2007 as an interim step to putting in place a variant of B+ and then review conditions in two years and in subsequent years to determine if a Plan B+ variant might be implemented is far too wishy-washy to be effective.

You as commissioners will in all probably not be around to make this decision, nor will many current leaders of public interest communities, government agencies, or the science community, so you can therefore be criticized as passing the buck.

As an alternative, I think you should set a deadline of no more than five years for the Commission and the Saint Lawrence Board to implement a Plan B+ variant. This would be proactive and a definite step toward improving regulation.

It will signal to all government agencies and riparians that you are serious about addressing environmental concerns and then mitigating actions need to commence now.

Otherwise, and using shoreline property as an example, construction of more residential homes and vulnerable buildings and erosion of flood-prone shorelines will continue, thereby further increasing vulnerabilities.

I am sure the Commission’s support staff and agencies can identify a Plan B+ variant now for implementation in five years.

My fourth and final comment deals with communications and information outreach activities. A wealth of information exists on how and why Great Lakes water levels fluctuate and how water levels are influenced by actions of the Commission's boards. There is also a great deal of information available on how Great Lakes shorelines evolved through erosion and accretion and acts of humankind.

A mitigation measure of considerable significance, I believe, would be to use this information to better inform agencies and people about shoreline dynamics and ways to avoid flood and erosion.

The Commission's boards have historically been engineering nature and they have done that job well, but they are not equipped to proactively inform, educate, and provide leadership to people and agencies on how to live in harmony with fluctuating water levels. Thank you.

HERB GRAY: Thank you.

DOUG CUTHBERT: I'll provide a written copy of those comments to both secretaries.

HERB GRAY: We welcome them. And I now pause to allow commissioners to pose questions to Mr. Cuthbert if they wish to do so.

JACK BLANEY (Commissioner, Canadian Section, International Joint Commission): Only to say, Mr. Chair, that this is a time, of course, whether we'd want to get into some kind of discussion, which we're not going to do, at least here, we're here to listen.

DOUG CUTHBERT: Understood.

JACK BLANEY: Thank you very much.

HERB GRAY: Thank you for coming out today. Mr. Speck?

SAM SPECK: Yes. Question: could you tell us a little more about what you meant by an alternative of setting of a five-year deadline for implementing (inaudible)...

DOUG CUTHBERT: Well, at the moment, your information infers that B+ is a variant that should be initiated or put in place in the future, is desirable to be put in place in the future. But if you leave it as some time in the future, commissioners, it's not going to happen.

If you set a deadline and say, okay, we'll either stick with 58D or we'll implement 2007 and in five years from now, we'll implement B+, that gives a signal to all of the agencies who are looking to mitigate some impacts, if they are negative, of B+ time to put their mitigation in place, but if you're fixed and firm as to when you're going to implement B+. So that's also, if you would, incentive for more mitigation.

HERB GRAY: Were there other questions from commissioners? If not...yes, please go ahead.

SAM SPECK: Yes, one other question (inaudible)...

HERB GRAY: Go ahead.

SAM SPECK: And what would you do if they didn't do what you would like them to do?

DOUG CUTHBERT: I think you have given them a signal and you would implement B+.

SAM SPECK: Regardless of its impact on some of these other factors that we're required to consider.

DOUG CUTHBERT: Well, the impacts overall are positive, certainly with respect to the environment. There is a little downside on shoreline damage problems. That's been a problem that's been identified for years and is increasing rather than decreasing because of shoreline use plans or lack thereof.

So my reaction is you give them five years and say, look, we're going to implement this, you have got time to put the mitigation in place, start now, otherwise people will procrastinate.

HERB GRAY: Okay, thank you very much. I would like to indicate the next person that I'd want to call to the microphone is Wayne Hennessy of Seaway Marine Transport of St. Catharines. This is the last card that I have. If there are others who would like to register to speak or add comments, we have time for that. And Mr. Henn...I'd like to invite Mr. Hennessy to make his presentation.

WAYNE HENNESSY (Seaway Marine Transport): Good evening. My name is Wayne Hennessy, I am here tonight representing Seaway Marine Transport. We're in direct (?) vessel traffic and customer service.

Seaway Marine Transport is a marine transportation company with its head office in St. Catharines, Ontario. We operate a fleet of 35 Canadian flag

(inaudible) carriers that trade exclusively on the Great Lakes, the Saint Lawrence River and the east coast of Canada.

Our ships carry things like grain, iron ore, coal, safety road salt, fertilizer, and construction and building materials. We are not particularly well known, but to give you a sort of size of scale, or scale of size, in the 2007 navigation season, our ships moved close to 44 million metric tonnes of cargo. And on a revenue tonne per kilometre basis, we're almost 20 per cent of the size of (inaudible).

Starting with the proposed new Order of Approval, in article 8 of the Boundary Waters Treaty of 1909, there was an express order of precedence that spells out the order in which sometimes competing interests of the water management policy will be addressed.

In the new Order of Approval, we can find no specific reference to how the Commission intends to rank new interests. As this new Order of Approval is also proposing to allow revisions to existing plans without further new orders of approval, along with moving to adaptive management plans and strategies, we feel that it is very important that we ensure that treaty compliance and existing ranking are preserved and that all parties know definitively where they stand in the scheme of things. We feel the best way to do this is to embed them into the Order with specific wording.

IJC literature also indicates that this new order provides comparable or greater benefits to the interests in the 1956 order. With regard to how those benefits have been calculated, we also have a number of concerns.

First, on the data used to identify impacts to the commercial navigation sector, we understand that during the development of the plans currently under consideration, that the most recent work done by the commercial navigation technical working group was not used.

Earlier costing models were used and only included costs from (inaudible)...not from origin to destination. And no revenues, or more accurately revenue losses, were considered in the calculation and the costs, and perhaps more importantly, no attempt was made to factor in potential modal shifts as a result of low water levels or high river (inaudible)...alternative plans.

Additionally, there is a net benefit to commercial navigation identified as a result of the reduced delays due to high currents in both the 2007 and B+ plans. However, in reality, navigation has never stopped because of high currents. Navigation was stopped briefly in 1993 to dump water, but by design, not by chance. We feel that this materially inflates the benefits of plans 2007 and B+ for commercial navigation in an unfounded way.

Under the current plan of operation, 1958D with deviations, there is specific allowance for deviations as and when required for as long as required to support navigation. History has shown that this flexibility has been necessary to ensure uninterrupted navigation. In fact, 58 with deviations came about because 58 without them didn't work.

History will also show that these deviations have had minimal impact on lake levels. We feel that this flexibility needs to be preserved, and again, as the

Commission moves to adaptive management plans and to allow revisions without new orders, we feel that this protection needs to be spelled out specifically in the Order, not in the Plan.

With regard to the specific plans presently under consideration, it is apparent that in a dry year like 1964, that both 2007 and B+ would be detrimental to Seaway Marine Transport.

After modelling 58D with deviations, 2007 and B+, we found that additional lack of water in Plan 2007 and B+ amounted to additional cargo losses of 200,000 metric tonnes and 260,000 metric tonnes respectively.

This would amount to approximately \$4.5 million of lost revenue for us, in addition to \$16 to 18 million of costs to our customers for additional transportation charges if they had to truck the shortfall.

As this cost spreads through the economy, the amount would grow ever larger and multiply into many times that number in GDP for Canada and the United States. We do not see this impact being accurately reflected in any economic impact calculation.

From an environmental aspect, trucking this tonnage would also entail approximately 9,000 fully loaded additional tractor-trailer units, which would double transportation greenhouse gas emissions when compared to the marine move. Even assuming a real move, greenhouse gases would increase by 25 to 30 per cent.

We need to ensure that by trying to address issues in one area, that we do not inadvertently do the same or more damage in another. We do not see this impact being reflected at all in any environmental impact calculation.

Another feature of the plans under consideration is a requirement to draw down Lake Ontario for two years and twenty (?). As the proposed plan reads now, a decision to draw the lake down is made early in the calendar year, and from that point on, the plan attempts to do this.

If, after a decision is made to draw down the lake, the conditions then turn dry, there may not be enough water left in the system to support full draft navigation for the balance of the year.

If, on the other hand, the conditions turn wet, then river velocities may be so high that it would be unsafe for navigation, as the plan would call for continued dumping of water to try and drain down the lake. We do not believe that these scenarios have been taken into account in the economic impact calculation.

The present seaway and river control projects were constructed and put in place 50 years ago and essentially changed the then-existing watershed biosphere (?) into what it has become today.

The plans under consideration are now attempting to further manipulate this biosphere, but it is apparent that the environmental criteria being used to design the plans are focusing primarily on habitat and wildlife. Larger-scale

environmental impacts such as climate change and air pollution seem to have been ignored.

In conclusion, Seaway Marine Transport questions the validity of the economic analysis being used to quantify the decisions presently being considered.

We also caution that a focus on habitat and wildlife conservation above all else turns a blind eye to other potentially more damaging environmental impacts on a large scale.

We need to know that a flexible and responsive plan is in place to provide for deviations as and when they are required, for as long as they are required, to support commercial navigation.

And finally, we need guarantees that safe and acceptable conditions for navigation will be maintained in accordance with the priorities laid down in the Boundary Waters Treaty. Thank you.

HERB GRAY: Okay. Now I invite commissioners to pose any questions they have.

ALLEN OLSON (Commissioner, U.S. Section, International Joint Commission): Will you be filing (inaudible)...

WAYNE HENNESSY: We will, yes.

ALLEN OLSON: And are you an association (inaudible)...

WAYNE HENNESSY: No, we are one company.

ALLEN OLSON: One company.

WAYNE HENNESSY: We are one company. A partnership of two marine shipping companies, but we are in fact one company.

ALLEN OLSON: (inaudible)...

WAYNE HENNESSY: (inaudible)...position.

HERB GRAY: Now my hearing isn't always that good, but I seem to recall you making a reference to things upstream as far as Thunder Bay.

WAYNE HENNESSY: We operate in the Great Lakes and the Saint Lawrence River and as far as the east coast of Canada...

HERB GRAY: It just gives me the opportunity to point out that we have another major study now underway, it started a year ago, similar to what we're now trying to finalize for Lake Ontario and the Saint Lawrence, for the upper lakes, for Niagara upstream.

WAYNE HENNESSY: Uh-huh.

HERB GRAY: I know we could all be sitting here in a couple of year, in a similar meeting, but I just thought I'd remind us all of this. Any further questions for this gentleman? And if not, we have one more speaker. Thank you very much. Oh, I'm sorry, Mr. Speck. Come back, Sir.

SAM SPECK: Between Plan B+ and 2007 and the current (inaudible)...support the current plan?

WAYNE HENNESSY: I think so.

SAM SPECK: And if between (inaudible)...

WAYNE HENNESSY: There are specific parts of other plans we don't like.

SAM SPECK: (inaudible)...

WAYNE HENNESSY: The drawdown in two years and 20 has very, very considerable risk for navigation interests. If things don't go exactly right, we don't believe the control systems are able to fully compensate for other than almost perfect and average weather year. So that scares us a lot.

We're an industry that runs at capacity pretty much all the time, so we do not have the luxury of (inaudible) additional assets to move additional cargo because we can't put as much on a ship as we normally do.

So I think the deviations is very important to us, that is apparent with 58D. The deviations allows for minor tweaks to ensure that navigation is allowed to continue at full (inaudible), and that is not embedded to the same degree in 2007 and B+.

And again, additionally, the drawdown in two years and 20 really has significant potential damage for us. First, we don't know when it would come, it's a trigger that happens in February every year, so that's a first issue, we can't plan for it. And the second is that if it goes long (inaudible)...

SAM SPECK: I'm still not sure (inaudible)...in terms of B versus 2007, which one do you have (inaudible)...

WAYNE HENNESSY: Again, we don't have a big problem with 2007 except with the two years and 20 drawdown. And I think we're looking at this

from certain bits and pieces throughout the various plans that, you know, we find very, very hard to stomach. And so I think status quo seems to be working right now, but we recognize there are other interests that rightfully need to be addressed. But 2007 without the two years and 20 drawdown would not be a bad thing for us.

JACK BLANEY: Mr. Chair, I understand (inaudible)...Commissioner Speck was looking for what's your major recommendation. It seems to me your major recommendation is to keep the kind of flexibility that's inherent to 58D.

WAYNE HENNESSY: Regardless of what plan you put in.

JACK BLANEY: So much so that it would actually be in the Order (inaudible)...

WAYNE HENNESSY: Yes, and regardless of what plan you really put it in. If you go to adaptive management policies and if you go to further revisions without new orders, we would very strongly recommend that you embed it in the order you are about to make so that all of these provisions...these are what we consider the good provisions of 58D with deviations, we'd like to see them kept.

HERB GRAY: All right.

WAYNE HENNESSY: Thank you.

HERB GRAY: Thank you very much. We have one concluding presenter, that's Ron Walker of CUPE Local 4207, connected with the St. Catharines Labour Council, and he's based in Welland.

RON WALKER (CUPE Local 4207): Yes, Local 4207 is the TA's local at Brock University, I'm kind of a new member there.

Unfortunately, I haven't read all of these reports, and I didn't get to earlier meetings, but I've been involved in discussions on a number of matters because there's been a lot of consultation on this all-new Great Lakes organization and regulatory format that's taking place.

My concerns, in the summary part of the report, is active management will take some actual commitment from the two federal governments, and there doesn't seem to be any means of necessarily compelling them to put enough money into making that management system work. So, you know, I'm not sure to what extent whatever proposals you finally go with, you're going to be able to get the federal governments to act on.

But three concerns. To me, there seems to be concerns around Kingston and the Frontenac Canal system, you know, that can be a major source of water diversion from Lake Ontario, though it does come back into the system later through the Ottawa River. But it may be a means of controlling the Ottawa River flooding, if, you know, you can divert water out of that Ottawa River through that Frontenac Canal at certain times of the year to reduce that problem.

My third point is the Montreal Harbour. I know they have put a lot of money and investments into raising the body of their harbour there. They have done lots of dredging. It's obviously the main financial hub of that part of the seaway system and I know they aim to enhance the shipping hub there.

If their dredging program has gone along, I'm not sure...you have to sort of reassess what the actual level of need would be in terms of the downstream water. So you're regulating through Cornwall how much water Montreal needs to operate that harbour efficiently.

And finally, a fourth concern, which is not even mentioned in your report, but for us in the Niagara is a very big concern, is this idea floating around by the organization of marine engineers of the United States to double the size of the canal that would handle ocean-going vessels. But that would really have a devastating effect on both the upper lake water levels as well as whatever you're trying to regulate, Ontario and downstream.

So it'd be nice to see somewhere in your report that in fact, the maximum tonnage be established for that Welland Canal and no provisions to double the size actually be allowed. So I don't know if the IJC is in a position to say that for the purposes of water regulation. That's not a good idea. I don't think it's a good idea.

So those are just some points I've learned in my experience as a labour activist and concerns we have (inaudible)...

HERB GRAY: Okay, and thank you. Basically, we're dealing with levels and flows. With respect to an issue of expansion of the seaway and the Welland Canal, there is a Canada-U.S. study that I think has just been completed led by the Department of Transport in Canada and the Corps of Engineers in the United States, but I'd ask my colleagues to confirm that it's not based on making the

Canal bigger, but making the current one operate better. And I think, Tom, I'm right, there, I'm just giving information.

TOM MCAULEY (Engineering Advisor, Canadian Section, International Joint Commission): (inaudible)...

HERB GRAY: I'm just breaking the rules.

RON WALKER: (inaudible)...the idea was floated over six years ago (inaudible)...

HERB GRAY: Other questions or points for this gentleman?

SAM SPECK: You represented yourself...

RON WALKER: I am representing myself. That's just giving a little bit of background. I have a sort of more extensive labour background.

HERB GRAY: Well, we thank you for coming.

RON WALKER: Thank you.

HERB GRAY: Now this completes the presentations. I want to conclude by saying that I want to thank you for attending and providing us with your views.

We will continue to accept comment through July 11th, and we'll make our decision, as I've said, only after considering all comments and in consultation with the two national governments, whose concern is there and whose concurrence we are required to seek on the final Order and Plan.

Now as mentioned earlier, our lead staff – you just heard from one of them - will remain available at the back of the room for about the next half-hour or so to answer any informational-type questions.

And having said that, we thank you for coming, and you helped make some history here because this is the first of a series of ten meetings around the Lake Ontario and Saint Lawrence to get comments. So we thank you for coming. And I think there's still some coffee or something left there, and somebody should drink it up, so feel free to stay and do that. And if you want to stay and chat, you're also welcome, more than welcome. Thank you for coming.
