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The Secretary, United States Section  
International Joint Commission  
2401 Pennsylvania Avenue, NW  
Fourth Floor  
Washington, DC 20440

COMMENT ON THE PROPOSED NEW ORDER OF APPROVAL, LAKE ONTARIO –  
ST. LAWRENCE RIVER REGULATION PLAN

During the IJC information meeting in Massena on May 08, 2008, it was explained that it was necessary to implement Plan 2007, instead of Plan B+, due to the provisions in Article VIII of the Boundary Waters Treaty of 1909 and the 1956 Amendment to the Orders of Approval of 1952. This is reiterated in your proposed new order.

Article VIII of the Treaty states in part “In cases involving the elevation of the natural level of waters on either side of the line...” and further...“the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.” Cases involving the elevation of natural water levels are not necessarily the equivalent of raising them. The 1952 Orders and 1956 Amendment to the Orders constantly use the term “elevation” to describe both high and low specific levels, such as elevations 247.3 feet or 243.3 feet.

We know that the Seaway/Power Project both raised and lowered water elevations in various sections of the system. Ergo, under both conditions suitable and adequate provision should be made for the protection and indemnity for those injured thereby. Injury is not solely a result of high water levels, but low water levels as well. The key phrase in Article VIII is the natural level of the waters.

If we examine what happened as a result of regulation to Lake Ontario, it is clear that the levels did change dramatically from the natural levels; not rising, but falling. The natural (pre-project) average level for Lake Ontario is 246.0 ft. The overall average Lake Ontario level under the current plan or Plan 2007 would be 245.2 ft. (over 9 inches lower). More importantly, the pattern of the water levels has changed. The July levels under Plan 2007 will be only a little over 4 inches lower, but the April levels will be 10 inches lower and the November levels some 11 inches lower. These lower levels are

not the natural levels of Lake Ontario, they're the unnatural levels! Article VIII of the Treaty does not address changes in unnatural levels.

We all know that the lowering of the natural levels in Lake Ontario was really done to placate shoreline owners along the south shore. This action was successful and did protect them, but caused injuries to many others within the system such as shortening the recreational boating and tourism seasons and of course, fifty years of continuing environmental degradation. No "suitable or adequate provisions" for the "protection and indemnity" for these latter interests were made in 1956, and more importantly, are not being offered today in 2008. Why the preferential treatment for one interest at the expense of much broader interests within the basin?

Plan 2007 will also cause increased injuries to a local section of the system, Lake St. Lawrence. This is the section that the IJC's new orders still refer to as "the International Rapids Section". It may be news to the IJC, but the rapids have been gone for fifty years. Maybe the IJC feels that by denying the existence of Lake St. Lawrence it can excuse the inequitable injuries to the area such as a greater incidence of high shoreline eroding water levels and a further shortening of the boating and tourism season that would be imposed by the adoption of Plan 2007.

The IJC has commented that Plan 2007 will provide some environmental improvement over the current plan. That is like saying that a baseball player with a batting average of one hundred has improved his average all the way up to one hundred one! He's still a lousy hitter and Plan 2007 is still a lousy environmental plan!

I strongly urge the IJC to forgo its consideration for Plan 2007 and implement the more equitable and environmentally sound Plan B+.

Sincerely,

Dalton P. Foster