

# LEVELER

E-Newsletter from the Lake Ontario Riparian Alliance

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Grassroots Public Advocacy for the Protection, Restoration and Conservation of Lake Ontario  
Beaches and Riparian Property

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## Lakeshore legislators change focus of Plan 2014 fight

Posted: Saturday, September 27, 2014 12:00 am

BUFFALO — In the battle over a plan to readjust out-of-date lake level management policies, Orleans County's representatives are turning their focus away from the commission behind their opposition to the plan.

Members of the Niagara-Orleans Regional Alliance, a two-county partnership between local legislatures, and U.S. Rep. Chris Collins, R-Clarence, met Thursday with officials from the International Joint Commission, which has sent IJC Plan 2014 to the State Department with recommendations for approval.

Orleans County Legislature Vice Chairman Lynne Johnson said the meeting was disappointing, as NORA has gathered supporting information for the arguments it, marine businesses and lakefront residents have put against the plan.

"We went to correct them on their incorrect and outdated information," Johnson said. "They were not going to change their stance ... the IJC is not going to move away from Plan 2014."

Collins, who along with Johnson and Niagara County Legislator Dave Godfrey met with IJC Acting Chairman Gordon Walker, Commissioner Dereth Glance and Public Information Officer Frank Bevacqua, said the plan remains unacceptable.

He cited the potential for a greater variance in lake levels in the St. Lawrence River and Lake Ontario, which opponents of Plan 2014 say will be disproportionately damaging to areas along the lake's southern shore.

"It has been plagued by public backlash and flawed economic analyses from the onset," Collins said. "Most disturbing is that Plan 2014 shows no concern for the negative economic impact its implementation will have on the thousands of individuals, families, and businesses along the south shore of Lake Ontario."

The international agreement's acceptance is dependent on the approval of the State Department in Washington, although it could be vetoed by Gov. Andrew Cuomo.

"I truly believe that along with Chris Collins and Dave Godfrey that we've educated the State Department and that they will not pass this onto the Governor's office," Johnson said. "We're ready to fight it in Washington, and at the Governor's office." — **By Jim Krencik** [http://m.thedailynewsonline.com/mobile/news/article\\_58be9fb8-45f6-11e4-8b23-abb5f1f5f31c.html](http://m.thedailynewsonline.com/mobile/news/article_58be9fb8-45f6-11e4-8b23-abb5f1f5f31c.html)

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U.S. Department  
of Transportation

Office of the Secretary  
of Transportation

Assistant Secretary

AUG 30 2013

1200 New Jersey Avenue, SE  
Washington, DC 20590

International Joint Commission  
U.S. Section  
2000 L Street, N.W.  
Washington, D.C. 20440

Dear Commissioners:

The U.S. Department of Transportation (DOT), which includes the Saint Lawrence Seaway Development Corporation (SLSDC), welcomes this opportunity to provide comments on the proposed International Joint Commission (IJC) Plan 2014 (Plan) and the implementing documents, including the draft Order of Approval.

The DOT cannot support the proposed Plan. As a threshold matter, we question the IJC's authority to change the current plan without reference or other communications from the U.S. and Canadian governments. The IJC is an international organization created under the 1909 Boundary Waters Treaty, with limited authority to approve changes to the boundary waters. Under Article III of the Treaty, further "uses or obstructions or diversions" of boundary waters require the authority of each country with jurisdiction, as well as the approval of the IJC. The IJC may be an independent entity, but actions it approves may not be taken independently of the two governments that created it.

Moreover, the Treaty restricts the IJC's authority by establishing an order of precedence under Article VIII. The order of precedence provides a specific list of uses with navigation second in priority only to domestic and sanitary uses. Article VIII states that "no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of preference." The IJC has previously respected the enumerated order of precedence when prioritizing or specifying a use or interest other than those listed. In contrast, the draft Order of Approval includes specific interests or uses that could negatively affect commercial navigation. The DOT does not oppose including new specific interests or uses, and agrees that environmental considerations deserve careful consideration; such additional interests cannot, however, be accommodated to the detriment of commercial navigation in violation of the Treaty.

When we have previously posed questions on this matter, IJC staff has responded that their intent is to comply with the Treaty provisions, but at the same time they explain that the Order of Approval is drafted to allow changes to be made in the future without needing to make changes to the Order. It is our concern that a new regulation plan could be developed and implemented in the future that would comply with the proposed new Order, yet violate the Treaty by allowing a new use/interest to materially conflict with or restrain the use of commercial navigation.

Moreover, the proposed adaptive management process raises concerns that the IJC may make changes to the regulation plan without interested users having an opportunity to participate in the process established by the Treaty for public comments.

DOT has additional, more specific concerns and questions regarding the documents submitted for review, and look forward to working with the IJC to address these issues. In conclusion, the preservation of navigation remains a critical goal in managing the boundary waters. DOT is concerned with the IJC's intention to change regulation plans on its own initiative. Its actions run afoul of the Boundary Waters Treaty, which specifically limits the authority and jurisdiction of the international organization. Also, the draft Order of Approval does not take into account the order of precedence, as required under the Treaty; it needs to provide specific language regarding the criteria used for users/interests of the Great Lakes-St. Lawrence Seaway System and to make the criteria "subject to the Treaty's Order of Precedence."

Thank you for providing us the opportunity to comment.

Sincerely yours,



Susan L. Kurland  
Assistant Secretary for Aviation  
and International Affairs

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**"How high's the water, Mama?"\***

or

**"What will Plan 2014 do for you?"**

If you've been coming to Sodus Bay very long, you're not only aware of Crescent Beach (the sand bar), but understand its importance to the bay. Crescent Beach is the isthmus that connects what would be the island of Charles Point to Lake Bluff. Charles Point and Lake Bluff are very similar in geologic makeup, being mostly clay and hard pan. Crescent Beach consists of stones, gravel and sand. The importance of Crescent Beach to Sodus Bay cannot be overstated. Without it, the northern ends of Leroy and Newark Islands would be exposed to the ravages of Lake Ontario. They would become lake shore. But I'm getting ahead of myself.

If Plan 2014 is ratified by Canada and the United States we know that we will be faced with higher highs and lower lows. That is what has been proposed by the IJC. The lows may nourish the sand bar; the highs will be devastating. If you don't think that is important I would ask you to read on.

An acquaintance of mine recently purchased a cottage on Crescent Beach. In August she witnessed lake waves overtopping the lakeside of her property and running across her property to the bay. This is a lot that has not been breached in my lifetime. The (six gauge average) water level at the time (August 13, 2014) was 246.00. The upper control limit, datum, is 247.3.

I have been spending summers on Sodus Bay since 1942 and feel that I know a little about it. In the 40s we would cut through the sand bar between Pearl Rook's and Bob Bloomer's with our 14' Penn Yan and outboard motor on our way to Chimney Bluff. It saved over a mile one way, a big deal with a five horse motor. In the very late 40s we did the same at the very eastern end of the sand bar. That had opened up to the lake destroying several bathouses at the base of the bluff on what used to be bay shore. In the mid 50s, the middle of the sand bar was washed out for a couple of thousand feet, the sand bar sagged south into the bay a couple of hundred feet, reestablished itself and Knob Island was no more. This tiny island became part of the sand bar where it remains today. Check an older chart (Sodus Bay Heights entryway) and you can see the separation of the sand bar from Knob Island for yourself.

It's clear to me that the sand bar, Crescent Beach, can not only be overtopped but breached, even under the present plan 1958-DD. I rowed over it in 1972. The western end narrows to 15 feet during high water and overtops regularly. The

1958-DD upper control limit is 247.30' and we have seen higher, i.e. 1993. Neither plan offers any guarantee. Plan 2014 doesn't even advertise control limits but rather trigger points. For this time of year those trigger points are well above the current upper control limit of 1958-DD and represent the point at which the new Board of Control may begin to take action; untenable. A man-made disaster.

I have seen the sand bar recede significantly into the bay. I have witnessed several over topplings and breaches. I have seen Sodus Point, Sands Point, flooded (early 1970s). Plan 2014 will only exacerbate the current condition. If we're going to **save our Sodus** we're going to have to not only alter behavior within the watershed but prevent the ratification of Plan 2014. The risk Plan 2014 presents is not offset by the hypothetical rewards the study purports and there are alternatives that would allow us to attain the wetland benefits they seek. SOS supports this latter approach.

Wetland restoration seems to be the driving force at the hands of environmental groups and the NYS DEC. Shipping no longer supports Plan 2014. Hydropower generation will not reap even the small gains forecast; Plan 2014 does not create any more water. With the possible exception of significant effects from climate change, over rated in my view, there really is no benefactor, not even the advertised 8% increase in meadow marsh. Our wetland areas at the outfalls of the six major tributaries that feed the bay would not benefit from Plan 2014. Our topography and geology would not respond favorably to the proposed higher highs and lower lows. The SOS position is that an intervention is required if we are to revitalize our wetlands opening them up to flower, fauna, nature seeking humans and the ability to mitigate pollutant laden sediments.

I encourage you to write, call or make a personal appeal to your state and federal legislators citing your concerns and soliciting their support in opposing Plan 2014.

Dave Scudder  
President, Save Our Sodus

\* Lyrics from: Five Feet High and Rising – Johnny R. Cash