

LEVELER

E-Newsletter from the Lake Ontario Riparian Alliance

Issue 43 July 5, 2015

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

In this issue:

- **Would Plan 2014 have prevented damage in 1993 and 1997?**
 - **The Op-Ed article the Rochester Democrat and Chronicle was afraid to publish.**
 - **Another Supreme Court Case against Government “Takings” of private property.**
-

Would Plan 2014 have prevented damage in 1993 and 1997?

The short answer is No!

Based on data supplied by the International St. Lawrence River Board of Control and The Lake Ontario – St. Lawrence River study, Plan 2014 will not prevent massive damages to the South Shore of Lake Ontario.

LORA's analysis of actual flow changes that occurred in the Falls of 1992 and 1996 have lead to the conclusion that the “Triggers” that have been put into Plan 2014, to prevent damage, would not be active soon enough to prevent more damage than had occurred under the current plan, 58 DD.

The damages would have been greater for the entire south shore but, in particular, Hamlin Beach State park, Durand-Eastman Beach and its traversing sewer interceptor. The sewer pump stations along the south shore all would have experienced much greater damage than they actually received.

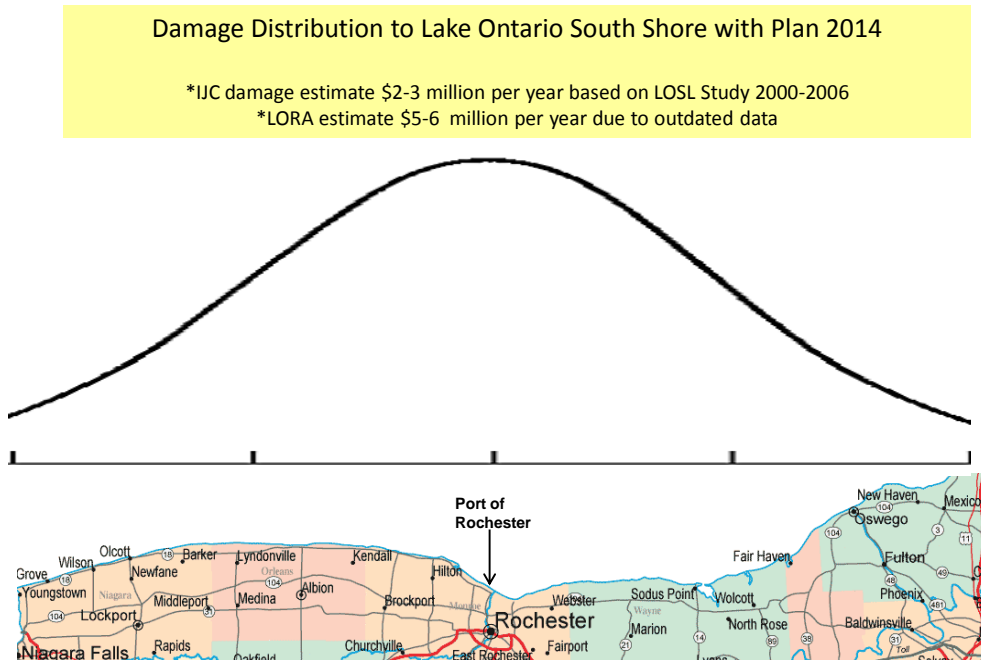
Although data for the 1973 high water period is not available, we will assume that the damage would also be proportionally greater. The Board of Control started emergency deviations in December of 1972, and under Plan 2014, these would not be allowed until about a month before the March 1973 St. Patrick's Day storm that reeked millions of dollars in damage to Monroe and Jefferson Counties alone!

The Op-Ed article the Rochester Democrat and Chronicle was afraid to publish.

Over the last few months, there have been op-ed letters in the Rochester Democrat and Chronicle, from Rochester Mayor Warren and Matt Haag of the City Council, regarding Plan 2014's impacts on Lake Ontario water levels. After reading both, you might imagine that City Hall has moved down University Avenue to the headquarters of the Nature Conservancy (NC). This seems odd since the last two City administrations were against Plan 2014 and its predecessor, BV7, recognizing that the proposed plans result in disproportionate losses to the south shore communities of Lake Ontario while holding all others harmless from damages. They both cite NC propaganda of improvement in Lake Ontario's beaches as a reason to support IJC Plan 2014. (Note: Mr. Haag has also worked in development for The Nature Conservancy.)

After reviewing their bios, it really comes down to their naiveté about the matters. The Mayor was not yet alive to experience the monumental devastation that occurred in 1973. She was likely in high school for the damages of 1993 and likely away at school for the flooding of 1997. Mr. Haag did not locate to this area until 2006.

They do not realize that the epicenter of south shore damages will be the Port of Rochester, as illustrated in the following diagram.



It is not the 2.5-inch increase that is the problem, but the occurrence of water levels above 247 feet during the spring storm periods that will occur 300% more often with Plan 2014 when compared to the current plan.

Plan	Amt. of time above 247.0 ft during spring months (March - May)	
Modeled 58DD	2.8%	
Plan B+	8%	
Plan BV7/2014	7.8%	

Additionally, Mayor Warren and Mr. Haag must not realize that to build beaches you need to destroy property. Since 85% of the private property on the lake has hardened structures built to current plan specifications, the process would involve damage to these properties along with unprotected taxpayer-supported public lands. Notably in this regard, the city-owned Durand-Eastman Beach came close to experiencing environmental disaster in 1997, when a 3-foot sewer inceptor running along the shore was undermined by water levels.

What we have stated here is only the tip of Plan 2014's iceberg of problems. If the Mayor would like to hear a more complete story, her Communications Director knows how to reach us.

Dr. Dan Barletta
 For the Lake Ontario Riparian Alliance
 Former LOSL Study Board Member

Note: graph data formulated from information obtained from the International Joint Commission.

Another Supreme Court Case against government “Takings” of private property

The US Supreme Court has issued another decision against government “taking” of personal property without compensation. Although this case, *Horne, et al v. Department of Agriculture* No. 14–275, was an agricultural lawsuit, it may be a precedent for any future lawsuit coming from damages that will occur due to implementation of the IJC’s Plan 2014. This case adds to the previous precedent in the case of *Arkansas Game and Fish Commission v. United States*, No. 11-597.

Question for the IJC: As Plan 2014 removes the 4-foot range, how will the water-side property border/lines get determined?

Today the regulatory agencies of the USACE(US Army Corp of Engineers) and the NYS DEC (NYS Dept of Environmental Conservation use the upper limit of the current operating plan’s (58DD) 4-foot range as the delineation of where our property’s borders are delineated.

Plan 2014 does not have any such limits, thus there is no clear delineation between property of the State and property owned publicly or privately.

How can this “Taking” of property occur without compensation being provided?

Additionally, as always, the LORA website has all past newsletters posted at:
<http://www.loranet.org/> and <http://www.loranet.org/levelerarchive/pastissues.htm>