



ADVANCING PUBLIC TRUST SOLUTIONS
TO SAVE THE GREAT LAKES

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FLOW Proposes New Principles to IJC as a Framework to Addressing Record Low Water Levels in the Great Lakes

Traverse City, MI – For Love of Water (FLOW) submitted comments to the International Joint Commission (IJC) to demonstrate how public trust principles can be applied to complement and aid this international governing body in making current and future decisions and orders affecting the flows, levels, environment, and public and private uses and benefits of the Great Lakes.

Lakes Michigan and Huron water levels have measured nearly two feet lower since the historic dredging on the St. Clair River began over a century ago. Compounding this problem, climate change and other historical diversions like the Chicago Diversion have been linked to decreasing water levels in the Great Lakes basin. Record low water levels, in turn, have increased competition and conflict between uses of the Great Lakes (e.g., shipping, boating, recreation, fishing, wetlands, aquatic habitat, swimming, beach walking, and riparian landowners), most of which are dependent on both water quality and quantity, as the two are inextricably connected.

The IJC is a bi-national board established by the Boundary Waters Treaty (BWT) of 1909 between the United States and Canada to protect the integrity of the flows, levels, and water quality of boundary waters, including the Great Lakes. To restore water levels throughout the Great Lakes, the IJC's Study Boards have proposed two important plans and solicited public comments on both of them; these plans are: (1) 2012 Lake Superior Regulation: Addressing Uncertainty in Upper Great Lakes Water Levels, and (2) the Lake Ontario-St. Lawrence River 2012 Bv7 Plan.

The Upper Great Lakes Plan examines the relationship between Lake Superior, Lake Michigan, and Lake Huron, and presents several engineering options for reducing the flows and levels through the St. Clair River, which is the primary outflow of Lakes Michigan and Huron.

Analyzing the Upper Great Lakes Plan, FLOW recommended that the IJC consider a combination of adaptation, conservation, balancing interests protected by the BWT and the public trust, comparative studies on equitable sharing, and a reexamination of the Chicago Diversion.



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In replacing the IJC’s Order 1958 D with Deviations, the 2012 Bv7 Plan “strives to return the Ontario-St. Lawrence system to a more natural hydrological regime” and at the same time address the needs of “a wide spectrum of interests to sustain minimal negative impacts.” If implemented, this plan is expected to increase spring water levels by 2.4 inches, summer levels by 1.2 inches, and fall levels by 2 inches. The majority of uses including the shipping and navigational industry, the environmental and scientific community, and the hydroelectric power community all tend to favor this proposed plan; however, riparian landowners oppose the plan on the grounds that it will cause a wider range of high and low water levels for longer periods and thus increase shoreline erosion.

Applying the public trust doctrine to its analysis, FLOW concluded that the 2012 Bv7 Plan as conceived equally balanced the protected public trust uses of navigation, fishing, drinking water, recreation, boating, and wetlands. However, because the private interests of the riparian owners are not a protected use under the public trust doctrine or the BWT of 1909, the Bv7 Plan did not have to prioritize these private interests over the public trust uses. In other words, while riparian owners have a right to use and enjoy the lakes, their rights are subordinate to the paramount public trust uses held in trust. In sum, the Bv7 Plan is consistent with and would not violate the BWT or the public trust principles.

Competition over water resources will only become more acute, particularly as we see lower water levels in the Great Lakes. The overlay of public trust principles in analyzing these difficult contests will be an invaluable tool to the IJC and other decision-makers. FLOW’s Chair, Jim Olson, remarked, “The public trust principles offer great equity among competing and conflicting water users and demand a reevaluation on how these issues have been handled in the past.”

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FLOW is non-profit organization working to educate the public about the public trust doctrine as a unifying framework to address the systemic threats to water, public lands, and the environment throughout the Great Lakes basin.