

ADVANCING PUBLIC TRUST
SOLUTIONS TO SAVE THE
GREAT LAKES

BOARD OF DIRECTORS

Jim Olson, *Chair & President*
Eric Olson, *VP & Secretary*
Bob Otwell, *Treasurer*

Gary Appel
Tom Baird
Ross Biederman
Ted Curran
Michael Dettmer
Wenonah Hauter
Emma Lui
Bruce Pregler
Royce Ragland
Greg Reisig
Cyndi Roper
Terry Swier

EXECUTIVE DIRECTOR

Elizabeth Kirkwood

153 ½ EAST FRONT STREET
SUITE 203 C
TRAVERSE CITY, MI 49684

231 944 1568

INFO@FLOWFORWATER.ORG

Governor Rick Snyder
P.O. Box 30013
Lansing, Michigan 48909

Dear Governor Snyder:

Thank you for prioritizing record-low water levels in the Great Lakes as part of your budget agenda. We at FLOW (“For Love of Water”) believe that this issue of water levels is at the heart of Michigan’s economy, energy and water needs, social fabric, quality of life, and environment. As you clearly understand, we must address the root causes of receding water levels so that we do not jeopardize our current and future way of life. Water is the lifeblood of our citizens.

We first want to commend you for implementing your emergency dredging plan with funds from the Michigan State Waterways Commission, which has jurisdiction over harbors. While some emergency dredging may be imperative, we at FLOW write this letter to urge the State of Michigan along with the other 7 States Great Lakes and the 2 Canadian Provinces to be developing a more comprehensive and long-term plan to truly address low water levels in our Basin. These strategies have emerged out of FLOW’s public comments to the International Joint Commission (“IJC”) last fall on the Upper Great Lakes Study and Bv7 plan for the lower lakes (see attached report).

This letter outlines 5 steps Michigan and its sister states and Canadian neighbors should consider as part of their long-term policies to protect the waters of the Great Lakes. US Courts have declared the Great Lakes subject to Public Trust Principles. Canadian courts have recognized a similar principle based on the fundamental right of the public, as individuals and as a collective, to use these waters for public purposes, like navigation, fishing, recreation, swimming, and drinking.

In Michigan, the Public Trust Doctrine and the Michigan Environmental Protection Act (“MEPA”) together grant the States the legal authority to reevaluate all diversions and actions that lower water levels in the Great Lakes. Under the Public Trust Doctrine and MEPA, the waters of the Great Lakes are a shared commons or public natural resources, such that human activities are prohibited from substantially impairing or subordinating public trust waters and their protected uses (including navigation, commerce, fishing, boating, swimming, recreation, and survival – like drinking water, cooking, and growing food). The impacts from the current water level crisis violate the public trust doctrine because both the resource and the publicly protected uses have been substantially impaired.

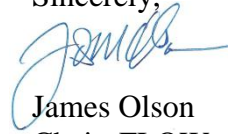
If state governments like Michigan actively applied the Public Trust Doctrine to evaluate human activities, there are several immediate measures we could take to mitigate the lowering water levels in Lakes Michigan-Huron.

1. **Raise water profile at St. Clair River:** Historic dredging of the St. Clair River has lowered the outlet of Lake Huron and contributed to the drop in overall water levels in Lakes Michigan-Huron. This dredging only accounts for a 10 to 16 inch drop in Lakes Michigan-Huron, according to Keith Kompoltowicz, chief of watershed hydrology for the U.S. Army Corps of Engineers in Detroit. As a short-term measure, the IJC has proposed different methods to raise water levels by reducing the rate of conveyance along the St. Clair River; one proposal included installing adjustable inflatable flap gates in the St. Clair River as a strategy to reduce the capacity of the river to move water. While no option has been selected as of yet, governments can assert the public trust doctrine to reduce water flows, balance the competing water interests, and ultimately protect the waters of the Great Lakes.
2. **Revisit the Chicago Diversion:** Under the 1967 Supreme Court decision, the Chicago Diversion was limited to 7,600 mld (2,068 mgd); at the time, however, this diversion allocation did not take climate change and other factors into consideration. The flow level has always been a point of controversy because, other than climate change, it is the largest diversion out of the Great Lakes Basin. The Chicago Diversion is equivalent to 1 inch less rainfall in the watershed each year. If we examine the lakes under the public trust lens, the Chicago Diversion does not meet the standard because it takes a significant amount of water out of the watershed, and because a substantial portion of the water is used for non-riparian and non-public trust purposes. Moreover, modern wastewater treatment has eclipsed the need to divert water to the Mississippi. Further, groundwater withdrawals just outside the Basin also have taken significant water from the Basin. The current Supreme Court order did not address public trust principles and a reevaluation is not covered by the Chicago-Illinois exemption to the Great Lakes Compact. Reevaluating this large diversion, however, is critical and it may also have the added profound benefit of preventing the invasive Asian Carp from entering and destroying the precious aquatic ecosystem of the Great Lakes.
3. **Renewable Energy Plans and Incentives:** Climate change is the largest diversion of water out of the Great Lakes. The most significant greenhouse gas, CO₂, emitted from our fossil-fuel economy has increased 30 percent, from 280 to 360 parts per million (ppm) since 1860. The overall emissions of greenhouse gases are growing at approximately 1 percent per year. To mitigate the impacts of climate change (including severe weather patterns, less precipitation, evaporation, evapotranspiration, and the resulting precipitous drop in water levels), governments and agencies in the Great Lakes must commit to saving our waters through more aggressive yet realistic regional renewable energy plans and incentives. This change is imperative as worldwide water demands for energy production are projected to double by 2035. Michigan is already headed on the right path, set to meet its 10 percent renewable energy standard by 2015. Moreover, Michigan's own Public Service Commission's Department of Licensing and Regulatory Affairs' report dated February 13, 2013 announced that the actual costs of renewable energy standard programs are lower than the cost of all new fossil fuel generation plans regardless of technology type.
4. **Conservation and Efficiency Programs:** Moving forward, governments of the States in the Great Lakes and Canada also must adopt strong conservation and efficiency programs. Michigan can and should be a leader for these types of innovation programs. The time is now to connect water to climate change, energy, and wasteful or inefficient and inequitable water consumption practices related to energy and food production, and other consumptive uses.
5. **Temporary Multi-Lake Balancing:** Presently, water flow is separately managed and regulated between the Upper Great Lakes (Superior, Michigan, and Huron) and Lower Great Lakes (Erie and Ontario). In the face of these grave declining water levels, the IJC as the advisory body to the U.S. and

Canada on boundary waters should consider reevaluating water allocations among all five Great Lakes as a temporary measure to share and balance the water. This is an example of the kind of adaptation and resilience necessary for modifying our governing water and energy policies of the Great Lakes, which are inextricably linked.

We can and must figure out more holistic policy solutions for managing the waters of the Great Lakes Basin. We believe these measures under the public trust doctrine are powerful strategies for the State of Michigan to chart a bright future. Thank you for your consideration of the foregoing letter and suggestions.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Olson", written over a light blue circular stamp.

James Olson
Chair, FLOW

cc: Mr. Bill Rustem, Director of Strategy