



ADVANCING PUBLIC TRUST SOLUTIONS
TO SAVE THE GREAT LAKES

Before the International Joint Commission

Comment to the International Joint Commission
On
Water Level Plans for Great Lakes and Public Trust Principles

Office of the International Joint Commission
Ottawa, Canada

And

Office of the International Joint Commission
Washington, D.C.

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On Behalf of the FLOW Public Trust Policy Center

September 30, 2012

Summary and Purpose

The following Comment on Great Lakes Water Levels issues should be substituted for FLOW's previous Comment, dated September 30, 2012. This substitute Comment expands discussion of "Lake-side" versus "Great-Lakes-wide" approaches to water levels, the Boundary Waters Treaty of 1909 ("BWT") and public trust preferred uses, and principles of balancing and equity for sharing losses and impacts under public trust law. The substitute Comment also addresses in more detail reevaluation of existing diversions from Lake Michigan-Huron based on public trust and BWT preferred or protected uses and principles of equity and fairness in light of the uncertainties of climate change. Finally, this comment expands on its Conclusion by adding recommendations. The Comment is otherwise identical to the original Comment, dated September 30, 2012.

This Comment will demonstrate how public trust principles can be applied to complement and aide the International Joint Commission ("IJC") in both current and future decisions and orders affecting the flows, levels, environment, and public and private uses and benefits of the Great Lakes. In conjunction with the preferences and standards for uses identified in the IJC's governing mandate – the Boundary Waters Treaty of 1909 – the Public Trust principles could serve as an overarching umbrella framework for the IJC, its staff, and the diverse public interests to balance priorities among uses and various courses of action. The systemic threats to flows, levels,

ecosystem, and private and public uses and enjoyment of the Great Lakes boundary waters pose complex and multi-layered challenges. The inevitable impacts of climate change – now and in the immediate future of this Century – increase the magnitude of these challenges manifold. The Public Trust offers a substantive methodology and set of established principles for common bodies of water, like the Great Lakes and its tributaries, to assure long-term protection and management of these waters, their quality, quantity, and public and private uses.