



ADVANCING PUBLIC TRUST SOLUTIONS  
TO SAVE THE GREAT LAKES

**Before the International Joint Commission**

**Comment to the International Joint Commission  
On**

***Draft Adaptive Management Plan for Addressing Extreme Water Levels 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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April 15, 2013

## Summary and Purpose

This comment on the International Joint Commission's ("IJC") *Adaptive Management Plan for Addressing Extreme Water Levels Draft* explains how public trust principles—long recognized in the Great Lakes and their connecting and tributary waters—embody adaptive and dynamic solutions to address extreme water level changes and related impacts or conditions. Courts in both the United States and Canada have adopted these legal principles of the public trust doctrine, which provide a valuable decision-making tool or method for evaluating and selecting iterative or dynamic solutions to water level changes, impacts, and conditions in the Great Lakes.

Systemic threats and impacts on flows, levels, ecosystem, and private and public use and enjoyment of the Great Lakes boundary waters pose complex and multi-layered challenges for solutions and adaptive responses. The inevitable, although uncertain, influence of climate change—now and throughout this century—increases the magnitude of these challenges manifold. Based on our analysis and evaluation to date, FLOW submits that the sound application of public trust principles by the IJC and the proposed Levels Advisory Board ("LAB") would (1) enhance the application of adaptive management tools for evaluating and addressing extreme water levels and related impacts and conditions, and (2) assure the long-term integrity of both the quality and quantity of these waters, the ecosystem, and public and private uses.

## **I. Background on Water Levels and Systemic Threats to the Great Lakes**

In the last few decades, lower water levels in both the lower Great Lakes and St. Lawrence River (Lake Erie, Lake Ontario, Niagara River, and St. Lawrence River) and the Upper Lakes (Lake Superior, Lake Michigan-Huron, and Lake St. Clair) have led to greater risks, costs, and overall basin-wide impacts. This has exacerbated conflicts between users and adversely affected the integrity of these ecosystems.

The prolonged period of low water levels seen in the lower and upper Great Lakes poses severe threats to wetlands, fish and aquatic habitat, shipping and navigation, boating, recreation, power generation, and private and public riparian shorelines. The effects of climate change on the hydrologic cycle (such as increased air and water temperatures, glacial and Arctic ice melt, ice melt over Greenland, diminished ice cover in the Great Lakes, more frequent dramatic storms or drought, and increased evapotranspiration rates) have resulted in dramatically lower water levels in the Great Lakes. Lower water levels, in turn, result in acute and chronic impacts on the conditions surrounding the water quantity and quality of the Great Lakes.

Extreme water levels reduce shipping, interfere with harbors, rivers, and navigation, and cause adverse impacts to wetlands, aquatic habitat, fish spawning, and all forms of water-dependent recreation, including boating, fishing, and swimming access and beaches. In addition, exposed bottomlands can: (1) impair riparian and public uses and values including loss of shore wetlands and plants and introduction of invasive species, and (2) undermine economic stability of communities dependent on tourism and commerce.

Virtually all of the previously listed uses and water-dependent natural features, such as wetlands and aquatic habitat, are protected uses and water resources under the principles of the public trust doctrine. Moreover, under public trust principles, these uses and water resources enjoy a preferred or higher level of protection than other water uses, such as diversions or consumptive uses that promote non-public trust activities or non-riparian uses applied outside the watershed, or committed to upland activities not related to the use of the surface of one of the Great Lakes.

However, even these enumerated public trust protected uses or interests may be in conflict with each other because of extreme changes in water levels. These enumerated public trust uses may be in conflict within one of the watersheds of the Great Lakes or with other protected public trust uses in the Great Lakes Basin. For example, the 2012 report of the Upper Great Lakes Study Board examined the tension and competing interests between protecting the fishing (sturgeon) habitat and shipping in the St. Clair River and Lake St. Clair *and* mitigating fishing, navigation, shipping, wetlands and habitat losses in Lake Michigan-Huron.

Since 1986, the IJC has commissioned studies, and developed and recommended plans to address these problems, most notably by the International Levels Study Board Report in 1993.

In 1993, the Study Board issued the 1993 International Levels Study Board Report entitled *Survey and Analysis of IJC Water Levels and Plans of the Lower and Upper Great Lakes*. The 1993 report called for more data and study on emerging water level issues, which resulted in a number of additional studies on the lower Great Lakes, Lake Michigan-Huron, Lake Ontario, St. Lawrence River, and St. Lawrence power projects. In 1999, the IJC conducted its own “Ad Hoc Study” (1999), noting concern for wetlands and increasing invasive species from more frequent drops in water levels, which resulted in reduced fish and waterfowl habitat, reproduction, and reduced contaminant filtration for the lakes.

### **A. Lower Lakes and St. Lawrence Bv7 Plan**

Prompted by increasing concern from users, associated impacts from global warming, and recent extreme water levels, the IJC—through its lower and upper lakes Water Level Boards—has developed and proposed plans to improve ecosystem protection and certain public trust uses and balanced these uses to minimize threatened harms to other public or riparian uses. For example, in 2006 a Lower Lakes Study proposed a plan for Lake Ontario and the St. Lawrence River. After further study, comment, and evaluation, the Lower Lakes Study proposed the Bv7 Plan, which “strives to return the Ontario-St. Lawrence system to a more natural hydrological regime,” while “allowing a wide spectrum of interests to sustain minimal negative impacts.” The Bv7 Plan offers a balancing of competing interests by: maintaining some benefits for wetlands, fish habitat, reducing the extent of invasive species, and minimizing impacts on hydropower, navigation, riparian landowners, and recreational boaters. However, the outcomes of balancing these competing interests may never be certain, given the complexity of dynamic factors and parameters.

### **B. Upper Lakes Studies and Plan**

In 2005, the Upper Lakes Study for the Review of the Regulation of Outflows from Lake Superior sought answers for improvements to control structures, better knowledge of physical processes, and other regulatory measures. The study looked at several factors that affect water levels, such as inflows, outflows, diversions and consumptive uses, glacial rebounding, subsidence, and conveyance capacity downstream of Lake Michigan-Huron (St. Clair River). In the end, the study called for more data related to these complex hydrological factors, such as over-lake precipitation rates, changes in demography and ecology from climate change, and more advanced computer modeling to test the system under various potential conditions.

In 2012, the Upper Great Lakes Study (“UGLS”) Board issued its report, *Lake Superior: Addressing Uncertainty in the Upper Great Lakes Water Levels*, that aimed to determine (1) the potential effects to water and climate due to climate change, and (2) whether the current Plan 1977-A satisfactorily addressed needs of several areas of interest affected by climate change, including, in the following order: domestic, municipal, and industrial use; navigation; hydropower generation; coastal zones, and recreational boating and

tourism. The 2012 study concluded that a “more robust” regulation plan could be implemented that accounted for climate change impacts and continue to provide benefits to the various interests equivalent to Plan 1977-A. However, the study also concluded that it was unlikely Lake Superior could be lowered to help address other water level impacts, such as those in Georgian Bay, through “multi-lake” approaches (meaning balancing or optimizing interests on Lake Superior, Michigan-Huron, and Lake St. Clair). In other words, the study found that the problems in Lake Michigan-Huron must not be solved or ameliorated by sacrificing similar interests in Lake Superior.

Both the 2012 UGLS Board report and the Lower Lakes Study Board’s Bv7 Plan evaluated and attempted to address impacts of climate change by maintaining the current levels of Lake Superior and, as nearly as possible, Lake Ontario. Due to long-term low water levels in Lake Michigan-Huron for more than a decade, citizens, communities, and other interests have raised serious concerns over loss of wetlands, boating and tourism, fish habitat and fishing. As these lakes continue to drop in level, these effects will increasingly affect these uses, ecosystems, and communities, calling for new solutions to address falling water levels.

### **C. Proposed Draft Adaptive Management Plan for the Great Lakes**

In 2012 as a response to increasingly extreme water level changes, the Upper Great Lakes Study Board concluded and recommended to the IJC that a more dynamic approach was needed to address record lows in Lake Michigan-Huron and on a wide scale throughout the Great Lakes to look at ways to address impacts from more extreme water levels, both high and low, based on predictions on global warming and climate change. The IJC established the Adaptive Management Task Team in 2012, which developed the draft Adaptive Management Plan for Addressing Extreme Water Levels that is now under review for and circulated for public comment.

The draft Adaptive Management Plan recognizes two ways to address water levels: (1) managing water levels through dams or other structures, and (2) by managing how we respond to the impacts of those water level changes. These control strategies are not immediately responsive and do not offer a more comprehensive approach to governance to address the conditions or impacts. Moreover, the other options—addressing impacts through actions like dredging or simply demanding acceptance of these conditions as a “new normal”—are often unduly narrow or temporary.

The Task Team has recommended a new governance structure and approach that is supplemental to existing structure and boards through creation of Board of Control Adaptive Management Committee to oversee assessment and evaluation of Regulatory Controls of Water Level from Lake Superior and Lake Ontario. It has also recommended a Levels Advisory Board (“LAB”) to guide the IJC and stakeholders toward a broader collaborative approach and to support activities beyond traditional or innovative lake level regulation techniques or responses. The LAB would seek to find solutions that are more dynamic, iterative, and manageable in scope, and would provide tools, methods, and standards to evaluate, decide, and implement on-going solutions and adaptation to

changing extreme water level conditions or impacts. In doing so, the LAB would seek to achieve the following seven (7) goals:

1. Improve understanding of changes in climate and water levels.
2. Improve understanding of risks associated with changing water levels.
3. Improve forecasting tools for changes in climate and water supply.
4. Provide tools for developing and evaluating alternatives to address water levels.
5. Develop and measure performance indicators to evaluate solutions to water level issues.
6. Ensure critical water level-related information is readily available.
7. Engage stakeholders and affected users and interests on water-related issues.

## II. Legal and Policy Framework

The International Joint Commission—governed by the authority of the Boundary Water Treaty of 1909, the Great Lakes Water Quality Agreement and its own Guiding Principles—has studied and made decisions or recommendations regarding managing and controlling the flows and levels of the Great Lakes boundary waters throughout its institutional history. In making these important decisions for this international water basin, the IJC has followed and emphasized its mandate to ensure the integrity of the ecosystem of the Great Lakes. In doing so, it has been guided by mandatory standards in the Treaty, its own Guiding Principles, the Great Lakes Water Quality Agreement and its mandate to protect the integrity of the ecosystem of the Great Lakes.

Moreover, as described below, the courts of both the United States and Canada have common law principles regarding water use and management that includes a recognition of the public trust doctrine, which, under the law of both countries, prohibits alienation or subordination and/or interference or material harm to certain basic public uses that depend on flows, levels, conditions, and quality of navigable waters like the Great Lakes, and their natural resources.

### A. Boundary Waters Treaty of 1909

Article III of the Boundary Waters Treaty prohibits new “uses, obstructions, or diversions affecting the natural level or flow of boundary waters” on either side of the international boundary except by authority of both Canada and the United States and the approval of the IJC.

Article IV authorizes the IJC to protect boundary waters from “pollution... on either side to the injury of the other.”

Article VIII vests the IJC with authority to approve obstructions, uses, or diversions that may affect flows and levels. Each country has equal rights in the use of these waters without disturbance of existing uses or diminishment of the “amount available for use.”

However, IJC decisions must follow an order of preference for the following uses:

- domestic and sanitary purposes
- navigation
- hydroelectric power
- irrigation

Moreover, this order of preference “shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.” Additionally, uses or divisions of water are basically treated equal unless subject to one of the above preferences.

Finally, the IJC may implement protective or remedial measures, and may condition such measures on provisions for protection against injury or compensation for injury of “any interests on either side of the boundary.”



## B. IJC Guiding Principles

The IJC has adopted and added a set of Guiding Principles to apply to its decision-making process such that it can anticipate and prevent disputes between the two countries, and assist in the protection of flows, levels, and the environment. To further achieve its dispute resolution role, the IJC has adopted a principle to follow the “concept of sustainable development,” an “ecosystem approach” as required by the Great Lakes Water Quality Agreement, sound science, and the “precautionary principle... in the absence of scientific consensus where prudence is essential to protect the public welfare.”

## C. Public Trust Principles

Public trust principles can be traced from Rome to the present, through both civil law systems, like in France and Spain, to the common law systems of both Canada and the United States. As a result of the Magna Carta of 1215 and the heritage of Roman Justinian codes that deemed water a *jus publicum*, a limitation was established on the Crown’s broad powers over public waters and natural resources of a special or unique character that served substantial public needs. This limitation, later noted by the courts, came to be known as the public trust doctrine. As a result, generally the waters of the Great Lakes are in the public domain in the name of the Crown in Canada and held or owned by the sovereign state for the benefit and welfare of its citizens in the United States.

In 1892, the United States Supreme Court in *Illinois Central Rail Road Co. v. Illinois*, ruled that all of the Great Lakes were subject to the public trust doctrine and a navigational servitude in favor of the federal government. Today, the courts in all eight Great Lakes states in the United States and the two Canadian provinces surrounding this water basin have recognized the public trust doctrine either expressly by naming the Great Lakes and the connected or tributary waters subject to a public trust or through application of the public’s paramount right and use of public or navigable waters. More recently, the Canadian courts have begun to recognize the potential for public trust principles, and several Canadian water law and policy experts have urged the adoption of public trust principles by the courts or the provincial governments. Canadian national and provincial governments have also begun to explore the incorporation of public trust principles into specific water and natural resource laws. The doctrine has also applied to protect common bodies of water from abuse or private control by the courts of other countries.

The basic public trust principles that apply to navigable waters like the Great Lakes, connecting waters, and tributary waters can be summarized as follows:

1. Public trust waters and protected uses cannot be alienated by government and may never be transferred or controlled for private purposes; that is, a public purpose is required.
2. A proposed diversion or use cannot materially impair the flow, level, integrity,



or quality of public trust water, tributary water, or public trust resources or protected public uses.

3. Governments have a duty to account for approval of a diversion or use by making duly recorded findings based on adequate information to assure that there is no unlawful alienation or transfer for private purpose and no material impairment of public trust waters or uses.
4. The substantial value of public trust waters, natural resources, and uses is presumed, and the burden of proof is on those who seek to use or alter the public trust commons or uses.
5. There is no “de minimis” harm that is exempt from the public trust doctrine. “Nibbling” or cumulative effects must be accounted for and considered.
6. Government has a continuing duty to determine that there will be no impairment or harm to the flows, levels, quality, and integrity of public trust waters, uses, and ecosystem before it approves or denies a governmental or private action. This duty requires the collection of data and information necessary for long-term planning sufficient to satisfy the solemn and perpetual trust responsibility, and affected interests and citizens as beneficiaries can institute administrative or judicial actions, as a last resort, to enforce public trust duties or apply public trust limitations that protect the integrity of the whole.
7. Government as trustee and affected interests must balance competing uses such that the public trust is not impaired and public trust uses are not subordinated to private uses. Private uses, while lawful if reasonable, or the *jus privatum*, are correlative but cannot override the *jus publicum* or public trust in these waters, natural resources, or the public uses dependent on them. Generally, the uses are accommodated provided, however, that the uses of public trust waters and ecosystem are not significantly harmed and the paramount public right to public uses is not subordinated or impaired.

These principles are consistent with and complement the Boundary Waters Treaty, the history of decisions, orders, references, and recommendations of the IJC. Moreover, public trust principles are consistent with the ecosystem goal of the 2012 Great Lakes Water Quality Agreement and Guiding Principles of the IJC. Thus, the remainder of this comment demonstrates how public trust principles would better equip the IJC, its water level study boards, and state, local governments, and other stakeholders to find practical, workable solutions to extreme water level conditions or impacts without compromising the integrity of quantity and quality of the waters and ecosystem of the Great Lakes Basin.

### **III. The Application of Public Trust Principles Will Provide Tools and Standards for Evaluation and Decisions to Address and Find Solutions to Great Lakes Extreme Water Level Changes, and Empower the IJC and Stakeholders to Better Participate and Engage on Water Level Issues.**

This section demonstrates how the public trust principles as enumerated in Section II.C support the goals of the IJC’s adaptive management plan by (1) empowering or enhancing the engagement of all stakeholders, (2) gathering and sharing improved knowledge and risk information on water level-related data, and finally (3) providing better criteria and standards for evaluating and making decisions in this century about extreme water levels—both high and low—in the Great Lakes. Ultimately, the advantage of adopting and applying public trust principles to manage the waters of the Great Lakes is that these principles provide greater flexibility in managing and responding to the impacts of extreme water level changes than traditional dams and other regulated structures alone. In addition, public trust principles would connect climate change issues to water because the long-term impacts of greenhouse gases may be addressed under the purview of its significant effect on water levels, so that climate change issues subsequently fall within the authority, or at least reference provisions, of the Border Waters Treaty and IJC.

#### ***A. LAB Goals 1-3 – Understanding the Scientific Data and Modeling***

To implement an effective adaptive management plan that responds to extreme water levels, the LAB would dedicate much of its time towards improving the understanding of: the impacts of climate change and water levels (Goal 1), the associated risks with changing water levels (Goal 2), and the tools for forecasting changes in climate and water change (Goal 3). For purposes of this comment only, these important and clearly defined goals are discussed collectively to demonstrate how public trust principles would apply.

Returning to the public trust principles once again, the government has an affirmative duty to “account for a diversion” (Principle 3) and “determine that there will be no impairment or harm to the flows, levels, quality, and integrity of public trust waters...” (Principle 6). In order to make these strategic decisions and understand the impacts of extreme water levels, however, the government must gather and share critical information over time and assess the information with state-of-the-art tools. Thus, as part of any decision-making about public trust waters, the government has a duty to citizens as the beneficiaries of the shared water resource to understand and to base its decisions on complex scientific data and information. In other words, these three scientifically rigorous goals of LAB’s work are also integral to applying the public trust and ensuring the protection of both the ecosystem and the protected water uses.

In addition, climate change—through increased evaporation rates and diminished precipitation rates—represents the largest water diversion out of the Great Lakes. Climate change, in other words, is dramatically lowering water levels in the basin. Moreover, climate change violates the public trust because it materially impairs the flow, level, integrity, and quality of the Great Lakes as a public trust resource with

protected public uses as described under Principle 2. Accordingly, the bi-national governments as trustees of the Great Lakes have a continuing duty to protect the public trust waters and understand the impacts of climate change on water levels through measures such as the ones IJC is proposing in its draft Adaptive Management Plan.

***B. LAB Goals 4 and 5 – Evaluating Decision Tools for Addressing Water Level Issues***

Drawing on this improved data and understanding about the impacts of climate change on water levels, LAB would provide tools for developing and evaluating options (Goal 4), and develop and measure performance indicators to evaluate solutions for addressing water level issues (Goal 5). To achieve these goals, LAB could readily rely on public trust principles as a basis for developing specific evaluation tools that link to performance indicators and result in equitable solutions for addressing extreme water levels. Public trust principles, by their very nature, offer a dynamic and flexible framework to consider and evaluate that support sustainable environmental, economic, and social needs, both now and under changing future conditions.

Such an approach is crucial given that the effects of climate change on water levels are demanding a sophisticated, complex multi-level management approach to optimize the benefits both common and unique to the lakes and their connecting waters. Moreover, public trust principles, if adopted along with other Guiding Principles followed by the IJC, would provide some outside limits to assure that the process has some direction, as opposed to one that is without some fundamental guidelines regarding water levels. Because protected public trust uses are most often at the core of serious impacts from extreme changes in water levels (except for the erosion of private riparian property related to high water levels), it is intuitive that public trust principles guide decision-making to protect these uses.

Public trust principle 7 on balancing competing uses and ensuring that public trust resources and uses are not impaired rests at the heart of evaluating complex scientific information and the needs of competing water uses in the Great Lakes. For example, in September 2012, FLOW demonstrated the application of this very principle in our comments to the IJC on *Water Level Plans for the Great Lakes and Public Trust Principles* and expanded discussion of “Lake-Side” versus “Great-Lakes-wide” approaches to water levels in the Upper Great Lakes and Lower Great Lakes Plans. In addition, FLOW analyzed the intra-basin issues in Lake Michigan-Huron and discussed how the IJC could apply the public trust principles to equitably balance the competing interests between the Georgian Bay wetlands and the St. Clair River sturgeon fishery habitat. Related to this balancing issue, FLOW examined the potential impact of proposed structures in the St. Clair River to elevate water levels in the Lake Michigan-Huron.

While the current IJC Regulation Plans and their ability to regulate extreme water levels are constrained by dams and other structures, the adoption of public trust principles in conjunction with existing IJC authority under the Guiding Principles and the Boundary

Waters Treaty enables a wider range of options to be considered, including emergency iterative or temporary multi-lake approaches to managing water levels in the Great Lakes. By adopting public trust principles to complement these existing sources of authority, the IJC and the LAB could also consider intra-basin diversions or transfers, including slowing down inflow and outflow rates from one intra-lakes basin to another, as possible options for evaluating water levels issues. It should be noted that in the past, the idea of additional transfers from Lake Superior has been rejected or at the very least discouraged. Public trust principles may well support this historical idea, but at the same time it would encourage consideration of water levels, impacts and conditions on a Basin-Wide evaluation to at least bring into play notions of fairness and equity in the exercise of regulatory controls by the IJC and its boards. In turn, this would encourage greater engagement and participation by a wider group of stakeholders, but without interfering with the IJC's final authority to make decisions affecting levels or related issues of harm or pollution of the water and ecosystem.

### ***C. LAB Goals 6 and 7 – Engaging Stakeholders & Ensuring Available Data For Decision-Making***

Essential to LAB's success is engaging stakeholders and ensuring critical water-level related information. According to the IJC, managing extreme water levels in the Great Lakes through traditional dams or other structures alone is proving too difficult given the uncertainty of climate change effects. Public trust principles 6 and 7—where governments have a duty to collect data for long-term planning and balancing competing interests—could greatly aid LAB and the IJC in meeting their goals by engaging stakeholders, gathering and disseminating critical data, and balancing equities to ensure that the paramount public right to public uses is not subordinated or impaired. Moreover, when governments or other interests hesitate sharing information or funding the collection and gathering of data and information necessary to restore and guard against extreme water level impacts and conditions, the public trust informational duty and its related principle of burden of proof (similar to precautionary principle) would call for open sharing and sufficient data and information. In the absence of sharing obtaining critical information, decisions would have to favor a course of action that protected public trust uses, as well as the waters and aquatic resources and habitat on which they depend.

Finding consensus will inherently require compromise; this we know. However, what the public trust principles adds is an important body of existing law that has already established criteria and standards to evaluate competing public trust uses and reach final decisions to protect the shared water resource.

To further elaborate on principle 7, balancing competing interests is important because the public trust authorizes, if not requires, proposed actions by IJC or state governments or stakeholders to honor the integrity of public trust waters and competing public trust uses where decisions are difficult. Difficult decisions could include the need for emergency or temporary solutions such as multi-lake or Great Lakes-wide strategies when necessary, and where some interests collide. The public trust principles maintain

that some interests are paramount to other non-public trust uses or interests that are not within the Basin or a watershed. However, in some cases, even where all competing uses are protected by the public trust or are other lawful water uses, or are simply correlative, the public trust demands that these interests are equitably balanced so long as the whole of the ecosystem and waters of the Basin are not seriously harmed or subordinated.

Balancing of otherwise appropriate public uses must (1) not compromise the whole in so far as feasible, and (2) must be viewed in cooperation with other public trust uses, so that each use or interest, or each lake basin, absorbs some of the loss or change from extreme water level, and some of the benefits, basically implementing a “parity” or “equitable use” principle in these situations. The caveat is that the compromise cannot destroy or impair the long-term integrity of quantity and quality of water itself, per public trust principle 1. This principle, of course, is also consistent with the IJC's charge under the Boundary Waters Treaty and the power vested in it by the 2012 Great Lakes Water Quality Agreement. All stakeholders—including the IJC, federal agencies in both countries, state governments as trustees, cities, businesses, and citizens as beneficiaries—have a fundamental right to insist that the public trust interests in the waters and their habitats and ecosystem are sustained for present and future generations.

#### **IV. Conclusion**

FLOW commends the IJC for recognizing and acting upon the urgent need to respond to the challenges of climate change in a flexible and adaptive manner. The LAB's purpose, to look for and implement transformative, iterative management solutions, is a necessary step towards improving upon the legal boundaries and regulations for governing the economic, social, and environmental outcomes of extreme water level impacts on the Great Lakes. This proposed adaptive management draft plan demonstrates the IJC's commitment to creating a system of governance in the Great Lakes Basin that can equitably and actively balance competing user interests and preserve the integrity of the hydrological system and its dependent ecosystems in the context of the uncertainty and variability brought on by climate change.

Public trust principles can undoubtedly augment this draft plan as an overarching framework to guide the planning, decision-making, and dissemination processes enumerated throughout this draft plan. The adoption of public trust principles as a working set of criteria, or more appropriately as an addition to the IJC's “Guiding Principles,” would greatly serve the IJC and the LAB in addressing the uncertainties associated with climate change and the potential for extreme water levels and their related impacts. Specifically, these principles would:

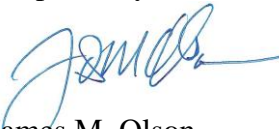
1. provide an existing legal framework to govern conflicts over protected public trust uses, such as fishing, navigation, swimming, boating, ecological values, within a watershed or throughout the entire Great Lakes basin;
2. promote equity balancing and collaboration among protected public trust uses;
3. offer a temporary or emergency strategy, such as multi-lake regulation, that is

- limited or prohibited under existing Regulation Plans;
4. augment and strengthen the very intent and purpose of an adaptive management plan, which demands lake level solutions that are sometimes outside the bounds of existing Regulation Plans; and
  5. provide additional authority for governments and stakeholders to become more engaged or request other interested persons to become more engaged in the process.

Notably, the collaborative and holistic approach of this draft Adaptive Management Plan reinforces the public trust principles that ultimately exist to preserve the integrity of the Great Lakes for all users, in perpetuity. FLOW encourages the IJC to affirm these public trust principles unequivocally in this draft plan to ensure that each iteration of adaptive management practices throughout the Basin provides just and equitable outcomes for all users of these great waters.

Your consideration of our views are most appreciated.

Respectfully submitted,



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