

IGLC Newsletter – March, 2006

Chairman's Greeting

Greetings and best regards, folks. Let me introduce myself. I am Roger Smithe, the newly elected Chairman of the International Great Lakes Coalition (IGLC) for 2006. The other officers of the IGLC are: Vice Chairman, Joe Menegon of Hamilton, Ontario; Secretary, Jim TeSelle, President of the Wisconsin Chapter; Treasurer, Priscilla Mueller of the Michigan/Lake Michigan Chapter; and Special Envoy for Government Affairs, Bill Somerville of the Michigan/Lake Michigan Chapter.

I live on the shore of Lake Michigan, in Manistee, MI. I joined the Coalition in 1988 when water levels were at record highs and caused horrible erosion of beaches and bluffs in my area. I'm 73 years old, a registered professional engineer and still work four days a week. My phone number and e-mail address are available from the Coalition office in Saugatuck. (269-857-8945)

I believe the principal objective of the IGLC is still the same today as it was in 1988: the preservation of beaches and property. High levels will surely return and threaten our homes again. They always have come back after a period of low water

My vision of the IGLC sees a collection of individual chapters that are united in the one common goal of Reasonable Lake Levels. However, some chapters are also involved in important local issues. The Wisconsin chapter has been working with the state on programs for Great Lakes Restoration. Articles on their accomplishments are in this newsletter. The Michigan/Lake Michigan chapter has expertise on sand supply. Some shoreline residents are suing the Corps of Engineers because pier structures interrupt the littoral drift of sand that nourishes the beaches. (See article by John Ehret) The Ohio chapter is involved in property rights issues. The Michigan/Lake Erie chapter is concerned about downcutting in the St. Clair River. Thus, the IGLC also serves as a forum for chapters to exchange information and ideas and gain wider support.

On lake levels again: The International Joint Commission (IJC) is soon going to undertake a VERY IMPORTANT and comprehensive new study of lake level management – if they get funding from Congress. The study will focus on two things: (1) possible changes in the formula for releasing Lake Superior water into Lakes Michigan and Huron, and (2) possible downcutting of the St. Clair River, which might (we don't know) have increased flows from Lake Huron to Lake Erie, and if so, possible remedial measures.

The IGLC believes, and I think everyone will agree, that when there is too much water in the lakes, the solution is to let some out. It is not to redistribute it between Lake Superior and Lake Michigan, or between Lake Huron and Lake Erie. We have sent comments on this point to the IJC and the Corps Engineers.

We are concerned that the study mentions a new balancing of interests, with "no disproportionate losses to any particular interest." That sounds like there may be some loss to some interests, and you know who that will be if we let it happen. The IGLC will be requesting that several of our members be appointed to represent shoreline interests on the various study groups. We would like to hear from anyone who has expertise in hydrology or the environmental impact of level fluctuations. You may call the office and leave a message. (269-857-8945) Bill Somerville, president of the Michigan/Lake Michigan chapter has already met several times with IJC people to present Coalition views.

Finally, the IGLC is friends with Save Our Shoreline (SOS). They have about 2500 members, mostly on Lake Huron, Saginaw Bay and Traverse City. SOS contends that, if your property deed says you own to the water's edge, that is exactly what it means. The DEQ does not own the beach. This issue has not been fully resolved and the IGLC will keep you informed.

From Your Secretary

Greetings, friends and neighbors! Bet you thought we'd forgotten about you! Well we didn't, we've just been so involved with Lakes issues that this newsletter got delayed just a bit. There's so much going on that it's taken a lot of our time just to keep up with it. In this letter we hope to give you a brief, repeat brief, summary of

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the major issues. Reading it all and trying to absorb it would probably leave most of us longing for re-runs of I Love Lucy. Actually it's all good, and we support it – hey, it's been a long time since any of us could say that!

One thing before we proceed: if we are to have any influence at all on what's going to be done with the Lakes, we need you. Yes you. Without you we are just a small group of nice guys and gals who want to leave something better to our children and grandchildren, but with you, we can actually do it. We need your support, and at the risk of putting you off, your money. Meetings, mailings, and trips all cost money but if we don't participate in the events going on, we will be a small faceless voice in a sea of much louder ones. Expect us to ask you to send letters to our elected representatives from time to time, and expect a survey asking your feelings about issues that affect us and the Lakes.

OK, done with lecture, now for the news.

Around The Basin

There are four major things going on that will affect all of us and our properties:

- 1 – Upper Lakes Plan of Study
- 2 – Great Lakes Charter Annex
- 3 – Great Lakes Water Quality Agreement
- 4 – Great Lakes Restoration Collaboration

1 – the Upper Lakes Plan of Study

This is a project by the Corps of Engineers that will hopefully result in their changing the way they manage the water level in Lake Superior, and as a result, the levels in Lakes Michigan/Huron. To quote from their presentation, the purpose of the study is:

- *Does the regulation of the Lake Superior outflow need improvements to better meet the needs of the interests (people) and the ecosystem?*
- *What are the physical changes that have taken place in the St. Clair River, and how do they affect Great Lakes water levels?*

As you may know, the level of Lake Superior is controlled within a range of 1.1 meters, or less than four feet. If it rises above that, as it has several times (remember 1986?), the dam is opened and the excess water comes down the St. Mary's River to – you guessed it – us. Unfortunately, the study is being done at least in part because the Georgian Bay Association caused such a stir with their own study, claiming that the Lakes have been permanently lowered by dredging in the St. Clair River, and demanding their water back! Hmmm, I hear you say – their water went down, our beaches and dunes are eroding, we're all on the same lake, what's going on here? That's what the study should tell us. It will cost \$13.9 million and take five years. Well, better that than no action at all. The IJC is in charge of this, and will be forming a Citizens' Advisory group – we have requested to be included. Keep you posted.

2 – the Great Lakes Charter Annex

This is an agreement between the eight Great Lakes states and the two Canadian provinces to control water use in the Lakes. It's an agreement as opposed to a treaty because we don't allow states to make treaties, but because it transcends state lines Congress must approve it. It was revised last year by a council of six members, three from the US and three from Canada. The agreement document was signed by the eight Governors and two Premiers in December. Quoting from the Council of Great Lakes Governors' website:

The Charter Annex is an amendment to the Great Lakes Charter of 1985, both good faith agreements signed by all the Great Lakes Governors and Premiers. The Charter Annex was developed to update the Great Lakes regional water management system and ensure the Great Lakes are protected, conserved, restored and improved for future generations.

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- *The Great Lakes Basin Sustainable Water Resources Agreement (the Agreement), a good-faith agreement among the 10 Great Lakes States and Provinces; and,*
 - *The Great Lakes Basin Water Resources Compact (the Compact), an agreement among the 8 Great Lakes States to join together in an interstate compact to enhance joint decision making about the use of Great Lakes water. The decision making standard to be used in evaluating future new or increased water uses is included in both the Agreement and the Compact.*
- The agreements detail how the States and Provinces will manage and protect the Great Lakes—St. Lawrence River Basin and will provide a framework for each State and Province to enact laws protecting the Basin.*

The agreements include the following points:

- *There will be a ban on new diversions of water from the Basin. Limited exceptions could be allowed, such as for public water supply purposes in communities near the Basin, but exceptions would be strictly regulated.*
- *The States and Provinces will use a consistent standard to review proposed uses of Great Lakes water.*
- *The collection of technical data will be strengthened, and the States and Provinces will share the information, which will improve decision-making by the governments.*
- *Regional goals and objectives for water conservation and efficiency will be developed, and they will be reviewed every five years. Each State and Province will develop and implement a water conservation and efficiency program.*
- *Lasting economic development will be balanced with sustainable water use to ensure Great Lakes waters are managed responsibly.*
- *The waters of the Basin are recognized as a shared public treasure and there is a strong commitment to continued public involvement in the implementation of the agreements.*

Important – this is the agreement that controls water diversions and exportations from the Great Lakes. This version contains a very important change – it essentially says ‘diversions will NOT be allowed, unless...’ as opposed to the last one which essentially said ‘diversions WILL be allowed, unless...’ This is a big change, and one we can all support. It means that to get water from the Great Lakes, a city must first prove that 1) it has implemented water conservation programs and still not been able to get enough water; 2) it will give the waste water back to the lake it was taken from, in the same amount; and 3) there is no other alternative. Unanimous approval of all eight governors is required to get a diversion. The city of Waukesha, Wisconsin, has made a serious attempt to get Great Lakes water via Milwaukee, even threatening to go to federal court if necessary. And most of us know the story of the Nestle Company in Michigan, sending water by the truckload out of the basin. The Annex was revised in part to deal with these situations.

3 - Great Lakes Water Quality Agreement (GLWQA)

This is another agreement but between the US and Canada. It was written in 1972, amended in 1978 and again in 1987, and is up for review again. Quoting from the Environment Canada’s website:

The Parties adopt the following General Objectives for the Great Lakes System. These waters should be:

- a. Free from substances that directly or indirectly enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life or waterfowl;*
- b. Free from floating materials such as debris, oil, scum, and other immiscible substances resulting from human activities in amounts that are unsightly or deleterious;*
- c. Free from materials and heat directly or indirectly entering the water as a result of human activity that alone, or in combination with other materials, will produce colour, odour, taste, or other conditions in such a degree as to interfere with beneficial uses;*
- d. Free from materials and heat directly or indirectly entering the water as a result of human activity that alone, or in combination with other materials, will produce conditions that are toxic or harmful to human, animal, or aquatic life; and*

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- e. *Free from nutrients directly or indirectly entering the waters as a result of human activity in amounts that create growths of aquatic life that interfere with beneficial uses.*

And more, this from Environment Canada's website:

Beginning in 1972

On April 15, 1972, Prime Minister Pierre Trudeau and President Richard Nixon met to sign the Great Lakes Water Quality Agreement. This milestone event committed Canada and the United States to control pollution in the Great Lakes and cleaning up waste waters from industries and communities. The major issue at that time was phosphorus over-enrichment.

Continuing in 1978

Six years later, in 1978, the two Governments were back at the table. A new Agreement was signed and the two countries pledged their determination "to restore and maintain the chemical, physical, and biological integrity of the waters of the Great Lakes Basin Ecosystem." The countries specifically committed themselves to rid the Great Lakes of persistent toxic substances -- substances that linger in the environment for a long time and can potentially poison food sources for both animals and people.

The 1987 Protocol

Nine years later, came the signing of the 1987 Protocol. Emphasis was placed on the importance of human and aquatic ecosystem health. The Protocol introduced provisions to develop and implement Remedial Action Plans (RAPs) and Lakewide Management Plans (LaMPs). RAPs focus on the 43 (now 42) geographic Areas of Concern, take an ecosystem approach, and draw upon broad local community involvement. LaMPs are designed to improve the environmental quality of the open waters of each of the Great Lakes, with a particular focus on Critical Pollutants.

In addition, the 1987 Protocol introduced other new annexes focusing on non-point contaminant sources, contaminated sediment, airborne toxic substances, contaminated groundwater, and associated research and development.

The GLCWA is reviewed every six years, last coming up in 2005. The law supporting this agreement is the Clean Water Act of 1972. A description of it, again from the EPA's website:

Introduction to the Clean Water Act

The Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States. (The Act does not deal directly with ground water nor with water quantity issues.) The statute employs a variety of regulatory and nonregulatory tools to sharply reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."

It's the IJC's responsibility to monitor activities in both countries, report on progress or problems, and recommend solutions. In their 12th Biennial Report, the IJC found many instances of non-compliance. Partly as a result of that, President Bush signed, in May 2004, and Executive Order that created –

4 - The Great Lakes Restoration Collaboration

This is the biggest project on the Lakes, and will ultimately affect us all. It features an Interagency Task Force (IATF) made up of cabinet-level folks from our side of the border and eight work groups each charged with making recommendations as to how to implement the CGLG's nine priorities. The reason there's eight work groups and nine priorities (no, it's not because someone in Washington can't add) is that one of the priorities

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is covered by the GLWQA and hopefully someone there will work on it. So what are those nine priorities? From the CGLG's website, they are:

Council of Great Lakes Governors' Priorities

- *Ensure the sustainable use of our water resources while confirming that the States retain authority over water use and diversions of Great Lakes waters.*
- *Promote programs to protect human health against adverse effects of pollution in the Great Lakes ecosystem.*
- *Control pollution from diffuse sources into water, land and air.*
- *Continue to reduce the introduction of persistent bioaccumulative toxics into the Great Lakes ecosystem.*
- *Stop the introduction and spread of non-native aquatic invasive species.*
- *Enhance fish and wildlife by restoring and protecting coastal wetlands, fish and wildlife habitats.*
- *Restore to environmental health the Areas of Concern identified by the International Joint Commission as needing remediation.*
- *Standardize and enhance the methods by which information is collected, recorded and shared within the region.*
- *Adopt sustainable use practices that protect environmental resources and may enhance the recreational and commercial value of our Great Lakes.*

As you might guess from reading these priorities, about everything you can think of regarding the Lakes is covered by the work groups' recommendations, plus several things only a bureaucrat could have come up with. The price tag is \$20 billion – that's right, billion with a B – and the timetable is ten years. But thanks to someone named Katrina, the budget deficit, Iraq, and a couple of really neat bridges in Alaska, the chances of getting this funded is about the same as you or me winning the lottery. The work groups were made up primarily of academics, scientists, biologists, and other people who work in the environmental community, with a very small representation (two of our guys!) from the public. Our governors, bless their hearts, have approved the first draft of the recommendations, so expect something to start happening this year. With what money? The IATF seems to think we don't need \$20 billion, that there's \$5 billion out there right now that no-one's using and we should start with that. Probably better than not starting at all.

A lot of good work was done but now we get to the critical part – preparing a plan to get it all implemented. Here's our problem: we really want all these projects to work. If done right, they truly will fix many of the problems we have on the Lakes. But unless it's managed properly, it'll turn into something like the AOCs, which have been languishing for over twenty years with little progress. From reading the above information about the various programs going on around the Lakes, you can see that there is considerable overlap and fragmented responsibility – no-one is steering this ship. Our position is that a plan be created to implement Restoration, and that one person be assigned to manage it, and that it be coordinated with the other projects – Upper Lakes Plan of Study, Charter Annex revision, and GLWQA changes. Yup, radical, but people like General Motors (oops, bad example) seem to do things this way and be successful at it. So, we are embarking on a campaign to sell that idea, and so far so good. The Wisconsin group is actually drawing up a business-based strategic plan to implement Restoration there, and we're going to approach the other states to do the same. The EPA has asked to join us. The reaction to the idea has been so positive that the Wisconsin DNR has offered to donate a pretty large sum of money. Stay tuned.

I hear some of you asking "So OK, if these things are already signed, what's the big deal?" The Big Deal is that just signing an agreement does not cause things to happen. First, the agreement must be made into a law, then each state must pass virtually identical laws, Congress has to also, then the policies and rules that define how things will actually be done have to be written, then public hearings, and then and then, we get a working set of regulations that can be enforced. For example, the Charter Annex says tht to get Great Lakes water, a community has to have tried a water conservation program. And just what is a water conservation program? It has to be defined. Is it not washing your car on Sunday afternoon, is it using 1 gallon per flush toilets, or what?? And what's the recourse if it hasn't been tried or didn't work? Do we give another chance? All this has to be worked out. So, public hearings will be held around the states, watch your newsletters we'll tell you when they're coming. And you can send letters to you representatives telling them what you think,

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we'll help you with that too. (Yes we know you don't need help thinking, but we'd like to give you our thoughts before you write.) Expect this process to take as much as two years before we have effective, functioning agreements.

Closer To Home

The Glass Decision

This is a case heard before the Michigan Supreme Court that was decided last fall. The plaintiff (Mrs. Glass) claimed that she was denied the right to walk on the beach. The owner of the property in question said she couldn't, that he owned to the water's edge. He lost, 5-2. Now she can walk on the beach, up to the Ordinary High Water Mark (OHWM – wherever that is!). So apparently can her husband, kids, aunts and uncles, friends and neighbors, your Aunt Minnie from Kansas, etc. She can't trespass to get to the beach, but as we all know there's plenty of public access so that won't be a problem for someone who really has an urge to walk on it. The Court said nothing about dogs or beer parties or bonfires on the beach but it don't take no rocket scientist to figure that one out. So, we have a problem. Our friends at SOS (Save Our Shoreline, in Bay City) have considered appealing to the US Supreme Court, but even they say that's a long shot. It's unlikely that one Supreme Court will overrule another, and we have no guarantee they'd even hear the case.

Or do we have a problem? One of the things we feel is very important to the success of all our efforts is that we work co-operatively with other groups and government agencies, not confrontationally. No we don't have to agree with them on everything but we get more accomplished by helping to make things work than by being boat anchors. That goes for this issue too. Our position on it is that we will support legislation in Michigan allowing the public use of the beach, as long as it's reasonably close to the water and not on our front steps, protects us from any liability, prohibits nuisance activities, and acknowledges our ownership to the water's edge. We hope you will all support this position, we feel it's a way of pro-actively protecting our interests while at the same time being the good guys.

A point we all need to keep in mind – the public has been walking on the beach for as long as I have, which is well over 60 years now. Few of us have ever had a problem. Granted there's not very many people who do it, but our point is that if cooler heads had prevailed when Ms. Glass wanted to walk on this gentleman's beach, we'd probably all be saved this problem right now. Stay tuned to this, too.

John Ehret's Case

John, one of our board members, is suing the Corps of Engineers for loss of beach due to erosion caused by their interfering with normal sand flow. His case is pending. He claims that beach erosion is not a natural process, that it's caused by the Corps' activities; they claim it's been going on since who knows when so it's not their responsibility. The issue is compensation – if John is right, the Corps took his beach. Even though he lives in Illinois, for which we forgive him, his problem could be any of ours if the issue isn't resolved. His property is near St. Joseph MI, an area that has suffered considerable erosion. If he wins his case, a precedent would be set that could affect a lot of us.

To quote John:

DON'T BE DUPED

The low water levels we have today cause waves to break further out from shore. This gouges out the natural contour of the subaqueous, equilibrium beach into an overall steeper slope. THIS JUST COCKS THE EROSION GUN TO GO OFF WHEN LEVELS RISE AGAIN.

Of course we have no idea when the high water levels will be back, but if history tells us anything, they will.

Survey

Last fall the Wisconsin group sponsored a survey. Copies were sent to all shoreline property owners on Lake Michigan and the response was over 20%. The purpose of the study was to gather information on property

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owners' opinions so that we'd have some data to use as ammunition in our dealings with government agencies. Again the response has been very positive, so much so that we plan to do the same thing in Michigan later this year, and eventually around the basin.

Sundry Stuff

And now for those of you who need something to fill all those idle hours while we wait for Spring to return, here are a few websites you may want to peruse:

<http://www.cglg.org/index.asp>

This is the website of the Council of Great Lakes Governors. Click on 'Great Lakes Priorities' on the right-hand side for a look at them.

<http://www.cglg.org/projects/water/annex2001Implementing.asp>

This is also the Council Of Great Lakes Governors' website, with information on the Charter Annex.

<http://www.glrc.us/>

This is the Great Lakes Restoration Collaboration website, featuring almost 600 pages of their recommendations, including the appendixes.

<http://www.epa.gov/grtLakes/>

This one is the EPA's Great Lakes website.

<http://www.on.ec.gc.ca/greatlakes/default.asp?lang=En&n=EE1B7E6A-1>

This is the page in Environment Canada's website that describes the GLCWA.

<http://www.ijc.org/php/publications/html/12br/english/report/index.html>

Here is the IJC's website, their 12th Biennial Report.

<http://www.epa.gov/glnpo/collaboration/>

This is another page in the EPA's website, about Restoration.

<http://www.dnr.state.wi.us/>

This is the Wisconsin DNR website.

<http://www.michigan.gov/deq>

The Michigan DEQ's website.

<http://ohiodnr.com/>

The Ohio DNR website.

OK, had enough? Please let us know what you think about these issues. And remember, we need you – any power or influence we have is due to you, not us. And if you have an extra \$35 (or more!) sitting around the house we could use it, we'd very much appreciate your dues and/or donations.

So long 'til next time!



Jim Te Selle
Secretary
International Great Lakes Coalition