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REAUTHORIZATION OF THE GREAT LAKES LEGACY ACT

(110–131)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 21, 2008

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May 19, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Subcommittee on Water Resources and Environment Staff

SUBJECT: Hearing on "Reauthorization of the Great Lakes Legacy Act"

PURPOSE OF HEARING

On Wednesday, May 21, 2008, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building, the Subcommittee on Water Resources and Environment will hear testimony from representatives from the United States Environmental Protection Agency ("EPA"), the State of Michigan, and stakeholder organizations from the Great Lakes region on the reauthorization of the Great Lakes Legacy Act.

BACKGROUND

This memorandum summarizes efforts to improve water quality in the Great Lakes. It provides an overview of current water quality across the Great Lakes and the use of the Great Lakes Legacy Act to remediate contaminated sediment.

Great Lakes Basin

The Great Lakes consist of Lakes Superior, Michigan, Huron, Erie, and Ontario. The Lakes contain around 84 percent of North America's, and 21 percent of the world's surface fresh water supplies. Outflow rates from most of the Great Lakes are very slow: Lake Superior retains water for 191 years, Lake Michigan for 62 years, and Lake Huron for 31 years. Lake Ontario has a retention time of 6 years, and Lake Erie requires 2.6 years for its waters to be exchanged. Those lakes with high retention times do not flush pollutants quickly, and are therefore particularly vulnerable to contamination.

The Great Lakes basin includes all of the state of Michigan, parts of Illinois, Indiana, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and the Canadian province of Ontario. Approximately 40 million people live within the Great Lakes basin. Water in the Lakes is used for a multitude of activities including drinking, fishing, swimming, boating, agriculture, industry, and shipping.

Water Quality in the Great Lakes

Industrialization and development have had a significant impact on the Great Lakes ecosystem. The region's industrial development has included mining, steel production, and machine tool and automobile manufacturing. Agriculture is also a significant component of the regional economy. The Great Lakes have historically provided convenient waterways for the movement of goods. They also provide process and cooling water for industrial users, and are used to generate hydroelectric power. While industrialization, agriculture, power generation, and other activities have produced significant economic development in the region, water quality has also been adversely impacted.

In its 2002 National Water Quality Inventory, EPA reports that 91 percent of assessed Great Lakes shoreline miles were impaired – meaning that the shoreline did not meet all of its designated uses, including fishing, swimming, and suitability for aquatic wildlife habitat. (Only 520 of 5,521 total Great Lakes shoreline miles were assessed for the 2002 National Water Quality Inventory.) The leading causes of this impairment include pathogens, metals, and toxic organic compounds. EPA notes that the dominant cause of reported shoreline impairment is legacy, or historical, pollution – chiefly contaminated sediment.

In the same report, EPA reports that 99 percent of the assessed Great Lakes open waters were rated as impaired. (Of the 60,546 square miles of Great Lakes open waters in the United States, 84 percent (50,866 square miles) were assessed for the 2002 National Water Quality Inventory.) The predominant causes of impairment were priority organics,[1] metals (primarily mercury), and pesticides. The primary sources of these causes of impairment are atmospheric deposition, industrial sources, agriculture, and legacy, or historical pollutants.

The EPA's 2005 National Coastal Condition Report II rated the overall condition of the Great Lakes as "fair-to-poor". Water clarity, drinking water quality, and dissolved oxygen were rated as "fair-to-good" or "good". Sediment contamination had a "poor" rating.

Pursuant to the 1987 Great Lakes Water Quality Agreement ("GLWQA"), the EPA and Environment Canada have coordinated biennial assessments of the ecological health of the Great Lakes ecosystem using a consistent set of environmental and human health indicators. The results of these assessments are published in the State of the Great Lakes reports.

[1] 27 organic chemicals targeted by EPA for elimination or reduction because of their persistent, bioaccumulative, and toxic characteristics.

In the 2007 State of the Great Lakes ("SOLEC") report, the status of the Great Lakes ecosystem is assessed as mixed.[2] The SOLEC report characterizes one of its primary assessment categories, contamination of the Great Lakes, as mixed, but improving.[3] Lake Superior is rated as good, Lake Ontario as poor, and the remaining lakes as mixed for contamination. The report notes that concentrations of some chemicals have declined significantly over the past 30 years, and that the overall trend of Great Lakes water quality contamination is improving. Nevertheless, contaminants from air, wastewater, and runoff from non-point sources continue to impact water quality in the lakes. In addition, concentrations of new chemicals that have the potential to cause harm have recently been detected, and are being labeled "chemicals of emerging concern".[4] Some localized toxic contamination continues to exist in high levels in Areas of Concern ("AOCs") (*see below*).

Great Lakes Legacy Act of 2002

In addition to other authorities, Canadian and U.S. efforts to clean up the Great Lakes are guided by the 1987 GLWQA. Through the GLWQA, both nations committed to ecosystem cleanup plans for Areas of Concern ("AOCs").

AOCs are defined under the GLWQA as ecologically degraded geographic areas requiring remediation. An area is considered ecologically degraded if at least one of 14 beneficial use impairments is present as a result of contamination.[5]

AOCs can contain multiple, discrete hazardous waste sites that can include National Priorities List ("NPL") sites under the Comprehensive Environmental Response, Compensation, and Liability Act (commonly known as Superfund), as well as other hazardous waste sites. Sites with high concentrations of toxic substances are often the historical, or legacy, remnants of former industrial pollution. While the discharge of these pollutants has largely ceased, these historical pollutants remain in contaminated sediment in those areas. Contaminants found in the AOCs include polychlorinated biphenyls ("PCBs"), heavy metals, and polycyclic aromatic hydrocarbons

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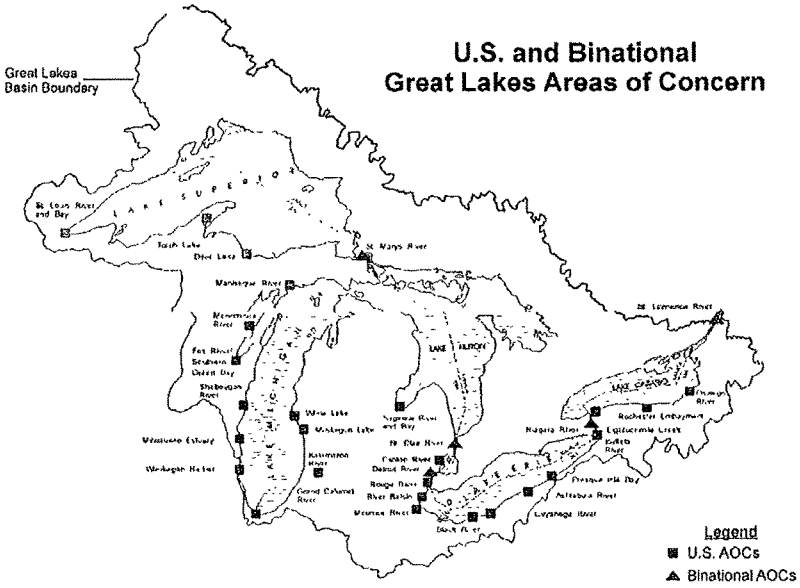
[2] SOLEC rates conditions according to five categories: Good – The state of the ecosystem component is presently meeting ecosystem objectives or otherwise is in acceptable condition; Fair – The ecosystem component is currently exhibiting minimally acceptable conditions, but it is not meeting established ecosystem objectives, criteria, or other characteristics of fully acceptable conditions; Poor – The ecosystem component is severely negatively impacted and it does not display even minimally acceptable conditions; Mixed – The ecosystem component displays both good and degraded features; Undetermined – Data are not available or are insufficient to masses the status of the ecosystem component.

[3] SOLEC rates trends according to four categories: Improving – Information provided shows the ecosystem component to be changing toward more acceptable conditions; Unchanging – Information provided shows the ecosystem component to be neither getting better nor worse; Deteriorating – Information provided shows the ecosystem component to be departing from acceptable conditions; Undetermined – Data are not available over time, so no trend can be identified.

[4] According to Environment Canada, some 70,000 commercial and industrial compounds are currently in use, and 1,000 new chemicals are produced every year. EPA and Environment Canada have categorized some of these chemical categories as 'chemicals of emerging concerns.' These include polybrominated diphenyl ethers (flame retardants), various pharmaceutical and personal care products, and approximately 20 currently-used pesticides.

[5] The GLWQA includes the following 14 beneficial use impairments: Restrictions on fish and wildlife consumption; Tainting of fish and wildlife flavor; Degradation of fish and wildlife populations; Fish tumors or other deformities; Bird or animal deformities or reproduction problems; Degradation of benthos; Restrictions on dredging activities; Eutrophication or undesirable algae, Restrictions on drinking water consumption, or taste and odor problems; Beach closings; Degradation of aesthetics; Added costs to agriculture or industry; Degradation of phytoplankton and zooplankton populations; Loss of fish and wildlife habitat.

("PAHs"). Of the 43 AOCs are located across the Great Lakes, 31 AOCs are in the United States and five AOCs are binational because they are located on connecting river systems between Canada and the U.S.



To better address the cleanup of AOCs, the Committee on Transportation and Infrastructure approved the Great Lakes Legacy Act ("GLLA") in 2002, and it was enacted as P.L. 107-303. The GLLA authorizes funding to clean up contaminated sediment sites in U.S. AOCs. This funding is used for remediation, public outreach, and research. GLLA cleanup is primarily focused on those sites that are not NPL sites. The GLLA authorized $270 million over five years. This authorized funding consists of $50 million per year for projects (contaminated sediment remediation and monitoring); $3 million per year for research; and $1 million per year for outreach activities.

Appropriations for the GLLA have consisted of:

- FY 2004: $9.9 million
- FY 2005: $22.3 million
- FY 2006: $29.6 million
- FY 2007: $30 million
- FY 2008: $34.5 million
- FY 2009: $35 million (President's Request)

Under the GLLA, the EPA's Great Lakes National Program Office ("GLNPO") was designated to implement the GLLA. Projects and AOCs that are addressed through the GLLA must be located in the United States, and will monitor or evaluate contaminated sediment, implement a plan to remediate contaminated sediment; or prevent further or renewed contaminated sediment.

Projects are prioritized and chosen by GLNPO based on a number of factors. These factors include:

- Remedial action for contaminated sediments;
- Projects that have been identified in a Remedial Action Plan (RAP);
- Projects that are ready to be implemented;
- Projects that will use an innovative approach, technology, or technique that may provide greater environmental benefits, or equivalent environmental benefits at a reduced cost; or
- Projects that include remediation to be commenced not later than one year after the date of receipt of funds.

GLLA cleanup projects are negotiated agreements between EPA (through GLNPO) and a non-Federal sponsor. Cleanup projects have a Federal share of 65 percent and the non-Federal sponsor is responsible for 100 percent of the operation and maintenance costs. These contributions may include in-kind services.

Implementation of the Great Lakes Legacy Act of 2002

The following table indicates delisted AOC sites.

Delisted U.S. AOC
Oswego River, New York (2006)

Source: US EPA

The following table indicates progress on GLLA projects to date at individual projects within AOCs. Each AOC can have multiple hazardous waste sites within it. Projects are first monitored and evaluated by EPA to determine the nature and extent of contamination. After this evaluation and only after parties have entered into a cost-share agreement with the Federal Government, remediation will begin. Only when remediation is complete at each of the sites, or projects, in a given AOC and beneficial uses are no longer impaired, will an AOC be delisted.

Projects being Monitored and Evaluated
Waukegon Harbor, Illinois (AOC: Waukegon Harbor, Illinois)
Grand Calumet, Indiana (AOC: Grand Calumet River, Illinois)
Riverview, Michigan (AOC: Detroit River, Michigan)
Ryerson Creek, Michigan (AOC: Muskegon Lake, Michigan)
Buffalo River, New York (AOC: Buffalo River, New York)
Kinnickinnic River, Wisconsin (AOC: Milwaukee Estuary, Wisc.)
Remediation Projects Underway
Ashtabula, Ohio (AOC: Ashtabula River, Ohio)
Remediation Projects Completed
Black Lagoon, Michigan (AOC: Detroit River, Michigan)
Ruddiman Creek, Michigan (AOC: Muskegon Lake, Michigan)
Sault Ste. Marie, Michigan (AOC: St. Mary's River, Michigan)
Hog Island, Wisconsin (AOC: St. Louis River and Bay, Minnesota and Wisconsin)

Source: US EPA

Since the GLLA was enacted in 2002, nearly 800,000 cubic yards of contaminated sediments have been removed from these sites.

Current Issues in Great Lakes Contaminated Sediment Cleanup

In 2005, the Great Lakes Regional Collaboration[6] made a number of recommendations, including changes to the GLLA, to speed and improve the cleanup and delisting of AOCs.[7] These recommendations include:

- Amending the GLLA to increase funding to $150 million per year, to clean up all contaminated sediment in the Great Lakes region by 2020;
- Streamline the GLLA cost-share provision process by dropping the maintenance of effort provisions,[8] extending the "life" of appropriated GLLA funds beyond two years, reducing

[6] The Great Lakes Regional Collaboration ("GLRC") is comprised of a number of organizations to design and implement a strategy for the restoration, protection and sustainable use of the Great Lakes. GLRC partners include the Council of Great Lakes Governors, the Great Lakes and St. Lawrence Cities Initiative, the Great Lakes Congressional Taskforce, the Great Lakes Indian Fish and Wildlife Commission, and GLNPO.

[7] Great Lakes Regional Collaboration. 2005. *Strategy to Restore and Protect the Great Lakes.*

[8] Maintenance of effort language was originally included in the GLLA in order to ensure that new federal appropriations for sediment remediation do not displace existing funding from non-Federal sponsors. In order to carry out qualified projects, the Administrator is to enter into agreements with the non-Federal sponsors to ensure that the non-Federal

the cost-share for "orphan sites", and increasing administrative discretion to allow GLNPO to disburse project implementation funds.

- Improve Federal, state, and local capacity to manage AOC cleanups;
- Create a Federal-state coordinating committee to work with local and tribal interests to speed cleanups; and
- Promote clean treatment and disposal technologies, as well as better beneficial use and disposal options.

In 2006, in a briefing to congressional staff, EPA identified a number of potential impediments to successful cleanup of GLLA projects. These impediments include lack of availability of non-federal partner cost-share funds, a lack of sediment disposal sites, and, in some locations, a lack of support from the public or other impacted parties.

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sponsors maintain expenditures for sediment remediation programs in the area of concern in which the qualified project is located.

WITNESSES

PANEL I

Lieutenant Governor John D. Cherry
State of Michigan
Lansing, Michigan

The Honorable Benjamin H. Grumbles
United States Environmental Protection Agency
Assistant Administrator for Water
Washington, D.C.

Accompanied by:
Mr. Gary Gulezian
Director
Great Lakes National Program Office
United States Environmental Protection Agency
Chicago, Illinois

PANEL II

Mr. Cameron Davis
President & CEO
Alliance for the Great Lakes
Chicago, Illinois

Ms. Emily Green
Director, Great Lakes Program
Sierra Club
Madison, Wisconsin

Mr. George H. Kuper
President
Council of Great Lakes Industries
Ann Arbor, Michigan

HEARING ON THE REAUTHORIZATION OF THE GREAT LAKES LEGACY ACT

Wednesday, May 21, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Eddie Bernice Johnson [Chairwoman of the Subcommittee] presiding.

Ms. JOHNSON. The Committee will come to order.

Good morning. Today, the Subcommittee will hear testimony on the reauthorization of the Great Lakes Legacy Act. This program aims to address the legacy of contaminated sediment that degrades water quality throughout the Great Lakes and threatens the health of populations who live in the region.

The Great Lakes Legacy Act of 2002 was a good first step in addressing the contaminated sediment that despoils the water resources upon which a successful transformation of the region will depend. Introduced by Congressmen Ehlers and Oberstar, it is aimed to clean those many contaminated sites that have been largely overlooked by ongoing Federal toxic waste site cleanup efforts.

Not only was the Superfund process perceived as slow, litigious and unwieldy, many contaminated sites in the Great Lakes Region were not included on the list of sites that would ultimately be addressed by the Superfund. Yet many of these sites were too large and too toxic for States and localities to deal with on their own.

In addition to many, many communities throughout the Great Lakes Region were left with the chronically toxic effects of contaminated sediment that relegated their towns and peoples to health risks and economic under-achievement.

The Great Lakes Legacy Act of 2002 sought to address these largely abandoned sites and Areas of Concern by providing a dedicated source of Federal funding for cleanup and remediation. This morning, we look to what has worked over the past five years with the Legacy Act, what challenges remain and how these can be addressed.

The Legacy Act of 2002 authorized $50 million a year for 5 years to clean up contaminated sediment of hazardous waste sites in 31 Areas of Concern. To this end, the program has been successful but only to a degree. Of the 31 Areas of Concern, one, Oswego Lake in New York, has been delisted.

Cleanup has been completed at four sites. I want to highlight, however, this is a cleanup of only four sites, not four Areas of Concern.

Many of the sites targeted by the original Legacy Act remain as they were in 2002, untouched and continuing to leach their toxic legacy into the lakes. Perhaps this is because the program has been consistently under-funded by the Administration over the past five years. Perhaps there are structural issues within the Legacy Act itself that need to be addressed.

Nevertheless, the fact remains that ten Areas of Concern in Michigan, four in New York, one in Pennsylvania, three in Ohio and three in Wisconsin remain wholly unaddressed.

Let me clear to my colleagues on the Subcommittee. The scientific record is very well established on the health impacts of these toxics on human populations. To be blunt, that so many hazardous waste sites remain unaddressed is a public health risk of the first order.

As a former nurse, I can say with clear conviction that as a body we would be remiss if we did not find a way to clean these toxic hot spots at a far faster pace than we have over the past five years. We cannot shrink from our responsibility on this front.

I look forward to hearing the testimony from our witnesses today in how we can improve the Legacy Act program.

I yield to my colleague, Ranking Member Mr. Boozman.

Mr. BOOZMAN. Thank you very much, Madam Chair.

I want to welcome all the witnesses today. I look forward to their testimony.

I also want to commend Dr. Ehlers for his years of work with stakeholders from the Great Lakes to advance the Great Lakes Legacy Act. When I was appointed to this position, it probably was not five minutes later that Vern called and said, I need to meet with you regarding this. So, as always, he is very, very active.

The Great Lakes are a vital resource for both the United States and Canada. The Great Lakes systems provide a waterway to move goods, a water supply for drinking, industrial and agricultural purposes, the source of hydroelectric power and swimming and other recreational activities, but the industrialization and development of the Great Lakes basins over the last 200 years has had an adverse effect on the Great Lakes.

Although safe for drinking and swimming in many places, fish caught from the Great Lakes are not safe to eat. Lake sediments contaminated from the history of industrialization and development in the region are one of the primary causes of this problem.

By treaty, the United States and Canada are developing cleanup plans for the Great Lakes and for specific Areas of Concern.

The Great Lakes Legacy Act passed in 2002 has helped citizens restore the quality of the Great Lakes by taking action to manage contaminated sediments and to prevent further contamination. The Great Lakes Legacy Act authorized the Environmental Protection Agency to carry out qualified sediment remediation projects and conduct research and development of innovative approaches, technologies and techniques for the remediation of contaminated sediment in the Great Lakes.

Legacy Act funding must be matched with at least 35 percent non-Federal share, encouraging local investment. By encouraging cooperative efforts through public-private partnerships, the Great Lakes Legacy Act provided a better way to address the problem of contaminated sediments.

At some sites, removing sediments will be the best way to address short and long-term risk. At the other sites, the last thing we want to do is go in and stir up the contaminated sediments by dredging, causing more harm to the environment. Obviously, how to address contaminated sediments at each Great Lakes Areas of Concern will be very much a site-specific decision.

The Great Lakes Legacy Act does not try to presume any particular cleanup action. It simply encourages stakeholders to take action and to make sure that the action they take will make a real improvement to human health and the environment.

This legislation is strongly supported by both the environmental groups and business groups in the Great Lakes Region. The Great Lakes Legacy Act reflects a consensus approach to addressing sediment contamination in the Great Lakes.

The authorization for the Great Lakes Legacy Act expires this year. Recently, the Act has been funded at a level between $22 million and $35 million per year.

Today's hearing allow stakeholders to express their support for the Great Lakes Legacy Act and offer any suggestions to modify the Act. I look forward to hearing today's witnesses.

In reading the testimony, I want to compliment you in the sense that it looks like that the stakeholders are working hard together and appear to be in consensus in much that we are going to hear today.

I yield back, Madam Chair.

Ms. JOHNSON. Thank you very much.

Are there other opening statements? Yes, Mrs. Miller.

Mrs. MILLER. Thank you very much, Madam Chair, and I certainly appreciate your having this hearing today.

I will enter my full statement for the record, but just briefly let me certainly welcome and recognize our Lieutenant Governor from the great State of Michigan. We work very closely together at the Federal and State levels and the local level as well to do everything we can to protect our magnificent Great Lakes.

This Subcommittee, as you are aware, Madam Chair, just last week held a week actually in my district in the City of Port Huron, where we addressed the issue of water quality, and Chairman Oberstar came. It was a great hearing. I think much will come of it.

In the Great Lakes, we think of the Great Lakes obviously as 20 percent, one-fifth of the fresh water supply of the entire planet, and all of us in Michigan do recognize the extraordinary work that remains to be done for restoration and maintenance of the Great Lakes. We love the Great Lakes, but we haven't treated it particularly well for many generations and so, as has been articulated already, many challenges facing the Great Lakes with industrial contamination, invasive species, the combined sewer overflows, et cetera.

As people have said that the last century was perhaps about oil and this century is going to be about fresh water, we are certainly at the forefront of all of that.

Again, we look at it as a national treasure. Certainly, it is long overdue that the Federal Government is recognizing what a national treasure it is and having the political will and the courage to stand up with their dollars as well and invest in this fantastic treasure.

So, again, with that, I certainly look forward to the testimony of all the witnesses but want to recognize Lieutenant Governor Cherry for his participation as well.

Thank you, Madam Chair.

Ms. JOHNSON. Thank you, Congresswoman Miller.

We will now introduce our first panel. We have Lieutenant Governor John Cherry from the State of Michigan; the Honorable Benjamin Grumbles, Environmental Protection Agency, Assistant Administrator for Water; and Mr. Gary Gulezian, Director of the Great Lakes National Program Office for the EPA, Chicago.

We will hear you as you were introduced. Thank you.

TESTIMONY OF LIEUTENANT GOVERNOR JOHN D. CHERRY, STATE OF MICHIGAN; THE HONORABLE BENJAMIN H. GRUMBLES, ASSISTANT ADMINISTRATOR FOR WATER, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; AND GARY GULEZIAN, DIRECTOR, GREAT LAKES NATIONAL PROGRAM OFFICE, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

Lieutenant Governor CHERRY. Well, thank you, Chairwoman Johnson and Members of the Subcommittee on Water Resources and Environment.

I am Lieutenant Governor John Cherry of the State of Michigan, and I appreciate this opportunity to share the perspectives of the State of Michigan and the Great Lakes Commission on the Great Lakes Legacy Act.

I am honored to serve both as Michigan's Lieutenant Governor and Chair of the Great Lakes Commission. The Commission is a public agency established by the Great Lakes Basin Compact in 1955 to help the eight Great Lakes States speak with a unified voice and collectively fulfill a common vision.

Let me begin by recognizing the Committee Members from the State of Michigan: Representatives Vern Ehlers and Candice Miller. I want to thank you and the other members of the Great Lakes Region for your support for the priorities for the Great Lakes.

In particular, Congressman Ehlers, you have been a key champion for the Great Lakes, and it is because of your leadership in sponsoring the Great Lakes Legacy Act of 2002 that we are here today reflecting on the success of this important program.

The Committee's support for reauthorizing and strengthening the Great Lakes Legacy Act is a necessary step forward, advancing a strong agenda for the Great Lakes.

I have submitted written testimony that I ask be made of the part of the record for today's hearing. The testimony includes the Great Lakes Commission's complete recommendations for reauthorizing and strengthening the Great Lakes Legacy Act.

The Great Lakes are a unique and extraordinary natural resource for our region and the Nation as a whole. More than 32 million Americans receive the benefits of the Great Lakes including drinking water, food, recreation, commercial navigation and water resources for industries and utilities.

Public interest in restoring and protecting the Great Lakes is greater today than at, perhaps, any time in the past. The Great Lakes Region has united behind the Great Lakes Regional Collaboration Strategy to restore and protect the Great Lakes.

As you know, Areas of Concern are the most heavily degraded areas of the Great Lakes. There are 31 U.S. and binational Areas of Concern including 14 in my home State of Michigan. Cleaning up these areas is a longstanding priority for the Great Lakes States.

The Legacy Act has proven highly successful in these efforts. It has become a cornerstone of restoration efforts for the Areas of Concern. In Michigan alone, the Act has facilitated the cleanup of approximately 250,000 cubic yards of contaminated sediments, using $20 million in Legacy Act funds and leveraging nearly $13 million from State and local sources.

The Great Lakes Commission has prepared detailed recommendations for reauthorizing the Legacy Act. I will mention three important highlights.

Number one, increase the authorized funding level to $150 million annually. This funding will better match the long-term cost of completing the remediation of contaminated sediments in the Areas of Concern which is projected to be between $1.5 billion and $4.5 billion annually. I mean over time.

Number two, allow the use of Legacy Act funds to restore habitat of cleanup sites. This is an appropriate use of Legacy Act funds that will facilitate the complete restoration and redevelopment of the site.

Extend the life of appropriated Legacy Act funds beyond two years would be the third point. Given the lengthy and complex nature of sediment cleanups and the possibility of unanticipated delays, the two-year limit is inappropriate for the Legacy Act program.

The Great Lakes States are united in their approach to a comprehensive restoration strategy. A recent study found that local governments alone are spending an estimated $15 billion each year on Great Lakes restoration and activities.

Collectively, the Great Lakes States look to the Federal government to be a critical partner in restoring the Great Lakes. Reauthorizing, strengthening and, most importantly, fully funded the Legacy Act would be a significant step in this direction.

Let me conclude by reminding the Committee that the Areas of Concern include communities and the rivers that run through them that helped win our Nation's wars and fueled our economic prosperity in the 20th Century. From the Buffalo River in New York to the Rouge River in Michigan to the Grand Cal River in Indiana, these are the rivers that suffered as our region and our Nation prospered.

The Areas of Concern are the clearest legacy of our use and abuse of the Great Lakes. The Great Lakes will not be fully re-

stored until these areas are restored. The Great Lakes Legacy Act is a key component of our strategy for restoring the Great Lakes.

Thank you, Madam Chairman and Members of the Committee for your work on this important legislation. I welcome any questions you may have.

Ms. JOHNSON. Thank you very much, Lieutenant Governor Cherry.

Mr. Grumbles.

Mr. GRUMBLES. Thank you, Madam Chair. It is great to be here and to be joined by Gary Gulezian, the Director of the Great Lakes National Program Office.

It is great to see you, Congressman Boozman, in your position of leadership on the Water Subcommittee, and I am looking at congressional leaders in the Great Lakes. Congressman Ehlers, Congresswoman Miller, EPA appreciates your work, your leadership on this effort.

Madam Chair, it is great to have the opportunity to discuss the successes to date as well as some of the challenges ahead. As you know, during this Administration, EPA has put a real priority behind protecting and restoring the Great Lakes and accelerating the restoration and protection of the Great Lakes. A key part of that is the Great Lakes Legacy Act.

So the first thing I would like to do is to say that we believe that our major success to date has been the ability under the Act to accelerate the pace of sediment remediation in the lakes. Since 2004, when the first amount of funding was made available under the Act, we have remediated over 800,000 cubic yards of sediment at a cost of almost $97 million.

For these remediation projects, we provided $53 million in Legacy Act funding which, in turn, has leveraged $44 million in additional funds. That has allowed us to remove over 1.5 million pounds of contaminants from the environment.

It is a model that may be used well in other regions of the Country. It is about accelerating the pace of cleanup through innovation and collaboration, and that collaboration is based on partnerships. The 2002 Act envisioned stronger partnerships among the agencies and with the public and private sectors.

EPA and other Federal agencies, such as the Army Corps of Engineers, have been working, providing efforts to get this environmental restoration underway. The Corps, in particular, has provided technical assistance and disposal capacity at their confined disposal facilities and working closely with State agencies and industry and local governments to get sediment remediated and to get environmental progress moving.

Another key component that we urge the Committee to keep in mind is that the key to continued success is going to be the continued ability of non-Federal sponsors to provide the necessary cost share.

Remediating the remaining contaminated sediments will cost in excess of $1 billion. While some of those cleanups will be accomplished through Superfund and other authorities, the potential demand for Legacy Act resources is expected to be high.

Of course, how much we can utilize will be a function of and limited by the availability of the non-Federal match. So we think it

is important to identify a non-Federal sponsor at these projects and to move forward because we won't be able to move forward if we are not able to identify non-Federal sponsors with the requisite cost share. It is all about leveraging, as you know.

So we are looking forward to working with States and other interested parties to find creative ways to provide the necessary funding.

Another major point to make is the polluter pays principle, and I know Congressman Ehlers, in particular, has been following this very closely.

EPA continues to honor the polluter pays principle. It is a fundamental part of how we approach remediation in the Great Lakes. We believe that is a key principle to continue to follow.

We also recognize that there are situations where there is an orphan share. There are situations where the projects, the key to accelerating the cleanup is by using the Legacy Act funding, using the authorities under the Legacy Act to help fill the gap to help make restoration possible.

The Lieutenant Governor also mentioned the two-year life of funding as one of the key issues to focus in on. The two-year life of funds could be problematic. As in most cases, it takes time to conduct the necessary up-front work to get these very complex projects ready for implementation. So this time-intensive up-front pre-remedial work is critical in order to conduct environmentally sound and fiscally responsible projects.

The last point, Madam Chair, is to underscore the point that environmental cleanup is an economic engine for health and prosperity. Recent studies have shown that there is an economic benefit from contaminated sediment remediation. The Northeast Midwest Institute and others are identifying the savings that occur, the environmental benefits that occur, in fact, the economic benefits that occur when these sites are cleaned up.

We agree with you that it is important to continue to use this authority as a way to accelerate cleanup and avoid costly debilitative litigation which has been something that has occurred in the past.

So we look forward to working with you and others as legislative proposals are introduced and as the Committee moves forward on this very important and successful environmental statute.

We would be happy to answer questions as you wish, Congresswoman. Thank you.

Ms. JOHNSON. Thank you very much.

I want to start a first round of questioning.

Lieutenant Governor Cherry, in your view, what is the current capacity for potential non-Federal partners like State or local governments to contribute to the current cost share level of 35 percent?

Lieutenant Governor CHERRY. In the State of Michigan, I believe that we have been fortunate enough to be able to match that work that the EPA has approved to do. We have had the benefit of what we call the Clean Michigan Initiative, a bond proposal that was passed back, I believe, in 1998 that has allowed us to fund our match.

All total throughout the Great Lakes Region, and this is through the eight Great Lakes States plus the two provinces of Canada through the St. Lawrence River, roughly $15 billion is spent annually by local units of government and the States on Great Lakes remediation.

So I think that the funding would be challenging if we were on a schedule that would complete cleanup in 10 years, but my sense is that there is a public will to make those expenditures. At least that has been the case in the State of Michigan.

I would think that if you were able to fund at $150 million a year over a 10-year period, the States would be probably able to match that, I would believe, as required.

Ms. JOHNSON. Given the current economic climate and fiscal environment, what is your impression of the capacity for State and local governments to actually contribute to your recommended cost share of 25 percent?

Lieutenant Governor CHERRY. I think you have to be innovative as a State because your ongoing State budget is very constrained, particularly in the upper Midwest. So you have to be innovative.

That is why the State of Michigan chose a bond route in which we floated a general obligation bond which gave us the working capital to match, to be an active partner with the Federal Government and our local units on remediation. That is how we would probably proceed in the future.

So I think those States will have to be creative, but again I think the upper Midwest understands that we are in a new era of global economics and that we have to begin to understand what our priorities are. Our economy is very much based upon the Great Lakes and so as much an investment in the future as it is an ongoing expense.

I would think you would find that the States and communities would rise to the occasion, utilize that kind of innovative funding that would allow them to have the capacity to meet the Federal Government in the cost share arrangements that we have.

Ms. JOHNSON. In the State of Michigan, there are currently 10 Areas of Concern that have not had any Legacy Act projects on them at all. Similar situations exist in nearly every other Great Lakes State. In your view, what is the reason for this and what has been done?

What has been the biggest impediment to not cleaning up these sites or fulfilling these goals?

Lieutenant Governor CHERRY. Madam Chairwoman, it is my recollection that we have completed three or four sites as of today as it pertains to the State of Michigan, and I believe that we are active financially with every project that the EPA has proposed for those Areas of Concern in the State of Michigan.

So, if anything, I think it is the Act as good as it is, and I want to say I believe the Act has moved things forward. I don't want to be critical of the Act, but I think the limitations have been the limitations within the Act itself.

Ms. JOHNSON. You have done four. Have you used any kind of priority out of the 10 that have received no Federal funding to date?

Lieutenant Governor CHERRY. I believe that these proceed as a collaboration, and I think this is one of the good things of the Act. It does give a structure in which the EPA can work in a collaborative way with States and local units of government to establish the priorities for remediation, and I believe that what we have done to date has been a reflection of the collaborative efforts to decide with the EPA what the first priorities are.

Ms. JOHNSON. Is it funding?

Lieutenant Governor CHERRY. I believe so. We have been able to match the funding that has been available to us to date. I think we could go further if we had more funding available to us.

Ms. JOHNSON. You have indicated that there might be some shortcomings in the law. How would you suggest it be changed?

Lieutenant Governor CHERRY. I think one of the issues is the two-year limitation. As Mr. Grumbles pointed out, this is sometimes a lengthy process to determine what is actually there in an Area of Concern. So the actual process can drag out more than two years, and so I think the availability of that funding being secure would be terribly helpful in that respect.

Additionally, the match level, I think, if it were reduced to 25 percent would allow us to engage. At least if it brought more Federal money into the picture, it would allow us to engage in more cleanups.

I also believe that remediation should include, as well, restoration of the habitat. I mean much of this is done to encourage a healthy ecosystem, and so the habitat goes beyond just the removal of sediments. The securing of a riverbank and other aspects of the habitat are all part of the overall project.

So to the extent that the Legacy Act could allow that, that would be helpful as well.

Ms. JOHNSON. Thank you.

Mr. Gulezian, in March of 2006, the Great Lakes National Program Office briefed the congressional staff on implementation of the Great Lakes Legacy Act. In that briefing, EPA identified potential impediments of the projects, and one of these impediments was a lack of available cost share.

Now, in the current cost share of 35 percent, has it been an impediment?

Mr. GULEZIAN. Cost share and having sufficient non-Federal funds to match the Federal funds is very important to moving forward with Legacy Act projects. To date, it has not been a problem in terms of utilizing the funds that we have received under the Legacy Act.

In the future, it could be more of a problem. I really see that as one of our challenges in the coming years, to make sure that we have sufficient non-Federal cost share to make these projects a success.

Mr. GRUMBLES. Congresswoman, I would just add that local and private industry investments are unlikely to be sufficient to make full use of the Federal funding that is provided. So State bond funds such as Michigan's Clean Michigan Initiative will be key to future success on meeting the cost share, which we feel is an extremely important principle of the Great Lakes Legacy Act just as it is for the Corps of Engineers Water Resources program.

Ms. JOHNSON. What problem under the current circumstances do you see in accomplishing the goals of the future? Is it still going to be a shortage of share on each end, both ends or one end?

Mr. GRUMBLES. Gary may want to elaborate on this some, but I think the key for us is following the priority system that is currently laid out in the statute and laid out well about focusing on remediation and also honoring the polluter pays principle and not providing some duplicative program or something that undermines the Superfund program when there are responsible parties.

In the context of the funding in the future, I think for us a key part of it, Madam Chair, is to work with the authorizing Committees and the appropriations Committees to think about innovations, innovative approaches.

The water enterprise bonds that aren't directly related to the Legacy Act but that we feel are the wave of the future when it comes to meeting Clean Water Act infrastructure needs is critically important to bring in more innovative funding, not to change the cost share that has worked well, we believe so far, but to remove barriers to potentially innovative approaches both at the Federal level and at the State level.

Mr. GULEZIAN. On the issue of innovative funding and generating non-Federal cost share, I think the concept of return on investment really needs to be taken into account. On the economic valuation work that we have done at some of the Legacy Act sites such as Waukegan, we were able to estimate that there could be increases in property value in the City of Waukegan of $250 million were we to do a Legacy Act project that would cost about $30 million.

If you look at non-Federal cost share, that would be $12 million of the $30 million. The return on investment from property tax receipts from that kind of a property value increase would pay for that in just several years.

So, to the extent that that kind of thing can be taken into account, it may be a way of generating non-Federal cost share through bonding.

Ms. JOHNSON. Well, I understand that 76 million cubic yards of toxic sediment remain to be corrected. Is that your estimate?

Mr. GULEZIAN. Based on the work of the regional collaboration where States and cities and nongovernmental organizations came together, some estimates were made of the remaining contaminated sediments within the Great Lakes Basin. The total amount that was estimated was on the order of 75 million. We think, of that 75 million, approximately 40 million will need to be remediated in some way.

Ms. JOHNSON. Mr. Grumbles, in your testimony, you note that EPA has successfully remediated 800,000 cubic yards of sediment over the past 4 years. What percentage of the total potential volume of contaminated sediment does this 800,000 cubic yards represent?

Mr. GRUMBLES. Based on our current estimates, it is about 10 percent.

Ms. JOHNSON. So, based on these calculations at the current rate of Legacy Act funding recommended by this Administration, it seems that it will take over 300 years to accomplish that and to remove all the toxic sediment?

Mr. GRUMBLES. You put a time frame on it, and I am not comfortable with making estimates like that.

Ms. JOHNSON. I mean at the current funding level.

Mr. GRUMBLES. What I am comfortable in saying is that we recognize, just like our non-Federal partners recognize, there is a tremendous amount of work that remains to be done, that the Great Lakes Legacy Act is an excellent framework for addressing some of the sediment problems. Existing environmental statutes like the Superfund statute or other regulatory authorities are also important ones.

We think the key is not to view this as a public works project but as a public-private works project and to use authorities and continue to focus on streamlining the program under the Great Lakes Legacy Act and identifying the challenges ahead. Some of them are funding, but others are making sure that we can also see the environmental benefits and work with the communities on the concept of restoration and restoring the impaired biological, chemical and physical integrity of these special sites.

Ms. JOHNSON. Yes. My concern is with the current situation of clean water supply in this Country. It seems to me that we could get into a public health problem if we could not move any more rapidly to clean these sediments out.

Mr. GRUMBLES. As you know well and as Congresswoman Miller mentioned about the importance of water in the 21st Century, it really is the oil of the 21st Century.

We see clean water as more than just an environmental protection issue. It is a public health issue, and that is why all of us, I think, are supportive of efforts to accelerate the pace of cleanup, using tools like the Great Lakes Legacy Act.

It is a threat to public health over time. Particularly when you look at the water flow patterns within the Great Lakes, it is important to come up with ways to remediate or to prevent the spread of potential toxins that could pose a risk to public health.

Ms. JOHNSON. Now I know that the U.S. shares some of this with Canada. What kind of cooperation has occurred there? Are the Canadians moving at a more rapid pace to remediate their contaminated sites than the U.S.?

Mr. GULEZIAN. We have a strong cooperative program with Canada. There is a Binational Executive Committee where the U.S. agencies meet with the Canadian agencies, and we also have a Binational Toxic Strategy where we specifically review the progress that is made on both sides of the border in cleaning up contaminated sediments.

The Canadians are making similar progress to us. These projects are complex. They are expensive. They have had some recent appropriations on their side to assist them with moving forward with their contaminated sediment problems.

We learn from each other too in terms of how best to approach these problems.

Ms. JOHNSON. You know we had a hearing on the Great Lakes here a couple of months or so ago, and there was testimony from one of the House Members that open sewage was being dumped from Detroit or somewhere in that area into the lake. How do you

measure that with the rate of cleaning the sediment and it getting recontaminated or do you consider that accurate?

Mr. GRUMBLES. The principle of pollution prevention is a key principle. That is why EPA has, for the last several years, been putting a priority in terms of our enforcement program, an enforcement priority on sewer overflows.

In the Great Lakes, we know, based on the age of the systems and climate and various factors, that combined sewer overflows as well as sanitary sewer overflows is a threat to the health of the Great Lakes. It doesn't make the situation any easier in remediating contaminated sediment if you are not also working upstream in the watershed to reduce sewer overflows.

We feel that it is a collaborative effort, and the Great Lakes strategy recognizes that sewer overflows is a key area, a priority, just like sediment remediation. The two need to be thought of together. So we are working with the States and we are working with the cities.

It is not just a question of more Federal funding. It is a question fusing the various tools to improve the management of those community assets and to find financing ways based on rates, local rates and also State efforts to finance the upgrade of those systems so that the sewer overflows are reduced.

We see progress, but it takes time. It takes years for these control plans to get developed and implemented.

Ms. JOHNSON. Thank you very much.

Mr. Boozman.

Mr. BOOZMAN. Thank you, Madam Chair.

Mr. Grumbles, one of the common threads from the testimony we are going to hear in a little bit and then also with Mr. Cherry's was this two-year problem that you mentioned in your testimony about having the two-year time frame. Can you talk a little bit more about that and maybe give us some examples of how that affects things?

Mr. GRUMBLES. We appreciate the decisions that are made in the appropriations process of the amount of funds. I think the Act contemplated no-year funds that could remain available until expended, but in the decisions made and the realities of the appropriations process, these funds are essentially two-year limits.

As was noted and I think everyone would agree, as was noted in our testimony, these are complex projects and they take some time. The key to sustainable projects is building the partnership up front and having local community support and also having the necessary technical information at these very complex sites. And so, we do run up against a lot of pressure.

We want to streamline and accelerate cleanup projects, but one observation we have had in the five successful cleanup projects to date is that two-year time frame can be a real challenge. So that is an area that we agree there needs to be a discussion, and we look forward to having that discussion with you and your colleagues in other Committees.

Mr. BOOZMAN. Very good. Right now, it looks like the appropriators are appropriating about $35 million or so a year for these things. If all of a sudden they say that we were able to do the $150 million, what capacity do you have?

How much money? With your staff and things like that, how much capacity do you have to actually do as far as appropriations?

Mr. GRUMBLES. I know we are continuously looking into the future and what is in the pipeline. I think we are looking at nine projects, potential projects, adding to the five that we have seen great success with.

In terms of the capacity, how quickly we could move towards those, it depends on a variety of things.

I would just say we know there is a tremendous need out there. We also know that an authorization level like $150 million is a very significant one that I think we would need to work with you on getting a more specific answer in terms of the timing and the capacity to actually make use of that type of funding in the near term.

Do you want to add anything to that? Okay.

Mr. BOOZMAN. I think that is all I have right now. Thank you, Madam Chair.

Ms. JOHNSON. Thank you, Mr. Boozman.

Mr. Hall.

Mr. HALL. Thank you, Madam Chair and thank you, Mr. Boozman, our Ranking Member, for holding this hearing.

Mr. Grumbles, I just wanted to ask you. It is good to see you again, sir.

I am just looking for clarity, myself. Out of the 31 Areas of Concern, how many individual sediment remediation projects are located wholly within the United States?

Mr. GRUMBLES. Go ahead, Gary.

Mr. GULEZIAN. I can respond to that, Congressman Hall.

There are approximately 70 sites that have contaminated sediments. Of the remaining 30 Areas of Concern on the U.S. side of the border, and some of those are jointly shared with Canada, each and every one of them has a contaminated sediment problem of one kind or another.

Mr. HALL. So where are those 70, approximately 70 sites in the process?

What I am asking, I guess, is that the 5 sites that are listed in written testimony are 5 of the 70, not 5 of 31. Is that correct?

Mr. GULEZIAN. Right, that is 5 of the 70, not 5 of the 31.

Mr. HALL. Also, Administrator Grumbles, I hear you. I didn't see it in your written testimony. I thought you said you estimated cost to clean up, to remediate all of the contaminated sites at a billion dollars, roughly. Did you say something like that?

Mr. GRUMBLES. I said it could be more than a billion, but we are looking at a cost in excess of a billion dollars.

Mr. HALL. Okay. Well, it doesn't faze me when you are talking 85 percent of the fresh water of the United States and 20 of the fresh water in the world. I compare it to $12 billion a month in Iraq. That is how I calculate things nowadays in my own mind to determine national priorities, but anyway that is getting off topic a little bit.

I wanted to ask Lieutenant Governor Cherry. First of all, I guess, one of the recommendations of the GLRC (Great Lakes Regional Collaboration) was to encourage clean disposal and treatment tech-

nologies. What are some of the best technologies in your mind that have come out of this?

Lieutenant Governor CHERRY. Congressman, I am not an expert on that.

Mr. HALL. Do you want to hand it off to the EPA?

Mr. GRUMBLES. The question is what are some of the promising technologies?

Mr. HALL. Yes. The GLRC recommended encouragement of clean disposal and treatment technologies. Outside of different kinds of dredging, is there anything else that has surfaced?

Mr. GULEZIAN. There are a number of approaches that we have looked at over the years in terms of innovative approaches. There are different kinds of dredging that can be done and, as part of the Legacy Act, we have experimented with different kinds of hydraulic dredging which are more efficient and do a better job of scavenging the contaminated sediments. That is something that we have worked on at the Ashtabula River project.

There are also other possibilities out there in terms of things like carbon mats that can absorb some of the toxic substances, where you might be able to have a more efficient cleanup that would actually not involve dredging at all. So there are a number of possibilities that we evaluate each and every time we do a project under the Legacy Act.

Mr. HALL. A carbon mat?

Mr. GULEZIAN. Right. This would be like activated charcoal built into a mat that you would place over the contaminated sediments that would prevent those sediments, to the extent that they are organics, from leaching out into the water. So it is something that can supplement an existing cleanup.

Mr. HALL. As we have examined at length in this Committee, the Supreme Court's rulings in the Rapanos and Carabell cases have created the potential for serious delays in issuing Clean Water permits and protection activities. What impact is this having or is this having an impact on the Great Lakes protection and the ability to meet the goals of the program?

Mr. Grumbles, do you care to comment?

Mr. GRUMBLES. Sure. Yes. I would say that one of our first priorities in the Great Lakes Regional Collaboration is on wetlands, and that is to restore, improve or protect 200,000 acres within the Great Lakes ecosystem. For 100,000 acres, the Federal agencies have stepped up to the plate and said we are going to do that.

We have made progress. We are at about 62,000 acres of restoring, improving or protecting, and that has not been hampered by the legalities of the Supreme Court decision. It has been more of the Federal agencies all focusing in, as was envisioned in the Great Lakes Regional Collaboration, and saying what tools can you use to really make progress. We look forward to working with the States on the other 100,000 acres.

Congressman, frankly, when you do get into the jurisdictional complexities, what we are doing is we are surveying the regions and the Corps district offices of what experiences are they finding on the ground when it comes to that significant nexus analysis and the various tests that were laid out in that Supreme Court deci-

sion. We will be happy to provide the Committee with our observations or insights from that as we continue to use that guidance.

Mr. HALL. That would be helpful. Thank you.

My time is up, but I want to thank you for the work that you are doing, and I hope that we can provide resources for you to do more of it.

As a Representative from New York State which is connected to the Great Lakes by the St. Lawrence seaway and, of course, bounding Lakes Ontario and Erie and the Hudson River which I represent a district from, which is connected by the Erie Canal and Champlain Canal to the Great Lakes, I am happy to see this rising high on our to-do list. It is certainly important that we protect this great resource.

Thank you, Madam Chair. I yield back.

Ms. JOHNSON. Thank you very much, Mr. Hall.

Dr. Ehlers.

Mr. EHLERS. Thank you, Madam Chair, and thank you very much for having this hearing. This issue is a very important one to me and I think to most of the people around the Great Lakes.

I thank Governor Cherry for taking the time to be here and speak on it. We spent many years together in the Michigan Senate and got a lot accomplished together, even though he is an outrageously leftist Democrat and I was an outrageously conservative Republican. You know that is not true from knowing me, but at any rate we worked very closely together on a number of these issues.

It is good to see you again, John. Thank you for being here and thank you for your kind words.

I also apologize for being late. I was speaking at another meeting. I would just ask that my opening statement be entered into the record. Without objection, I hope you will do that.

The first version of the Legacy Act, which is the version that we have been discussing here, has been fantastically successful. I normally don't brag about my work to that extent, but I keep hearing it from the people around the Great Lakes. They are extremely pleased with the Act.

I think what has made it so successful is that we designed it to be a combined Federal, local, environmental and State project with funding coming from all the parties in some fair and equitable arrangement that we developed. That is really been a strong inducement to the business community and to the locals and to the environmental groups to really promote the program.

We could have, in fact, accomplished much more had the Congress allocated the funds. The President, to his credit, and the EPA advocated full funding every year that the bill has been in effect. Unfortunately, the Congress cut back the funding every year.

But, in spite of that, I have been told by numerous individuals who have worked in Superfund and have worked in this that this is by far the best cleanup activity that they have ever engaged in because everyone worked together, everyone knew what the parameters were, we managed to keep most of the attorneys out of it, and it would just set up a structure where all the parties could work things out together and get the job done.

I really appreciate your cooperation and work in that.

In response to the comments about the increasing funding, I have no doubt that the Congress will appropriate the money that can be usefully used. I think setting the goal at an authorization of $150 million is imminently reasonable

I know the Congress will not throw money at the problem unless it can be used effectively. So I am not worried about increasing the authorization since I know the appropriators will allocate the appropriate money.

I think it is important to increase it because we are poised in a number of areas in this Nation to rapidly go ahead with cleanups. Local communities and States are rounding up funding to be able to deal with. Environmental communities are excited and ready to go, building local support. So I think it is imminently reasonable to increase the authorization, and I hope the appropriations will match the local enthusiasm and energy, both of the local and State Governments.

I will defend a $150 authorization. I don't think we can go wrong with that. Obviously, we won't spend it all if it is not all needed, but I think it is a good way to go.

I just thank the State of Michigan for its work. As you mentioned, there are four sites there. I visited several of them, and the cleanup went amazingly rapidly.

I say this after having spent a lot of time on the county level working with Superfund and on the State level working with Superfund. I was just astonished that in the space of two years, we could clean up sites that under the Superfund Act would have taken seven years to clean up. So I think this is an effective program.

I believe Mr. Oberstar and I will be introducing a bill on this fairly shortly, and I hope we can have a lot of support from our colleagues and from people across the Nation.

The real key, as has been pointed out by our witnesses, is the cooperative aspect of it. I recall when we had our first hearing on the original bill, Congressman Duncan was the Chair of the Committee at the time. We had testimony from the Federal Government that this was a good program, testimony from State and local governments that it was a good program, testimony from the business community that it was a good program and testimony from the environmental community that it was a good program.

Congressman Duncan turned to me after the hearing was over, and he said that is the first time in his 20 years of experience in the Congress that he has ever had all of those groups agree on something. He said, we will report this bill to the floor immediately.

I am very pleased that that cooperation has continued and that all of you involved, not just this panel but the next panel as well, have worked on this so well and made it such a success. I thank you for that.

I yield back the balance of my time.

Ms. JOHNSON. Thank you, Dr. Ehlers.

Dr. Kagen.

Mr. KAGEN. Thank you, Chairwoman Johnson and Ranking Member Boozman for being here and for having this hearing.

I thank you for coming to give your testimony that I missed. I was on the House floor, giving a presentation about our oil crisis.

My question has to do not just with the cooperation, which I appreciate, but the fact that we still have 30 Areas of Concern that have not been remediated. I am wondering if you could, Mr. Grumbles, clue me in as to why it is taking so long.

I think we have cleaned up one site, Oswego, and yet there are 29 others or 30 others remaining.

Mr. GRUMBLES. A priority for us, a goal for us is working with all our partners to clean up those sites, but I am going to turn to Gary Gulezian as the Director with the most knowledge on the specifics of that, Congressman.

Mr. KAGEN. Thank you.

Mr. GULEZIAN. The biggest barrier to cleaning up the Areas of Concern is cleaning up contaminated sediments. The only area that we have delisted is the Oswego area, and the Oswego area was the only area where we don't have a contaminated sediment problem.

These problems are complex. They are expensive to deal with. Even once you get the contaminated sediments cleaned up, before we can redesignate the areas, we have to see the beneficial uses come back. For example, we need to have healthy fish and wildlife populations there amongst other things before we could delist an area, but the primary barrier is cleaning up contaminated sediments.

Mr. KAGEN. Is there a ranking order of locations that you are going to take on? Is there a certain order in which you are attacking these and, if so, where does the Menomonee River and Fox River stand on your list?

Mr. GULEZIAN. We are trying to take on all of them at once with all of the authorities that are available. The work that we are doing at the Areas of Concern is work that is shared by the local communities, the States and the Federal Government and, within the Federal Government, there are a number of programs that can be brought to bear.

For example, at the Fox River, the approach that we are using is the Superfund law. As you know, that has been progressing. It is going to be a very, very significant cleanup there, and we are really looking forward to that one moving forward.

We had been working in the Menomonee area with the local committee that is working at the Area of Concern to define the problem and to define the needs for cleanup there, and we have similar activities going on at each and every one of the 30 Areas of Concern across the Great Lakes.

Mr. KAGEN. On a related matter, the Brownfields program has a relatively high number of applications that are ready to go. They are on the shelf. Is there a hang-up there?

Is it the funding? Is it appropriations?

Mr. GRUMBLES. In terms of prioritizations, again, as Mr. Gulezian mentioned, for us on the Areas of Concern, we follow the statute which lays out remediation of contaminated sediment and then goes through a variety of specific factors in the statute itself about innovative technologies and other approaches.

When it comes to the Brownfields program, Congressman, I would say the best thing to do is for us to commit to get back to

you with our folks back at the agency who really have more knowledge of the Brownfields program than we do.

But, Congressman, just like the Brownfields program, the contaminated sediments program under the Legacy Act as well as the proposed legislation on Good Samaritan cleanups at hard rock mines, which is something we hope the Committee will act on, are three examples of environmental progress by taking innovative, collaborative approaches.

In terms of the prioritizations, we think it is an important role for Congress. In the Legacy Act, they laid it out, and we will work with our partners.

A key part of that is finding projects where there is the local community support which is often reflected in their ability to provide a cost share, but it is more than that. It is having the buy-in from the community. That is why we feel the Legacy Act and the Brownfields program and those Good Samaritan cleanups are all very positive and promising programs for environmental restoration.

Mr. KAGEN. Thank you for your answers.

I ask that my opening statement, which I was unable to deliver, could be placed into the record.

I yield back.

Ms. JOHNSON. No objection; all opening statements can be placed in the record

Mrs. Miller.

Mrs. MILLER. Thank you very much, Madam Chair.

I certainly look forward to working with all of my colleagues on both sides of the aisle to make sure that we do reauthorize and hopefully appropriate $150 million for this, this year. I think it is critically important.

I am going to follow up a little bit. Mr. Kagen was asking about some of the sites in his district, and I would also like to, just trying to get a handle on where all of these are and how you have prioritized the various sites.

I know in my neck of the woods the St. Clair River and the Clinton River, the Saginaw Bay, the Saginaw River are all AOCs. I am just wondering. I don't think they are in the nine sites that you talked about, Mr. Grumbles, but does anyone have any information on where they may fall and if you are not having much success because of the lack of match available or what is happening there?

Mr. GRUMBLES. Gary, do you want to?

I know we are going to want to commit to you to get back with you with far more specific information on this, but if you want to add on.

Mrs. MILLER. Okay.

Mr. GULEZIAN. No. We can get back to you with specifics on those sites

Mrs. MILLER. Okay. I appreciate that. I am, obviously, very interested in that and want to assist in any way that I can to be a conduit to assist with that.

Mr. Grumbles, you mentioned about how sedimentation remediation needs to be accelerated, and I certainly do agree with that. I think we all agree with that.

Hopefully, we have enough places to put all of the sedimentation as we are remediating. I just raise that, not to get too much in the weeds on this, but as I mentioned the Clinton River. The Confined Disposal Facility for the Clinton River, the CDF for the Clinton River, because of dredging that has occurred and we have been all earmarking to get dredging projects because of the historic low water levels, et cetera.

The dredging that is going to occur on the Clinton River this year will essentially fill, as I understand it from the Corps of Engineers, our district director there, fill the CDF for the Clinton River. So I am just wondering how.

The EPA and the Corps of Engineers, are they working with the States to identify disposal facilities if we do get all of these funds and then we have nowhere to put this? How is that all working?

Mr. GRUMBLES. I am going to ask Gary Gulezian to respond to that.

I know from my own observation so far, over the last five or six years since the Legacy Act or since 2004 when congressional funding began to be provided, and I can tell you that we have been working with the Corps closely on that issue of Confined Disposal Facilities and capacity for remediation. I know it is an issue that is going to depend on the site.

Mrs. MILLER. I appreciate that, and I did want to raise that because that is one that I happen to be familiar with because it is literally in my back yard, but there may be other areas like that. So we do need to be, I think, working cooperatively to recognize this if we are going to increase the funding.

You can get back to me on that as well.

Mr. GRUMBLES. Okay.

Mrs. MILLER. Let me go on to my next question since I don't have too much time here.

We have talked today about the cost share. It is no secret that the State of Michigan is facing unbelievable economic challenges. The Lieutenant Governor mentioned about the Clean Michigan bond which passed overwhelmingly in Michigan.

I am not even sure how much money we have left there. I know there is a phased-in area as the drawdown on some of the funding. I am not sure how much we have left in that, but I do know that it is difficult, obviously, for the State and the local municipalities, counties, what have you to come up with a cost share.

We saw this most recently with the water quality monitoring system, actually. This Committee had a field hearing, I mentioned, in Port Huron in my district last week, and we talked about the initial expense of the water quality monitoring system where we were able to get Federal earmarks.

We split it between two counties pretty equally. That was a 60-40 match that the counties themselves matched. There has been money for maintenance, some of which was vetoed by the State, but I think was put back in.

Everybody is concerned about the money, obviously. I just wonder if anyone has a comment about the appropriateness of the percentage of the match here. Is there some feeling that perhaps the Federal Government should take a look at this again?

In the State of Michigan, whatever we clean up is not just advantaging us. It is advantaging the entire Great Lakes Basin. We don't want to not be able to have a dime to make a buck. So I am not sure. Perhaps we should look at the formula.

Lieutenant Governor CHERRY. Congresswoman, that is a good question. I mean the Great Lakes Commission, which represents the region, is suggesting that the match be dropped so that in fact we can stimulate more cleanups.

You are right about the economic difficulties, budget-wise, to find the extra dollars. In spite of that, we should understand as well that throughout the Great Lakes Region and the St. Lawrence that local and State Government and provincial government have spent $15 billion a year on Great Lakes remediation. So there is clearly a will to engage here.

I believe that if, for instance, there is more money available in the form of an annual authorization or appropriation, people will think of innovative ways to get there, such as the bond proposal that we used. We have about 25 million left, I believe, and we are contemplating renewal. So we understand that the Great Lakes issues of remediation are a long-term effort and that we need to be in position to engage in the long term.

I think what ultimately we all need to do—local, State and Federal Government—is step up because it is an enormous problem. It is an important issue.

These are problems that emerged in the time of industrialization, and much of it is the result of the Great Lakes Region being an economic engine for the Nation and an arsenal of democracy for the Country. And so, these are problems we all created, and we all need to remediate.

We believe that you need additional money but also the match should drop.

Mrs. MILLER. Lieutenant Governor, has the Commission actually advanced a recommendation, a percentage of what they would like to see the match drop to?

Lieutenant Governor CHERRY. Twenty-five percent.

Mrs. MILLER. To 25, 75-25?

Lieutenant Governor CHERRY. Yes, correct.

Mrs. MILLER. Okay.

Mr. GRUMBLES. Congresswoman, I know that time is short, but I just wanted to add. Almost it is a statement of the obvious, but there is also intense competition in the Federal appropriations process. The importance of having a cost share that helps to stretch the Federal dollar as far as possible is important. So we look forward to having further discussions with the authorizing Committees as well as the appropriations Committees.

I think that one very important aspect of the whole debate is to ensure that more information is made available of the State and local economic benefits of cleanup. The more communities, the more all of us see the value of cleanup and how it stimulates economic benefits, that can help bring more parties to the table to help meet the 65-35 share.

There is some degree of flexibility in our regulation, but essentially we are operating off of the statutory framework that you and

others have been involved in. So we look forward to further discussions with you and other Members on that issue.

Mrs. MILLER. Yes, I appreciate that. I think everybody does recognize the economic advantages of the cleanup of the Great Lakes.

I guess I am somewhat embarrassed to still see the huge amounts of combined sewer overflows going into the Great Lakes. On the other hand, the cost to the locals to right-size the inadequate underground infrastructure is mindboggling. By some estimates, in southeast Michigan alone, $54 billion just to fix what we have which is not particularly inherent to Detroit. All the old industrial cities are dealing with that kind of thing.

There is enormous need, that is for sure, and never enough resources.

I know my time is expired. Thanks very much, Madam Chair.

Ms. JOHNSON. Thank you very much.

Are there any other questions?

Then we will thank the first panel and appreciate your coming for testimony.

We welcome the second panel: Mr. Cameron Davis, President and CEO of the Alliance for the Great Lakes of Chicago, Illinois; Ms. Emily Green, Director of the Great Lakes Program, Sierra Club, Madison, Wisconsin; and Mr. George Kuper, President of the Council of Great Lakes Industries, Ann Arbor, Michigan.

Mr. Davis, you can begin your testimony.

TESTIMONY OF CAMERON DAVIS, PRESIDENT AND CEO, ALLIANCE FOR THE GREAT LAKES; EMILY GREEN, DIRECTOR, GREAT LAKES PROGRAM, SIERRA CLUB; AND GEORGE H. KUPER, PRESIDENT, COUNCIL OF GREAT LAKES INDUSTRIES

Mr. DAVIS. Well, good morning and thank you, Chairwoman Johnson and Ranking Member Boozman and Members of the Subcommittee.

I am Cameron Davis, President and CEO of the Alliance for the Great Lakes. We are the oldest citizens Great Lakes organization in either the U.S. or Canada.

I am also representing the Healing Our Waters-Great Lakes Coalition as one of their co-chairs, representing roughly 100 or more organizations from around the Great Lakes Basin who are vitally concerned about this issue.

With 90 to 95 percent of the Nation's fresh surface water, the Great Lakes could cover the United States in roughly nine to nine and a half feet of water, the continental United States, but their size belies their fragility.

Because they are relatively closed ecosystems, they do not flush like rivers. What goes in, tends to stay in. That is true of legacy pollutants, persistent toxins that remain at the bottom of industrial harbors which are a legacy of the Midwest's past.

The result of this is contamination that can continue to circulate through the food chain from fish to people especially children, women and other sensitive populations. The contamination can also suppress property values as we heard before.

Since more than 30 toxic hot spots were listed on the cleanup list of Areas of Concern more than 20 years ago, only 1 has been re-

moved from the list. The longer we wait to remediate these Areas of Concern, the more expensive cleanups get and the more they threaten the health of our children and families. Simply put, it is time to act.

We consider revitalizing our Nation's waters through the Clean Water Restoration Act, combating invasive species and other efforts to be important in addition to reauthorizing the Great Lakes Legacy Act which has, as was mentioned before, a proud history of bipartisan and multi-stakeholder support. Reauthorizing this Act will help greatly.

Since Congressman Oberstar and Congressman Ehlers introduced the first generation of the Act several years ago, the Legacy Act has been extraordinarily helpful. But several years of experience under the first generation of the Legacy Act shows that there are ways we can get more mileage out of the law.

Several years ago, roughly 1,500 stakeholders from around the region including agency officials, elected officials, NGO representatives and businesses put together this plan of attack for helping to clean up and restore the Great Lakes. One of the series of recommendations that came out of this Great Lakes restoration collaboration strategy was that we do want to see the Act boosted in terms of its authorization.

We want funds to go for aquatic habitat restoration. It is not enough to just clean the contaminants out. We need to make sure that these Areas of Concern are fully restored with habitat so that they function again.

We want to see public information and education be part of the funding effort as well. Research shows that when there are coordinated, proactive public education efforts that precede cleanups, those cleanups can be facilitated and accelerated, which I know is our goal through much of the reauthorization of the Legacy Act.

Enhancing matching opportunities by allowing potentially responsible parties to contribute and dropping the non-Federal cost share to 25 percent, which we heard a great deal about earlier from the first panel.

Focusing on sediment cleanups is a top priority. It is incredibly important. Removing the maintenance of effort requirements, eliminating the need for exclusive Federal agency project implementation so that contractors can execute cleanups with agency oversight and extending the life of Legacy Act funds beyond two years which, as we also heard today, is a time frame that is difficult for many of these complex cleanups to meet.

In conclusion, we urge you to act quickly to pass the next generation of the Great Lakes Legacy Act to address these recommendations.

Thank you for your efforts so that we can ensure that we leave a legacy of health for our families in the future, not a legacy of pollution.

Ms. JOHNSON. Thank you very much, Mr. Davis.

Ms. Emily Green.

Ms. GREEN. Good morning, Madam Chair and Members of the Subcommittee. Thank you very much for giving me the opportunity to speak with you today.

The Sierra Club is the Nation's oldest and largest grassroots environmental organization with over 1.5 million members and supporters nationwide.

I am here in Washington today to ask for your help in addressing the toxic pollution in the Great Lakes.

Thanks to the leadership of Congressman Ehlers, this Committee and others, the Great Lakes Legacy Act of 2002 has been an extraordinarily successful program that has allowed us to clean up toxic sites despite being under-funded.

I am here to ask you to pass legislation reauthorizing the program this year, increasing the authorized funding level and making some minor policy changes to increase its effectiveness. Reauthorizing this program is one of the major recommendations of the Great Lakes Regional Collaboration Strategy which, as you have heard, is a comprehensive blueprint for the long-term restoration and protection of the Great Lakes.

It is critically important that this legislation move this year to avoid gaps in the implementation of the program and to allow us to more effectively address one of the worst problems that our region faces. The longer we wait, the more difficult and expensive this problem will be to solve.

As you noted in your introduction, Chairwoman Johnson, contaminated sediments in the Great Lakes are linked to numerous and very well documented human health and ecological impacts as well as economic impacts. Really, it doesn't have to be this way.

We know how to clean up these sites, and we can gain much by doing so. A recent Brookings Institution study found that cleaning up toxic pollution in the Great Lakes will directly raise property values by 12 to 19 billion dollars. We simply need the funding and the political will to act.

Before the Great Lakes Legacy Act was passed in 2002, we attempted to clean up these sites through a variety of programs, most of which were designed for other purposes and none of which were adequately funded. This approach, in short, did not work.

In 2005, the U.S. Policy Committee for the Great Lakes identified 75 remaining contaminated sediment sites in U.S. Areas of Concern.

I believe that reauthorizing, expanding and, most importantly, funding the Great Lakes Legacy Act is the single most effective and important thing we can do to advance the cleanup of these sites.

The program has arguably been the most effective contaminated sediment cleanup tool that we have had to date, even though it has been chronically under-funded and some of its provisions have created unintended obstacles to cleanup. Despite its limited funding, it has removed almost two million pounds of toxic contaminants to date and has completed cleanups that otherwise languished for years.

As I noted previously, reauthorizing the Act is also a top recommendation of the Great Lakes Regional Collaboration Strategy. The strategy, as you probably know, contains a number of recommendations that are important to the Great Lakes, and we are implementing those recommendations in stages.

For 2008, our top legislative priorities are to reauthorize the Great Lakes Legacy Act, pass legislation that prevents the introduction of aquatic invasive species and pass the Clean Water Restoration Act. We appreciate the Committee's interest in all of these issues.

The recommendations to expand and reauthorize the Legacy Act are the product of a strong collaboration of industry, environmental organizations, agency staff and scientists. We are all in agreement on these recommendations. We all believe that Congress should reauthorize the Legacy Act this year and make the policy changes that have been discussed by both of my colleagues here today.

In summary, and I am happy to talk about these in more detail in questions, these would be:

To increase the authorization level to $150 million per year;

Add a habitat restoration component;

Clarify the intent of the Act to allow potentially responsible parties to contribute to the non-Federal share;

Ensure support for public education and outreach as part of the cleanup process;

Remove the maintenance of effort requirements;

Allow the disbursal of Legacy Act funds to non-Federal contractors;

Reduce the local cost share to 25 percent; and,

Extend the life of Legacy Act funds beyond two years.

In our view, these improvements are essential to cleaning up these sites in the Great Lakes.

In closing, I urge you to reauthorize and expand the Great Lakes Legacy Act this year and to build support for the full appropriation of funds. This is one of the most important things that Congress can do to this year to implement the Great Lakes Regional Collaboration Strategy and to protect the irreplaceable treasure that is the Great Lakes now and into the future.

Thank you very much for your time and for inviting me to speak to you today.

Ms. JOHNSON. Thank you very much, Ms. Green.

Mr. Kuper.

Mr. KUPER. Good morning, Madam Chair, Members of the Subcommittee. Thank you very much.

My name is George Kuper. I represent three dozen large Canadian and U.S. companies focused on sustainable development policies in the Great Lakes Basin, and it is a privilege to be here.

We are here in the spirit of an old industrial operating principle, namely that of continuous improvement. Industry has really appreciated the opportunity to work with U.S. EPA Region 5 and other stakeholders such as those sitting on my right in the region, both on the specific projects that you have heard about and those that are in the pipeline; but also on identifying ways to improve the Great Lakes Legacy Act itself with the consistent and overriding objective of reducing contamination to the Great Lakes from contaminated sediments.

To that end, I would like to emphasize five improvements among the ten that we are here collectively representing that are more detailed in my submitted testimony.

The first is the eligibility criteria for non-Federal match. The original intent, which was clearly expressed in the statute, was to allow Potentially Responsible Parties, PRPs, to participate in the non-Federal share. The implementation policy that has been pursued has severely curtailed the ability of PRPs to participate.

Our recommendation is that you affirm that PRPs are eligible to participate, using the added value criteria proposed by the Great Lakes Regional Collaboration.

Secondly, pilot and demonstration projects: Innovative pilot or demonstration projects that could lead to more effective or efficient remediation techniques for contaminated sediment are not now being funded because of the perception that these are "research," not projects, and no research funds have been appropriated.

Our suggestion is that you give discretion to program administrators to fund pilot or demonstration projects as projects, not research.

Thirdly, the pick and stick rule, a wonderful name for an old rule administered by the OMB: Pick and stick prevents using two Federal sources of funding on the same project at the same time. It is raised as a barrier to using Great Lakes Legacy Act funds at Superfund sites even where little progress is being made under Superfund due to the lack of viable PRPs.

We think the application of the pick and stick rule yields counterproductive results, precluding or significantly delaying cleanups. This 1800s rule does provide an option for co-funding as long as there is express statutory authority to do so.

Our recommendation is that you need to remove the application of the pick and stick to Great Lakes Legacy Act projects in the reauthorizing legislation.

A couple of administrative improvements, seemingly small but important, that you have heard others mention:

Maintenance of effort requirements, inappropriate because sediment cleanup costs often vary widely year to year and excellent projects are being disqualified because larger expenditures happen to occur in a previous year. Attempts to work around the maintenance of effort requirements may force delays or detrimental changes to proposed remedial projects.

Our recommendation is the maintenance of effort requirement should be removed from the legislation.

Lastly, project implementation, currently the Great Lakes Legacy Act requires exclusive Federal agency project implementation which precludes disbursal of funds to other entities. This is inefficient. It is really inefficient to have multiple contractors onsite because of the limitations of disbursal funds.

Disbursal to non-Federal contractors is allowed under the Water Resources Development Act, and the proposed fix utilized the WRDA approach. Our recommendation is that you should allow disbursal of funds to other entities.

In conclusion, our recommendation are, obviously, that you reauthorize the Great Lakes Legacy Act and do so in a timely fashion so there is no interruption of the program and do so for five years at $154 million per year. That is $150 million for projects, $3 million for research and $1 million for public information and participation programs.

We hope that you will take the opportunity in this reauthorization to correct the inefficiencies and issues with implementation of the Great Lakes Legacy Act.

Thank you for your time and attention to this important program.

Ms. JOHNSON. Thank you very much for your testimony.

We will begin the first round of questioning now.

I would like each of you to comment on this question. There has not really been that much accomplishment in attempting to clean these hazardous areas, the waste sites, and I would like you to give me your opinion of the reason for this.

Is it money? Is it structural changes that are needed in the law or should EPA implementation of the law be improved? Tell me what you think the handicaps might be.

Mr. DAVIS. Thank you, Chairwoman Johnson.

I do think that whether or not much has been accomplished is relative. We have a lot of work that has been done under the Legacy Act that otherwise wouldn't have been done, which I think is very commendable.

That being said, we still have a long, long way to go. It is a little bit like climbing a mountain and seeing that you have a long way to go and not really appreciating where you have been. So we do have a long way to go on that.

Why? Why do we have so much further to go? Why haven't we made as progress? I do think funding is a key piece of that answer.

Many of the Great Lakes States are struggling. You heard from Lieutenant Governor Cherry earlier today that Michigan has the Clean Michigan Initiative. Many of the other States don't have that kind of bonding for these kinds of purposes.

So while that has put Michigan in a decent position, many of the other States have not had the luxury of matches to be able to reach that 35 percent. I do think that that is one thing that could be addressed.

You mentioned the structure of the Act. Certainly, we think that many of the recommendations that we have made today will help accelerate the pace of these cleanups.

I do know this: Since the list was created, it is unacceptable that we continue to make as little progress as we have. We have done some good work. We need to speed that pace up.

Ms. JOHNSON. Thank you very much.

Ms. Green?

Ms. GREEN. Thanks for asking that question.

I think I would agree with Cameron that we actually have made some good progress, and I take sites like Ruddiman Creek as an example of a site that sat for years, and the local community had advocated for years and years and years for something to be done about this. The Legacy Act came along, and finally it is cleaned up, and lake salmon are now back in that creek.

But why not faster? I would love it to see it go faster. I think there are three things, and I think it is really all of the things you mentioned.

It is the lack of funding. The Act has been consistently underfunded, under-appropriated since it was started.

The cost share, I think, is an issue in some sites, and it is hard to pinpoint because what you have is with the 35 percent cost share you likely have communities that don't even apply for Great Lakes Legacy Act funds because they can't raise that cost share. So it becomes an unnecessary barrier to application.

At least in the case of orphan sites, we ought to look at reducing that cost share.

Then the administrative changes that you have heard all of us bringing up. Some of them small and I think were really not intended to be barriers like the maintenance of effort provision and the disbursal of funds to non-Federal contractors, but together they have really kept a number of sites from flowing through the process.

I think if we could tackle those as part of the reauthorization, it would help make this Act and program more efficient.

Ms. JOHNSON. Thank you very much.

Mr. Kuper?

Mr. KUPER. Madam Chair, there are probably eight or ten points that I would try to summarize for you.

First is the eligibility of Potentially Responsible Parties. Were they able to participate in the cost share portion, you would have more projects.

Use of project funds for pilot or demonstration projects: There have been several demonstration projects proposed that have not been accepted by the program administrator.

The problem created by the pick and stick rule needs to be fixed so that we can spend Great Lakes Legacy Act money at Superfund sites.

We need to drop the maintenance of effort requirements. That clearly has been a barrier to projects.

We need to eliminate the current limitation that requires exclusive Federal agency project implementation. We need to have everybody in that project that can possibly make a difference.

And, we need to use Legacy Act funds for the restoration of habitat. We ought to be prioritizing those funds for remedial projects.

We ought to have a public participation program to make sure the public information that is getting out about these projects is in the spirit of the Act and the objectives we are all trying to work on.

As Emily Green said, we need to have cost share that is more affordable, and we need more money in the program.

Ms. JOHNSON. Thank you very much.

Mr. Boozman.

Mr. BOOZMAN. Thank you.

I guess one of the things I don't quite understand is you just mentioned that we need more money in the program, but I don't understand, if you reduce the cost share significantly, how that gets more money in the program.

Ms. GREEN. Well, I think we are talking about expanding the authorization pretty significantly to $150 million a year. So, despite a slight reduction in the cost share, there is still going to be more money to go around.

Mr. BOOZMAN. But if we did that, though. I mean ideally we would like to get as much Federal money as we can into the program. I am very supportive of that.

As Mr. Grumbles said earlier, we have this problem, and we have many other problems that you all are dealing with as you mentioned earlier. The reality is there is a finite amount of money.

If we get as much Federal as we can in there and with an authorization of $150 million when we have steadily crept up, I think, from $9 million to $35 million, and maybe we will get a little bit more this go-round. But the reality is unless you do an awful lot of legwork with the appropriators, it is not going to happen.

I think the danger is you get a significant increase in authorization, you don't get a whole lot more money appropriated, you have a decrease in the cost share, and then you are not going to see a significant increase in your dollars. Does that make sense?

Ms. GREEN. Absolutely.

Mr. BOOZMAN. That is the scenario that I see happening with this.

Mr. KUPER. I understand the principle. The problem is we are trying to lower the barriers to getting projects up and underway, and it is clear that the local cost share is one of those barriers. So, to the extent that we would have more projects in the pipeline appealing for those Federal funds, it would hopefully make the appropriators more aware of what is possible with the Federal dollars.

Does that make sense?

Mr. BOOZMAN. I understand, but again I think the scenario that I just said is more realistic in the sense that you raise the appropriation, you lower the cost share, some more dollars hopefully. Again, I am very supportive of that.

But the reality is, as Mr. Grumbles said, who is I think on your side and trying to get as much money pushed in that direction as possible, you have a problem. You have less cost share, you have some more dollars, but I don't see how that really helps you a whole bunch.

The other thing is you mentioned increasing or actually diverting some money to habitat. What percentage would you divert?

We have cleanup money now. If we did habitat money, what percentage would you see going to habitat?

Mr. DAVIS. I guess I will take a shot at that, Congressman Boozman.

I don't know that we need to slate a percentage.

What I would do is think of this more in terms of prioritization. First prioritization, get these contaminated sediment sites cleaned up. Get the pollutants out.

To the extent that there is money left over, then look at helping to rebuild these aquatic habitats so that these sites function, so that the river fronts and harbor fronts can again be gathering places for these communities, so that fishing can help boost the local economies. In many instances, these are places that have been hit hard for decades as a result of this contamination.

So I would think that more in terms of a prioritization scheme than slicing up a pie with various percentages that way.

Mr. BOOZMAN. Okay. Again, I would agree that the priority needs to be the cleanup.

Again, politically, you have to think through this in a sense that what you don't want is communities that have powerful people that happen to be in Congress pushing habitat over the other. Those are the political realities that we deal with.

So I would agree. I think cleanup is the major thing.

Ms. Green, you mentioned an ecological tipping point with the Great Lakes. Could you comment and tell me what you mean by that, kind of your reasoning behind that?

Ms. GREEN. Sure. Recently, sort of a collection of scientists around the Great Lakes were just looking at the huge number and variety of stressors on the ecosystem as a whole and released a report that suggested that the impact of all these stressors was pushing the ecosystem towards what they call a tipping point, towards the point at which it would no longer be able to respond to additional stressors. It would change permanently beyond the point of repair so that even if we made changes to kind of enhance restoration, clean up some of these sites, the ecosystem wouldn't respond.

That poses a real threat in my mind because it would change the way that all of us are able to use and interact with the Great Lakes, whether it is for recreation or industry or drinking water, whatever it is.

So I think it puts the onus on us to act quickly to sort of address some of these issues and increase the ecosystem's resiliency, its adaptability to stressors including climate change, by the way, which is going to have some sort of impact, before it is too late.

Mr. BOOZMAN. Very good.

You mentioned pilot projects which, again, makes sense if you can do things more expeditiously, less expense. Do you have any specific things that you are thinking about in that regard?

Mr. KUPER. There have been several that have been proposed. I would like the opportunity to tell you about them from an expert rather than myself. So I will get back to you with that.

Mr. BOOZMAN. That would be fine. If you could respond to that, that would be very helpful.

Again, if we could come up with things that are more expeditious, I think we have certainly allocation in that way in the Highway Bill and some other things that has precedence.

I want to compliment all of you. In reading your testimony, you seem to be working very, very together which is so important and really are a model. I wish that we could duplicate your united front with a lot of other things that we deal with. So thank you very much. I appreciate your testimony.

I yield back, Madam Chair.

Ms. JOHNSON. Thank you, Mr. Boozman.

Dr. Kagen.

Mr. KAGEN. Thank you, Madam Chairman, and thanks for bringing up, Ranking Member Boozman, the idea of a united front. I like that idea across the aisle as well.

Emily Green, thank you for being here. Thank you for your work with the Sierra Club, and I appreciate all of your testimony and the work you have done over the past number of years.

In case someone is watching back home, you didn't change your last name to Green because of your belief in a green economy, did you?

Ms. GREEN. I did not.

Mr. KAGEN. Can you be any more specific with regard to habitat restoration money, if any, with regard to the Legacy Act?

Ms. GREEN. Sure. What we were really thinking about there, and this gets a little bit to your question as well, is limiting the type of habitat restoration work we would do to actually just restoration at the site of cleanup. So it is a relatively small expenditure compared to the price of cleaning up a contaminated sediment site, but it is what it would take to return the cleaned up site back to a functioning habitat.

For example, in the case of Ruddiman Creek, and this was actually done by the local community, they replanted the creek bank with native grasses and plants and vegetation and got it back to a wetlands state which is what it was before it was dredged.

Mr. KAGEN. So you would like funding to be ramped up sufficiently to cover the complete restoration of the toxic site.

Ms. GREEN. That is correct.

Mr. KAGEN. Or Area of Concern, as we call it.

Ms. GREEN. That is correct.

Mr. KAGEN. Okay, so that is where that stands.

Mr. Kuper, I want to thank you for delineating very nicely the different definitions or redefinitions of pick and stick and research.

You know whenever a physician takes care of a patient, it is really research. You are getting a prescription, and it might or might not work. It might have some toxic effects. You could call that research, and it might not be covered by your insurance carrier.

In much the same way, a pilot project. Have you got any pilot projects in mind?

Mr. KUPER. As I responded earlier, the answer is yes, but I would like the opportunity to supply those to you subsequently because there are a lot of people involved in generating these pilot projects.

Mr. KAGEN. Right. You also highlighted the problem at the level of the toxic site where the local community might have some speed bumps or resistance to joining and applying for a program. If I heard you correctly, you really want everyone to be able to apply for this funding, is that correct, including the responsible parties?

Mr. KUPER. That is correct, yes.

Mr. KAGEN. Is there any reason not to include them? Aren't we really rewarding them for their bad behavior?

Mr. KUPER. This is not to replace their obligations. This is in addition to their obligations.

Mr. KAGEN. So you are focusing on the Area of Concern, on the environment itself and not those who may have caused the problem.

Mr. KUPER. Correct.

Mr. KAGEN. Okay. In terms of local cost-sharing components, how does that factor into a community? Can you give me a specific example?

Mr. DAVIS. I am not sure I understand the question.

Mr. KAGEN. Well, if the local community has to do cost sharing, can you give me an example where a community may not have applied for the money?

Mr. DAVIS. I think we heard from Gary Gulezian earlier today that while that has not been a barrier up until right now, there is some anticipation that in the future that we could see sites that are not able to apply because of that cost share problem.

Mr. KUPER. Congressman, the problem with the answer to your question, which is an excellent question, is that we don't know about a lot of the applications that don't become applications.

Mr. KAGEN. You can't measure what you don't see.

Mr. KUPER. A negative, correct.

Mr. KAGEN. You can't manage what you can't measure. Is that about it?

Mr. DAVIS. That is correct.

We have heard anecdotally that Buffalo may fall into the kind of scenario that you are talking about, Dr. Kagen, where the cost share may be a speed bump.

Mr. KAGEN. Can you educate me about the participation or non-participation of non-Federal contractors?

Mr. KUPER. A tough issue, it is a matter of whether or not you can spend money with an expert who may not be a Federal contractor on the same site that Federal contractors are working, and the answer is you can't under the current way the program is administered. It ought to be fixed.

Ms. GREEN. So, say you have a dredge in the water that is being paid for by, say, the State of Minnesota under some other authority and there is a little bit of extra part of the site that could be part of the Legacy Act orphan share, you can't, right now, pay that contractor to do the cleanup. You have to bring in your own federally-funded dredge. It is inefficient, wasteful.

Mr. KAGEN. I understand. So, if it makes sense, it might not be happening. We should change the legislation so that it makes sense.

In the area in which I am familiar with in terms of research projects with NIH or any other kind of funding, it is not uncommon to get funding from a number of different grantors to study the problem of cancer of asthma or any number of other problems. It is the question of commingling of the funds and making sure there is an accurate accounting of the money that Congress, I think, is most interested in.

I want to thank you for your testimony.

I yield back my time.

Ms. JOHNSON. Thank you very much.

With no other questions, we will consider the hearing finished, and we thank you very much for being here to testify.

Mr. DAVIS. Thank you, Chairwoman.

Ms. GREEN. Thank you.

Mr. KUPER. Thank you for the opportunity.

Ms. JOHNSON. The Committee is adjourned.

[Whereupon, at 11:47 a.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-3)
HOUSE TRANSPORTATION AND INFRASTRUCUTRE COMMITTEE
WATER RESOURCES AND ENVIRONMNET SUBCOMMITTEE

Hearing on
Reauthorization of the Great Lakes Legacy Act
Wednesday, May 21, 2008 2167 RHOB

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Chairwoman Johnson and Ranking Member Boozman, thank you for holding this hearing on the reauthorization of the Great Lakes Legacy Act.

The sustainability of the Great Lakes is critical to the surrounding states and provinces. The Great Lakes Legacy Act started the process of cleaning up areas of contaminated sediment in the Great Lakes region. This clean up reduces health risks to the surrounding communities and lessens ecosystem degradation. The reauthorization of the Great Lakes Legacy Act gives us the opportunity to make improvements to this program so that the many Superfund sites can be adequately cleaned up.

In addition to aiding the cleanup of the Great Lakes, the reauthorization of the Great Lakes Legacy Act will continue to create and promote water quality across the nation. This Act will allow us to improve our ability to manage cleanups and to advance clean treatment and disposal. These benefits will not only continue to improve the quality of the Great Lakes but will be an example for further environmental endeavors.

In closing, I would like to thank our witnesses for joining us today and I look forward to hearing their testimony.

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STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON REAUTHORIZATION OF THE GREAT LAKES LEGACY ACT
MAY 21, 2008

Thank you, Madame Chairwoman, for holding this hearing on Reauthorization of the Great Lakes Legacy Act.

Madame Chairwoman, this Subcommittee has a long history of oversight on the ecological and environmental health of the Great Lakes. Over the past three decades, the Subcommittee has held numerous hearings on this issue, and has investigated and proposed legislation to address Great Lakes water quality impairment, contaminated sediments, and a wide variety of sources of pollution to the Lakes.

As a life-long resident of a Great Lakes state, I am well aware of the importance of these vital natural resources to the economic health and well being of our state. Whether as a source of drinking water for our largest cities, a major transportation

corridor for the movement of goods and services, or as a center for recreation, the Great Lakes are integral to the regional economies and livelihood of those states that line their shores.

I am pleased we continue to examine and explore these issues as there are significant policy and funding challenges that remain in this nation's efforts to restore and protect the Great Lakes. I welcome the witnesses here today, and look forward to their testimony.

Steve Kagen

OPENING STATEMENT
Congressman Steve Kagen

TRANSPORTATION & INFRASTRUTURE SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT
"Great Lakes Legacy Act Reauthorization"
Wednesday, May 21, 2008

Thank you Chairwoman Johnson and Ranking Member Boozman for holding this important hearing on the reauthorization of the Great Lakes Legacy Act. I would also like to thank all the members of the panels for appearing before the Water Resources and Environment Subcommittee. In particular, I would like to welcome Emily Green, who serves as the Director of the Great Lakes Program for the Sierra Club in Madison, Wisconsin.

Reauthorization of the Great Lakes Legacy Act would provide funding to remove toxic sediments from Great Lakes Areas of Concern (AOC), including the Menominee River, which forms the boundary between northeast corner of Wisconsin and the southern tip of the Upper Peninsula of Michigan. In the Menominee River System, toxic sediment has lead to a degradation of fish and wildlife populations and habitat, threatened recreational activities and human health, and other detrimental impacts.

Additionally, this legislation would allocate appropriations for the remediation of contaminated sediment in the Lower Fox River and Green Bay AOC, which has resulted in the elimination of fish and wildlife populations, beach closures, and restrictions on dredging activities.

As a key component to the region's delicate ecosystem, northeast Wisconsin's harbors, rivers and tributaries are extremely important to our economic and environmental well-being. With the Great Lakes Legacy Act scheduled to expire at the end of September this year, it is critical that Congress take action now to ensure that these precious resources will continue to be enjoyed by future generations.

I look forward to working collaboratively with my colleagues on the Committee to make certain that the annual authorization in the Great Lakes Legacy Act is increased to carry out projects that would remove contaminated sediment or prevent further contamination in the Great Lakes region.

Thank you Chairwoman Johnson and Ranking Member Boozman, and I yield back my time.

Harry E. Mitchell

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Water Resources and Environment
5/21/08

--Thank you Madam Chairwoman.

--When you live in Arizona, you learn pretty quickly to have a healthy respect for clean, fresh water.

--Our supplies are so limited, you simply have to.

--But I don't think you have to live in a desert to appreciate why the health of the Great Lakes is so important to all of us, even those of us who live so far from them.

--These 5 lakes contain more than 80 percent of North America's surface fresh water, and more than 20 percent of all that exists on earth.

--This is a precious resource, and unfortunately, it is under stress.

--And that is why today's hearing is so important.

--The Great Lakes Legacy Act has proven an important tool in addressing areas of environmental concern throughout the region. As we consider reauthorization, however, we need to examine what has worked well and what hasn't.

--I look forward to hearing from today's witnesses.

--I yield back.

Testimony Presented by the
Hon. John D. Cherry, Jr.
Lt. Governor, State of Michigan and
Chair, Great Lakes Commission

Before the
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
U.S. House of Representatives
May 21, 2008

Introduction

Madame Chairwoman Johnson, Ranking Member Baker, and members of the Subcommittee on Water Resources and Environment, I appreciate this opportunity to share the perspectives of the State of Michigan and the Great Lakes Commission on the Great Lakes Legacy Act. I am honored to serve both as Michigan's Lt. Governor and chair of the Great Lakes Commission. The Commission is a public agency established by the Great Lakes Basin Compact in 1955 to help its members – the eight Great Lakes states – speak with a unified voice and collectively fulfill their vision for a healthy, vibrant Great Lakes-St. Lawrence River region. To fulfill its mission, the Commission employs a multi-jurisdictional approach in the development of regional strategies to protect and maintain the ecological and economic health of the Great Lakes.

The Great Lakes: A Vital Resource for Our Region

Before addressing the Great Lakes Legacy Act, I want to emphasize that the Great Lakes are a unique and extraordinary natural resource for our region, and for the nation as a whole. More than 32 million Americans receive the benefits of the Great Lakes, including drinking water, food, recreation, commercial navigation, and water resources for industries and utilities. Highlights of benefits we enjoy from the Great Lakes include:

- Over $50 billion in economic activity generated from recreational activities such as boating, fishing, hunting and wildlife watching;
- $16 billion annually in sales from recreational boating alone;
- $4 billion annually from commercial and sport fishing;
- A diverse agriculture industry, representing approximately one-third of the land in the basin and supporting $40 billion in agricultural sales in the eight-state Great Lakes region;
- The world's longest deep-draft inland waterway that supports the movement of 200 million tons of cargo each year; and
- Unique resources that support rich biological diversity, including more than 130 rare species and ecosystems.

The Great Lakes have shaped the development of our region and will be integral to our future economic vitality and quality of life. As the economy of the Great Lakes region evolves, the Great Lakes will be more vital than ever in supplying the fresh water that is critically important to our region's economic well being, from producing essential raw materials, supporting transportation and energy needs and sustaining the amenities that attract highly trained workers and healthy communities.

Benefits from Implementing a Comprehensive Restoration Strategy for the Great Lakes

Public interest in restoring and protecting the Great Lakes is greater today than at perhaps any time in the past. Our renewed concern over the health of the Great Lakes has been fueled by threats from invasive species; bacterial contamination from sewer overflows and other sources; growing nonpoint source pollution; destruction of valuable fish and wildlife resources; and toxic pollutants—both from

historical sources as well as airborne toxics that continue to enter the Great Lakes from local and distant sources. Potential impacts from climate change and water withdrawals are additional, long-term challenges facing the Great Lakes region. In summary, there is a heightened sense of urgency in the region to address both existing and emerging threats to the Great Lakes.

Reflecting this sense of urgency, the Great Lakes region has united behind the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes. This comprehensive strategy was organized around a suite of priorities established by our region's governors to address key challenges facing the Great Lakes environment and economy. Following the governors' leadership, a May 2004 Presidential Executive Order recognized the Great Lakes as a "national treasure" and called for improved coordination of federal programs directed at the lakes. More than 1,500 federal, state and local officials and other stakeholders developed the restoration strategy, which outlines priority actions to protect and restore the Great Lakes. Since its release in December 2005, the Regional Collaboration strategy has become the blueprint for federal, state and local actions needed for the Great Lakes.

As we confront the cost of the strategy's recommendations, we should bear in mind the return on investment that will be gained from fully implementing them. In 2007 The Brookings Institution documented the value of economic benefits that would result from implementing the Regional Collaboration restoration strategy. The Brookings report estimated more than $50 billion in long-term benefits. Direct economic benefits from tourism, fishing and recreation alone are estimated at $6.5 billion to $11.8 billion. Cleaning up the Great Lakes Areas of Concern will increase coastal property values by $12 billion to $19 billion. This represents only a portion of the total long-term economic benefits projected by the Brookings Institution study.

Thus, as we consider reauthorizing the Great Lakes Legacy Act and advancing other programs directed at the Great Lakes, we should recognize the very real benefits these actions will have for our region and our nation as a whole. The Great Lakes are not just an environmental resource, but an economic engine for our region and our nation.

The Great Lakes Legacy Act: The Key to Cleaning Up Great Lakes "Toxic Hot Spots"

The Areas of Concern are the most heavily degraded areas of the Great Lakes. They were designated by the eight Great Lakes states pursuant to the 1987 amendments to the Great Lakes Water Quality Agreement. This designation stems from the areas suffering from one or more of 14 impairments to beneficial uses, such as restrictions on drinking water, beach closures, loss of fish and wildlife habitat, and restrictions on dredging activities. Since 1987 the states have played a leadership role in administering restoration efforts in the Areas of Concern, in collaboration with the U.S. Environmental Protection Agency, other federal agencies, and local public advisory councils. Progress in restoring the Areas of Concern has, admittedly, been slow. This reflects both the complicated array of environmental issues being addressed in the Areas of Concern, as well as the shortage of dedicated funding for costly remediation activities.

Cleaning up contaminated sediments is the most costly and technically complex challenge facing the Areas of Concern. Prior to the Great Lakes Legacy Act, most sediment cleanups were funded under the Superfund program and other federal enforcement programs. At best, the Superfund process is extremely slow, cumbersome, expensive and inefficient. The program also is woefully underfunded at the current time. In addition, the Superfund remedial program can only address sites that have been placed on the National Priorities List. Most contaminated sediment sites in the Great Lakes are

not included on this list. Finally, the Superfund process is not well suited for addressing contaminated sediments in aquatic settings, where contamination has accumulated over many years – if not decades – and is extremely difficult to isolate and trace to a single source or responsible party.

Despite these challenges, however, contaminated sediments are the key cause of environmental degradation in the Areas of Concern. They contribute to at least 11 of the 14 beneficial use impairments assessed in the Areas of Concern and nearly all the areas have contaminated sediments. Thus, addressing contaminated sediments has been, and must remain, a core element of our collective restoration effort for the Areas of Concern.

Passage of the Great Lakes Legacy Act in 2002 was a very important development in the history of the Areas of Concern program and the broader Great Lakes restoration effort. The Legacy Act has substantially strengthened our ability to restore the Areas of Concern by providing a dedicated funding source to address the most significant source of environmental degradation in the most highly degraded areas of the Great Lakes. It filled a significant gap in the Great Lakes restoration regime and resulted from concerted leadership from Congress, business and industry, and the environmental community to develop a more effective solution to contaminated sediments in the Great Lakes region.

The Act has proven to be highly successful in implementing contaminated sediment cleanups and has become a cornerstone of restoration efforts for the Areas of Concern. To date, five major cleanup projects and seven projects to monitor and evaluate contaminated sediments have been funded with a federal cost share of $55 million and nonfederal contributions of $45 million. Seven additional projects are under review with a projected federal cost share of approximately $85 million. In Michigan alone, the Legacy Act has facilitated the cleanup of approximately 250,000 cubic yards of contaminated sediments, using $20 million in Legacy Act funds and leveraging nearly $13 million from state and local sources. Michigan also has used Legacy Act funds to support remedial investigations for sites on Muskegon Lake and the Detroit River. These investigations are an important part of the cleanup process and will prepare these sites for future large-scale Legacy Act cleanups.

The Legacy Act program enjoys strong support from the Great Lakes states, the business community, regional environmental organizations, and local advisory councils in the Areas of Concern. The eight Great Lakes states are especially supportive of the Legacy Act because it provides a more efficient – and, ultimately, more effective – approach to removing toxic sediments from the Great Lakes than the Superfund program and other authorities. The program leverages both funding and technical expertise from the states, and utilizes our understanding of where the most serious contamination problems existing in our local waterways. It has produced on-the-ground results in a far more timely manner than the Superfund program.

Reauthorizing and improving the Great Lakes Legacy Act is a top priority for the Great Lakes region, including the Council of Great Lakes Governors, the Great Lakes Commission, the Council of Great Lakes Industries, Great Lakes tribes, and the more than 100 environmental and conservation organizations represented by the Healing Our Waters Great Lakes Coalition.

Finally, reauthorizing and improving the Legacy Act was a key recommendation from the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes.

Priorities for Reauthorizing and Improving the Great Lakes Legacy Act

The Great Lakes Commission has prepared detailed recommendations for reauthorizing the Legacy Act and improving its efficiency and effectiveness. These recommendations reflect the collective views of the eight Great Lakes states, which have been the nonfederal sponsor for most Legacy Act projects implemented to date. A task force of contaminated sediment specialists from the states developed the Commission's recommendations, which were formally adopted by the Commission in December 2007. With their substantial "real-world" experience implementing contaminated sediment projects under the Legacy Act, the states' recommendations provide important guidance for improving the Act. The Commission's recommendations are consistent with those from the Great Lakes Regional Collaboration and the views of other regional partners.

The Commission's complete statement on reauthorizing the Legacy Act is attached in its entirety as part of this testimony. Some selected highlights include the following:

1. **Increase the Authorization of Appropriations to $150 Million Annually:** This authorization level better matches the long-term costs of completely remediating contaminated sediments in the Areas of Concern, projected to be between $1.5 billion and $4.5 billion. This also will enable the U.S. EPA to support particularly large contaminated sediment remediation projects that may be developed in coming years. In Michigan alone, nearly one million cubic yards of contaminated sediments are known to remain in the state's 14 Areas of Concern. This does not include sediments that still need to be fully assessed and characterized. A rough projection is that at least $300 million will be required to completely remediate all contaminated sediments in Michigan's Areas of Concern. This increased authorization must, of course, be followed up with full funding through the appropriations process in Congress.

2. **Allow the Use of Legacy Act Funds to Restore Habitat:** Legacy Act funds should be available to support habitat restoration at sites where contaminated sediment remediation has occurred. This is an appropriate use of Legacy Act funds that will facilitate the complete restoration and redevelopment of the sites.

3. **Maximize the Potential to use Contributions from Potentially Responsible Parties:** Given the high cost of sediment cleanups, it is vital to maximize financial contributions from potentially responsible parties (PRPs) as long as their contributions are above and beyond what is required under a legal settlement. The Legacy Act currently allows PRP contributions to be counted as nonfederal cost share for Legacy Act projects, but this should be expanded to cover work at other sites or geographic areas in an Area of Concern beyond where the PRP's original, legally-required remediation work is conducted. Further, the timing of nonfederal contributions should not disqualify them from counting as nonfederal cost share as long as they contribute directly to the development of the project.

4. **Remove the Maintenance of Effort Requirement:** The Act currently requires the nonfederal sponsor to maintain a level of effort in an Area of Concern where a Legacy Act project takes place at or above the average level of such expenditures in the two fiscal years preceding the start of the project. This requirement is not appropriate for sediment projects whose expenditures can fluctuate widely from year to year. Moreover, project sponsors should not be penalized for – or discouraged from – investing in restoring an Area of Concern prior to the start of a Legacy Act project. This provision could inadvertently disqualify an otherwise worthwhile project when a nonfederal sponsor spends large sums in

an Area of Concern prior to the start of a Legacy Act project that it cannot maintain in subsequent years.

5. **Extend the Life of Appropriated Legacy Act Funds Beyond Two Years:** Funds appropriated under the Legacy Act should remain until they are contracted in support of an eligible project. Given the lengthy and complex nature of contaminated sediment cleanups, and the possibility of significant, unanticipated delays in completing projects, the two-year limit is inappropriate for the Legacy Act program.

6. **Reduce the Current 35 Percent Nonfederal Cost Share Requirement to 25 Percent for Orphan Sites:** At "orphan" sites where no responsible party is available to support the nonfederal cost share, the required cost share should be reduced to 25 percent from the current level of 35 percent. Doing so will help advance contaminated sediment remediation at orphan sites by the states and local communities with limited financial resources.

The Commission urges the Committee to consider its full suite of recommendations for improving the Legacy Act. If incorporated into the reauthorization legislation, the Commission's recommendations will improve the Act's efficiency and expedite the pace by which contaminated sediments are remediated in the Areas of Concern.

Advancing the Federal Commitment to Restoring the Great Lakes

The Great Lakes Legacy Act has been a marked success in our regional efforts to restore the Great Lakes. Reauthorizing and strengthening the Act would be a significant accomplishment – a major "win" – for the Great Lakes. It would demonstrate a Congressional commitment to elevating the federal role in Great Lakes restoration and implementing the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes.

Congressional support for the Great Lakes Legacy Act also will help respond to growing frustration in the region over lack of federal support for the Great Lakes restoration strategy. Simply put, federal support for the strategy has not matched the vision and commitment outlined in the President's executive order. This unfortunate trend continues with the President's proposed Fiscal Year 2009 budget. According to the Office of Management and Budget, if implemented as proposed, that budget would reduce federal funding for Great Lakes programs by nearly $100 million, or 14 percent. At the very moment the Great Lakes region is united behind a comprehensive restoration strategy, the federal government appears to be pulling back from its role in restoring the Great Lakes.

This is a marked contrast to the resources being invested in Great Lakes restoration by state and local governments. A recent study by the Great Lakes Commission and the Great Lakes and St. Lawrence Cities Initiative found that local governments *alone* are spending an estimated $15 billion each year on Great Lakes restoration activities. The State of Michigan has invested at least $33 million in restoring the Great Lakes under its 1998 Clean Michigan Initiative environmental bond program, including $25 million for cleaning up contaminated sediments, most of which has been used to leverage funding under the Great Lakes Legacy Act. A new bond program is being developed and, if approved by the state legislature, will be presented to Michigan voters in November. It includes a major focus on the Great Lakes and may provide nearly $400 million for Great Lakes restoration activities. Wherever possible, funding from the new bond program will be used to provide non-federal match for federal programs, such as the Legacy Act.

Michigan Governor Granholm and the governors of the other Great Lakes states laid the foundation for and helped develop the Great Lakes Regional Collaboration restoration strategy. And despite difficult economic conditions in our states, we are supporting the strategy's implementation.

In summary, the Great Lakes states look to the federal government to be an equal partner in advancing Great Lakes restoration efforts. Reauthorizing, strengthening and – most importantly – fully funding the Legacy Act would be a very significant step in this direction.

The House Committee on Transportation and Infrastructure has been an important partner in Great Lakes restoration. The Committee's support for a rigorous new regime for preventing the introduction of aquatic invasive species via ballast water in commercial ships addresses perhaps the top priority in the Great Lakes. If adopted by the Senate and signed into law, this legislation will represent a milestone in our efforts to protect the biological integrity of the Great Lakes. The Committee's support for reauthorizing and strengthening the Great Lakes Legacy Act will complement its work on ballast water and advance a strong agenda for the Great Lakes.

Conclusion: Addressing a Legacy of Abuse to the Great Lakes

The Great Lakes region has forged our nation's steel; built automobiles and bombers; milled paper and lumber; refined oil; manufactured chemicals; and supported an extensive transportation system of railroads and deep water ports. But the Great Lakes suffered as our region – and our nation – prospered. The Areas of Concern are the clearest legacy of our use and abuse of the Great Lakes. If these areas are not restored, our Great Lakes will never be fully restored. The Great Lakes Legacy Act is a key component of our strategy for restoring the Great Lakes. It is imperative that Congress reauthorize and strengthen this successful Act and sustain progress in restoring the Great Lakes – the largest body of fresh surface water on Earth.

Great Lakes Commission Recommendations for Reauthorization of the Great Lakes Legacy Act

Approved by the Great Lakes Commission Board of Directors
December 2007

Summary Overview

The Great Lakes Commission calls on Congress to reauthorize the Great Lakes Legacy Act in 2008. The Legacy Act authorizes funding to remediate contaminated sediments in Great Lakes Areas of Concern designated under the Great Lakes Water Quality Agreement. The Legacy Act program has been highly successful in implementing contaminated sediment cleanups and has become a cornerstone of restoration efforts for the Areas of Concern. The program enjoys strong support from the Great Lakes states, the business community, regional environmental organizations, and local Area of Concern advisory councils.

It is critical that Congress reauthorize the Great Lakes Legacy Act and maintain this vital program for restoring the Great Lakes. Reauthorizing the Act is among the Great Lakes Commission's top legislative priorities for 2008.

This statement presents the Great Lakes Commission's recommendations for reauthorizing the Legacy Act. This reflects the collective views of the eight Great Lakes states, which have been the nonfederal sponsor for most Legacy Act projects implemented to date. With their "real-world" experience developing and implementing contaminated sediment projects under the Legacy Act, the states' recommendations provide important guidance for improving the Act. The Commission's recommendations are generally consistent with those from the Great Lakes Regional Collaboration and the views of other regional partners.

Background

The Great Lakes Legacy Act, signed into law in 2002 (P.L. 107-303), authorizes $270 million over five years to remediate contaminated sediments in Great Lakes Areas of Concern. The Act authorizes $50 million annually to monitor, evaluate or remediate contaminated sediments, or prevent new contamination. The Act also authorizes $3 million annually for research on innovative remediation technologies; and $1 million annually for public outreach and education. The Act requires a minimum of 35% nonfederal cost share for remediation projects. (Additional information is available from the U.S. Environmental Protection Agency's Great Lakes National Program Office at www.epa.gov/GLLA.)

To date, five cleanup projects and seven projects to monitor and evaluate contaminated sediments have been implemented under the Legacy Act with a federal cost share of $55.4 million. Eight additional projects are under review with a federal cost share of approximately $92 million. U.S. EPA is accepting proposals and negotiating agreements under the Legacy Act on an ongoing basis.

In 2005 the Great Lakes Regional Collaboration restoration strategy called on Congress to revise and reauthorize the Legacy Act and made numerous recommendations toward this end. In 2006 U.S. EPA published a final rule for implementation of the Act that addressed some, but not all, of the Collaboration's recommendations.

Current Great Lakes restoration legislation (Great Lakes Collaboration Implementation Act of 2007, H.R. 1350/S. 791) would reauthorize the Legacy Act but does not address all of the issues raised by the Great Lakes Regional Collaboration. Stand-alone reauthorization legislation is expected to be introduced in 2008.

Recommended Amendments to the Great Lakes Legacy Act

The Great Lakes Commission's recommendations for amending the Legacy Act are described below (these are not presented in priority order). Incorporating these amendments during the reauthorization process will benefit the Great Lakes states and improve the Act's effectiveness and efficiency in remediating contaminated sediments in the Great Lakes.

1. **Reauthorize the Legacy Act Through 2013 and Increase the Authorization of Appropriations to $150 Million Annually:** The appropriations authorized for the Legacy Act program should be increased from the current level of $54 million annually to $150 million annually, consistent with the recommendations of the Great Lakes Regional Collaboration. This authorization level better matches the long-term costs of completely remediating contaminated sediments in the Areas of Concern, projected to be between $1.5 billion and $4.5 billion. This also will enable U.S. EPA to support particularly large contaminated sediment remediation projects that may be developed in coming years.

2. **Allow the Use of General Legacy Act Funds for Pilot or Demonstration Projects:** Funds from the general appropriations provided for the Legacy Act should be allowed for pilot or demonstration projects. To date, appropriations have not been provided for the component of the Legacy Act program that supports research on innovative remediation technologies. Thus, the Act's definition of "eligible projects" should be amended to include demonstration and pilot projects using innovative approaches, technologies, and techniques. Funds from the general Legacy Act appropriations should be allowed for this purpose, at the discretion of the Administrator and in consultation with the state in which the pilot project is to take place. However, the Commission believes that highest priority should be given to projects that focus on remediating contaminated sediments. The recommended order of priority is 1) remediation projects; 2) projects that prepare a site for remediation (e.g., support for remedial investigations and feasibility studies); and 3) pilot projects.

3. **Allow the Use of Legacy Act Funds to Restore Habitat:** Legacy Act funds should be available to support habitat restoration at sites where contaminated sediment remediation has occurred under the Act. High quality habitat need not have been present on the site prior to remediation for Legacy Act funds to be used for this purpose.

4. **Contributions of Nonfederal Cost Share from Potentially Responsible Parties:** The Commission supports allowing contributions from potentially responsible parties (PRPs) to be counted as all or part of the nonfederal cost share for Legacy Act projects as long as that contribution is above and beyond what is required under a legal settlement (this situation is commonly referred to as a "betterment"). In addition, the Commission supports allowing such PRP contributions to be counted as nonfederal cost share for Legacy Act projects at other sites or geographic areas in an Area of Concern beyond where the PRP's original, legally-required remediation work is conducted.

5. **Accounting for Nonfederal Contributions to Legacy Act Projects:** The Commission believes that the timing of nonfederal contributions to Legacy Act projects should not disqualify those contributions from counting as nonfederal cost share as long as they contribute directly to the development of the project. Thus, even if nonfederal contributions precede a signed project agreement, they should be eligible to be counted as nonfederal cost share as long as they contribute directly to the development of the Legacy Act project.

6. **Remove the Maintenance of Effort Requirement:** The Act currently requires the nonfederal sponsor to maintain a level of effort in an Area of Concern where a Legacy Act project takes place at or above the average level of such expenditures in the two fiscal years preceding the start of the project. This requirement is not appropriate for sediment projects whose expenditures can widely fluctuate from year to year. Moreover, project sponsors should not be penalized for – or discouraged from – investing in restoring an Area of Concern prior to the start of a Legacy Act project. This provision could inadvertently disqualify an otherwise worthwhile project when a nonfederal sponsor spends large sums in an Area of Concern prior to the start of a Legacy Act project that it cannot maintain in subsequent years.

7. **Allow the Disbursal of Legacy Act Funds to Nonfederal Contractors:** The Legacy Act should permit the disbursal of funds under the program to nonfederal contactors if doing so enhances the timing and effectiveness of a project. This option should be available and should be incorporated into project agreements, where appropriate.

8. **Extend the Life of Appropriated Legacy Act Funds Beyond Two Years:** Funds appropriated under the Legacy Act should remain until they are contracted in support of an eligible project. When reauthorizing the Legacy Act, Congress should fix this artificial limit to avoid funds being lost in the future. Given the lengthy and complex nature of contaminated sediment cleanups, and the possibility of significant, unanticipated delays in completing projects, the two-year limit is particularly inappropriate for the Legacy Act program.

9. **Reduce the Current 35 Percent Nonfederal Cost Share Requirement to 25 Percent for Orphan Sites:** At sites where no responsible party is available to support the nonfederal cost share, the required cost share should be reduced to 25 percent from the current level of 35 percent. Doing so will help advance contaminated sediment remediation at orphan sites by the states and local communities with limited financial resources.

Question about this statement may be directed to

- Tim Eder, Executive Director, 734-971-9135, teder@glc.org
- Matt Doss, Program Manager, 734-971-9135, mdoss@glc.org

# # #

The Great Lakes Commission, chaired by Michigan Lt. Gov. John Cherry, is a nonpartisan, binational compact agency established under state and U.S. federal law and dedicated to promoting a strong economy, healthy environment and high quality of life for the Great Lakes St. Lawrence region and its residents. The Commission consists of governors' appointees, state legislators and agency officials from its eight member states. Associate membership for Ontario and Québec was established through the signing of a "Declaration of Partnership." The Commission maintains a formal Observer program involving U.S. and Canadian federal agencies, tribal authorities, binational agencies and other regional interests. The Commission offices are located in Ann Arbor, Michigan.

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Testimony of Cameron Davis, President & CEO, Alliance for the Great Lakes & Co-Chair, Healing Our Waters®--Great Lakes Coaliton

on the Great Lakes Legacy Act Reauthorization

Before the Water Resources & Environment Subcommittee
U.S. House Transportation & Infrastructure Committee
May 21, 2008

Good morning Chairwoman Johnson and members of the Subcommittee. My name is Cameron Davis and I serve as president and CEO of the Alliance for the Great Lakes. Formed in 1970, the Alliance is the oldest non-partisan, citizens' not-for-profit Great Lakes protection organization. Our mission is to conserve and restore the world's largest freshwater resource using policy, education and local efforts, ensuring a healthy Great Lakes and clean water for generations of people and wildlife. I'm also fortunate to serve as the co-chair of the Healing Our Waters® -Great Lakes Coalition, which is made up of more than 100 organizations dedicated to Great Lakes restoration.

With 90 to 95 percent of the nation's fresh surface water, the Great Lakes could cover the Continental United States with more than nine feet of water. But their size belies their fragility. Because they are a relatively closed system – they do not flush like rivers – what goes in, tends to stay in. That is true of "legacy pollutants," persistent toxins that remain at the bottom of industrial harbors and rivers, a legacy of the

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Midwest's past. The result: contamination can continue to circulate through the food chain from fish to people, especially children, women and other sensitive populations.

Contaminated Sediments Pose Serious Problems

Though contaminated sediment is not a glamorous issue, it continues to threaten Great Lakes industries in very real ways. During periods of low lake levels such as those we're experiencing now, commercial ships can churn up contaminated sediment. Dredging plans can take years—if not decades—to result in cleanup because of sediment cleanup complexities, causing shipping to suffer in the meantime.

It also continues to affect shoreline communities. Municipalities that ordinarily might use their harborfronts for community gathering spots instead find that people are repelled from these important places.

It is in many ways the most threatening Great Lakes health problem. Unlike air pollution or runoff that may be apparent to the senses, contaminants from sediment are insidious, stealthily working their way up the food chain to contaminate fish and people who eat them.

Some of the contaminants found in sediment are known to have wide-ranging effects. Several of the pollutants found in sediments such as PCBs, dioxin, and PAHs have been shown to cause cancer in animals and humans. Also, dioxins, mercury, and arsenic have been linked to reproductive problems. These chemicals can harm people when they eat fish that live in lakes and rivers with contaminated sediments.

The U.S. Environmental Protection Agency recognizes that some organo-chlorines, many of which re-circulate through the Great Lakes from sediment, can be a severe threat to public health:

> Researchers at Wayne State University have been following from birth a group of children born to mothers who had regularly eaten at least 11.8 kg of contaminated Lake Michigan fish over a 6-year period. The study linked exposure to PCBs to decreases in birth weight, head circumference and gestational age of the new-born infants. Follow-ups of the children have documented subtle deficits in short-term memory and certain cognitive skills. The extent to which these deficits are a result of contaminant exposures is still a subject of great debate, prompting other researchers to conduct similar studies in human subjects and laboratory studies with rats.[1]

The International Joint Commission, which advises the U.S. and Canadian federal governments on transboundary environmental matters, found that:

> The evidence is overwhelming: certain toxic substances impair human intellectual capacity, change behaviour, damage the immune system and compromise reproductive capacity. The people most at risk are children, pregnant women, women of childbearing age and people who rely on fish and wildlife as a major part of their diet.[2]

The Commission's parting words on the subject are telling: "The political will must be found and financial resources allocated to dredge and remove contaminated sediments."[3]

Time for Action

In 1987, after using a bi-national decision making process, the International Joint Commission finalized a list of contaminated hotspots. Now more than 20 years later,

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[1] U.S. Environmental Protection Agency, *Great Lakes Atlas,* http://www.epa.gov/glnpo/atlas/glat-ch4.html#7 (accessed May 15, 2008)
[2] International Joint Commission, Ninth *Biennial Report on Great Lakes Water Quality* (1998), page 10.
[3] *Id.*, p. 40.

only one of the 31 sites either wholly in the U.S. or shared with Canada have been removed from the list. It is time to turn this around and restore these sites so we can restore their communities.

Additionally, two recent Brookings Institution studies show that a federal investment in restoring the Great Lakes – including sediment cleanup – will result in about a 3:1 return on investment: For every dollar invested by Congress, we should expect about three dollars in short and long-term benefits.[4] This may include up to $26 billion in returns via property value increases in the region's metropolitan areas, many of which house contaminated sediment problems.[5]

It is simply time for action. The longer we wait to fund and clean up these sites, the more expensive the problem becomes in terms of dollars and the health of our children.

Fortunately, Great Lakes Legacy Act reauthorization will help.

Making the Next Generation of the Great Lakes Legacy Act Work Better

Since Congressmen Oberstar and Ehlers introduced the first generation of the bill several years ago, the Legacy Act has been extraordinarily helpful. But several years of experience under the first generation of the Act shows that there are ways we can get more mileage out of the law.

The Great Lakes Regional Collaboration *Strategy*, developed by 1,500 agency, public interest, business and other stakeholder representatives from around the region recommended among other things:

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[4] Austin, J., et al., *Healthy Waters, Strong Economy: The Benefits of Restoring the Great Lakes Ecosystem* (Brookings Institution, September 2007).
[5] Austin, J., et al., *Place-Specific Benefits of Great Lakes Restoration* (Brookings Institution, February 2008).

- Addressing inefficiencies in the Great Lakes Legacy Act and increasing available funding to a level sufficient to reach the goal of cleaning up all contaminated sediment sites in the AOCs by 2020.
- Working toward better alternatives to removal and disposal of sediments.[6]

It went on to recommend ways to achieve many of these recommendations for the Legacy Act, including:

- Prioritizing projects so that sediment cleanup is the first choice and we can make progress on de-listing Areas of Concern.
- Expanding the authorization to provide more funding for more eligible projects, including those that use innovative demonstration and pilot efforts.
- Allowing funds to go for aquatic habitat restoration because sometimes simply removing contaminants is not enough to bring a site back to health.
- Eliminating the need for "exclusive federal agency project implementation" so that contractors can execute cleanups with agency oversight.[7]

Speeding Cleanups is Critical

The next generation of the Legacy Act is critical to ensure that we do not wait another 20 years to see the remaining Areas of Concern cleaned up. We urge you to quickly introduce and pass legislation in keeping with these recommendations. Thank you for revitalizing and renewing the Act to ensure that we leave a legacy of health for future generations, not a legacy of pollution.

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[6] Great Lakes Regional Collaboration Strategy (Dec. 2005), p. 37-38.
[7] *Id.*, p 38.

Testimony of Emily Green
Great Lakes Program Director
Sierra Club

On the Great Lakes Legacy Act

Before the Water Resources & Environment Subcommittee
U.S. House Transportation & Infrastructure Committee
May 21, 2008

Good morning Madame Chairwoman and members of the Committee. Thank you for giving me the opportunity to speak with you today. The Sierra Club is the nation's oldest and largest grassroots organization, with over 1.5 million members and supporters nationwide. For the past 30 years, we have been a strong advocate for the restoration and protection of the Great Lakes ecosystem. The Sierra Club Great Lakes Program works to turn back specific threats to the region's waters and the communities that they support. To achieve this goal, eliminating the legacy of toxic chemicals in the Great Lakes has been one of our top priorities.

I am here in Washington today to ask for your help in addressing this toxic legacy. The Great Lakes Legacy Act of 2002 has been an extraordinarily successful program—its main limitation has been the lack of full funding. I am here to speak in favor of legislation reauthorizing this program this year, increasing the authorized funding level, and making some minor policy changes to further increase its effectiveness.

It is critically important that this legislation move forward this year to avoid gaps in the implementation of this program and to allow us to more effectively address one of the worst problems that our region faces. Reauthorizing the Great Lakes Legacy Act is one of the major recommendations of the Great Lakes Regional Collaboration Strategy, a comprehensive plan to restore the Great Lakes, crafted by over 1,500 citizens, public officials, scientists, business representatives and conservationists.

We have the tools and the knowledge to address this toxic legacy, and we know that the Great Lakes Legacy Act works. Now we need the political will and the funding to expand and fully implement this successful program.

The Challenge of Toxic Sediments

There are 42 rivers and harbors in the Great Lakes Basin that the U.S. and Canada designated as Areas of Concern (AOCs). All of them contain toxic hotspots. For the last four or more decades, the sediment hotspots in these and other areas have leached toxic chemicals into the lakes, contributing to the pollution of fish, wildlife, and people living in the basin.

Research in our region has yielded reams of data on the ecological and human health impacts of this contamination. These include tumors and impaired reproduction in fish, birth defects and impaired reproduction in fish-eating birds and mammals, like cormorants, bald eagles, terns, and mink, and increased cancer risk in people. Researchers have found higher levels of PCBs in the blood of people living around the Great Lakes as compared to the rest of the nation. They found that children born to mothers with the highest levels of PCBs in their blood have slightly decreased IQs and were as much as two years behind their less-exposed peers in reading and math skills. These impacts are well documented and urge action on our part to prevent their continued occurrence.

In addition to their well-documented impact on human health and the environment, Great Lakes toxic hotspots have placed a major burden on the region's economy. Toxic pollution has increased the cost of, and in some cases prevented, the redevelopment of urban waterfronts in places like Waukegan, Milwaukee, Detroit, and Buffalo. A recent Brookings Institute study found that cleaning up toxic pollution in Areas of Concern will directly raise coastal property values by $12 billion to $19 billion.[1] Another study found that cleaning up contaminated sediments in the Buffalo River AOC would increase property values near the river by up to 16 percent, or $790 million. The same study estimated a local property value increase of roughly 10 percent, or $234 million, from cleanup of the Sheboygan AOC.[2]

Toxic pollutants in the sediment of every major Great Lakes port and industrial harbor have vastly increased the costs of navigational dredging. The toxic muck coming out of many of our harbors every year must be contained, at a cost at least 3 – 4 times the cost of dredging clean sediments. According to the Army Corps of Engineers, over half of the roughly 4 million cubic yards of dirt dredged out of navigation channels in the Great Lakes every year must be contained, treated, or managed in some way. If this sediment were clean, the disposal cost would be closer to $5 per cubic yard, significantly less than the $10 - $20 per cubic yard for management and containment. Clean sediments would yield annual savings somewhere between $11 and $34 million dollars.

Toxic hotspots have increased shipping costs. Difficulties finding a place to put polluted dredge spoils, low water levels, and shortages in funds allocated to harbor maintenance have resulted in significant dredging backlogs. Ships going in and out of ports that are not fully dredged routinely carry less cargo than they are capable of holding to allow the ships to ride higher in the water. This practice of lightloading can cost thousands of dollars, as a 1000' long ship leaves 500,000 pounds of cargo on shore to accommodate each additional inch of draft. These challenges will get worse as Great Lakes water levels are expected to continue to drop, making it more important than ever to clean up the hotspots that contaminate our harbors.

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[1] Austin, J., et al, *America's North Coast: A Benefit-Cost Analysis of a Program to Protect and Restore the Great Lakes*, September 2007.
[2] Braden, J.B. et al, *Economic Benefits of Sediment Remediation*, December 2006.

The fishing industry has been damaged by contaminated sediment. Polluted sediments are the major source of toxic chemicals in fish, and the reason for fish consumption advisories in the Great Lakes. Pollutants in fish have shut down some commercial fisheries in the Great Lakes, and the presence of consumption advisories has decreased recreational fishing and cut into the charter boat industry. This affects many associated industries, from tackle, bait, and outdoors stores to the broader tourism industry. The Environmental Impact Statement for the Fox River cleanup estimated that toxic sediments in the Fox River and Green Bay cost northeastern Wisconsin $65 million in lost recreational fishing and associated tourism revenues between 1981 and 1999. But the study also noted that these losses could be turned around by removing the contamination and lifting the fish consumption advisories.

We are only just now beginning to understand and assess the impact of these losses on our economy. But it is clear from the data that we do have that it is worth it to act to address this problem. The Great Lakes are an incredible resource, but they could be much more without the negative impacts of their legacy of toxic chemicals.

The Role of the Great Lakes Legacy Act

The Great Lakes Legacy Act has helped to resolve the single greatest barrier to getting rid of the toxic legacy in the Great Lakes – the lack of adequate funding. Historically, we struggled to find the resources and authority to clean up toxic hotspots because they fell through the gaps of our environmental laws. While some sites have been addressed through Superfund, the Water Resources Development Act and other programs, most Great Lakes sediment sites fell through the gaps until Congress passed the Great Lakes Legacy Act of 2002, which authorized $270 million from fiscal years 2004 through 2008 to clean up toxic sediments in AOCs.

The Legacy Act has not been fully funded since it was passed in 2002. However, despite the funding shortfall, the program has made a significant difference to the Great Lakes. The federal government has spent $55.4 million since the program began to clean up toxic hotspots in five Areas of Concern and monitor and evaluate projects at seven additional sites. The five cleanups have removed almost 2 million pounds of toxic contaminants from Ashtabula, Ohio; Sault Ste. Marie, Ruddiman Creek and the Black Lagoon in Michigan; and Hog Island, Wisconsin. The Legacy Act has allowed cleanups to move forward that otherwise had languished for years.

For example, local citizens advocated for the cleanup of Ruddiman Creek and Pond in Muskegon, Michigan for years. Great Lakes Legacy Act funds enabled the cleanup to finally move forward—EPA and the Michigan Department of Environmental Quality completed the cleanup in 2006, removing 26,000 pounds of lead, 2,800 pounds of cadmium, 204,000 pounds of chromium, and 320 pounds of PCBs from the creek. This creek had been posted as "no swimming, no fishing, no recreation" because of the human health risk posed by the contamination. By dredging and removing 90,000 cubic yards of contaminated sediments, the agencies were able to improve water quality, restore natural water flow patterns, and improve natural habitat by replanting the creek banks with native

flowers, trees and grasses. The cleanup removed a significant threat to human health, reduced the toxic pollution flowing into Lake Michigan, and restored a natural asset in the city of Muskegon. Local citizens have said that even lake salmon have now returned to the creek.

Reauthorizing and expanding the Great Lakes Legacy Act is the top recommendation of the Great Lakes Regional Collaboration Strategy, with respect to cleaning up Areas of Concern. A strong collaboration of industry, environmental organizations, agency staff and scientists came together through the Great Lakes Regional Collaboration and are in agreement on the recommendation to reauthorize and expand the Legacy Act. The Sierra Club was part of this consensus and strongly recommends that Congress pass legislation this year that reauthorizes the Legacy Act and includes the following key elements:

- Increase the authorization level to $150 million per year and reauthorize the act through 2013—this is the level of funding that the Great Lakes Regional Collaboration partners deemed necessary to complete the cleanup of Great Lakes Areas of Concern;
- Add a habitat restoration component so that we can bring a site back to full recovery after completing a cleanup;
- Allow Potentially Responsible Parties (PRPs)—industries that may be responsible for the toxic pollution—to contribute to the nonfederal share in cleanups that go beyond what might be possible under an enforcement action. The intent of the original legislation, without absolving PRPs of any liability, was to allow the Legacy Act to be applied as broadly as possible and to address the orphan share of sites, even if PRPs were responsible for some of the contamination in an Area of Concern. We agree with this intent and fell that it should be clarified in the reauthorization, without removing any liability requirements under CERCLA or other statutes;
- Remove "maintenance of effort" requirements—because the cost of sediment cleanups vary highly from year to year and generally decline significantly once a cleanup is complete, these requirements can force a project sponsor to contribute funding that exceeds the actual cost of the project, thus deterring participation in this program and disqualifying otherwise excellent projects;
- Allow disbursal of Legacy Act funds to nonfederal contractors so that private contractors can implement a cleanup with federal agency oversight—this will allow more efficient and effective use of Legacy Act funding. For example, if a local sponsor is already using a private contractor to clean up part of an AOC using another sources of funds, this provision would allow EPA to expand the cleanup to other areas of the AOC using Legacy Act funds without the expense of bringing in another dredge and other duplicative cleanup equipment—rather, the agency would be able to take the much less expensive and more efficient route of using the contractor that is already on-site; and
- Extend the life of Legacy Act funds so that we can undertake projects even if they cannot be completed in less than two years.

The Great Lakes Regional Collaboration partners deliberated these policy changes and the recommended funding increase closely before including them in the final GLRC Strategy. It is our consensus recommendation that these changes are essential to remove unnecessary barriers to Legacy Act implementation and to enable us to fully address contaminated sediments in Great Lakes Areas of Concern.

In closing, I urge you to reauthorize and expand the Great Lakes Legacy Act this year and to build support for the full appropriations of funds. This dedicated funding source is allowing states and EPA to clean up our toxic legacy, cross sites off the list and get rid of our "Areas of Concern" for good. It is allowing cities to redevelop valuable urban waterfronts and increase economic activity. It is testing technologies and approaches that can benefit cleanups in the rest of the nation. And it is addressing one of the most important components of the Great Lakes Regional Collaboration Strategy, which will protect our drinking water, our economic future and our Great Lakes way of life.

I urge you to act quickly to reauthorize the Great Lakes Legacy Act. It is one of the most critical steps that we can take to move the Great Lakes from an ecosystem that is on the brink of collapse to an ecosystem that is resilient enough to support a diverse, healthy environment and vibrant human communities. And we have to act now—if we wait, these problems will only get worse and more expensive to solve. We must act now to ensure that future generations can use and enjoy the Great Lakes as we do today.

Thank you for your time and your consideration.

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TESTIMONY OF
BENJAMIN H. GRUMBLES
ASSISTANT ADMINISTRATOR FOR WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMITTEE ON WATER RESOURCES AND ENVIRONMENT OF THE
U.S. HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
May 21, 2008

Introduction

Thank you, Madam Chairwoman and members of the Subcommittee for allowing me and Gary Gulezian, the Director of the Great Lakes National Program Office (GLNPO) to discuss the Great Lakes Legacy Act, the progress we have made since its enactment, and the challenges and opportunities ahead as we consider its reauthorization .

During this Administration, EPA has placed a high priority on restoring and protecting the Great Lakes and, in particular, using innovation and collaboration to remediate contaminated sediment sites.

The Great Lakes Legacy Act of 2002 has become a very important new tool in advancing the cleanup of contaminated sediment sites throughout the Great Lakes as part of our commitments under the Great Lakes Water Quality Agreement, a U.S.-Canada agreement designed to restore and maintain the Great Lakes Basin Ecosystem. Since 2004 we have remediated over 800,000 cubic yards of contaminated sediment at a cost of almost $97 million. This translates into the removal of over 1.5 million pounds of contaminants from the environment, thereby reducing risk to aquatic life and human health. We have

removed contaminants such as polychlorinated biphenyls (PCBs), mercury, various heavy metals, and polycyclic aromatic hydrocarbons (PAHs).

As you know, Great Lakes Legacy Act remediation projects require a minimum of 35 percent non-federal match. To date, we have expended approximately $53 million of Great Lakes Legacy Act funds and have in return leveraged approximately $44 million of non-federal dollars from our project partners. This leveraging has only been possible through our investing time and resources toward the development of successful partnerships.

Background

The Great Lakes are the largest surface freshwater system on Earth, containing about 85 percent of North America's surface fresh water and about 20 percent of the world's supply. Industrialization and development have had a significant negative impact on the Great Lakes ecosystem. The Great Lakes are particularly vulnerable to contamination because the average outflow rate is low relative to the volume of the Lakes; therefore, contaminants remain in the system for many years. As a result, many pollutants historically discharged into the water settle into the sediments at the bottom of the rivers and harbors that flow into the Lakes. These contaminants have the potential to cause harm to humans, aquatic organisms, and wildlife, and, as a result, there are advisories against consuming Great Lakes fish. Contaminated sediment is the greatest source of persistent toxic substances to the tributaries of the Great Lakes basin, and represents a significant pathway of human exposure to these contaminants.

The Great Lakes Water Quality Agreement identified specific problem areas in the Great Lakes basin. These areas are called "Areas of Concern" (AOCs), and 30 of the 40 AOCs are located wholly or partially on the U.S. side of the Great Lakes (the rest being in Canadian Waters). One of the primary impediments to "restoring the beneficial uses in the AOCs," as identified in the Great Lakes Water Quality Agreement with Canada, is the presence of contaminated sediments in these areas.

As of our last reporting to Congress, thanks to a variety of programs, approximately 4.5 million cubic yards of contaminated sediments have been remediated from the U.S. Great Lakes, and EPA expects reporting through 2008 to show an additional 1 million cubic yards remediated.

To tackle this problem of contamination, and to take a key step toward recovery and the delisting of these AOCs, Congress passed and the President signed the Great Lakes Legacy Act in 2002. The Act provides funding to take necessary steps to clean up contaminated sediment in "AOCs located wholly or partially in the United States," and designates specific funding for public outreach and research. The U.S. Environmental Protection Agency's Great Lakes National Program Office was designated by the Great Lakes Legacy Act to implement the program.

The Great Lakes Legacy Act is a unique program that provides for sediment remediation in a timely manner when no other program is available and there is not clear responsibility for the contamination. Two features of the Legacy Act differentiate it from other regulatory/enforcement programs: (a) it is EPA's only

authority expressly directed at cleaning up contaminated sediments; and (b) it is directed at the endpoint of eliminating beneficial use impairments in Great Lakes AOCs. A beneficial use impairment is a change in the chemical, physical, or biological integrity of a water body as defined by the Great Lakes Water Quality Agreement. Programs such as Superfund have differing endpoints, and may not eliminate beneficial use impairments in Great Lakes AOCs.

Accomplishments to Date

We have seen substantial progress in removing contaminants from various areas around the Great Lakes since EPA received its first appropriation under the Great Lakes Legacy Act in 2004. Since 2004 we have remediated over 800,000 cubic yards of contaminated sediment at a cost of almost $97 million. To date, we have expended approximately $53 million of Great Lakes Legacy Act funds and have in return leveraged approximately $44 million of non-federal dollars. This has allowed us to remove over 1.5 million pounds of contaminants from the environment, thereby reducing risk to aquatic life and human health. We have removed contaminants such as PCBs, mercury, various heavy metals, and PAHs.

To date, the sediment remediation projects completed are:

Black Lagoon, Trenton, MI, Detroit River AOC

Newton Creek/Hog Island Inlet, Superior, WI, St. Louis River AOC

Ruddiman Creek & Pond, Muskegon, MI, Muskegon Lake AOC

St. Marys River/Tannery Bay, Sault Ste. Marie, MI, St. Mary's River AOC

Ashtabula River, Ashtabula, OH, Ashtabula River AOC

I briefly discuss each of these projects below.

Black Lagoon

The remediation of the Black Lagoon was completed in November 2005. This project removed 116,000 cubic yards of contaminated sediments. The non-federal sponsor for this project was the Michigan Department of Environmental Quality. The total cost of this project was $9.3 million. As a result of this sediment clean-up project, the City of Trenton, MI has moved forward with the economic/recreational revitalization of the Lagoon. The City received a $151,000 grant for shoreline habitat restoration (from NRCS) and in June 2007 received a $582,000 boating infrastructure grant (from USFWS) for marina construction. On June 18, 2007, the City of Trenton celebrated the restoration and revitalization of the Black Lagoon in a ceremony renaming the lagoon as "Ellias Cove" in honor of the family who donated the land presently known as Meyer Ellias Park. The neighbors to the south of the park have reported they are swimming off their docks again and the lagoon is now a favored fishing spot for the local boaters.

Newton Creek/Hog Island Inlet

The remediation of Newton Creek/Hog Island Inlet was also completed in November 2005. This project removed 46,000 cubic yards of contaminated sediments. The non-federal sponsor for this project was the Wisconsin Department of Natural Resources. The total cost of this project was $5.7 million.

As a follow-up to the sediment remediation project, the *Hog Island and Newton Creek Ecological Restoration Master Plan* was developed by the community, with financial support from EPA. The plan provides a blueprint to restore the wetland, aquatic, shoreline and riparian habitats in this area of the St. Louis River AOC. The actions highlighted in the plan are excellent opportunities to provide nesting habitat for migrating birds, nature trails and recreational opportunities including fishing and canoeing.

Ruddiman Creek & Pond

The remediation of Ruddiman Creek & Pond was completed in May 2006. This project removed 90,000 cubic yards of contaminated sediments. The non-federal sponsor for this project was the Michigan Department of Environmental Quality. The total cost of this project was $14.1 million. Since the sediment clean-up, salmon have been seen swimming up the creek. This had not been observed for many years prior to the clean-up. To further ensure an improved habitat and as a follow-up to the sediment remediation project, a *Muskegon Lake Ecological Restoration Master Plan* was developed by the community. The plan provides a blueprint to restore the wetland, aquatic, shoreline and riparian habitats in the Muskegon Lake AOC.

St. Mary's River/Tannery Bay

The remediation of St. Mary's River/Tannery Bay was completed in August 2007. This project removed 40,000 cubic yards of contaminated sediments. The non-federal sponsors for this project were the Phelps Dodge Corporation (acquired by Freeport-McMoRan Copper & Gold Inc. in March 2007) and the Michigan

Department of Environmental Quality. The total cost of this project was about $8 million with approximately $4.8 million coming from the Great Lakes Legacy Act.

Ashtabula River

The remediation of the Ashtabula River was completed in November 2007. This project removed 500,000 cubic yards of contaminated sediments. The non-federal sponsor for this project was the Ashtabula City Port Authority with contributions from the Ohio Environmental Protection Agency and the Ashtabula River Cooperation Group II. The total cost of this project is estimated to be around $60 million. We are working closely with the U.S. Army Corps of Engineers, which is currently dredging the contaminated navigation channel of the river, immediately downstream of the Legacy Act project area. Together, these two efforts will remove the bulk of the contaminated sediments in this AOC

Future Projects

Based on the successes to date, we are committed to continuing to remediate contaminated sediments from the Great Lakes. We are currently evaluating nine projects that have the potential to lead to future remediation projects. These projects are in various stages of development and we are actively working with non-federal sponsors to move these projects along and ultimately remediate even more of the remaining contaminated sediments in the Great Lakes. Furthermore, we anticipate releasing additional requests for projects which will result in more remediation efforts.

Challenges

As you know, the Great Lakes Legacy Act's multi-million dollar remediation projects are extremely complex and, as such, present many challenges. From the beginning, we have looked for ways to streamline and improve the program, both within EPA and in coordination with our partners. However, any program with this many technical complexities and interested stakeholders will continue to face challenges. I would like to share several of these challenges with the Subcommittee.

For example, we must coordinate with regulatory and enforcement programs before undertaking any remediation projects under the Great Lakes Legacy Act. This is necessary to determine if there is a responsible entity for the contamination and if the remediation will instead take place under another authority (e.g., Superfund). This also allows us to work collectively within the EPA, as well as with other agencies, to maximize resources for remediating contaminated sediments in the Great Lakes.

Another challenge, but absolute necessity, is to obtain the non-federal cost share which can be substantial, given the total project costs. To date, states have typically played a key role, both in terms of project funding but also project management, permitting and monitoring. This critical role must continue if we are to maintain or accelerate the rate of progress. Local and private industry investments are unlikely to be sufficient to make full use of federal funding; state bond funds, such as Michigan's Clean Michigan Initiative will be a key to future success.

Further, having the necessary technical information to move a project toward remediation is also challenging. In some cases, the projects are proposed to us with a substantial amount of information that outlines the scope of the problem, and minimal work is needed to proceed to remediation. However, in other cases, less is known, which requires additional work to be done prior to commencing with any remediation activities. This information is crucial to developing solid cost estimates and an engineering design that will accomplish the desired environmental objectives.

Finally, enlisting community support is an important component of every project. It can take substantial time to educate the public and establish solid and sustainable local support for the project.

Legislative Proposals

We understand Members in the House are considering the introduction of a reauthorization bill and that Senators Levin and Voinovich and many of their colleagues just introduced a bill (S 2994) on May 8th.

We look forward to reviewing the legislation and working with the Congress to provide the Administration's views on the elements of the reauthorization necessary to gain Administration support as well as any technical assistance that may be appropriate.

Conclusion

As you know, because of the federal funding provided through the Great Lakes Legacy Act, we have seen substantial success in removing contaminants from

various areas around the Great Lakes. The Great Lakes Legacy Act has stimulated partnerships, including an investment of approximately $44 million from sources outside of the Federal Government. As new projects begin, this number will continue to increase.

Prior to the Great Lakes Legacy Act funding remediation, many communities had tried unsuccessfully for a decade or more to find a way to solve their environmental problems. The Legacy Act is truly meeting an important local and regional need. Finally, as we conduct projects to restore "beneficial uses" in these Areas of Concern by removing toxic stressors, we are also working with other Federal programs to identify opportunities to restore critical habitats that improve ecological conditions. We refer to this as "Remediation to Restoration," or R2R. Together, we seek to continue making improvements in the Great Lakes ecosystem, by completing tangible, on-the-ground actions.

Again, thank you for the opportunity to testify. Mr. Gulezian and I would be pleased to answer any questions you might have.

TESTIMONY OF
GEORGE H. KUPER
PRESIDENT
COUNCIL OF GREAT LAKES INDUSTRIES

BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

21 MAY 2008

Good morning, Madame Chair and Members of the Subcommittee on Water Resources and Environment. I am George Kuper, President of the Council of Great Lakes Industries (CGLI). The Council of Great Lakes Industries represents U.S. and Canadian companies and industries with significant investments, facilities, products, or services in the Great Lakes Region. The CGLI is focused on policies that affect the region, particularly as they support sustainable development. Thank you for providing the Council of Great Lakes Industries with the opportunity to testify regarding the importance of reauthorizing and amending the Great Lakes Legacy Act.

Several years ago, with strong Congressional leadership, environmental, business and civic interests came together to support increased funding to accelerate contaminated sediment cleanups at Areas of Concern (AOCs) around the Great Lakes Region. The result was the Great Lakes Legacy Act of 2002 (GLLA), today one of the most touted Great Lakes Restoration legislative success stories. The GLLA authorized $54 million/year for five years to accelerate cleanups ($50 million/year for projects, $3 million/year for research, and $1 million/year for public information programs) and was successfully administered by the U.S. Environmental Protection Agency, Region 5, Great Lakes National Program Office.

The GLLA has made significant progress in its first five years of operation through its use of cost sharing to encourage public-private partnerships to achieve cleanup goals. The successes of the GLLA need to be continued and expanded for the benefit of the 35 million people who are dependent on the Great Lakes for drinking water, food, transportation, and

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recreation because contaminated sediment can be a continuing source of contaminants to the Great Lakes ecosystem.

In December 2005, the Great Lakes Regional Collaboration, which included Federal agencies, Great Lakes Governors, Great Lakes Mayors, Great Lakes Tribes, members of the Great Lakes States Congressional Delegation – with input from environmental groups, industry, and academia - released its *Great Lakes Regional Collaboration Strategy To Restore And Protect The Great Lakes*. The *Strategy* identified several inefficiencies and impediments to achieving the objective of the GLLA in light of several years of experience under this landmark legislation. Improvements in the reauthorizing legislation are called for to address these and other issues with the GLLA program. Business and civic interests, including the Council of Great Lakes Industries and several environmental non-governmental organizations, propose reauthorization of the GLLA with modifications to the GLLA to make it more effective. Specific inefficiencies and impediments to be addressed include:

(1) the narrow interpretation of certain eligibility criteria applicable to proposed GLLA projects, which is significantly and inappropriately limiting the full range of intended sources of the non-Federal match;

(2) the lack of funds for pilot or demonstration projects using innovative approaches, technologies, and techniques that have the potential to remediate as well as lead to more effective, enhanced, and/or efficient remediation techniques for contaminated sediment;

(3) application of the "Pick and Stick" Federal appropriations rule to categorically block the use of GLLA funds at Superfund sites; and

(4) some well-intended but counter-productive statutory provisions borrowed from other programs that were intended to address dissimilar circumstances.

These inefficiencies and impediments are unnecessary and should be removed in order to restore the strong promise of this important legislation.

1. Eligibility Criteria For The Non-Federal Match

To accelerate cleanups, the GLLA taps into available sources of funds for the non-Federal share of the cost of the cleanup. One major source of funds is parties who are potentially responsible (PRPs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Congress recognized this and expressly authorized PRPs to serve as the non-Federal sponsor to help fund Great Lakes cleanups. The final rule implementing the GLLA, published in 71 Fed. Reg. 25504 (May 1, 2006), however, severely impedes the participation of PRPs through the rule's scoring system. The scoring system significantly penalizes projects with PRP participation and makes CERCLA sites less likely to receive funding. The net effect of this scoring system, which establishes arbitrary deductions in the scoring for PRP sites, is that the greatest source of potential matching funds for GLLA projects has now been extremely restricted. Correction of this problem is now more important than ever because the extreme budget crises at the State and local government levels are decimating two potential sources of the non-Federal share for GLLA projects.

The result of this scoring system is contrary to the Congressional intent behind the GLLA – accelerating cleanups in Great Lakes AOCs. It will emasculate the GLLA and severely restrict progress in further addressing contaminated sediment in the Great Lakes. Moreover, it is contrary to the multi-stakeholder consensus that was reached in the Fall of 2005 as part of the Great Lakes Regional Collaboration. The Great Lakes Regional Collaboration established legitimate and workable eligibility criteria for PRP participation in GLLA projects:

> The eligibility of PRPs to provide some or all of the non-Federal share of a Legacy Act package should be evaluated on its merits on a site-specific basis, in the context of the concept of "added value." Examples of circumstances where PRP participation in Legacy Act project funding would provide "added value" include, but are not limited to, sites where an "orphan share" exists or where the remedy will be enhanced (such as where the scope -- quality or quantity -- of the remediation is improved, innovative methods are employed or the remediation will be accelerated). *Great Lakes*

Regional Collaboration Strategy to Restore and Protect the Great Lakes, December 2005, p. 38.

The rule, rather than following the "added value" concept proposed by the consensus, arbitrarily penalizes PRP sites, regardless of the value that may be brought by the PRPs. This is especially critical given that in today's fiscal climate, States and municipalities are struggling to find funds to cover day-to-day operations let alone find funds to tee-up much needed, beneficial GLLA projects. As Congress originally recognized, PRPs can provide an excellent source of funds that may be leveraged to jump start projects with orphan shares or projects that bring added value to the AOC.

The consensus criteria for PRP participation should be used instead of the current rule.

2. Pilot or Demonstration Projects

Although specifically intended in the original legislation, no GLLA funds have been used for innovative pilot or demonstration projects that could remediate as well as lead to more effective and/or efficient remediation techniques for contaminated sediment. The lack of willingness to invest in these projects apparently stems from the misconception that these projects are solely research projects. And, because no funds have been appropriated in the research category, these projects could not be funded. The administrator of the GLLA program should be given discretion to award some appropriated GLLA project funds to innovative pilot or demonstration projects.

3. "Pick and Stick" Federal Appropriations Rule

The "Pick and Stick" maintained by the Office of Management and Budget Rule has become a very significant barrier to GLLA projects moving forward at CERCLA sites. The assertion is that once a site is under the CERCLA category, activities in that site cannot be funded out of more than one Federal "pot." In the context of the Legacy Act, GLLA funding has been flatly rejected at CERCLA sites because once the CERCLA appropriation is "picked" it must "stick". For example, at Waukegan Harbor, the fact that it is a former CERCLA site caused significant problems due to the contemplated simultaneous work under CERCLA and GLLA. This would have resulted in either a delay under CERCLA or a delay in the start of the GLLA

project in order to avoid simultaneous use of funds from two separate Federal programs. Delay under either program is antithetical to the express purpose of the GLLA. At some sites, this delay could in effect become a total bar if CERCLA proceedings stall.

The "Pick and Stick" Rule should be removed from the administration of the GLLA as it is a barrier to progress and the use of funds out of both programs simultaneously should be allowed. This will enhance, facilitate, and/or accelerate the recovery of Great Lakes sediment.

4. Administrative Inefficiencies

Finally, the multi-stakeholder consensus from the Great Lakes Regional Collaboration recommended several administrative corrections to enable the GLLA program to function more effectively and efficiently. These corrections include:

A. Dropping the "maintenance of effort" language because it is not appropriate in the context of sediment remediation where costs often vary widely from year to year and where excellent projects are arbitrarily disqualified because expenditures happened to occur in a prior year. For example, if the year prior to the GLLA project involved significant site investigation costs and the GLLA project costs in year one would be lower, the project would be ineligible for GLLA funding. This happened at the Estabrook Site (Milwaukee AOC), where Wisconsin has been caught in the "maintenance of effort" web. Ironically, the maintenance of effort requirement is either going to force a delay in other dredging work to be funded by Wisconsin in the same AOC or force a reduction in the amount of dredging so as not to trigger the "maintenance of effort" provisions under the GLLA. This is an absurd result, which is completely contrary to the express intent of the GLLA to accelerate cleanup.

B. Eliminating the current limitation in the GLLA that requires exclusive Federal agency project implementation because this precludes disbursal of funds to other entities, such as non-Federal contractors. This in turn, can restrict the effective and efficient implementation of remedial work. This is also a serious impediment to effective use of GLLA funding and can either preclude eligibility due to impracticability issues (e.g., multiple contractors) or simply increase project costs,

thereby wasting valuable GLLA funds. For example, the GLLA can pay for the material and supplies for an innovative cap installed by the non-Federal sponsor, but cannot pay for the labor to install the cap. Disbursal to non-Federal contractors is allowed under Water Resources Development Act (WRDA); and, should be permitted under the GLLA.

Reauthorization

As stated by the *Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes* (p. 38), the GLLA should be reauthorized for $154 million/year ($150 million/year for projects, $3 million/year for research, and $1 million/year for public information and participation programs) for an additional five years to continue the progress that is being made at Great Lakes AOCs.

Conclusion

Although the first five years of the GLLA have been successful, the program should be optimized and made more administratively practical in order to achieve its main goal - to accelerate the cleanup of contaminated sediments in Great Lakes AOCs. In addition, the goal of encouraging innovative sediment management approaches and research has been stymied. These issues and obstacles should be addressed so that the goal of the GLLA – accelerated and innovative cleanups of contaminated sediment in Great Lakes AOCs – may be achieved.

While I have focused my comments on the issues of particular interest to industry, we also support other proposed modifications to the GLLA including allowing GLLA funds to be used for restoration of aquatic habitat, prioritizing the use of GLLA funds for remedial projects, and adding a public participation program to the public information component of the GLLA.

In summary, the following changes should be made when reauthorizing the GLLA:

- Affirm the eligibility of PRPs to participate in the non-Federal share utilizing the consensus-based "added value" criteria;
- Provide for the use of project funds for innovative pilot or demonstration projects;

- Address the problem created by the "Pick and Stick" Rule by expressly allowing the use of GLLA funds at CERCLA sites;
- Drop the maintenance of effort requirement;
- Eliminate the current limitation in the GLLA that requires exclusive Federal agency project implementation;
- Allow GLLA funds to be used for restoration of aquatic habitat;
- Prioritizing the use of GLLA funds for remedial projects;
- Add a public participation program to the public information component of the GLLA;
- Increase the authorization to $154 million/year ($150 million/year for projects, $3 million/year for research, and $1 million/year for public information and participation programs); and,
- Reauthorize the GLLA program for five years.

Thank you again for this opportunity to provide you with a summary of industry's experience with a very important program. Industry representatives have been privileged to work with other stakeholders in developing these consensus recommendations for improvement of the GLLA.

This is important legislation. It is so important that diverse stakeholders have come together and worked together over the years to find solutions that benefit the Great Lakes. We appreciate your interest and hope that the program will be continued – and improved – without interruption.

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