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DISCUSSION FOLLOWING THE REMARKS OF MR. MILLS
AND DR. DONAHUE

COMMENT, MR GROETZINGER: Mike and John, thank you very much for a very interesting presentation. It is always easier to understand subjects when we have a little time for Q&A. And Henry, as he is always prone to do, gets the first question.

QUESTION, MR. KING: There are quite a number of organizations that are functioning in this area. I am wondering: is there any need for additional institutionalization of the coordination of the efforts in this area, or should the responsibilities of the International Joint Commission be enlarged? Sometimes, you have to institutionalize progress so that job goes on between the heartbeat and also operates in good times and bad, so why do not you take a brief deep breath and give me an idea of whether there is any additional need for a coordinating institution or enlarging something that is in existence.

QUESTION, DR. DONAHUE: I will say a few words on that. Quite frankly and bluntly, I think the worst thing we possibly could do is to create more institutions to coordinate institutions on the Great Lakes, period.

A few years ago, I had the opportunity to look at four principal binational publicly-funded institutions, those being the International Joint Commission, the Great Lakes Fishery Commission, the Great Lakes Commission and the Council of Great Lakes Governors. I compared their mandates as stated in law versus their activities, and there still is a huge opportunity for our existing institutions to do more than they are doing now. I think they work well together. I think adding to their complexity just results in more meetings and more paper, but not more progress. That is my personal view on it. We need to work with what we have.

COMMENT, MR. MILLS: I have one comment, I agree with Mike on this point. I think the problem is that when we talk about institutions, we talk about them in a vertical sense, and that is our mindset. Our mindset is geared more in terms of vertical hierarchy and areas of responsibility and control, but what we need are horizontal mechanisms, those that bring together what is already in place in terms of those vertical institutions that are there. Finding the linkages and coordinating them between the existing institutions from a horizontal sense would be much more effective.

QUESTION, MR. GROETZINGER: I had a follow-up question to Henry's. What do you identify as the single greatest problem in coordination between the U.S. and Canadian institutions? Is it a matter of systems, such as computer systems and interlinking, or simply provincialism and jealousies between agencies? Can you identify an issue and how is it being addressed?

ANSWER, DR. DONAHUE: Our responses might differ on this a little bit. I would have to say that working for an organization that coordinates state and provincial activities, the biggest challenge right now is not working across boundaries, but within each institution. The Great Lakes states, for example, have gone from feast-to-famine very quickly with regard to their budgets. We are dealing with travel restrictions and reduced staff. Whenever this happens, unfortunately, regional sensitivities are the first to go. So the biggest problem we are finding right now is keeping our various jurisdictions focused on the bigger picture and to not be as sensitive about geopolitical boundaries.

ANSWER, MR. MILLS: I do not think we have the necessary information to be able to – well, we are not all singing from the same song sheet. We have different pieces of information of the picture, and from that, we start creating some of those interjurisdictional or interagency kinds of rivalries. One of the biggest advantages that the Great Lakes Program holds is that it attempts to broaden that understanding and our basic knowledge of those vision-setting indicators that Mike spoke of and that we need to focus on. So, if all of the agencies can agree with that – that is our objective – then the work and the knowledge that is being developed will be consistent, and if we start sharing our insights, we will be obviously much better off.

COMMENT, MR. GROETZINGER: Other questions?

QUESTION, MR. URAM: Yes. Good evening. Thank you both for coming, and thank you for your great comments. I do agree that we have come along way and that there is still a little ways to go, but I wanted to talk to you about the social contract and accountability, and, following up with what Professor King had to say, and agreeing with you that we may not necessarily need more institutions. But we need to have some sort of accountability mechanisms in the institutions that are here to ensure that the public is guaranteed that achievements will be reached. What sort of social contracts are you going to engage in to ensure that the public will see that we achieve the goals that are needed for the Great Lakes region?

ANSWER, MR. MILLS: Maybe I can start there. I totally agree that the social contract is really important, and that includes open and transparent reporting – that is, setting clear objectives or milestones, and providing the information in an open and transparent fashion. I totally agree that it is necessary, but I do not think, at this stage, we have it all across the board. I think we have examples of it, but not in any sense is this Basin-wide.

COMMENT, DR. DONAHUE: When we operate at the regional level, there is a bit of identity crisis. The Ontario Ministry of Environment and the Michigan Department of Environmental Quality might be a household term for a lot of people, but when you get to the regional level, not everybody has heard of the Great Lakes Fishery Commission or Council of Great Lakes Governors. So the accountability really is not there. There is a need to do

some additional work to raise our profile, and there may be some things that can be institutionalized as well.

In the U.S., for example, a few years back, the U.S. General Accounting office did an examination of the history of the International Joint Commission and the extent to which the U.S. Federal Government responded to its recommendations.¹ If I recall this correctly, over time, only about two-thirds of the recommendations have yielded any formal response.² Maybe we need some type of a more formalized process wherein the parties respond, in public *and* substantively, so we get a good understanding of what is being done at the jurisdictional level to deal with region-wide problems.

QUESTION, MR. URAM: What about accountability mechanisms to assure that goals are achieved? Do you have any thoughts on that?

ANSWER, MR. MILLS: In 1972, 1978, and 1987, we set a number of targets identified in the Great Lakes Water Quality Agreement (GLWQA),³ most of which we have surpassed at this point. These were part of an accountability mechanism; the agreement between two countries said, here is what we want to do. What we need to do now is recognize that we are well beyond that, and set targets further out, and report against those new targets. Reporting against the GLWQA itself is reporting against an old standard.

QUESTION, MR. QUINN: I have a question for each of our speakers dealing with the issue of the pressures of population growth on the Great Lakes Basin, both directly and indirectly. For the first speaker directly, I think some of the indications are that about half the growth of the population growth in Canada would be along the Basin; and your figures had about 40 million people currently living around the Basin. What would be optimum carrying capacity for the Basin, 80 million, a hundred million? What is sustainable, and would be there any policies on the Canadian side to limit the population growth near the Basin?

And for the second speaker: between now and 2050, the populations of the United States is estimated to about double in the south and west.⁴ The great aquifer under the heartland of America is drying up, and there is increasing pressure to get water from the Great Lakes. Would the Great Lakes Commission like to have population stabilization policies across the

¹ U.S. GENERAL ACCOUNTING OFFICE & U.S. DEPARTMENT OF STATE, NEED TO REASSESS PARTICIPATION IN THE INTERNATIONAL JOINT COMMISSION: REPORT TO THE CHAIRMAN, COMMITTEE ON GOVERNMENTAL AFFAIRS, U.S. SENATE, Doc. No. GAO/NSIAD-89-164 (1989), available at <http://archive.gao.gov/d26t7/139270.pdf>.

² *Id.* at 16.

³ See Agreement on Great Lakes Water Quality, U.S.-Can., Apr. 15, 1972, Annexes 1-17, 23 U.S.T. 301, amended Nov. 22, 1978, 30 U.S.T. 1383, amended by Protocol, Nov. 18, 1987, T.I.A.S. No. 11,551 [hereinafter GLWQA].

⁴ See, e.g., Paul R. Campbell, *State Population Projections*, at <http://www.census.gov/population/www/pop-profile/stproj.html> (Jan. 18, 2001).

United States? After all, is not it going to be very difficult to keep the Great Lakes water? I think you indicated that 90 percent of the fresh water in the United States is in the Great Lakes. Is not it going to be very difficult to keep it there with these tremendous population growths?

ANSWER, DR. DONAHUE: One sure-fire way of raising the household familiarity of organizations like the Great Lakes Commission would be to have some sort of population control. If my figures are correct, even though most of the Great Lakes states have lost populations or maybe just gained it very modestly in the last ten years, our costal counties have experienced tremendous growth in populations. I suspect that the carrying capacity is already exceeded, and, as I said before, land use is the single most important issue in this region. Ultimately, just like all politics is local, I think all environmental solutions are going to be local as well. That is where you need a stronger infrastructure at the local level to deal with these things. We have our mayors organized, our governors organized, our agencies organized, but we are not very well organized at a watershed level, but much more so in Ontario than the Great Lakes states. That is, perhaps, where the ultimate solution will be.

COMMENT, MR. MILLS: I have nothing to add to that except there are no intentions to look at population control policies, as far as I am aware of, on the Canadian side of border, either. It is important, though, that we look at the problems from a Basin-wide or "watershed" perspective, and solve them from an integrated water management perspective. Certainly, given today's lifestyles, the carrying capacity is well past; I have absolutely no doubt about that. But does that mean that we have to change our quality of life to be able to live within the carrying capacity? I am not sure about that. You can maintain that same quality of life, but not necessarily at the same level of activity, so as to allow the long-term sustainability of the ecosystem itself.

So there is a lot of work to be done, and I think I agree with Mike. It is bottom-up exercise. It is not a top-down exercise.

QUESTION, MS. PELLETIER: I have two questions. The first one, I guess, is for personal clarity. Michael, last week at the IJC meeting, someone from the public health group made a presentation on a report card. I do not know if you are aware of this or not. I was wondering if you were talking about the same concept.

ANSWER, DR. DONAHUE: Yes, I was at the IJC Conference in Washington. The notion of a "report card" has a lot of currency right now and, actually, if you look at it, most of the Great Lakes states put out a "State of the Lakes" report of some kind;⁵ a few non-governmental organizations do

⁵ E.g., OHIO LAKE ERIE COMMISSION, STATE OF OHIO 1998 STATE OF THE LAKE REPORT (1998), available at <http://www.epa.state.oh.us/oleo/leqi/leqi.html>; MICHIGAN DEPT. OF

this as well. I think it is great that there are so many out there. I think this speaks to the need, but the big challenge is to fold that all together. I personally believe that the U.S.-Canada water quality agreement, once we get a few key amendments to it, might provide an excellent basis for that report card.

The idea of that report card is rising through the ranks at the International Joint Commission, and I would not be too surprised if we met here five years from now and reported, in a more defensible and measurable way, how we are doing in different sectors of Great Lakes governance.

QUESTION, MS. PELLETIER: I guess this addresses my second question, as the IJC is looking at both countries: does this mean that Canada and the U.S. will be working together in order to harmonize the indicators that you will be using in order to better monitor the progress?

ANSWER, MR. MILLS: Within the context of the Great Lakes, that is correct. But, obviously, there is a recognition that there is work being done on both sides of the border; the indicators themselves are simply a part of a national round-table exercise in Canada that is looking at ways to quantify environmental quality and progress. Obviously, the SOLEC work that Mike referred to is an attempt for us to collaboratively and binationally look at what these indicators should be and how they might play out in a Great Lakes Basin water quality perspective. Again, I think they would serve as a basis for a report card in terms of progress.

QUESTION, DR. REGIER: I want to get at the issue of zones of non-compliance. Do you remember them? In the 1987 Protocol⁶ they were given the euphemism "areas of concern" (AOC). So there are lots of zones of non-compliance. In fact, 43 came to become recognized as such.⁷ Now, what is happening to these orphan zones of non-compliance that were never designated by this euphemism? I note that the Great Lakes Commission has been working on trying to clean up agriculture abuses and even cleaning up brownfields and stuff like that, some of which are still zones of non-compliance. I happen to be living in a watershed where the whole damn watershed is a zone of non-compliance, and somehow managed to stay out of the AOC euphemism. I am wondering what is being done under the Great Lakes Water Quality Agreement to expand from AOCs to include these other zones of non-compliance?

ANSWER, MR. MILLS: Well, from a Great Lakes Water Quality Agreement perspective, they would be picked up within the concept of the

ENVTL. QUALITY, STATE OF THE GREAT LAKES ANNUAL REPORT 2001 (2002), available at <http://www.deq.state.mi.us/documents/deq-ogl-SOGL01.pdf>.

⁶ See GLWQA, *supra* note 3, Annex 2.

⁷ Great Lakes Areas of Concern Online, at <http://www.epa.gov/glnpo/aoc/> (last visited Aug. 13, 2002).

Lake Erie Management Plan (LEMP), which is trying to deal with the whole lake in the same sense that we are trying to deal with an AOC.

We have been tracking down the sources of pollution from various watersheds. We do not have the complete answer; we are not there. Our hope is that we will be able to say at some point in the future that we have finished the job. We have been at it now for 30 years; we are going to be at it for, in my opinion – well, it took us what a century to get to where we are. It may take us a century to reverse some of those impacts.

ANSWER, DR. DONAHUE: On the U.S. side, the future of the AOC program, to date, has been highly tied to federal funding through U.S. EPA. In recent years, that funding has been reduced in many states, and in Michigan in particular. It has resulted in a similar reduction in the ability of the state to address problems in its AOCs. So what you have, in many instances, are local groups of well-intentioned but perhaps ill-equipped individuals that have been thrust into leadership roles in getting these areas cleaned up. That is one of the reasons our organization is supporting legislation, such as the Great Lakes Legacy Act,⁸ which would provide \$50 million a year to the EPA for the next five years for an infusion of funds into the AOC program;⁹ I think that, on the U.S. side, we need to get two or three of those sites legitimately off the list in the next few years, or our elected officials are going to think, well, let us cut our losses and move on. So I see it as a very critical program right now.

QUESTION, DR. REGIER: What about zones of non-compliance, the ones that are not designated areas of concerns, the orphans?

ANSWER, DR. DONAHUE: Some would argue the AOCs are orphans, too. I am not aware of any interest or initiative on either side of the border to add to the AOC list, but only to focus on them through the lake-wide management plan process. Certainly, there are probably other sites out there that would qualify to be added to the forty or so that we have right now.

QUESTION, MR. KUNTZ: I have a question for John Mills. Actually, it is a follow-up to the question that Henry King asked about alternative ways of thinking about the organizations and coordination of activities within the Basin. Some look at the 1987 Protocols of the Great Lakes Water Quality Agreement as an erosion of the coordination effort that was going on through the Great Lakes Program office in Windsor. The development of the SOLEC¹⁰ program by the IJC has replaced some of that, but it has been somewhat different in character. In those days, it was a very different kind

⁸ Great Lakes Legacy Act of 2002, H.R. 1070, 107th Cong. (2002).

⁹ *Id.*, § 2.

¹⁰ That is, the State of the Lake Ecosystem Conference. For more information, see *State of the Lakes Ecosystem Conference*, at <http://www.on.ec.gc.ca/solec/solec2000-e.html>.

of organization, and it achieved much of the integration that both of you talked about today.

I was interested to hear that there is active consideration of yet another modification of the Agreement. Do you envision going back to a stronger central office, such as you had in the Great Lakes Program office?

ANSWER, MR. MILLS: Let me chat a moment about that. I think that is an important point. The IJC, with the creation of the Great Lakes Water Quality Agreement and the Windsor office, did play a very active role in terms of not only kind of trying to define the problem, but also formed the first part of the implementation. Things changed over the years. There have been a number of institutions that were created. The binational executive committee allowed the parties to get more engaged in the coordination more directly, circumventing the IJC, the Great Lakes Commission itself, and a whole bunch of other players.

I think there is a requirement for a continuing engagement of all of those players and more in that regard. However, I do not feel like saying, let us go back to a centralized IJC-controlled process. I think the IJC is an absolutely essential binational government mechanism and it must continue to play a strong role. I think that we will have to work on figuring out exactly what that means. I would love to see the IJC's credibility enhanced; over the years, as the IJC's credibility has diminished in some eyes on both sides of border. However, I would not go to the extent of saying, let us create or recreate 1972; I do not think that is the answer.

QUESTION, MR. GROETZINGER: As we close this evening's report card, having reached the end of the semester, can you give us your grade? Who passed and who failed? Do we have any As and Fs? Where do we need to do our work?

ANSWER, DR. DONAHUE: I will start by giving Henry King an A for putting on an excellent session like this. Things are unquestionably heading in the right direction. Just in my own personal experience with the Great Lakes, I think we have the institutions, the legal framework, and the table is set to make some good progress. If we can increase the monitoring, surveillance and research to quantify that progress and increase public accountability, it will be a good thing. To be honest right now, I see us probably at C-level right now, but heading northward in a very positive way, if we can pull that off in the next few years.

ANSWER, MR. MILLS: When you ask the question, my immediate response was about a C, but I do believe, unlike Mike, that elements are there to move it up into the "A" category. It will take, however, a significant amount of effort to make that happen. I do not underestimate the challenge that awaits us. We must recognize that, as we create the institution and arrangements to be able to address the issues, it is a dynamic ecosystem, continually changing, and our understanding of it will continue to change

from day to day, and our ability to be able to adapt is something that is going to continue to challenge us over the years.

MR. GROETZINGER: Well, as we break for summer vacation, would please join me in thanking Mike Donahue and John Mills.