

State AG files expanded IJC lawsuit

OFFICIALS: International oversight board failed to properly implement flood protocols at dam.

Gov. Andrew Cuomo and New York State Attorney General Letitia James on Friday announced the filing of an expanded lawsuit on behalf of the state against the International Joint Commission, the body that helps regulate water levels on Lake Ontario and along the St. Lawrence River.

In a joint announcement, Cuomo and James said the expanded legal claim revolves around the implementation of flood protocol for the Moses-Saunders Power Dam. The lawsuit notes that under a protocol known as "Plan 2014" that the dam "shall be operated to provide all possible relief to the riparian owners upstream and downstream" in instances of high water levels. As a result of the IJC's actions and failures to act in response to flooding in 2017 and 2019, Cuomo and James said New York incurred substantial and potentially avoidable damages.

This lawsuit expands on the suit filed by the New York State Department of Environmental Conservation last month by also including damages incurred by all state agencies, including DEC, which state officials said collectively number over \$50 million.

"The IJC's mismanagement of Lake Ontario water levels wreaked havoc on vulnerable shoreline communities and the resulting damage carries a stiff price that shouldn't be shouldered by the state of New York or by the very property owners the commission was supposed to protect," Cuomo said. "The IJC has been wholly unresponsive to our complaints and have taken no action to make the situation better, and this expanded lawsuit will allow us to better recoup the costs of the damage and to hold the Commission accountable."

Directed by Cuomo, DEC initiated litigation against the IJC on Oct. 9, 2019. Friday's action, brought by the attorney general's office, incorporates DEC's prior complaint, as well as adding impacts to other New York state agencies.

"The International Joint Commission failed their primary mission of properly managing Lake Ontario's water levels," James said. "We will not stand by while the IJC continues to expose New Yorkers to dangerous flooding. The individuals and families along the shoreline do not deserve the pain of having to deal with the damages to their homes and businesses—damages that could have been avoided in the first place. We are hopeful that this lawsuit will bring safety, security, and justice to those most impacted by IJC's negligence."

The IJC has maintained that it has sought to balance the negative effects of high water across all shoreline residents. The board kept outflows at record highs from June 13 to Aug. 20 to alleviate flooding along the lakeshore.

The office of the attorney general and Cuomo's office are seeking compensatory damages in excess of \$50 million dollars for damages that include: damages to state property; damages consisting of monies the State spent and will spend to repair harms to property, municipalities, and residents; and damages to natural resources, including the value of lost recreational activities.

State officials said flooding on the shores of Lake Ontario in 2017 cost the state damages in excess of \$4 million, which included damage to state parks, beaches, campgrounds, boat docks, and boat launches. The release from Cuomo and James described the situation as "disastrous" for thousands of businesses and New Yorkers along the Lake Ontario shoreline in Niagara, Orleans, Monroe, Wayne, Cayuga, Jefferson, and St. Lawrence counties.

Additionally, in 2019, flooding cost State property damages in excess of \$2 million. Several State agencies also incurred substantial expenses in connection with their responses to the flooding. DEC and the New York National Guard fortified public and private shorefront property with water barriers and other equipment. The Division of Homeland Security and Emergency Services (DHSES) deployed sandbags, sandbagging machines, pumps, and water barriers.

DHSES also activated the State Emergency Operations Center for 125 days to conduct operations across eight New York Counties and hundreds of miles of shoreline. Additionally, the state spent more than \$100 million dollars helping homeowners, small businesses, municipalities, and others repair property damage from flooding in 2017 and 2019.

Cuomo and James noted that the U.S.-Great Britain Boundary Waters Treaty, Plan 2014, the 2016 Supplementary Order of Approval, and other applicable laws impose a duty on IJC to operate the dam in a manner that safeguards the interests of riparian property owners on the New York shores of Lake Ontario and that meets a standard of reasonable care for those property owners.

The Annual Empire State Marine Trades Association Fall Meeting took place on October 9th and 10th in Albany, New York at the Bull Moose Club

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Sheridan Hohman & Associates will continue to monitor and keep ESMTA informed on all the items listed above. For more information please contact the ESMTA Representatives, Tim Sheridan at (518) 424-9250, ts@sheridanhohman.com or Katie Hohman at (631)678-7120 kh@sheridanhohman.com

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