Testimony Presented by the
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Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
U.S. House of Representatives
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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

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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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