

Chautauqua Lake Memorandum of Agreement  
1<sup>st</sup> Anniversary Update  
May 2020

It has been a year since many organizations signed on to the Memorandum of Agreement (MOA) developed by former County Executive, now State Senator George Borrello. With a year of the MOA's two-year term behind us, it is time to check progress on the Senator's signature Chautauqua Lake accomplishment which promised to bring us to a new level of consensus and end disagreement and litigation.

Chautauqua County (County) and, through MOA Term #3, its "agent", the Chautauqua Lake and Watershed Management Alliance (Alliance), have taken the lead implementing MOA requirements and enforcing its compliance. The Alliance has attempted to implement the MOA and confirm MOA compliance by those to whom funding from local foundations and the County is awarded. The Alliance has awarded over \$1,000,000 since the MOA's April 2019, execution. So, we would expect MOA requirements to have been met.

Unfortunately, implementation of the County's MOA has not been a priority for the County or its Alliance-agent. There is no implementation plan, no clear implementation responsibility or organization and no updates on progress. The requirement that the MOA be "re-evaluated annually" has been ignored. Vince Horrigan, the Alliance's interim Executive Director, has said there will be update after a year. Coordinated review and upgrade is put off until October 2020 and into 2021, far too late to guide fall 2020 grant applicants.

**MOA implementation has been extremely slow and "selective".** Only 25% of the MOA's terms and tenets have been fully implemented.

- The MOA requires formation of a "Centralized Lake Authority" and development of a "Comprehensive Lake Management Strategy", both foundations of effective lake management and repeated throughout the MOA. Neither has progressed as described in the MOA.
- MOA-required "Transparency" alludes the Alliance. It changed its rules in 2019 so that half its Board meetings are hidden from public view. Grant application scores, critical to the credibility of the grant process, are kept secret from applicants, members and Alliance Board Members. The existence and summaries of Alliance meetings, including those with the State, County, NYSDEC, Chautauqua Institution (Institution) and Towns and Villages, are kept from members and the public.
- The Alliance, as a 501c3 entity, is not subject to (1) management, staff and Board Member conflict of interest/disclosure rules, (2) the open meeting law or (3) Freedom of Information Act discovery as is the County. The Alliance, with its current Board Chairman also Chairman of the County Legislature, its Executive Director a former County Executive and with the current County Executive as a Board Member, is the "quasi-governmental organization" which Senator Borrello once called it. The Alliance is a County agent without the checks required of County management and staff.
- The Alliance, through the MOA, committed to "Science-Based Decisions". However, it has ignored supportive herbicide-related "science" included in the 2018 Supplemental Environmental Impact Statement (SEIS). The Alliance looks the other way from the well-documented negative weed harvesting environmental impacts and violations of NYS invasive species laws. The Alliance has failed to acknowledge the benefits of and support Town/Village plans to use the environmentally friendly herbicide ProCellaCor EC, recently registered in New York State. Although ProCellaCor EC has no drinking or other water use restrictions of significance in Chautauqua Lake, the Alliance's interim Executive Director has campaigned against its use.
- There has been no "Pilot Study" to compare herbicide and weed management efficacy and cost. Herbicide efficacy and cost have been confirmed and documented. Not so for harvesting, while at the same time over

\$750,000 have been spent on the purchase and operation of skimmers and MobiTracs to follow harvesters around to recover the weed fragments left behind which seed more invasive weeds.

- There has been no progress on the “annual update” of the County’s flaunted, but never completed, Macrophyte Management Strategy (MMS), mentioned numerous times in MOA requirements. Recall that herbicide-related MMS plans could not be implemented after the County abandoned the required Supplemental Environmental Impact Statement (SEIS). It remains a mystery why the SEIS, completed by the Town of Ellery with the Chautauqua Lake Partnership in 2018, is never mentioned in the MOA.
- There is no a scope of work nor progress on the MOA-required “Drinking Water Safety Feasibility Study” of alternative water supplies, the only MOA requirement directly involving the Chautauqua Institution (Institution). However, the Institution finds time and funding to campaign against the MOA’s clear expectation of herbicide use, most recently in a in a letter to the NYSDEC demanding no herbicide use in “all of Chautauqua Lake”, while it continues to depend on the “impaired” Lake for its water.

The MOA is focused on weed management in Chautauqua Lake, both the use of aquatic herbicides and weed harvesting. However, **the vast majority (75%) of the MOA requirements which have been enforced are associated with only one of these, herbicides.** There has been almost no enforcement of harvesting-related MOA requirements even as harvesting continues to receive an overwhelming proportion of Alliance funding, over four times that awarded to herbicides in 2020. Town and Village herbicide plans are threatened and underfunded while harvesting continues with no oversight or enforcement.

All herbicide-only MOA requirements were met in 2019 including “Annual Assessments and Treatment Recommendations”, “Timing of Herbicide Treatments”, Herbicides Selected for Use”, “Curly Leaf Pondweed Management” and “Use of Herbicides as a Management Tool”. Using \$40,000 provided by the County, the Alliance contracted and managed a "qualified, independent third-party entity", Princeton Hydro, to conduct a thorough assessment and confirm the success of Town and Village 2019 herbicide treatments. No such assessments, required by the MOA, have been conducted or planned for weed harvesting

Enforcement of MOA requirements applicable to both herbicides and weed harvesting is one-sided.

- For herbicides, fish habitats are “protected” consistent with the 2018 SEIS and confirmed through NYSDEC permitting while millions of fish are brought aboard harvesting barges with cut weeds and die each season
- “Detailed cost estimates”, actual costs from three years of treatments, are available for herbicides with no such detail available for harvesting.
- Herbicide treatments target invasive weeds in “GPS-specified” locations based on weed surveys confirmed by the NYSDEC. Harvesting is non-selective cutting native as well as invasive weeds without survey support, NYSDEC oversight or MOA-required GPS tracking.
- “Integration of (Weed) Management Methods”, a program of optimal combination of herbicides and harvesting, has not been implemented due to Alliance inattention and Chautauqua Lake Association (CLA) intransigence despite a \$20,000 Sheldon Foundation grant available for that specific purpose.

Key MOA signatories continue to violate the MOA's initial and fundamental requirement committing them “...to work collaboratively to achieve the (MOA requirements) ...”. The CLA, the Institution and Town of Chautauqua have been most active in violation with a variety of anti-herbicide actions. The CLA has funded its own highly suspect weed survey critical of herbicides. The Institution has continued to make unsupported claims with inaccurate information, filed a suit (and failed) in 2018 and has threatened lawsuits in 2019 and 2020. Both CLA and the Institution have lobbied the NYSDEC against herbicides and used local and Buffalo media to undermine the consensus Senator Borrello sought. The Town of Chautauqua has blindly supported the Institution’s claims although the Institution represents only a small fraction of its constituents.

And, as detailed elsewhere in this Update, the County and the Alliance themselves have failed to comply with many MOA requirements.

Although the Alliance has failed to enforce most all weed harvesting-related MOA requirements, they have continued to award more local foundation and County funding to weed harvesting-related activities than any other. At least \$346,000 is being awarded to CLA in 2020 at the same time the Alliance has limited herbicide funding to three Towns and three Villages to \$78,000 total, less than 25% of that allocated to harvesting. At the County's direction, the Alliance recently directed \$90,000 in County Bed Tax revenue to harvesting without the grant application and scoring process the Alliance has required for other awards and knowing that the CLA had violated MOA requirements in 2019 (e. g., CLA refused to equip harvesters with GPS).

The Alliance continues to receive County and foundation funds even as it fails to adhere to or enforce MOA requirements to which it has committed and, acting as the County's "agent", threatens to withhold funding from the Town of Ellery which is not even a MOA signatory.

In conclusion, George Borrello's plan for MOA-driven consensus is off to an extremely poor start. Very few MOA requirements have been implemented and, although few harvesting requirements have been met, harvesting continues to account for the vast majority of weed management funding.

The "buck stops" with management. In this case, management is the former County Executive and interim Alliance Executive Director Vince Horrigan and the Chairman of the County Legislature and Alliance Board Chairman Pierre Chagnon (three-year term limit has been reached). If they are unable to effectively and fairly implement the MOA, they should be replaced in the Alliance organization and the Alliance reorganized. Or, if that's not feasible the Alliance should be disbanded.

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