

The International Joint Commission (IJC)



Who They Are And How They Came To Be

The United States (U.S.) and Canada share a long, and peaceful border, and the two nations have a history of cooperation and comity. Although it is something of an obscure interjurisdictional organization, the International Joint Commission (IJC) has been involved in water management issues between the two countries for over a century.

Why the IJC is relevant to North Dakota, and why you should know more about, is in no small part, due to the unique circumstances that led to its creation.

The “Spite Ditch”

Ironically, it was a rather fractious dispute between Canada and the U.S. in the late 1800s, that led to the formation of the IJC. In the border region between Montana and Alberta lies the headwaters of the Saint Mary River, which flows into Canada. In this region the

soil is suitable for agriculture, but insufficient rainfall often creates challenges. The U.S. government realized that by diverting the Saint Mary River (Hudson Bay drainage), into the nearby Milk River (Missouri River drainage), they would be able to utilize a significant amount of water for irrigation.

When the U.S. began working towards the construction of this project, they apparently failed to adequately consult Canada before the fact. In response, the Canadians built their own diversion channel, from the Milk River in Alberta, *back* into the Saint Mary River. This Canadian-built diversion was referred to as the “Spite Ditch”, because it was built to spite the U.S. for not consulting with their Canadian neighbors to the north. The Spite Ditch was not very well constructed, but it made the point that water would not be taken from Canada without their consent. In a dry region



The location of the Saint Mary River Diversion. The Spite Canal was located nearby where the Milk River loops into Alberta, Canada.

such as the center of the North American continent, it is understandable that these actions, which each party thought was legitimate and that followed their own laws, caused tension between the two countries, with the potential for real conflict.

Other Projects

Besides the Spite Ditch, conflicts in eastern North America over the diversion of water for hydroelectric power at Niagara Falls, the Saint Mary's River (a different river in eastern Canada), the Chicago Sewage and Shipping Canal, and other concerns over impacts to water in the Great Lakes, all set the stage for the need for some mechanism to arbitrate these conflicts.



Spite Canal head gates in July of 1904. Credit: Glenbow Archives.

The common theme in these disputes, was that one jurisdiction was concerned about the other taking actions that would impact their water, or more importantly, taking water that they would normally have access to.

With all of these projects causing disputes along the border of the U.S. and Canada, it was decided that a treaty to avoid or resolve disputes over issues affecting waters crossing the border was necessary. The Boundary Waters Treaty Act (BWTA) was entered into by the two countries, after being ratified by President Taft in the U.S., and King Edward II of England (because Britain had control of Canada's foreign affairs at that time in 1909). The BWTA in turn led to the creation of the IJC for the mediation of future disputes over water.

The IJC held its first meeting in January of 1912, in Washington, DC.

How The IJC Works

The preamble to the 1909 BWTA reads *"The United States of America and His Majesty the King... being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends..."*

As a result of the treaty, an institution was created to help avoid, mediate, and if need be, settle disputes between the two countries, primarily in water resource issues, but also in the case of disputes over air pollution. Despite the fact that the U.S. has ten times more people and Canada is slightly larger in area, the BWTA ensures that the IJC operates on a basis of absolute equality between the two countries.

Membership on the IJC includes three appointed members from Canada and the U.S. respectively, with the Commissioners having equal authority and power. There are always two chairs, one from each country, symbolically appointed by the Commissioners of their own country, but in reality appointed by the U.S. President, and Senate; and the Canadian Governor in Council respectively.

All decisions require at least a four vote majority, although agreements are generally reached through consensus. Since its' creation, the IJC has dealt with 125 issues. The Commissioners do not formally represent their countries, but in reality they feel obliged to act in the best interests of their respective countries.

There are currently 17 boards, task forces, working groups, and committees active under the IJC. The International Red River Board and the International Souris River Board deal directly with North Dakota water issues. These groups always have equal representation from the U.S. and Canada, and serve the

IJC in their personal and professional capacities, not as representatives of their governments, employers, or other institutions.

During its history, although the IJC has had many issues referred, arbitration has always remained non-binding. No matter has been referred to the IJC for binding arbitration in its century-long history.

If the IJC makes a recommendation, and if the government in question decides to act on those suggestions, the IJC sub-groups, such as the International Red River Board, can be called upon to be involved in the resulting actions.

The Future

Although the IJC was created in no small part due to disputes over water in the arid west, the region currently generating the greatest degree of interest, is the Great Lakes. Water quality, diversions out of the lakes into parts of the U.S. frequently impacted by drought, and challenges related to the transfer of aquatic nuisance species (ANS) are on the forefront of the IJC's efforts, and the people living around the Great Lakes.

Whatever the future of the IJC holds, it is certain that they will find themselves busy.

For more information on the IJC, please go to www.ijc.org/en_/.



Maintenance on Niagara Falls in 1969. One of the areas that led to the BWTA. Credit: Edwin H. Schroeder



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BWTA SIMPLIFIED

ARTICLE I:

Related to naval navigation and citizens of the two countries.

ARTICLE II:

Jurisdiction and control over diversion of water flowing into or across boundary waters.

ARTICLES III-IV:

Requirements for how projects shall receive approval, and an agreement that boundary waters should not be polluted to the injury of health or property in the other country.

ARTICLES V-VI:

Related to the Niagara River, as well as the Saint Mary and Milk Rivers.

ARTICLE VII:

Having to do with the makeup of the IJC.

ARTICLE VIII:

Having to do with the IJC's jurisdiction over how interjurisdictional disputes will be handled.

ARTICLE IX:

Relating to how issues are to be referred to the IJC.

ARTICLE X:

Referring to how decisions are to be reached.

ARTICLE XI-XIV:

Having to do with the business of paperwork, meetings, referring matters to the IJC for binding arbitration, legal requirements of agreements, and communication between the parties.



Pipeline of the Saint Mary River Diversion.
Credit: Alberta Environment and Parks