

## United States-Canada Transboundary Water Governance Prioritizes Stakeholder Engagement

By Jane Corwin

A review of the construct and functionality of the International Joint Commission may offer an example of effective water governance to be emulated in the Indo-Pacific Region. As water knows no boundaries nor political authority, collaboration across borders is necessary in order to manage water apportionment, flood/drought mitigation, and water quality in transboundary waters. Additionally, the importance of effective water governance will only increase with a changing climate.

The governments of the United States and Canada recognized this in 1909 with the signing of the Boundary Waters Treaty (BWT). In the BWT, the governments established the mechanism by which the two countries would jointly manage their common waters. The governments created the International Joint Commission (IJC) to be one of those mechanisms. Further affirmation of the need for cross boundary cooperation resulted in the signing of the Great Lakes Water Quality Agreement in 1972, most recently updated in 2012, which directs the IJC to assess progress and garner public input to achieve water quality objectives established by the two governments. The BWT gives the IJC power to resolve water disputes through Orders of Approval and References.

### Orders of Approval

Under the BWT, the two governments must agree to any project that would affect the natural levels and flows of boundary waters or raise the level of waters crossing the boundary in the upstream country. The governments must either seek the IJC's approval for the project or negotiate a special agreement.

This commitment is both unique and critical to the effectiveness of IJC work. In providing this authority both governments relinquished a measure of autonomy to the IJC, an international organization that does not represent the interests of either country, but rather serves both countries. This language is highly unusual in bilateral agreements and speaks to the trust and friendship between the two nations.

### References

The BWT also provides the two governments the opportunity to ask the IJC to study and make recommendations on any subject. Studies result in recommendations, not arbitral awards. The scope of the reference is clearly defined by governments. Governments need to agree to issue the reference, and oftentimes one government is in favor and the other is not. In such a situation the IJC may work with governments to better define the scope of the issue in order to garner support for issuing a reference.

A third power of the IJC, in addition to Orders of Approval and References is not explicitly defined in the BWT but accepted by governments, empowers the IJC to 'alert' governments to potential conflicts. The IJC conducts its work by creating boards of experts, equally comprised of U.S. and Canadian engineers, scientists, and members of the public, to study and make recommendations under a Reference or execute an Order of Approval. There are currently 20 Boards functioning across the boundary.

Board members are appointed by the IJC. Change is driven through Board composition. In recent years Boards

**Jane Corwin**, Chair of the U.S. section of the International Joint Commission, explains that: "As water knows no boundaries nor political authority, collaboration across borders is necessary in order to manage water apportionment, flood/drought mitigation, and water quality in transboundary waters."

have included more members of the public and stakeholders. This speaks to the ever-growing desire by commissioners to have the public informed and to provide transparency in IJC decision making.

Another major priority of the current set of Commissioners is inclusion of indigenous peoples on its Boards. Many live in the areas affected by the work of the IJC. They also contribute traditional knowledge to the scientific analysis conducted by the Boards—and are key stakeholders.

### **Convening Authority Enhances Stakeholder Engagement & Transparency**

Boards embody the IJC's convening authority by bringing federal and state/provincial agencies, local expertise, and public input together. Joint fact finding and shared information increases "buy in" by stakeholders and helps break down silos of information on both sides of the border.

Convening national and state/provincial agencies with local governments also allows the IJC to address issues at the local level. Doing so has proven to reduce, and in some cases, eliminate disputes over water, as in the recent case of the review of the Moses-Saunders Dam on the St. Lawrence River. The IJC has promoted its International Watersheds Initiative as a program designed for this purpose.

### **Consultation and Consensus Building**

The treaty and the Commission's Rules of Procedure call for the concurrence of at least four Commissioners to ensure that decisions can be reached only if at least one Commissioner from each country agrees. The Commission and its network of advisory and regulatory boards, in any case, strive for consensus as a means of reflecting the common interest. In practice, most Commission decisions are taken in this way and boards must refer matters to the Commission for decision if board members are unable to achieve consensus.

### **Objectivity and Independence**

The authors of the Boundary Waters Treaty built into the Commission an expectation that its members would seek solutions in the common interest of the two nations. To that end, Commissioners "make and subscribe a solemn declaration in writing" that they "will faithfully and impartially perform the duties imposed" under the treaty. Similarly, members of IJC boards are expected to serve the Commission in their personal and professional capacities. This allows board members to explore all options, which helps promote the development of novel solutions and consensus.

### **Flexibility**

One of the most important features of the Commission's work has been the flexibility, inherent in its mandate and process, to be able to adapt to the circumstances of particular transboundary issues or conditions. The terms of the Boundary Waters Treaty have allowed the Commission to develop innovative mechanisms for soliciting public participation, for problem-solving, and for working with the governments themselves.

### **Challenges Facing the IJC**

The IJC faces the same challenge all bilateral agencies and commissions face; the asymmetry of countries causes different levels of prioritization. Different political systems and commissioner appointment processes can also affect budgeting and continuity of leadership. Finally, the relationship between each federal government and its respective provincial/state governments, as well as federal agencies, can influence decision making at the IJC. These issues are ameliorated by the friendship and trust of the two governments through their treaty relationship and the International Joint Commission.

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