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# Boundary waters troubled Norman Brandson

## Century of tranquil Canada, U.S. transborder water relations must be restored

By: Staff Writer

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Saturday, at Niagara Falls, an official ceremony will be held to celebrate the 100th anniversary of the Canada-U.S. Boundary Waters Treaty.

We have much to celebrate. The treaty represents a unique approach to managing waters shared by two sovereign nations. It established the International Joint Commission, a six-person body with each country appointing three members, mandated to function as a non-partisan regulator and advisor for waters straddling or crossing the international boundary.

The treaty empowers the IJC to authorize any development on boundary or trans-boundary waters in either country that could alter the level along or above the boundary. There are today dozens of structures operating on boundary waters in Canada and the United States under terms and conditions set by the commission, to the benefit and satisfaction of both countries.

The treaty also establishes a process under which either the United States or Canada can refer a trans-boundary water quality or quantity dispute or issue to the IJC. The commission then provides the two governments with non-binding recommendations.

There have been more than 100 such references -- all to date made jointly by both countries -- and in only two instances have the governments failed to act on the subsequent recommendations.

In Manitoba we have benefited from commission advice on apportioning flow on the Souris River, on water quality in both the Red and Souris rivers, on ways to improve our response to flooding in the Red River Valley, and on numerous other trans-boundary water issues.

From coast to coast the commission's unbiased recommendations have resolved disputes that would be intractable in other parts of the world.

Our celebration of the achievements of the treaty and the IJC ought not to blind us to the challenges that lay ahead. There are some troubling signs that the future of the treaty may be less sanguine than its past.

If there is one feature of the treaty that defines its uniqueness it surely is the process for resolving international water disputes between two nations of vastly different economic and military power by peaceful, unbiased, fact and science based means.

Unfortunately, it appears that both national governments are choosing to avoid an IJC reference in favor of a

process of negotiation that substantially dilutes the objectivity provided under the BWT. The result is a more traditional dynamic in which "might is right" and "playing to the home folks" can feature more prominently.

There are several recent examples on both sides of the border of concern in one country about a project in the other country that could have trans-boundary affects. In each instance, rather than a reference to the IJC, the governments have opted for either a negotiating process to resolve the dispute, or no process at all.

The immediate cause of this unfortunate departure from past practice appears to be pressure applied to its national government by the state or province in which the potential harmful action originates.

The justification for avoiding the IJC is generally two-fold. First, we the state or province with a vested interest in the potentially harmful action have decided the downstream concerns are groundless. Second, an unnecessary or frivolous (in our view) IJC reference would simply waste time and impede the implementation of the action in question.

The former justification suffers from the very parochialism and bias that the commission was designed to overcome. The latter justification assumes that the two governments' appointees to the commission are incompetent, which they most certainly are not.

Canada and the U.S. have a consistent record of appointing commissioners of the highest quality. Frivolous references (a somewhat subjective concept in any event) would be quickly dispatched and time sensitive issues would likewise be handled efficiently. The commission's past record in responding to time pressures is outstanding.

IJC avoidance is directly evident when our national governments opt for an alternative process such as the one headed by the President's Council on Environmental Quality to negotiate a settlement to the dispute over possible impacts of the Devils Lake outlet in North Dakota on waters in Manitoba.

Less visible but just as effective is the refusal of both governments to make a unilateral reference to the commission even though the treaty allows for such a procedure.

Even more subtle but also highly effective is the control both governments exert over the budget for their respective institutional support for the IJC. In spite of occasional apparent generosity by the governments, the long-term trend has been to short-change the commission of the resources it needs to service its full mandate.

Water flows both north and south across the Canada-U.S. border. It is quite possible for both countries to avoid seeking advice from the IJC, and to pursue a less objective resolution of water disputes, treating water no differently than lumber or hogs or wheat; or to take a tit-for-tat approach and match each of its neighbour's hair-brained water projects with one of its own.

In the short run, this plays well to narrow sectoral interests in states and provinces, but even in the absence of a Boundary Waters Treaty and an International Joint Commission, this would serve neither country's long-term environmental and economic interest. Given the incalculable benefits our two nations have reaped in the past from adhering to both the letter and the spirit of the treaty, such action would be foolish in the extreme.


The 100th anniversary is certainly a time to look back with pride on the successes of the Boundary Waters Treaty; but it's also a time to look to the future. President Barack Obama has expressed strong support for the IJC process and closer co-operation with Canada on trans-boundary water issues.

The foundation for co-operation is strong. We can renew our commitment to the treaty and to protecting and enhancing our limited renewable freshwater resources. Yes we can.

Norman Brandson is a member of the Manitoba Clean Environment Commission and a trustee on the board of the Fort Whyte Environmental Education Centre in Winnipeg. He retired after his 32-year career in the Manitoba public service, the last 15 of which he served as deputy minister of the Departments of Environment, Conservation and Water Stewardship.

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