



October 23, 2017

U.S.-Canada International Joint Commission (IJC)

Overview

The International Joint Commission (IJC) was established under the 1909 Boundary Waters Treaty (Treaty) between the United States and Canada. The purpose of the IJC is to aid in the resolution and prevention of disputes between the United States and Canada over uses of boundary waters, including issues related to drinking water, commercial shipping, hydroelectric power generation, agriculture, industry, recreational boating, and shoreline property (Figure 1). The IJC is a nonregulatory entity and makes nonbinding decisions on issues within its purview. Congressional interest in the IJC has focused on the IJC's scope of authority, its role in specific disputes, and funding for the U.S. portion of IJC activities.

How the IJC Functions

The IJC functions as a nonpolitical research, advisory, and mediation body for the two governments, which have referred matters to it by mutual consent. Its decisions and recommendations are the result of objective analysis, and are not intended to reflect U.S. or Canadian national policies. Commissioners do not formally represent their countries, and must declare in writing that they will be impartial when carrying out their duties. The IJC needs a quorum of four to make decisions, and generally reaches decisions through consensus and not through formal votes.

The IJC has six commissioners: three are appointed by the U.S. President with the approval of the Senate. One commissioner from each country is selected as a chair; both serve concurrently. The U.S. commissioners do not serve a fixed term; they serve at the pleasure of the President. New

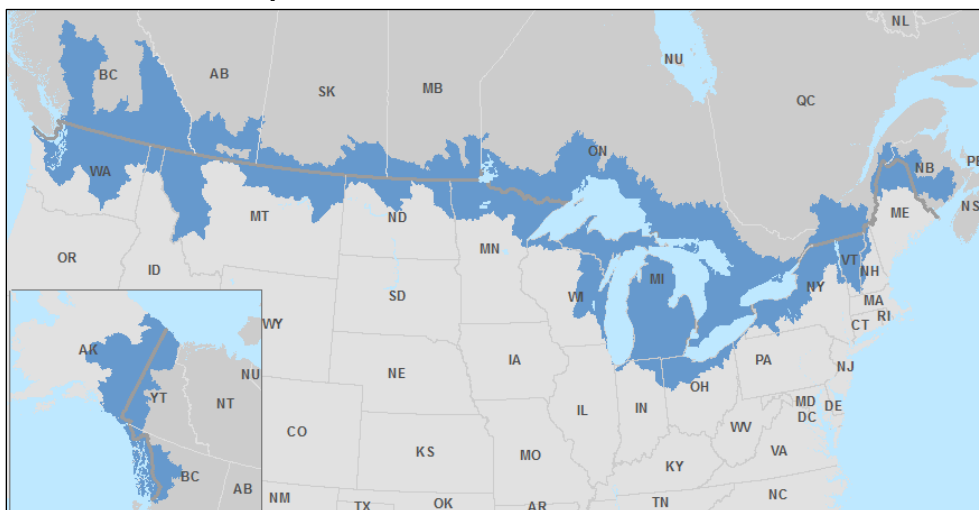
commissioners historically have been nominated about a year following a new administration. Canadian commissioner terms usually vary from two to five years.

The IJC currently supervises 17 boards and task forces that oversee projects; these working groups draw upon the expertise of around 300 representatives from academia, government, and nonprofit organizations. The IJC actively solicits input from all interested parties on any transboundary water and air quality issues that it is investigating and holds public hearings and invites public comment before issuing a final report. The IJC is commonly assigned two types of tasks: references and orders of approval, which are discussed below.

Reference

A "reference" addresses a question or a matter of difference between the United States and Canada, with respect to provisions of the 1909 Treaty found in Article IX or X. A reference is usually submitted to the IJC by both countries, although it could come from just one country. If jointly submitted, the reference contains specific questions for the IJC to answer and a time frame for a response. The IJC generally appoints a board or task force to conduct technical investigations to inform reference decisions. Public hearings and other forms of consultation are held, and a report with findings and recommendations is prepared. Once the IJC issues a report, the governments may request the IJC appoint a board to monitor progress in implementing that report's recommendations. Although reference recommendations are not binding, they are usually accepted by the Canadian and U.S. governments.

Figure 1. U.S.-Canada Transboundary Watersheds



Source: CRS, modified from U.S. Geological Survey, at <https://www.sciencebase.gov/catalog/item/4fb697b2e4b03ad19d64b47f>.

Notes: The Boundary Waters Treaty covers the waters from the main shores of Canada and the United States that include the international boundary between the two countries. This includes rivers, lakes, and connecting waterways, but not tributary waters into these areas. The IJC covers boundary waters and sometimes addresses basin-wide issues.

An example of a reference is the International Watershed Initiative (IWI), established in response to a 1998 joint reference requesting a framework for operating international watershed boards to address water and ecosystem issues on a watershed level. The reference contained several tasks for the IJC and direction to submit progress reports. Through a series of public consultations and inquiries, the IJC enhanced existing boards in transboundary watersheds and created new boards from existing ones.

Order of Approval

A government can submit an application seeking the approval of the IJC for proposed works or activities (such as dams, diversions, or bridges) that would use, change (with respect to water level), obstruct, or divert boundary waters, with respect to Article III or IV of the Treaty. Once a project application has been submitted, the IJC notifies the public and creates a board or uses an existing board to review the application. The board analyzes the application to determine whether the project should proceed and how it should be operated. The IJC holds public hearings on the application and allows stakeholders to provide input either orally or in written statements. If the IJC decides to approve a project with conditions, it will issue an Order of Approval (Order). The IJC also has the authority to amend an Order.

An example of an Order is the recently updated regulation of water levels and flows in Lake Ontario and the St. Lawrence River. In 1952, the United States and Canada filed an application to the IJC to build the Moses Saunders Dam and for two electric companies to jointly construct and operate the facility. The application was approved in 1952 through an Order. Concurrent to the filing of the application, a reference was submitted by both governments to study whether outflows from Lake Ontario could be regulated by the dam to achieve certain objectives. In 1963, the two governments approved Plan 1958D, which developed criteria to regulate flows through this dam. A study by IJC found that the 1958D regulations harmed coastal wetland ecosystems leading to Plan 2014, which is a new plan for determining flows through the dam. Plan 2014 went into effect in January 2017, replacing Plan 1958D.

Other IJC Activities

In addition to resolving transboundary disputes under the Treaty, the IJC also helps implement the 1972 Great Lakes Water Quality Agreement (GLWQA) last updated in 2012, and other mandates and treaties. Under the GLWQA, the IJC assists the two governments by assessing program effectiveness, reporting on progress toward meeting GLWQA objectives, and strengthening public engagement.

Potential Issues for Congress

The IJC largely makes nonbinding decisions for both countries to consider. Some contend that the nonbinding and nonregulatory nature of the IJC hampers its ability to effectively address issues involving the boundary waters. Others maintain that the nonbinding nature of IJC recommendations allows each country to decide how to best handle issues and retain sovereignty over its lands and resources. Some observers have noted that U.S. agencies

historically did not fully implement or respond to a large number of IJC recommendations. Some also contend that the IJC's investigative, reporting, and monitoring functions that lead to the recommendations are its most valuable contribution. An illustration of this relates to Plan 2014, which has been in focus due to flooding along the Lake Ontario shoreline. Plan 2014, as discussed earlier, was put forth by the IJC and implemented by the United States and Canada in 2017. It aims to provide for more natural flows that support shoreline ecosystems while continuing to regulate flooding in Lake Ontario and its shorelines. Critics argue the Plan has led to increased flooding in the United States, leading property owners to incur additional flood damages and costs. Supporters of the Plan contend that it increases the health of coastal habitats, thereby improving the economy of the area and enhancing the resiliency of natural shorelines. The IJC contends that the operations under the Plan did not significantly contribute to flooding experienced in 2017, and that efforts guided by the Plan aimed to minimize flooding during precipitation in the area.

Another potential issue is the level of funding the IJC receives to conduct its activities. IJC is funded by the United States and Canada, with expenses for projects and reports shared equally between the two countries (U.S. funding is in **Table 1**). Some contend for more funding to conduct greater oversight over projects and actions in the boundary waters. Others suggest that the IJC should fund grant programs to support transboundary projects. Some counter this proposal by contending that the authority to finance projects should be limited to states and provinces.

Table 1. U.S. Funding for the IJC (\$ in millions)

| FY2014 Actual | FY2015 Actual | FY2016 Actual | FY2017 Estimate | FY2018 Request |
|------------------|------------------|------------------|--------------------|-------------------|
| \$7.66 | \$7.66 | \$7.51 | \$7.49 | \$7.50 |

Source: U.S. State Department Congressional Budget Justifications.

Role of Congress

Congress can have a direct role in the issues addressed by the IJC. Congress could pass legislation that supports or detracts from IJC's recommendations on issues addressing boundary waters. Congress also may play an indirect role in the IJC decisionmaking process. At times, Members of Congress have addressed issues related to IJC deliberations by writing letters expressing their views to the commissioners, conducting oversight (e.g., holding hearings), and working with the U.S. Administration to jointly express their views on an issue. The United States has the choice to implement many of the recommendations posed by the IJC or work with Canada outside of the IJC if both countries agree to do so. Congress can also weigh in on boundary water issues by directing agencies to address these issues separately from the IJC, through oversight or legislation.

Pervaze A. Sheikh, Specialist in Natural Resources Policy
Marnie Kremer, Research Assistant

IF10761

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.