



---

Volume 33

Issue 2 *The North American Experience Managing International Transboundary Water Resources: The International Joint Commission and the International Boundary and Water Commission, Part 2*

---

Spring 1993

## Commentary

Mary E. Kelly

### Recommended Citation

Mary E. Kelly, *Commentary*, 33 Nat. Resources J. 299 (1993).  
Available at: <https://digitalrepository.unm.edu/nrj/vol33/iss2/5>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu), [lsloane@salud.unm.edu](mailto:lsloane@salud.unm.edu), [sarahrk@unm.edu](mailto:sarahrk@unm.edu).

MARY E. KELLY\*

## Commentary

Thank you for inviting me to participate this weekend. It is a great opportunity for me to learn and take advantage of the expertise gathered here. I want to offer a special thanks to Al Utton for the invitation and a particular note of thanks to the planning committee. Involving people like Peg Rogers, Paul Muldoon, Carlos Nagel, and me—people who are actively working to increase public participation and institutional accountability through a variety of methods—demonstrates, I believe, a concrete commitment to meaningful public participation on the part of the experienced analysts gathered here.

My comments will be directed primarily toward the nature of public participation in the International Boundary and Water Commission (IBWC) and other institutions that deal with transboundary pollution problems along the United States/Mexico border. Roberto Sanchez alludes to 'border communities' being the major sector from which public participation will come. While I do not disagree with this assessment, I think it is also important to examine how events over the last few months may significantly affect the character of public participation in the decisionmaking processes of transboundary institutions on the United States/Mexico border.

The prospect of a North American Free Trade Agreement has, I believe, dramatically altered the scope and nature of public participation we are likely to see. In the United States, the NAFTA discussions have drawn the attention of some large national environmental groups, some of which have offices in the southwest. From my perspective, the involvement of these groups in United States/Mexico transboundary pollution issues will continue for at least two reasons.

First, the United States/Mexico trade and development debate is the best opening to integrate environmental concerns into trade agreements. There are obvious and direct transborder effects of pollution caused by industrialization which results from increased United States investment in Mexico, as we have already seen along the border region with the maquiladora industry. There are also dramatic differences in the regulatory capabilities and systems of the two countries, with Mexico having far fewer resources to enforce its environmental laws. Thus, it is rela-

---

\*Mary Kelly is Executive Director of the Texas Center for Policy Studies, which works on environmental and public health issues.

tively easy to make a straightforward case about the links between increased economic integration and the need for environmental and natural resource protection. Some groups at the national level have recognized this fact, and have moved their attention from the General Agreement on Tariffs and Trade (GATT) debate to the United States/Mexico NAFTA debate.

Second, community groups and regional environmental groups in the United States border region (and in Mexico) will need to influence policy away from the border, in state capitols and Washington, D.C. This will tend to require at least some degree of coordination with the large D.C.-based groups, due to the location, influence, and resources of such groups.

While I am much less qualified to understand the relationships of local and regional groups in Mexico with environmental groups based in Mexico City, it seems to me that the high degree of centralized control of environmental regulation in Mexico will require border groups to develop links with national groups that have a Mexico City presence. This may be more difficult in Mexico than in the United States because of lack of resources for local and regional groups with the Mexico City environment and habitat degradation in southern Mexico.

The most important dimension of public participation in the transboundary arena is likely to develop from the increasing binational cooperation among nongovernmental organizations (NGOs). Before the last few months, there had been some binational NGO cooperation, including: the Border Ecology Project's work in Arizona and Sonora, cross-border work in the San Diego/Tijuana area, and the Texas Center for Policy Studies' new project linking groups in Texas and northern Mexico. There has also been some binational dialogue between labor, human rights, agricultural, and immigration rights groups. In some respects, however, it is the environmental and public health arena where interests are less divergent and binational cooperation may develop more rapidly.

Nevertheless, before the prospect of a United States/Mexico free trade agreement became more likely, binational cooperation among environmental groups was fairly limited. As some commentators noted yesterday, it often takes a 'crisis' to bring about necessary institutional change. In a similar vein, the NAFTA debate has been a trigger event, forcing the environmental community to very quickly develop mechanisms for increased binational cooperation.

In my view, this binational cooperation is extremely important. First, binational statements undercut the ability of governments to isolate the NGOs of one country. For example, some in the United States government have labeled those who have called for inclusion of environmental issues in the debate about an FTA with Mexico as 'anti-development' or against development for Mexico. It is an effective rebuttal to this hyper-

bole to show that declarations calling for inclusion of environmental issues in the trade negotiations have been made on a binational basis.

Second, binational cooperation allows for the gathering and transfer of information that is crucial to developing sound positions in the environmental community. United States groups, using the federal Freedom of Information Act or state 'open records' acts can get information on activities in both the United States and Mexico that is often unavailable to groups in Mexico. In addition, even though Mexico does not have a freedom of information act, it is at times possible for groups in Mexico to get some information that is completely inaccessible to United States groups but is quite necessary for a complete understanding of policy or events in Mexico.

I would also like to address briefly the belief that a lack of public participation reflects a lack of interest or lack of effort on the part of the 'public.' Nevertheless, there are some clear institutional constraints on adequate public participation in the IBWC and in the La Paz process. Foremost among these constraints is, I believe, the lack of a clear directive to either the IBWC or the La Paz work groups to foster public participation. Ms. Becker's paper describes the difference in lack of directives very clearly. She also cites an array of interesting specific examples of the International Joint Commission's (IJC) efforts to develop public participation.

I believe the IBWC could learn some serious lessons from the IJC record with regard to public participation and note that there are no statutory or other legal bars to public participation in the IBWC decisionmaking process. It is a simple matter of taking the initiative.

We must nevertheless acknowledge the socio-economic and cultural differences between the United States/Mexico and United States/Canada border regions that may make public participation more difficult in the former. In the United States/Mexico region, people are dealing with basic survival issues such as food, clean drinking water, and housing. There is little luxury for learning the intricacies of access to the IBWC or La Paz processes. Also, there is a significant language barrier to binational cooperation between NGOs in the United States and Mexico, often requiring translation of documents and simultaneous translation at meetings. This obviously increases the cost of effective binational NGO cooperation and participation. Finally, the historical mistrust between the United States and Mexico can often be manifested in a sometimes legitimate suspicion of 'gringos' interfering in Mexican affairs. Hopefully, however, these barriers can be overcome. We desperately need a strong binational public voice calling for more openness and responsiveness on the part of existing and new transboundary institutions in the border area.

As a final comment, I do not agree that the IBWC should be the agency which is given broader responsibilities for pollution control in the border region. It is an unacceptably closed structure that has little account-

ability and is responsive only to entrenched interests. The basic agreement setting up the La Paz process must also be revised to mandate public participation. It is the responsibility of the environmental community interests, to lay the groundwork now for insuring that any new transborder institutions dealing with United States/Mexico environmental and natural resource problems are established with adequate mandates and mechanisms for public participation.