



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

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Recommended Citation

Keith A. Henry, *Commentary*, 33 NAT. RES. J. 305 (1993).

Available at: <https://digitalrepository.unm.edu/nrj/vol33/iss2/7>

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KEITH A. HENRY *

Commentary

The main papers for this session explain what the situation is in the two jurisdictions: the Canada/United States border with the Boundary Waters Treaty of 1909 and the International Joint Commission (IJC); and the United States/Mexico border with the 1944 Water Treaty and the International Boundary and Water Commission (IBWC).

In the case of the IBWC, there is permission to involve the public, but the Commission has chosen not to do so. Now, as problems change from those of engineering river improvements to the much more complex and socially sensitive difficulties of dealing with cross-boundary water pollution, there is a growing and insistent public demand for a change to a more open process in which the public can participate.

The 1909 Boundary Waters Treaty does not call for any public involvement, but the IJC accepted the principle from the start and encouraged public participation through its preliminary and final hearings process. As time went on, public involvement became more and more widespread until it reached its present form which, in the eyes of Mr. Hayton, is about all that can be done, except to tinker with, and perhaps tune up a little, a working and successful system.

I am very proud to say that I was the first Canadian member of the IJC's Public Relations Committee, along with Victor Smith of the United States Section. In 1973 and 1974, we took a very serious look at public involvement in the IJC's studies of water quality in the Great Lakes. We developed and proposed a Public Relations Policy for the Commission, which was adopted. We followed this with another proposal for implementation of the policy, which again was approved by the Commission. In late June of 1975, the Commission convened a workshop at Ann Arbor, Michigan, to which were invited a substantial number of people who were interested in Great Lakes Water Quality Agreement (GLWQA) studies. Out of this two-year development period came the beginnings of what I consider to be very effective public involvement and participation in the IJC's decisionmaking process. It grew better year by year while I was with the Commission (until late 1978). My understanding is that it has continued to improve, although there seems to be a good deal of concern that the position of the IJC itself is not as influential as it once was.

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On the Mexico/United States border, the mandate of the IBWC is very different in that it is to investigate, design, construct, and operate the river management works to make a fair division of the waters for the two nations. In my opinion, however, it will not be possible for the IBWC to continue to work effectively without public scrutiny of its operations. Sr. Sanchez describes a couple of options and their probable results. As I see it, the public will insist on knowing what is going on and if it does not get its information from the IBWC, it will turn, in the United States, to the Environmental Protection Agency (EPA) or Housing and Urban Development (HUD) to get help. These other agencies are sensitive to public opinion and their participation will assuredly lead to a thorough ventilation of pollution problems and proposed solutions.

I have been freely tossing about the term 'the public,' as if I knew what I was talking about. Anyone who has had anything to do with public participation will be only too aware that an understanding of who the public is a very deep-rooted problem which often remains uncertain all the way through project development.

Any number of self-elected private interest groups are quite ready to stand up and claim to speak for the public, particularly the silent majority. The aging hippie group, whose real purpose has always been to tear down as much of the fabric of society as it can, is usually one of the front runners in claiming to have broad-based support. They seldom speak for anything more than the handful of protesters they are able to drag onto the steps of city hall or the state legislative buildings. The 'rent-a-protester' group is certainly not the public. Too many who proudly display the nomenclature of 'public interest group' are really private interest groups and would be more honest if they used that designation. To repeat, it is not easy to know just who can fairly claim to represent the public.

I have run a couple of public participation jobs since leaving the IJC and have learned a few things that might be stated as principles for obtaining public participation.

- (1) Involve the public right from the start, including the 'go-no-go' decision.
- (2) Get professional assistance to prepare a 'community profile.' There are people or companies who can do this efficiently and effectively. You end up with a pretty good idea of who really does represent the public and then you can work with them. If you can get people interested at this stage you have a chance of getting some understanding from them when facts and data begin to emerge.
- (3) The best way to interact with the public is through workshops with the people who really lead the community thinking. All you can do is facilitate these workshops. You shouldn't try to

manage them and you certainly cannot manipulate them. Above all, be honest with the public.

- (4) It is important to start off with informational 'open houses' to disseminate what is known at the beginning. Depressingly few attend these starters, but they are nevertheless essential to defuse the inevitable claims that 'no one ever told us about this until it was too late to change.'
- (5) The holding of public meetings is not a very profitable exercise. It gives the extremist fringe a platform to expound their moribund thinking and give the impression that they have much more support than they really do. They also get the opportunity to inflame public opinion by making many false statements that are hard to scotch once they are printed in the press or replayed a half-dozen times on some TV news program. I have always figured that these professional protesters ought to hire their own hall and draw their own crowds. I have never gone to public meetings when I have been involved in a major investigation. Much more useful exchanges of information occur with small groups of truly interested people.
- (6) Another point that I consider to be very important is to tell the public that although they have every right to know the facts, and every right to express their opinions, public participation does not mean public dictation. Investigating boards, be they the IJC, the IBWC, or much more modest bodies, are still charged with making the best decisions they can devise, to do the best they can for the most people, as they see the problem. They are not head-counters in a popularity contest.

In the early 1980s, I was chairman of a panel of the British Columbia Utilities Commission appointed to carry out a public hearing on BC Hydro's application to build a major hydroelectric generating station on the Peace River at Site C. That exercise, which involved 116 days of testimony and cost several million dollars, taught me a number of things, one of the most important of which was that before such a hearing, the participants should be identified and then required to undergo what the legal people call an 'examination for discovery.' After this is done the hearing authority should insist that they get together with the proponent and agree upon the facts to as great an extent as possible.

It is usually readily possible to narrow down the issues a great deal and get the points of difference clearly on the table so that arguments can be about those things that are significant and arguable.

While it is possible to do this, it is never easy, because the unreasonable have absolutely no wish to clarify their position. However, a nasty chairman can accomplish a great deal to shorten proceedings and get meaningful input to the decisionmaking process.

In summary, my comment on the public participation process is that the IJC has a pretty good working model, which will always need some tinkering with to make it ever better, but which should not be drastically modified until some good reason appears.

Incidentally, I suggest that those concerned with the Great Lakes Water Quality Agreement consider the possibility that the tremendous build-up of NGOs and other forms of intervenors in the IJC's administration of the Agreement may have induced a degree of apprehension in the bureaucracy. Perhaps this is what has led to the declining use of the IJC in controversial issues of water quality along the border. The Parties may have come to fear the creation of an alternative government.

I think the IBWC will probably have to struggle through to a satisfactory process or face the possibility of being outflanked by other agencies that are more sensitive to public concerns.

I wish both the Commissions well. They need all the goodwill they can muster.