



Volume 33

Issue 1 *The North American Experience Managing International Transboundary Water Resources: The International Joint Commission and the International Boundary and Water Commission, Part 1*

Winter 1993

Commentary - Does the Past Record of Action Provide a Guide to the Future

Joseph F. Friedkin

Recommended Citation

Joseph F. Friedkin, *Commentary - Does the Past Record of Action Provide a Guide to the Future*, 33 Nat. Resources J. 125 (1993).

Available at: <https://digitalrepository.unm.edu/nrj/vol33/iss1/10>

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, lsloane@salud.unm.edu, sahrk@unm.edu.

JOSEPH F. FRIEDKIN*

Commentary

DOES THE PAST RECORD OF ACTION PROVIDE A GUIDE TO THE FUTURE?

I appreciate the opportunity to perhaps contribute a bit from my experience in response to the questions in respect of the International Boundary and Water Commission (IBWC). I grew up in the era when the need was food and water for people. And I had a hand in building dams to supply more water for more food and for more people, and I'm trying to get off that mind-set to adjust to the problems caused by more people. It's not easy.

My comments, however, will deal as, I believe Dr. Mumme's paper deals, with the immediate problems at hand, the water environmental problems which now threaten the health and well-being of the people on both sides. Referring to subjects discussed this morning: having served most of my career with the IBWC, I am not qualified to comment upon Dr. LeMarquand's paper except to agree with and express appreciation of his view, that a supranational institution as some have proposed for managing boundaries is impractical and not with the political realities.

With respect to Dr. Mumme's paper on the IBWC I want to say at the outset that I have long respected his studies and writings on the Commission and he has been kind to me. Let me also mention at the outset that after having had a career with the IBWC for which I am proud and grateful, I might not be completely unbiased in my comments to hopefully clarify some points.

To be sure, there have been marked demographic increases and economic changes along the border in the past 40 years. The population has increased more than five times and the border has become highly industrialized, and indeed the quantities of sanitary and hazardous wastes crossing the international boundary and entering the boundary rivers have increased many fold and will continue to increase. And certainly the environmental needs and the number of environmentally sensitive people along the border have increased many times. All of these increases combine to demand that the Commission and two governments be more responsive to the needs of the people along the border. When the border sanitation problems first appeared in the 1930s and until the 1950s,

*Joseph Friedkin served as the U.S. Commissioner of the International Boundary and Water Commission of the United States and Mexico.

they were relatively small, the degree of treatment required was relatively low. The problems could be and were resolved for a few hundred thousand dollars or less and the costs were shared by the two governments in proportion to the benefit to each country. Today the problems are big and, for the larger cities along the border, the costs for complete solutions approach and may exceed \$100 million. The solutions present a far bigger challenge and obligation of the two governments to finance and manage. And in the future prospects are that the population and industry will continue to grow, problems and costs become even bigger.

As noted by Dr. Mumme, the National Environmental Policy Act (NEPA) modified a number of the United States Section's ways of doing business, by formalizing and making more public the Sections, informal meetings and presentations.

With respect to Dr. Mumme's reference to the public's frustration with the performance of the IBWC and particularly the United States Section, I know well the frustration. I can still hear ringing in my ears, the question by Imperial County, California, Health Officer, asking me if I was going to wait until people died from the polluted waters discharged from Mexico across the boundary into Imperial County before I corrected the problem. I have received similar comments from officials of the cities of San Diego and Nogales. And their frustrations are well founded by the 20 to 30 years of partial solutions which have fallen short of resolution of the border sanitation problems.

I think, however, that we should also note that in recent years, the Commission has made some progress toward solutions. In 1987, an agreement was reached for improving the quality of the Mexicali discharges of wastes into the United States. In 1988, an agreement was reached for the needed expansion of the international plant to treat wastes from Nogales, Sonora and Nogales, Arizona. In 1989, an agreement was reached on joint measures to improve the quality of water of the Rio Grande at Laredo, Texas and Nuevo Laredo, Tamaulipas, and in 1990, agreement was reached on a conceptual plan for an international solution of the Tijuana/San Diego sanitation problems.

Turning to the second section of Dr. Mumme's paper, entitled "Constraints on Innovation," there is little I could add to or detract from his analysis of the limitations within the Commission. These are inherent in the establishment of the Commission and in the delegations by the two governments in international treaties. I do want to underline Dr. Mumme's statement that "any effort to innovate by amending the 1944 Water Treaty or alter it through another treaty, would raise a political hornets' nest with no assurance that the current state of affairs would be improved."

The IBWC has not, and I do not believe it should take on the trans-boundary air pollution problems because the control which is required for resolution lies solely within the sovereignty of each country. Also, and referring to Alberto Szekely's good presentation, for the same reason global warming is not a problem for the IBWC or other joint institutions, in my opinion.

Getting back to the IBWC and its restraints, I suggest that we turn and look at what I believe are clearly the external constraints that weigh heavily upon the Commission's ability to be fully responsible to the needs of the people. From my experience, these constraints have had and still have their roots in: the wide disparity between the economics of the United States and Mexico, and as a consequence, the disparity between the priority each is able to assign to the need for correction of border water environmental problems, i.e., the sanitation problems.

To illustrate, in my own experience in the years prior to 1987, and referring to the two largest international sanitation problems—Tijuana/San Diego and Mexicali/Calexico. In both, the origin of the problem was untreated or partially treated sanitary and other wastes from the Mexican city discharging north across the boundary into United States communities. In both cases, there was no question that the United States Commissioner had the full support of the people and authorities in the United States—the local, State of California, and the federal government, including the Congressmen and Senators—and he had full support of the Mexican Commissioner for resolution of the two problems. But, Mexico, suffering from its economic problems, was unable to finance the works needed for complete solutions. In addition, beginning in 1981, the Reagan administration was unwilling to share in the cost of works to treat sanitation wastes from Mexican cities. Our plea was that the need was to protect the health of United States citizens, but to no avail. At one point in an effort to get the United States government to assist in financing border treatment plants, I felt we had the support of three of the four congressmen from the San Diego area to seek an appropriation through the Congress to assist Mexico in paying the cost of the works needed. But, about that time (1985) the Gramm-Rudman bill became law and they were understandably hesitant in the face of its limitations to proceed.

In about 1982, the United States ambassador to Mexico called in the EPA to resolve the border sanitation problems. And the EPA tried. In August 1982, the presidents of the United States and Mexico signed the Agreement for Cooperation in the Protection and Improvement of the Environment in the Border. Much of it was drafted by Alberto Szekely and Cliff Metzner, who was then with the Embassy. It provided that the United States EPA and the Secretariat for Urban Development and Ecology in Mexico take leading roles as coordinators to resolve the border environ-

mental problems. But they were unable to effect the progress hoped for. The reason: the agreement had no teeth. It contained the provision that activities under the agreement shall be subject to the availability of funds and other resources of each party and to the applicable laws and regulations in each country; and Mexico was not able to finance the works needed.

In the section "An Agenda for Innovation" is the need for responsiveness by the Commission to the environmental needs of the people along the border. Again, there can be no question as to this need. And, I believe, each section of the Commission has tried to the extent it can to meet this need. I believe what appears to be lacking in the Commission's communication with the people stems from its practice of not reporting publicly its studies and negotiations for international agreements. That is, to not negotiate in the newspaper. On the needs cited by the author for more functional expansion, in my experience with the Commission, each one of the functions mentioned has been investigated and studied by the United States Section and I am quite sure by the Mexican Section. And, each government is quite aware of the potentially serious problem areas.

But the timing with respect to the political and international need has not been such as to warrant action in the serious areas. I have learned, and the hard way as have others, that although it is clearly far better to resolve problems before they become critical issues, it is to the extent of bordering on the impossible, to get the United States government, and I would guess also the Mexican government, to focus on a problem until it becomes a very real pressing issue politically as well as physically.

I would like now to underline what I believe are fundamentally important to enable the IBWC to resolve its current and future environmental and other problems within its jurisdiction.

1. The development of an economically strong Mexico with continued growth of its environmental political focus.

2. A good cooperative working relationship between the Presidents and administrations of their governments. And, I believe we are seeing these needed developments already starting. Already we have seen a marked change in the relationships between the United States and Mexico with the elections in 1988 of Presidents Bush and Salinas de Gortari.

Looking into the near future, the signs appear positive for the continued development for a strong economy in Mexico. The maquila industry in Mexico has grown since about 1960 to the extent that it currently provides jobs for over 400,000 people in Mexico. The products of this industry are a major part of Mexico's exports to the United States amounting to about \$43.9 billion in United States currency in 1988. The value of the maquila products exported is second only to that of the oil exported to the United States. Because of its proximity to the United States, this indus-

try is expected to grow and to increasingly compete with the similar industries in the Pacific Rim and in the Caribbean Basin. Indeed, this industry holds the promise of a stronger economy for Mexico. And with the growing environmental political forces in Mexico, prospects appear good for marked improvement in its environment in the interior and for complete solutions to the border sanitation problems.

Looking a little further into the future, from what I understand, prospects appear good for the Free Trade Agreement proposed between the United States, Mexico, and Canada. It is being pushed by President Bush as in time increasing the United States market for its goods and products by some 80 million people. And, it is being pushed by President Salinas de Gortari to greatly expand Mexico's industries and export of its goods to the United States, to build a strong economy in Mexico. I think the desire for stronger economies will carry the votes needed. And, I am for it because I believe the environmental objections will be met. Moreover, I seriously doubt that today's environmental problems along the border will be completely resolved unless and until the economy of Mexico is strengthened to enable the financing of the complete solutions needed.

In the meantime, as long as the good cooperative working relationship between the two presidents and their respective administrations continues, there should be increasing progress by the two governments through the Commission toward resolving the border sanitation problems, and the potential ground and surface water problems which lie ahead. And, there is and there will be continuing need for the Commission to be responsive to the people.