

**The International Joint Commission (IJC):
An Exploration of its fit as a Binational Commission**

by
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A thesis submitted to the Faculty of Graduate Studies of
The University of Manitoba
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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(June 2024)

Abstract

The signing of the Boundary Waters Treaty (BWT) in 1909 between Canada and the United States established the International Joint Commission (IJC). The main responsibilities of the IJC are to evaluate projects that affect water level and flows across the borders, and to investigate transboundary issues and provide possible solutions. One of the main attributes of the IJC is that, in theory, it is binational. A binational agreement means that Canada and the United States work together on common issues rather than on separate problems along national preferences. The IJC has been studied by many scholars, however, they mainly focus on its history, functions, and activities. A weakness in the literature is the lack of attention to the commission and binational nature of IJC. It is generally assumed that the IJC is a binational commission without evaluating whether or not it meets the requirements of a binational commission. To investigate this gap in the literature, this thesis asks: is the IJC truly a binational joint commission?

To assess the question, this thesis draws on existing literature to analyze the characteristics of the IJC and employs two case studies: the Zosel Dam applications and the Garrison Diversion Unit (GDU) reference which provides a good test of the IJC's commission and binational status. Ultimately, this thesis concludes that the IJC is indeed a binational commission.

Given that environmental and economic uncertainties are growing in the world and even allies, American and Canadian policy analysts and decision-makers should look to the IJC's binational mechanisms to develop mutually acceptable solutions to water border issues.

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Acknowledgements

I would like to extend my gratitude to the members on my thesis defence committee: Dr. Andrea Charron, Dr. James Fergusson, and Dr. Andrea Rounce. Your time and patience are greatly appreciated. This thesis would not be possible without the support, knowledge, and guidance of my advisor, Dr. Andrea Charron. Additionally, Dr. Charron's generosity, encouragement, and opportunities provided during my undergraduate and graduate studies have made me a more well-rounded person.

I would like to express thanks to all my friends and family for their support that they have given me throughout the course of my graduate studies. A special thanks to my parents Josie and Louis for their love and encouragement, and my dog Izzy for keeping life interesting. To my friends: Andrew, Ashley, Daniel, Ian, Jordan, Mal, Nick B., Nick G., Peter, Scott, and Trey for their kindness, help, and good times.

Finally, I would like to acknowledge the generous funding I received throughout my graduate studies: the 2022-2023 Social Sciences and Humanities Research Council (SSHRC) Canada Graduate Scholarship-Master's (CGS-M); the 2023-2024 J.W. Dafoe Graduate Fellowship for Study in International Relations; 2023-2024 Paul Buteux Graduate Student Conference and Research Award; the 2024 Manitoba Chair of the Global Governance Studies Murray and Muriel Smith Scholarship; the 2023-2024 University of Manitoba Tri-Agency Master's Supplement Award (TMSA); the 2022-2023 University of Manitoba Faculty of Graduate Studies Tri-Agency Top-Up Award; the 2023 Faculty of Arts Student Conference Travel Award; and the University of Manitoba Faculty of Arts Endowment Fund.

Abbreviations and Terms

BC	The Province of British Columbia
BTW	Boundary Waters Treaty of 1909
cfs	cubic feet per second
CANUS	Canada and the United States
CEC	Commission for Environmental Cooperation
CRT	Columbia River Treaty
EPA	US Environmental Protection Agency
Ft	Feet
FTA	Free Trade Agreement
GDU	Garrison Diversion Unit
GLWQA	Great Lakes Water Quality Agreement
IOLBC	International Osoyoos Lake Board of Control
IBWC	International Boundary and Water Commission
IJC	International Joint Commission
IOs	International Organizations
IRRWB	International Red River Watershed Board
IWC	International Waterways Commission
IWI	International Watershed Initiative
Kms	Kilometers
MOU	Memorandum of Understanding

MP	Member of Parliament
NGOs	Non-Government Organizations
NORAD	North American Aerospace Defence Command
ND	The State of North Dakota
PJBD	Canada-United States Permanent Joint Board on Defence
RRVWSP	Red River Valley Water Supply Project
US	United States
USACE	United States Army Corps of Engineers
WA	The State of Washington

Chapter One: Introduction

1.1: Overview

The management of transboundary waters¹ between Canada and the United States (CANUS) offers insight into the complex and unique relationship between the two countries. The size of the shared border,² their combined control of the continent,³ a common language, mutual interests, and similar values have created strong and longstanding economic, cultural, and defence ties.⁴ These have allowed for numerous informal and formal transnational interactions, and the creation of a network of joint institutions, treaties and agreements between Canadians and Americans despite the asymmetry of population size, economic strength, and military power all in the United States' (US) favour.⁵ Within this complex network of joint institutions, treaties, and agreements that the two countries have built to manage their partnership includes a treaty that revolutionized transboundary water management known as the Boundary Waters Treaty

¹ The Boundary Waters Treaty's preliminary article defines "boundary waters" as waters on the boundary that flow across or flow from the boundary line of Canada to the United States or vice versa as per International Joint Commission, *The Boundary Waters Treaty of 1909*, Preliminary Article, <https://www.ijc.org/sites/default/files/2018-07/Boundary%20Water-ENGFR.pdf>. For the Boundary Waters Treaty of 1909 see Appendix C of this thesis.

² The border is approximately 5,061 kilometers (kms) on land and 3,830kms of water as per "Boundary Facts," International Boundary Commission, updated 2023. <https://www.internationalboundarycommission.org/en/the-boundary-and-you/interesting-facts.php>.

³ Canada and the United States are relatively isolated from other countries, with exception of Mexico which shares a land border with the United States. They are surrounded by three oceans (the Arctic, Atlantic, and Pacific) as argued by William R. Willoughby in *The Joint Organizations of Canada and the United States* (Toronto: University of Toronto Press, 1979), 3. Willoughby, however, underestimated the proximity of Russia to Alaska (less than 100 miles in the Bering Sea), the Caribbean, and Central American islands, such as the Bahamas, Cuba, and Turks and Caicos as per the map observed in "North America," World Atlas, updated 2023, <https://www.worldatlas.com/webimage/countrys/na.htm>.

⁴ "Canada-United States relations," Government of Canada, updated 2023, <https://www.international.gc.ca/country-pays/us-cu/relations.aspx?lang=eng>.

⁵ Richards B. Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," The Claude T. Bissell Lectures University of Toronto, *Institute for Legal Studies* 8, no.4 (1987): 12-13, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=909288.

(BWT) of 1909.⁶ The signing of the BWT between Canada and the United States marked a significant milestone in shared waters' management and CANUS relations.⁷

Prior to the BWT, border waters were shared and managed through diplomatic relations, and a collection of treaties and agreements which will be outlined in the second chapter of this thesis. In general, however, the approach was ad hoc and piecemeal as opposed to strategic and coordinated. In 1902, the Ottawa and Washington developed a dispute settlement mechanism for transnational waterways named the International Waterways Commission (IWC). The IWC provided useful studies on construction projects for water diversions, and studied the design of water control structures.⁸ The work of the IWC also pushed the federal governments to establish procedures for all transboundary waters issues to prevent conflicts that could escalate to hostilities.⁹ In 1907, the IWC recommended that a treaty be created to provide “joint management and cooperation between the United States and Canada for the shared boundary waters”.¹⁰ Although the IWC was replaced by the International Joint Commission (IJC), it laid the foundation for the creation of the BWT.¹¹

The Treaty was signed as a compromise between Ottawa and Washington. Canada

⁶ Willoughby, *The Joint Organizations of Canada and the United States*, 3; and “History of the IJC,” International Joint Commission, updated 2023, <https://ijc.org/en/who/history>. This proposal will refer to the Boundary Waters Treaty of 1909 as “the BWT”, or “the Treaty” interchangeably.

⁷ “History of the IJC,” International Joint Commission, updated 2023, <https://ijc.org/en/who/history>. Canada and the United States are signatories to the Boundary Waters Treaty of 1909.

⁸ David Whorley, “From IWC to BWT: Canada-US Institution Building, 1902-1909,” in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clemen (Calgary: University of Calgary Press, 2020), 46.

⁹ Don C. Piper, “Two International Waterways Commissions: A Comparative Study,” *Virginia Journal of International Law* 6, no. 1 (December 1965): 102, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/vajint6&div=10&id=&page=>.

¹⁰ Daniel Macfarlane and Noah D. Hall, “Transboundary Water Management and Governance in the Great Lakes—St. Lawrence Basin,” in *Transboundary Environmental Governance across the World's Longest Border*, eds. Stephen Brooks and Andrea Olive (East Lansing: Michigan State University Press, 2018), 34.

¹¹ Whorley, “From IWC to BWT: Canada-US Institution Building, 1902-1909,” 36; and “Origins of the Boundary Waters Treaty,” International Joint Commission, updated 2023, <https://ijc.org/en/who/mission/history/bwt>.

wanted to ensure sovereignty was protected in its waterways, and foresaw transboundary water issues emerging in the Great Lakes-St. Lawrence region and in the St. Mary and Milk Rivers situated in Alberta, Saskatchewan, and Montana.¹² Canada sought to create a new institution that oversaw all waterways along the border. In contrast, the United States wanted a commission like the IWC which would investigate problems as they came up. During negotiations of the BWT, the United States was worried that a commission with too much independence and power could pose a threat to their Harmon Doctrine which advocated for absolute American territorial sovereignty over natural resources as a riparian state to waters flowing through its territory.¹³

As a solution, both states compromised and signed the BWT to ensure that one country did not have advantage over the other.¹⁴ After several drafts, British Ambassador James Bryce (on behalf of the Dominion of Canada) and Secretary of State Elihu Root (on behalf of the United States) signed the BWT in 1909.¹⁵ In 1910, the United States passed the Treaty into law, and in 1911, the BWT was confirmed in Canada through the International Boundary Waters' Treaty Act.¹⁶

¹² Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 39-40; and Piper, "Two International Waterways Commissions: A Comparative Study," 102.

¹³ David Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," *Natural Resources Journal* 33 no.1 (1993): 62-63, <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1965&context=nrj>. The Harmon Doctrine is named after US Attorney General Judson Harmon because of a dispute the United States had with Mexico over the Rio Grande in 1895 as per Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 63 (see footnote 15).

¹⁴ Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 63.

¹⁵ Stephen J. Randall, and John Herd Thompson, *Canada and the United States: Ambivalent Allies* (Georgia: University of Georgia Press, 2008) 75. Canada was formally known as the Dominion of Canada as per Eugene A. Forsey, and Matthew Hayday, "Dominion of Canada," *The Canadian Encyclopedia*, 7 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/dominion>.

¹⁶ "Origins of the Boundary Waters Treaty," International Joint Commission, updated 2023, <https://ijc.org/en/who/mission/history/bwt>.

The BWT's most important feature is that it established the International Joint Commission¹⁷ through Article VII.¹⁸ One of the main attributes of the IJC is that, in theory, it is binational. A binational agreement means that Canada and the United States work together on common issues rather than on separate problems along national preferences.¹⁹ The IJC has been studied by many political science, history, and water resource management scholars including William R. Willoughby, Murray Clamen, and N.F. Dreisziger from 1909 to 2020.²⁰ They mainly focus on the history, functions, and activities of the Commission. A weakness in the literature, however, is the lack of attention to the commission and binational nature of IJC. It is generally assumed that the IJC is a binational commission without evaluating whether or not the IJC meets the requirements of a binational commission. To investigate this gap in the IJC's literature, this research seeks to answer: **Is the IJC truly a binational joint commission? If so, what counts as a binational joint commission? And is the IJC still needed within the CANUS relationship?**

The Commission aids Canadians and Americans manage thirteen lakes and river systems along the border.²¹ The Commission has two main responsibilities and four functions. The main responsibilities are to evaluate projects that affect water level and flows across the border, and to investigate transboundary issues and provide possible solutions.²² The four functions that the

¹⁷ This thesis will refer to the International Joint Commission as the "IJC", or "Commission" interchangeably.

¹⁸ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VII.

¹⁹ Lee Botts, and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement* (East Lansing: Michigan State University Press, 2005), 198-199.

²⁰ Willoughby, *The Joint Organizations of Canada and the United States*; N.F. Dreisziger, "International Water Management in Canadian-American Relations, 1894-1907," *Canadian Water Resources Journal* 8, no. 3 (1983), <https://www.tandfonline.com/doi/pdf/10.4296/cwrj0803058>; and Murray Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," in *Water Without Borders? Canada, the United States, and Shared Waters*, eds, Emma S. Norman, Alice Cohen, and Karen Bakker (Toronto: University of Toronto Press, 2013).

²¹ International Joint Commission, "Role of the IJC," updated 2024, <https://www.ijc.org/en/who/role>.

²² International Joint Commission, "Role of the IJC," updated 2024, <https://www.ijc.org/en/who/role>.

BWT assigns the IJC are: 1) administrative duties (Articles V and VI); 2) quasi-judicial authority (Articles III, IV, and VIII) 3) investigative functions (Article IX); and 4) arbitral abilities (Article X).²³

The Commission consists of three Canadians and three Americans. The Canadian commissioners are appointed by Cabinet, whereas the US representatives are appointed by the US President and confirmed by the Senate. The IJC has offices in Washington, D.C., and Ottawa, with a regional office in Windsor to support the Great Lakes initiatives.²⁴ Additionally, to aid with its mandate, the Commission can ratify boards and committees, and can approve studies which are comprised of an equal number of Canadians and Americans. They are staffed by federal, provincial, and state agencies.²⁵ Currently, there are a total of eighteen boards.²⁶

The IJC has successfully resolved disputes and prevented conflict over shared waters.²⁷ To achieve its success, the IJC had to adapt to changing trends and government attitudes. Its relationship with the federal governments is especially important²⁸ as the governments can “work

²³ Murray Clamen and Daniel McFarlane, “Introduction,” in *The First Century of the International Joint Commission*, eds. Murray Clamen and Daniel McFarlane, (Calgary, University of Calgary Press, 2020), 7; and International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VII.

²⁴ “Commissioners,” International Joint Commission, updated 2023, <https://ijc.org/en/who/people/commissioners#>.

²⁵ G. Graham Waite, “The International Joint Commission-Its Practice and Its Impact on Land Use,” *Buffalo Law Review* 13, no. 1 (1963): 98-100, https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=2763&=&context=buffalolawreview&=&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C5%2526q%253Dhow%252Bcommissioners%252Bare%252Bselected%252Bfor%252Bthe%252Binternational%252Bjoint%252Bcommission%2526btnG%253D#search=%22how%20commissioners%20selected%20international%20joint%20commission%22.

²⁶ “Boards, Studies, and Committee,” International Joint Commission, updated 2023, <https://ijc.org/en/who/boards>.

²⁷ John W. Holmes, “Introduction: The IJC and Canada-United States Relations,” in *The International Joint Commission Seventy Years On*, eds. Robert Spencer, John Kirton, and Kim Richard Nossal (Don Mills, T.H. Best Printing Co. Ltd, 1981), 4-5.

²⁸ Murray Clamen, and Daniel Macfarlane, “The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes,” *Review of Policy Research* 32, no.1 (2015): 56-58, <https://onlinelibrary-wiley-com.uml.idm.oclc.org/doi/full/10.1111/ropr.12107>.

around” the IJC addressing issues using bilateral negotiations.²⁹ Furthermore, since the Commission is a “creature of the two Governments”³⁰ it cannot independently pursue an issue as the governments determine the IJC’s workload. Until the 1960s, the IJC focused on water levels and allocation as Canada and the United States were eager to build megaprojects, such as dams and hydro-electricity infrastructure in the Great Lakes-St. Lawrence and the Columbia River regions. However, during the 1960s, the Commission shifted its stance and recommended against megaprojects, and began to promote water quality and environmental preservation.³¹ In 1972, the first Great Lakes’ Water Quality Agreement (GLWQA)³² was signed which gave the Commission an expanded role in the Great Lakes’ region.³³ However, during the early to mid-1970s, the commissioners became more outspoken on environmental issues and IJC reform which contributed to the federal governments losing confidence in the Commission.³⁴ During the late 1980s to early 1990s, attempts by the IJC to increase power and independence and advocate for environmental concerns in the Great Lakes was met with backlash from the national governments. Both viewed the IJC as becoming too involved in environmental activism resulting in reduced staff and resources in Commission offices. Additionally, the IJC saw its work

²⁹ Stephen J. Toope, and Jutta Brunnée, “Freshwater Regimes: The Mandate of the international Joint Commission,” *Arizona Journal of International and Comparative Law* 15, no.1 (1998): 287,

https://repository.arizona.edu/bitstream/handle/10150/659311/17_15ArizJIntlCompL_273_1998.pdf?sequence=1; and Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 78.

³⁰ Chirakaikaran Joseph Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada* (New York: Columbia University Press, 1932), 131.

³¹ Clamen, and Macfarlane, “The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes,” 41-42.

³² Prior to the signing of the GLWQA, the Commission’s focus was primarily on the Great Lakes-St. Lawrence region publishing reference reports on pollution and water flow in the Great Lakes which encouraged the federal governments to sign the Agreement. Since 1972, the Agreement was updated in 1978, 1987, and 2012 as per “The IJC and the Great Lakes Water Quality Agreement,” International Joint Commission, updated 2023, <https://www.ijc.org/en/what/glwqa-ijc>; and Clamen, and McFarlane, “Introduction,” 6-8.

³³ Botts and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 18, and 20.

³⁴ Don Munton, “Paradoxes and Prospects,” in *The International Joint Commission Seventy Years On*, eds. Robert Spencer, John Kirton, and Kim Richard Nossal (Don Mills, T.H. Best Printing Co. Ltd, 1981), 76, and 83.

decreased as other non-government organizations (NGOs), and government agencies took on an environmental role which overlapped with the Commission's responsibilities.³⁵

In 1997, the Commission's relations with the federal governments improved when both requested that the IJC develop an approach to help the two countries meet their responsibilities outlined in the BWT. In 1998, the IJC recommended that environmental issues should be addressed using a holistic approach which would distribute responsibilities from the IJC to local stakeholders. The solution was to create the International Watersheds' Initiative (IWI).³⁶ The initiative was accepted by both federal governments as part of a shift to decentralize water management, and recognize that Indigenous and local peoples, subnational governments, and industry should be equal partners in resolving transnational water issues. The IWI identified that shared boundary water issues should be addressed by considering the whole watershed instead of individual water systems.³⁷ Currently, the purview of subnational-governments, local stakeholders, and Indigenous peoples is becoming greater when dealing with localized water and environmental problems.³⁸ The IWI attempts to address modern environmental challenges such as, transboundary data harmonization, studying climate change impacts on watersheds,³⁹ and

³⁵ Botts and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 107, 209, and 217.

³⁶ David Preston, *Response to IJC in 21st Century report* (Ottawa: Department of Foreign Affairs and International Trade, 19 November 1998) <https://www.ijc.org/sites/default/files/Canadian%20IWI%20Mandate.pdf>; and "History," International Watersheds Initiative, updated 2023, <https://ijc.org/en/iwi-iibh/history>.

³⁷ "International Watersheds Initiative," International Joint Commission, updated 2023, <https://www.ijc.org/en/what/iwi>. A watershed is defined as: "an area of land that drains all the streams and rainfall to a common outlet" this "common outlet" can be a lake, bay, or river as per Water Science School, "Watersheds and Drainage Basins," *U.S. Department of the Interior*, 8 June 2019, <https://www.usgs.gov/special-topics/water-science-school/science/watersheds-and-drainage-basins>.

³⁸ Clamen, and Macfarlane, "The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes," 42.

³⁹ "History," International Watersheds Initiative, updated 2023, <https://ijc.org/en/iwi-iibh/history>.

effectively work with subnational governments and stakeholders within the framework of the IJC and the BWT to come to an equitable solution.⁴⁰

Current environmental concerns and economic interests relating to the management of shared waters will continue to be important to the field of CANUS relations and its stakeholders.⁴¹ The IJC is important symbolically for environmental cooperation. Practically, it is an institution that has developed a unique bureaucratic culture, and internal processes separate from national and subnational governments. The Commission's autonomy has gained it a reputation for impartiality, ability to use scientific findings to form policy recommendations, and effectively approve applications.⁴² In other words, it is trusted to come to an equitable solution at a time when publics are generally very skeptical of government processes. But that could change. Therefore, a better understanding of the IJC's mechanisms will assist current American and Canadian policy analysts and decision-makers to understand the IJC's role in the CANUS relationship and shed light on what it means to be a binational joint commission.

1.2: Methodology

The thesis will analyze a collection of primary documents, such as meeting minutes, government documents, IJC references and applications, and virtual meetings as well as IWI project reports, workshop reports, and media releases. Also, the research will scan secondary sources, such as books, peer reviewed articles, and external reports. The core part of this research

⁴⁰ Clamen, and Macfarlane, "The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes," 57.

⁴¹ John Kirton, and Brittaney Warren, "The Importance of the international Joint Commission," in *The First Century of the International Joint Commission*, eds. Murray Clamen and Daniel McFarlane, (Calgary, University of Calgary Press, 2020), 497-499; and Tony Clarke, "Turning on the Tap? Water exports to the United States," in *Living with Uncle: Canada-US Relations in an Age of Empire*, eds. Bruce Campbell and Ed Finn (Toronto: James Lorimer & Company Ltd, 2006), 118.

⁴² Clamen, and Macfarlane, "The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes," 43.

involves examining the structure of the IJC, its activities, relations with federal, provincial, state and local governments, and the opinions of IJC commissioners. The thesis will provide a concise definition for the theories of binationalism and bilateralism along with their requirements. Two case studies will be employed; the Zosel Dam applications of 1942 and 1980 in the Osoyoos Lake/Okanagan River region,⁴³ and the Garrison Diversion Unit (GDU) reference of 1975 in the Red River Basin.⁴⁴ Given the limited scope of this thesis, it was decided that two case studies were sufficient to confirm the binationalism and commission characteristics of the IJC. Each case was valued differently by Canada and the United States and national interests were at stake which makes them suitable tests to see if the IJC's solutions were binational. A binational solution requires consensus to favour a North American solution as opposed to a particular state.⁴⁵ This is the key test of binationalism. A commission is a mechanism that is enacted by government(s) to investigate, or advise on an issue, and usually do not possess decision making abilities, such as creating policy. Commissions are usually temporary, composed of technocrats, and pride themselves on independence and impartiality from the government(s) that created it.⁴⁶ The commission part is tested by the professionalism and independence of the members of the

⁴³ "49A," International Joint Commission, updated 2023, <https://ijc.org/en/49a>; and "108A," International Joint Commission, updated 2024, <https://ijc.org/en/108a>.

⁴⁴ "101R," International Joint Commission, updated 2023, <https://ijc.org/en/101r>. A drainage basin and watershed are used interchangeably, and defined as: "an area of land that drains all the streams and rainfall to a common outlet" this "common outlet" can be a lake, bay, or river as per Water Science School, "Watersheds and Drainage Basins," *U.S. Department of the Interior*, 8 June, 2019, <https://www.usgs.gov/special-topics/water-science-school/science/watersheds-and-drainage-basins>.

⁴⁵ Botts, and Muldoon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199.

⁴⁶ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; Geoffrey Wiseman, "The Palme Commission: New thinking about security," in *International commissions and the power of ideas*, eds. Ramesh Thakur, Andrew F. Cooper, and John English (Tokyo: United Nations University Press, 2005), 60-61; Andrew F. Cooper and John English, "International commissions and the mind of global governance," in *International commissions and the power of ideas*, eds. Ramesh Thakur, Andrew F. Cooper, and John English (Tokyo: United Nations University Press, 2005), 20; and Gareth Evans, "Foreword," in *International commissions and the power of ideas*, eds. Ramesh Thakur, Andrew F. Cooper, and John English (Tokyo: United Nations University Press, 2005), xii.

IJC who are experts engaged by Canada and the United States to collectively investigate, advise and coordinate advice/responses.⁴⁷ The case studies are also important because the Commission was forced to use different mechanisms to reach a solution. Furthermore, by using these cases the thesis will be able to examine the IJC's operations in different regions along the boundary waters, and how it addresses separate issues with distinct outcomes. The goal of this research is to examine whether the IJC meets the requirements of a truly binational joint commission.

To identify key variables that make a commission binational, and whether the characteristics of binationalism can be drawn out from the case studies the thesis will use tables, such as:

Table 1.1: Summary of Key Variables

Characteristics of a Binationalism Commission	IJC	Zosel Dam	GDU
In each case tested one country had more at stake than the other, but solutions were based on the common interest	The IJC is set up to ensure common interests are the priority	Canada had more to benefit than the United States	United States had more to benefit than Canada
A Commission is usually a mechanism that is enacted by government(s) to investigate, or advise on an issue, but do not possess decision making abilities. In addition, it is usually temporary, composed of technocrats, and prides itself on independence and impartiality from the government(s) that created it	IJC members are professional and independent experts who are appointed by Canada and the United States to collectively investigate, advise, and coordinate	In the Zosel Dam case IJC members exercised their professionalism and independence from governments	In the GDU case IJC members exercised their professionalism and independence from governments
Consensus is reached to favour a North American solution	The IJC seeks to find mutual solutions to an issue	The IJC used its quasi-judicial mechanism to seek a mutual solution	The IJC used its investitive function to seek a mutual solution

Note: Information in the above table is consolidated by the author from sources used in chapters one, two, three, and four of this thesis.

⁴⁷ International Joint Commission, *The Boundary Waters Treaty of 1909*.

The characteristics are drawn from the literature on binationalism found in the third chapter of this thesis.

1.3: Thesis Organization

The first chapter of the thesis introduces the research question and its significance, briefly explains the evolution of the IJC, and the methodological approach. The second chapter draws out the historical events that led to the signing of the BWT and outlines the framework of the IJC. The third chapter explains the concept of a joint commission, discuss the theories of binationalism and bilateralism while identifying their key requirements, and introduces two key cases: the GDU reference of 1975 and the Zosel Dam applications of 1942 and 1980. The fourth chapter examines the case studies in detail and explains their methodological challenges. Moreover, chapter four takes the characteristics of a binational commission and the features of the IJC outlined in chapters two and three, and analyzes whether, or not the Commission is indeed a binational joint commission. The cases are used to confirm the status of the IJC's binationalism (or not). The fifth chapter concludes by identifying the significance of the study of binationalism and the Commission and explains the importance of the IJC in the Canada-United States relationship. While the literature assumes binationalism and commission of the IJC, this thesis confirms that at least in the cases of the GDU and Zosel Dam, these characteristics hold.

1.4: A Literature Review of the International Joint Commission (IJC)

The peer reviewed articles, edited volumes, and book chapters selected for this review serve as a foundation to IJC literature as they provide insightful explanations of the BWT, and the Commission's structure, features, and powers. Other selected works highlight contemporary academic understanding of the IJC, and its role within transboundary water management and

governance.⁴⁸ The literature review is comprised of sixteen important works: five publications, eight peer reviewed articles, two book chapters, and one annotated digest. The review is split into three sections: i) the IJC's origins, functions and structure; ii) perspectives on the Commission; and iii) the IJC within transboundary environmental issues.

The first work outlines the origins of the IJC, its structure, and powers. Chirakaikaran Joseph Chacko's 1932 *The International Joint Commission between The United States of America and The Dominion of Canada* appears to be one of the earliest, major in-depth analyses of the origins of the Commission, and the Treaty.⁴⁹ Chacko's thorough interpretation of the BWT, and each of the Treaty's articles will be a useful guide when analyzing the BWT. The author concludes that the management of transboundary waters between Ottawa and Washington through an institute, such as the IJC, is "most commendable", an effective method to keep peace, and provides good communication between the two countries.⁵⁰

G. Graham Waite's 1963 *The International Joint Commission-Its Practice and Its Impact on Land Use* studies the IJC's impact on businesses and communities that reside around border waters. Waite provides a helpful explanation of the Commission's application and reference procedures and compares application and reference processes to the court of law, and legislative

⁴⁸ Water management and water governance are two different concepts. Governance is "the ability to wield and coordinate resources [in this case water] from public and private actors, generally in a more informal manner than 'government' and with the participation of a wider range of actors. Governance often entails a shift from formal, top-down modes of interaction to more informal, nonhierarchical arrangements" as per Debora VanNijnatten, Carolyn Johns, Kathryn Bryk Friedman, and Gail Krantzberg, "Assessing Adaptive Transboundary Governance Capacity in the Great Lakes Basin: The Role of Institutions and Networks," *International Journal of Water Governance* 4, no.2 (2016): 10, <https://journals.open.tudelft.nl/ijwg/article/view/5845/5018>. Whereas water management occurs within water governance, and is defined as the practice of controlling, using, and conserving water to optimize its availability and quality as per The World Bank, "Water Resource Management," updated 2022, <https://www.worldbank.org/en/topic/waterresourcesmanagement#2>.

⁴⁹ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*.

⁵⁰ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 369, 375, and 379.

committee procedures.⁵¹ Waite concludes that the IJC operates more as a legislative committee than as a court of law.⁵² Waite's article provides critical insight when examining the IJC's application and reference processes.

F.J.E. Jordan's 1966 *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)* includes documents, such as the "papers of the Governors General, Department of External Affairs files, Department of State files, and Parliamentary and Congressional papers and reports"⁵³ which cover background negotiations from 1894 to 1909, and the development of the IJC from 1912 to 1966. Jordan identifies the origins and developments of the BWT and the IJC through a collection of documents of historical accounts, correspondence between negotiators, and transcripts of Treaty negotiations between Ottawa and Washington.⁵⁴

William R. Willoughby's 1979 *The Joint Organizations of Canada and the United States* presents the joint organizations established between CANUS. In chapters two, three, and four he explains, in detail, the IJC's structure, and four functions (administrative, quasi-judicial, arbitral, and investigative)⁵⁵ to provide a contemporary viewpoint compared to Chacko's 1932 analysis of the IJC's functions. Additionally, in chapter five, Willoughby evaluates the Commission's success and effectiveness predicting that the number of cases assigned to the IJC will not increase as other organizations will be established to deal with shared water issues. He was

⁵¹ Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 94.

⁵² Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 101.

⁵³ F.J.E. Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, prepared for the International Joint Commission (Ottawa, Canada, August 1966), ii.

⁵⁴ Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, ii-iii.

⁵⁵ Willoughby, *The Joint Organizations of Canada and the United States*, 9.

prophetic in his assessment. Given the Commission's success and prestige, he concluded it will always have a role in transboundary water management.⁵⁶

N.F. Dreisziger's 1983 *International Water Management in Canadian-American Relations, 1894-1907* provides a concise historical review of water management between CANUS from 1894 to 1907. Dreisziger briefly explains and analyzes the negotiations between Ottawa and Washington leading up to the signing of the BWT.⁵⁷

Next is a collection of works examining and evaluating the IJC and its activities while providing unique perspectives on its effectiveness in shared water management. Peter S. Smedresman's 1973 *The International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control along the Boundaries* offers a comparative analysis of two commissions that focus on water boundary issues (the IJC, and the International Boundary and Water Commission (IBWC) between the United States and Mexico). Smedresman evaluates both commissions based on their water management abilities, and reputation as dispute settlement mechanisms.⁵⁸ The article concludes that the IJC holds more parity (in terms of values and powers of the commissioners), has a greater number of responsibilities and powers, and is more independent from the federal governments than the IBWC. His findings were expected as the

⁵⁶ Willoughby, *The Joint Organizations of Canada and the United States*, 64.

⁵⁷ N.F. Dreisziger, "International Water Management in Canadian-American Relations, 1894-1907," 73-75.

⁵⁸ Peter S. Smedresman, "The International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control along the Boundaries," *New York University Journal of International Law and Politics* 6, no. 3 (1973): 499, <https://heinonline.org/HOL/P?h=hein.journals/nyuilp6&i=513>.

United States lacks upstream control in its shared waters with Canada, and it has a stronger friendship with Canada and Great Britain compared to Mexico.⁵⁹

The International Joint Commission Seventy Years edited by Robert Spencer, John Kirton, and Kim Richard Nossal published in 1981 was from the product of a 1978 conference held at the University of Toronto to discuss institutions that connected Canada and the United States. Scholars attending the conference became interested in the IJC. The edited volume, which marked the Commission's seventieth birthday, is a product of that curiosity.⁶⁰ Each chapter holds a different perspective of the IJC as they were written by either civil servants, who worked on Commission boards, former commissioners, or academics, who specialize in CANUS relations or environmental governance and management. Throughout the edited volume there is consensus that the IJC is well respected in Canada and the United States, and useful for both countries. The volume's selected bibliography has an invaluable list of academic literature.⁶¹

The following two articles provide a negative assessment of the IJC's performance.⁶² David Lemarquand's 1993 *International Joint Commission and Changing Canada-United States Boundary Relations* examines the weaknesses of the IJC.⁶³ Lemarquand concludes that the federal governments' confidence in the Commission determines the frequency upon which it is called. If either Ottawa and Washington have low confidence in the IJC, it will not be used and

⁵⁹ Smedresman, "The International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control along the Boundaries," 529; and Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 63.

⁶⁰ Robert Spencer, John Kirton, and Kim Richard Nossal, ed. *The International Joint Commission Seventy Years On* (T.H. Best Printing Co. Ltd, 1981), vi-ix.

⁶¹ Spencer, Kirton, and Nossal, ed. *The International Joint Commission Seventy Years On*, 153-154.

⁶² Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 78-79; and David J. Allee, "Subnational governance and the International Joint Commission: Local management of United States and Canadian boundary waters," *Natural Resources Journal* 33, no.1 (1993): 134, and 140, <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1979&context=nrj>.

⁶³ Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 77-79.

cannot function effectively. However, the article asserts that a reformed Commission with a watchdog role could increase its use and effectiveness.⁶⁴ Similarly, David J. Allee's 1993 *Subnational Governance and the International Joint Commission: Local Management of the United States and Canadian Boundary Waters* claims that subnational government, non-governmental organizations, and local stakeholders are becoming more active in the management of natural resources including water which increase competition for roles traditionally held by the IJC. For example, in 1985 two investigative reports were created which focused on the same issue: one by the IJC, and the other by a joint task force commissioned by provinces and states that reside near the Great Lakes. Allee questions the Commission's usefulness.⁶⁵ The article analyzes the relationship between these actors, the federal governments, and the Commission⁶⁶ and concludes that cooperation between governments, stakeholders, and the IJC will be imperative for the Commission's survival.⁶⁷

Barry Sadler's 1993 *Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters* offers an observation on the activities of the IJC in the Great Lakes and western Canada-United States. Sadler discovers that the Commission finds innovative approaches to transboundary water issues regardless of its powers being limited by the BWT and political competition between various levels of government.⁶⁸ The article recommends that the IJC should follow an "ecosystem approach" when addressing border water

⁶⁴ Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," 61, and 90-91.

⁶⁵ Allee, "Subnational governance and the International Joint Commission: Local management of United States and Canadian boundary waters," 134, and 141.

⁶⁶ Allee, "Subnational governance and the International Joint Commission: Local management of United States and Canadian boundary waters," 133-135.

⁶⁷ Allee, "Subnational governance and the International Joint Commission: Local management of United States and Canadian boundary waters," 147-148.

⁶⁸ Barry Sadler, "Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters," *Natural Resources Journal* 33, no.2 (1993): 389, <https://core.ac.uk/download/pdf/151600936.pdf>.

issues.⁶⁹ This approach was later realized in 1998 with the implementation of the International Watersheds Initiative.⁷⁰

Murray Clamen's 2013 chapter, *The IJC and Transboundary Water Disputes: Past, Present, and Future in Water Without Borders? Canada, the United States, and Shared Waters* focuses on the IJC's institutional flexibility drawing on the Commission's most recent major initiative (the IWI) as the main future driver in shared water management. Clamen outlines the concept of the IWI, and the initiative's challenges and successes. He provides a concise explanation of the IWI, and a relatively recent assessment of its effectiveness.⁷¹ This is useful insight to explain the major shifts in the Commission's development and theorizes helpful recommendations on how the IJC might be better used by the two national governments.

Stephen Brooks' 2018 chapter *The International Joint Commission: The Promise and Limits of an Ambitious Model in Transboundary Environmental Governance across the World's Longest Border* examines the possibilities and limits of the IJC model through the study of its commissioners via a series of interviews in 2007. The interviews gathered insight on national differences between commissioners, and how they view their role and the responsibilities of the Commission within transboundary water management. Using the study, and Lemarquand's and Allee's 1993 articles, Brooks concludes that the reduced use of the IJC by both federal governments combined with the proliferation of interest in transboundary water management have limited the IJC's role in solving environmental problems, and water management.⁷² This

⁶⁹ Sadler, "Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters," 391.

⁷⁰ Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," 72-73.

⁷¹ Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," 71-72.

⁷² Stephen Brooks, "The International Joint Commission: The Promise and Limits of an Ambitious Model," in *Transboundary Environmental Governance across the World's Longest Border*, eds. Stephen Brooks, and Andrea Olive (East Lansing: Michigan State University, 2018), 3, and 26-27.

study is the most helpful to assess whether or not the IJC has binational characteristics as the opinions of past commissioners adds a level of primary insight into how the commissioners interpret the nature of the IJC.

The First Century of the International Joint Commission, edited by Daniel Macfarlane and Murray Clamen offers a collection of articles written by academics and practitioners who examine the IJC throughout its first one hundred years. Published in 2020, the book provides a current outlook on the Commission's role in water management, as well as a useful introduction and broad overview to the IJC in transboundary water management. The edited volume is split into four main sections. The first section looks at the establishment of the IJC and the BWT. Section two examines cases from coast-to-coast that played an important role in the Commission's history. Section three focuses on the IJC's work within the Great Lakes-St. Lawrence Basin. The last section discusses the Commission's success, its role in environment law and governance, and its future in border water management.⁷³ The book will be very important to help outline the IJC's characteristics and activities along the CANUS border. Furthermore, the first and last sections are essential to the review of the foundation of the IJC, the Commission's history, and the outlook on its future.

Third, are two articles that focus broadly on environmental governance. These articles unpack the IJC's broader role within the CANUS relationship and reaffirm that the IJC's model is useful to shared water management. Peter Stoett and Owen Temby's 2015 *Bilateral and Trilateral Natural Resource and Biodiversity Governance in North America: Organizations, Networks, and Inclusion* assess North America's bilateral and trilateral environmental institutions to see whether the IJC's activities are focused on "capacity building" or "regulatory"

⁷³ Clamen, and McFarlane, "Introduction," 23-26.

actions, and if they follow a “bureaucratic” or “post-bureaucratic” governance model. Stoett and Temby find IJC activities as both “capacity-building” and “regulatory,” and classify the Commission as “post-bureaucratic.”⁷⁴ Debora VanNijnatten, Carolyn Johns, Kathryn Bryk Friedman, and Gail Krantzberg’s 2016 *Assessing Adaptive Transboundary Governance Capacity in the Great Lakes Basin: The Role of Institutions and Networks* provides knowledge of institutions, such as the IJC, roles in transboundary environmental governance. The article evaluates transboundary governance in the Great Lakes basin concluding that more participation by local communities, and better coordination between new and old institutions in the Great Lakes’ region will improve the collective effort to address issues.⁷⁵ The article gives a useful definition of transboundary governance and reaffirms the IJC’s role in current transboundary water management and governance efforts.⁷⁶

From the literature three themes stand out: i) the IJC is generally thought of as an important and successful dispute resolution mechanism for Canada and the United States, and is likely to be used in the future; ii) the literature takes for granted what exactly constitutes a commission, or if its binational nature matters or changes its structure; and, iii) the IJC must continue to collaborate with actors other than national and subnational governments, such as local organizations, area residents, and Indigenous peoples in the future. This thesis now turns to the origins of the IJC and its structure.

⁷⁴ Peter Stoett, and Owen Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” *Review of Policy Research* 32, no.1 (2015): 1, and 11, <https://onlinelibrary-wiley-com.uml.idm.oclc.org/doi/epdf/10.1111/ropr.12110>.

⁷⁵ VanNijnatten, Johns, Friedman, and Krantzberg, “Assessing Adaptive Transboundary Governance Capacity in the Great Lakes Basin: The Role of Institutions and Networks,” 9, and 28.

⁷⁶ VanNijnatten, Johns, Friedman, and Krantzberg, “Assessing Adaptive Transboundary Governance Capacity in the Great Lakes Basin: The Role of Institutions and Networks,” 8, and 10.

Chapter Two: The Origin of the International Joint Commission and Its Structure

2.1: Introduction

This chapter provides the fundamentals of the IJC and the Boundary Waters Treaty (BWT) which will lay the foundation for the remainder of the thesis. This includes an explanation of transboundary water management before the BWT, the shared water issues that eventually pushed Ottawa and Washington to negotiate the Treaty, the negotiations of the BWT between the federal governments, and how the Treaty provides the Commission with its powers. In addition, this chapter will explore the IJC's functions and structure.

2.2: Context for a Transboundary Waters Treaty

Prior to the BWT, Great Britain, and the United States signed numerous treaties and agreements, such as The Definitive Treaty of Peace (The Paris Peace Treaty) (1783),⁷⁷ The Jay Treaty (signed in 1794, but ratified in 1796),⁷⁸ Treaty of Ghent (1814),⁷⁹ Rush-Bagot Agreement (1817),⁸⁰ Treaty of 1818 -the London Convention (1818),⁸¹ the Webster-Ashburton Treaty (1842),⁸² Northwest Boundary Treaty (Oregon Treaty) (1846),⁸³ the 1854 Reciprocity Agreement

⁷⁷ "Treaty of Paris (1783)," National Archives, updated 2022, <https://www.archives.gov/milestone-documents/treaty-of-paris>.

⁷⁸ "British-American Diplomacy: The Jay Treaty; November 19, 1794," Yale Law School Lillian Goldman Law Library, updated 2008, https://avalon.law.yale.edu/18th_century/jay.asp.

⁷⁹ "Treaty of Ghent (1814)," National Archives, updated 2022, <https://www.archives.gov/milestone-documents/treaty-of-ghent>.

⁸⁰ "Exchange of Notes Between the United Kingdom and the United States Concerning the Naval Forces to Be Maintained on the Great Lakes (Rush-bagot Agreement)," Government of Canada, updated 2023, <https://www.treaty-accord.gc.ca/text-texte.aspx?id=101662>.

⁸¹ Norman L. Nicholson, "Convention of 1818," *The Canadian Encyclopedia*, 6 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/convention-of-1818>.

⁸² "Webster-Ashburton Treaty, 1842," Office of the Historian, updated 2023, <https://history.state.gov/milestones/1830-1860/webster-treaty#:~:text=Webster%20and%20Ashburton%20agreed%20on,in%20several%20bodies%20of%20water>.

⁸³ Taylor C. Noakes, "Oregon Treaty," *The Canadian Encyclopedia*, 7 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/oregon-treaty>.

(1854);⁸⁴ and the Treaty of Washington (1871).⁸⁵ These treaties and agreements were a result of various events which included the American Revolution, US western territorial expansion, territorial disputes, and the War of 1812.⁸⁶ While none of the treaties or agreements leading up to the BWT created a permanent joint commission with the purpose of settling cross-border water disputes or resolving water border tensions between the two countries, they did help institutionalize the principle of free navigation in shared waters, and established and solidified boundary lines.⁸⁷ The next challenge was to allocate and manage transboundary rivers, streams, and lakes without creating friction between Canada and the United States. Both countries saw shared waters as an economic opportunity, and sought ways to control, manage, and annex these bodies of water and water systems.⁸⁸ As more water issues (see section 2.3) arose, Canada and the United States realized that signing treaties and agreements to resolve problems took immense diplomatic effort and time and that a permanent machinery to resolve water border disputes made more sense.⁸⁹ In addition, Britain retained control over Canadian foreign policy until 1931 when the Statute of Westminster was signed leaving the Canadian government to settle issues through an “awkward Ottawa-London-Washington triangle”⁹⁰ which made diplomacy with the United States difficult.

⁸⁴ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 58-59.

⁸⁵ P.B. Waite, “Treaty of Washington,” *The Canadian Encyclopedia*, 7 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/treaty-of-washington>.

⁸⁶ For footnote sources see footnotes 74-82 above.

⁸⁷ Whorley, “From IWC to BWT: Canada-US Institution Building, 1902-1909,” 44. It is important to note that after the BTW was signed in 1909, Ottawa and Washington continued to sign treaties and agreements to finalize the border as per “History,” International Boundary Commission, updated 2023, <https://www.internationalboundarycommission.org/en/about/history.php>.

⁸⁸ “History,” International Boundary Commission, updated 2023, <https://www.internationalboundarycommission.org/en/about/history.php>.

⁸⁹ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 69-70.

⁹⁰ Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 62.

2.3: Shared Water Issues

Before the creation of the BWT and IJC, three main water issues created reoccurring, political problems for both federal governments. The first main problem was water irrigation interests that clashed in the St. Mary and Milk Rivers watershed. Both rivers flow north into Alberta. The St. Mary River is part of the Saskatchewan-Nelson River system flowing into the Hudson Bay basin and is a more reliable water source than the Milk River. The Milk River flows through southern Alberta from Montana then re-enters Montana, and subsequently drains into the Missouri River which empties into the Gulf of Mexico. In 1891, the United States Department of Agriculture planned to divert the waters of the St. Mary River into the Milk River to help irrigate Montana's agricultural lands. The Canadian Department of the Interior responded by proposing to build a canal to divert water from the St. Mary River before the United States diverted the water on their side of the border. The Americans approved their St. Mary-Milk River diversion project but fearing Canada would build retaliatory canals to redirect the rivers, construction was halted until an international agreement between the two national governments was signed.⁹¹

A second example can be found in the Great Lakes (Lakes Superior, Michigan, Huron, Erie, and Ontario) and the St. Lawrence River system which created more issues for each country as a transfer of water from the Great Lakes and St. Lawrence River would impact local sanitation, the natural beauty of the region, and lower water levels which would negatively impact navigation and hydro-electricity.⁹² Three particular projects highlighted the challenges in the Great Lakes-St. Lawrence region. The first project, the construction of the Chicago Diversion in 1900, lowered Lake Michigan's water levels. Canada became concerned that the Diversion

⁹¹ Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 39-40.

⁹² Piper, "Two International Waterways Commissions: A Comparative Study,"; and Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 40.

also lowered water levels in Lake Huron causing economic impacts for Canada in terms of lost revenue in shipping, and hydro-electricity, especially in the Niagara Falls area, and the St. Marys River in Sault Ste Marie.⁹³ The second project, the construction of the St. Lawrence Seaway, concerned the Americans as it would change shipping in the region.⁹⁴ The third project planned by the United States diverted water from Niagara Falls and faced opposition in both countries as it would impact the natural beauty and use of Niagara Falls.⁹⁵

The third issue was about balancing water levels for hydro-electricity, farming, and navigational interests in the Lake of the Woods-Rainy River (LOTWRR) region. All three uses required different water levels.⁹⁶ These three projects were major factors in the negotiations of the BWT and the initial discussions for the creation of a commission to help manage transboundary water issues. Although these disputes are no longer an issue for Ottawa and Washington, the underlying reasoning for them (competing interests in shared waters) remains the persistent concern that ensures the IJC's continued existence.

2.4: Discussions of a Joint Commission for Boundary Water Disputes

The first mention of an international commission to manage cross-boundary waters was raised in 1894 at an international waterways' convention in Toronto, Canada. The Canadian government, while debating the feasibility of the St. Lawrence Seaway as a joint project between the federal governments, called for a joint commission to resolve common waterway issues

⁹³ Gordon Walker Q.C., "The Boundary Water Treaty 1909: A Peace Treaty?," *Canada-United States Law Journal* 39, no. 14 (January 2014): 174, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2526&context=cuslj>; and Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 40-42.

⁹⁴ N.F. Dreisziger, "Dreams and Disappointments," in *The International Joint Commission Seventy Years On*, eds. Robert Spencer, John Kirton, and Kim Richard Nossal (Don Mills, T.H. Best Printing Co. Ltd, 1981), 9-11.

⁹⁵ Dreisziger, "Dreams and Disappointments," 11-13.

⁹⁶ Q.C., "The Boundary Water Treaty 1909: A Peace Treaty?" ,174.

between the two countries.⁹⁷ That same year, delegates from Canada, the United States, and Mexico met at the third annual International Irrigation Congress⁹⁸ in Denver, Colorado. During the Congress, it was suggested that an international commission be appointed to settle conflicting water rights' claims that arise on the United States' international borders with Canada and Mexico.⁹⁹ In 1896, Canada acted on the suggestion, and requested that the British Ambassador to Canada meet with the US Secretary of State on the topic of establishing an international commission. The US response was non-committal, and the resolution was abandoned until 1902.¹⁰⁰

2.5: The Creation of the International Waterways Commission (IWC)

In 1902, the US Congress indirectly responded to Canada's request to create a commission by passing the Rivers and Harbors Act.¹⁰¹ The Act called for any modifications to waterways to abide by "any rules and regulations that may hereafter be recommended by any International Commission and that shall become operative"¹⁰² out of concern that US national interests and projects in the Great Lakes region could be ended by Britain (for Canada) if its request was not entertained. Subsequently, the Act stated:

The President of the United States is hereby requested to invite the Government of Great Britain to join in the formation of an international commission, to be composed of three members from the United States and three who shall represent the interests of the Dominion of Canada, whose duty it shall be to investigate and report upon the conditions

⁹⁷ Dreisziger, "International Water Management in Canadian-American Relations, 1894-1907," 64.

⁹⁸ The International Irrigation Congress promoted water irrigation to help develop the western US agricultural sector. The Congress was comprised of western US states. Canada and Mexico were honorary members as per Thomas L. Smith, ed., *Official Proceeding of the Third National Irrigation Congress* (Denver: The Local Committee of Arrangements, 1894), 9, <https://babel.hathitrust.org/cgi/pt?id=uc1.b2936541&seq=15&q1=canada>.

⁹⁹ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 71-72.

¹⁰⁰ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 72-74.

¹⁰¹ Dreisziger, "Dreams and Disappointments," 12.

¹⁰² Unknown, "River and Harbor Act of June 13, 1902," *Library of Congress Manuscript Division* (1902), 2, <https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record/ImageViewer?libID=o38245&imageNo=1>.

and uses of the waters adjacent to the boundary lines between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River Saint Lawrence to the Atlantic Ocean; also upon the maintenance and regulation of suitable levels; and also upon the effect upon the shores of these waters and the structures thereon, and upon the interests of navigation, by reason of the diversion of these waters from or change in their natural flow; and, further, to report upon the necessary measures to regulate such diversion, and to make such recommendations for improvements and regulations as shall best subserve the interests of navigation in said waters.¹⁰³

The official invitation to London's Foreign Office was sent on July 15, 1902. However, Canada was not notified until January 3, 1905. The delay further aggravated the Canadian government because during the same period, in 1903, the Alaska Boundary Dispute was settled not in Canada's favour by the deciding vote of a British judge.¹⁰⁴ Nonetheless, in 1905, the Canadian government accepted the invitation, and the IWC was established under US legislation. The IWC was not an international treaty -no permanency of it was indicated, and it was comprised equally of three Americans and three Canadians.¹⁰⁵ Furthermore, the IWC was purely an investigative tool to report and sometimes make recommendations to the federal governments.¹⁰⁶ It was not empowered with any authoritative, administrative, or legislative decision-making over

¹⁰³ Unknown, "Report on the Commission to Investigate Water Boundaries: Great Lakes' levels June 13, 1902," *Library of Congress Manuscript Division* (1902), <https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record/ImageViewer?libID=o282750>.

¹⁰⁴ D.M.L. Farr, and Niko Block, "Alaska Boundary Dispute," *The Canadian Encyclopedia*, 6 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/alaska-boundary-dispute>. The border dispute arose after the United States purchased Alaska from Russia in 1867, however, the boundary line between British Columbia and Alaska was unclear. In 1897 Canadian and American interests in the Klondike Gold Rush caused a dispute with the ambiguous line of demarcation. Canada wanted a direct route from the gold fields to the Pacific fjords for quick access and shipping, whereas the United States wanted control of the access points to the territory. A joint commission was created from 1898 to 1899 to resolve the issue, but was unsuccessful, and in 1903 the problem was referred to an international tribunal. The tribunal consisted of three Americans, two Canadians, and one British representative. Both the American and Canadian representatives supported their respective government's territorial claim, but the member from Britain (to the surprise of Canada) sided with the American interpretation of the boundary. This not only angered the Canada public, but worried the Canadian government that it could not trust Britain to support its interests and was an incentive for the Government of Canada to take control of its own foreign policy with the United States. As per D.M.L. Farr, and Niko Block, "Alaska Boundary Dispute," *The Canadian Encyclopedia*, 6 February 2006; and Q.C., "The Boundary Water Treaty 1909: A Peace Treaty?" 174.

¹⁰⁵ Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 42-43; and Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 75.

¹⁰⁶ Dreisziger, "Dreams and Disappointments," 12; and Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 75.

transboundary waters.¹⁰⁷

The IWC provided useful studies on construction projects for the diversions in Chicago and Niagara Falls. These studies later proved insightful for the Minnesota Canal and Power Company's design of water control structures that would affect the LOTWRR water basin.¹⁰⁸ Furthermore, the work of the IWC also pushed the federal governments to establish a resolution mechanism for all transboundary water issues. For example, in 1906, the IWC's report to the national governments on the conditions of Niagara Falls recommended that "[a] permanent joint commission can deal much more satisfactorily with the settlement of all disputes arising as to the application of these principles and should be appointed."¹⁰⁹

However, the IWC's reports did not aid Canada and the United States in settling any disputes.¹¹⁰ Instead, in 1913, the IWC was decommissioned¹¹¹ as disagreement over the jurisdiction of the IWC, its restricted powers and effectiveness came to the forefront. Moreover, the eventual creation of the IJC, which took on many of the IWC's responsibilities, rendered the IWC obsolete.¹¹²

2.6: Negotiations of the Boundary Waters Treaty of 1909

¹⁰⁷ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 75.

¹⁰⁸ Whorley, "From IWC to BWT: Canada-US Institution Building, 1902-1909," 46.

¹⁰⁹ Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, 6.

¹¹⁰ Q.C., "The Boundary Water Treaty 1909: A Peace Treaty?" 175; and Dreisziger, "Dreams and Disappointments," 13.

¹¹¹ "Origins of the Boundary Waters Treaty," International Joint Commission, updated 2023, <https://ijc.org/en/who/mission/history/bwt>.

¹¹² *International Waterways Commission Progress Report*, Senate, 62D Congress 3d Session (1912), 5-7, <https://babel.hathitrust.org/cgi/pt?id=uiuo.ark%3A%2F13960%2Ft9481xj8v&seq=7>. The Canadian section interpreted the Act to consider all transboundary waters, but the Americans saw it limited to the Great Lakes as per Senate, *International Waterways Commission Progress Report*, 5-7.

In 1907, the two federal governments recognized the limitations of the IWC and began to negotiate a solution for the shared water issues.¹¹³ In the United States, President Theodore Roosevelt tasked Secretary of State Elihu Root to oversee negotiations. Root sought the advice of his special legal adviser Chandler P. Anderson, and appointed George Clinton, the legal expert for the American section of the IWC, to negotiate with Canada. Root preferred a “Commission of Enquiry” to deal with issues as they arose.¹¹⁴ In Canada, Prime Minister Wilfred Laurier appointed George C. Gibbons, a lawyer and the chairman of the Canadian section of the IWC.¹¹⁵ Unlike Root, Gibbons believed that a permanent joint commission with stronger powers than the IWC would help ease tension along the border. Both Laurier and Root had reservations about signing a treaty. Laurier wanted to protect Canadian waters from American exploitation through an independent commission, and ensure that the St. Mary-Milk issue was resolved.¹¹⁶ Root wanted the Chicago Diversion to be excluded from the treaty, and worried that a commission with too much power could undermine the US government’s control over its waterways.¹¹⁷ After negotiations and two major drafts of the treaty, the BWT was signed by the United States and Great Britain (on behalf of Canada) on January 11, 1909, establishing the first permanent joint commission between Canada and the United States.¹¹⁸ In the United States, the BWT was

¹¹³ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 77.

¹¹⁴ Dreisziger, “Dreams and Disappointments,” 15; and Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, 12, and 14.

¹¹⁵ Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, 5, and 11-12.

¹¹⁶ Dreisziger, “Dreams and Disappointments,” 17, and 19.

¹¹⁷ Dreisziger, “Dreams and Disappointments,” 17-18.

¹¹⁸ Dreisziger, “International Water Management in Canadian-American Relations, 1894-1907,” 74; and Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, 97.

approved by the US Senate, and was ratified on May 5, 1910.¹¹⁹ In Canada, the Commission was legislated on May 19, 1911 after passing through the Senate and receiving Royal Assent.¹²⁰

In sum, both federal governments faced “complex interdependence” as they were mutually dependent on shared rather than unilateral water management.¹²¹ By creating the BWT, both countries sacrificed some control of national waters to an independent institution established by the Treaty and limited their advantages in their upstream waters. In return, they minimized the possibility of conflict in shared waters and satisfied national interests.¹²² For the Canadian government, national interests meant protecting itself from American pressures, and becoming more independent from Great Britain as it was Canadians who negotiated directly with Washington to establish the Treaty, no longer via the United Kingdom.¹²³ For the American government, it felt pressure from the public and states to resolve boundary water disputes. Additionally, the natural state of boundary waters being either upstream or downstream¹²⁴ left the United States vulnerable to the direction of water flow without a clear strategic advantage. Water infrastructure projects could be put in jeopardy by opposition and retaliation from Canada and Britain which would force the Americans to resolve disputes through diplomatic channels taking time and resources away from other issues.¹²⁵

¹¹⁹ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 78.

¹²⁰ Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*, 149.

¹²¹ Robert O. Keohane, and Joseph S. Nye, *Power and Interdependence* (Boston: Longman, 2012), xv.

¹²² Helen Milner, “Review Article: International Theories of Cooperation Among Nations: Strengths and Weaknesses,” *World Politics* 44, no. 3 (1992): 487-488,

http://www.rochelleterman.com/ir/sites/default/files/Milner1992_0.pdf; and Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 63.

¹²³ Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 62-63.

¹²⁴ Note: Receiving downstream water is viewed as a disadvantage because recipients of downstream water have no control of what is being done to the water upstream as per Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 63.

¹²⁵ Lemarquand, “International Joint Commission and Changing Canada-United States Boundary Relations,” 62-63; and Whorley, “From IWC to BWT: Canada-US Institution Building, 1902-1909,” 39-40, and 42.

2.7: The Functions of the IJC

The International Joint Commission's jurisdiction, functions, and structure (which will be discussed in section 2.8) were established within the articles of BWT. Articles III, IV, VI, VIII, IX, and X of the Treaty empowers the IJC with four functions: administrative, quasi-judicial, investigative, and arbitral.¹²⁶

First, the Commission's administrative abilities (Article VI) "simply" address the St. Mary-Milk Rivers dispute. As a limited function restricted to a localized area, Article VI allocates irrigation waters to Alberta and Montana, and directs the IJC to supervise the diversion of waters in the St. Mary-Milk Rivers assigned to each country through the Commission's Accredited Irrigation Officers who ensure the allocation of water is followed in accordance with the IJC's Order of Approval.¹²⁷

Second, the quasi-judicial powers (Articles III, IV, VIII) of the IJC allow it to permit or restrict certain activities. Articles III and IV state that IJC approval is required for all "uses, obstructions, and diversions"¹²⁸ that temporarily or permanently impact water levels or quality of boundary waters on either side of the border. However, Article IV allows the federal governments to avoid the IJC's approval by entering into special agreements, presumably conducted through negotiations.¹²⁹ Furthermore, the second paragraph of Article IV is important as it directly prohibits pollution of water in one country resulting in injury of health or property in the other country. This allows the IJC to address environmental issues.¹³⁰

¹²⁶ Clamen and McFarlane, "Introduction," 5-7. For the entire BWT see Appendix C of this thesis.

¹²⁷ Willoughby, *The Joint Organizations of Canada and the United States* 17; "Mandate," Accredited Officers of the St. Mary and Milk Rivers, updated 2023, <https://ijc.org/en/aosmmr/who/mandate>; and International Joint Commission, *The Boundary Waters Treaty of 1909*, Article IV.

¹²⁸ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article III, and IV.

¹²⁹ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article III, IV, and VIII.

¹³⁰ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article IV.

Article VIII outlines two rules and three priorities on which the commissioners of the IJC base their decisions: i) that both countries have “equal and similar rights” when using boundary waters; and ii) the preference of water use will be guided by the following priorities: a) domestic and sanitary purposes, b) navigational, and c) power and irrigation purposes.¹³¹ Simply, all three articles (III, IV and VIII) collectively provide the IJC with its quasi-judicial powers to permit or restrict applications seeking to divert, obstruct, or use the boundary waters or waters flowing across or from shared waters by either individuals or governments through an Order of Approval. An Order of Approval outlines conditions which a project must follow to comply with the BWT.¹³² Once an application is submitted, the IJC holds at least one public hearing so the applicant can explain and defend their project. The commissioners have the power to acquire evidence under oath, and witnesses can be examined and cross-examined.¹³³ After the public hearing(s) and the application review by the commissioners, they vote on a decision. A decision can have three outcomes. First, the application, with at least four of six commissioners in favour, is accepted and an Order of Approval will be issued. The Order will place conditions on the project and usually a board is appointed to monitor the compliance of the Order and to oversee the project. Second, the application, with at least four commissioners in favour, is denied which means the project cannot proceed. Lastly, the Commission can be equally divided, and separate reports are sent to each federal governments leaving the decision to them in consultation with their respected state and province where the issue is in question. All decisions made by the

¹³¹ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 95; and International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VIII.

¹³² Willoughby, *The Joint Organizations of Canada and the United States*, 29.

¹³³ International Joint Commission, *Rules of Procedure of the International Joint Commission*, rules 23.1-23.6, <https://ijc.org/en/who/mission/principles/rules-of-procedure>; and Waite, “The International Joint Commission-Its Practice and Its Impact on Land Use,” 106-107.

Commission are final, but Orders can be amended by the IJC.¹³⁴ To ensure that the conditions of its Order of Approval is obeyed, the Commission monitors the compliance of the approval by appointing technocrats to “control boards”, to oversee application conditions and provide reports to the IJC.¹³⁵ If an Order is disobeyed, punishment resides with national and subnational governments as the Commission does not have enforcement and policing powers.¹³⁶ The IJC’s quasi-judicial powers and its Orders play a primary role in its activities.

Third, another one of the IJC’s main functions is its investigative abilities outlined in Article IX of the BWT. The Commission reports and recommends on any transboundary issue if requested by either national government.¹³⁷ A request for the IJC to investigate a dispute is called a reference. Unlike the IJC’s quasi-judicial function, which limits its jurisdiction to matters relating to use, obstruction, and diversion of waters, Article IX expands the Commission’s jurisdiction to any issues “along the common frontier.” Therefore, in theory, any border issue can be referred to the IJC.¹³⁸ Similar to its quasi-judicial powers the Commission cannot, on its own, enact a reference to investigate as Ottawa or Washington must submit a reference for the IJC to begin its investigative work. This provides the federal governments with a tool to investigate any issue along the border. Neither the Treaty nor the rules of procedure specify if both or only one of the national governments can request a reference, but in keeping with the cooperative nature

¹³⁴ International Joint Commission, “Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909,” 2, and 4-6; International Joint Commission, *Rules of Procedure of the International Joint Commission*, rule 25; and Waite, “The International Joint Commission-Its Practice and Its Impact on Land Use,” 109.

¹³⁵ Waite, “The International Joint Commission-Its Practice and Its Impact on Land Use,” 99.

¹³⁶ Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 372.

¹³⁷ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article IX; and Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 240-241.

¹³⁸ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article IX.

of the Commission, they have always jointly submitted referrals to the IJC.¹³⁹ The procedure for a reference is similar to the application process except that in addition to holding public hearing(s), the Commission can create advisory boards or boards of experts to help with their investigation. After the public hearing(s), and the board of experts has completed their work, the IJC commissioners decide on the matter of the reference. Under Article VIII, the investigative reports to Ottawa and Washington can be “unanimous, majority, or equal division”.¹⁴⁰ The Commission’s reports are important as they provide impartial data which can be used for political, public, or private interests.¹⁴¹ When the decision is unanimous, the IJC sends a joint report to both federal governments. However, if a commissioner disagrees with part of a recommendation, they can submit a separate opinion without impacting the overall decision. When the decision is based on a majority, the national governments receive a majority report and a minority report. When there is a split decision along national lines, each section sends a separate report to their respective governments. Unlike applications, the final reports submitted to the federal governments are recommendatory only. The recommendations can be accepted or rejected by Ottawa and Washington. Most of the IJC’s recommendations, however, are accepted, and at least partially implemented as most recommendations are non-controversial and administrative.¹⁴²

¹³⁹ Willoughby, *The Joint Organizations of Canada and the United States*, 39.

¹⁴⁰ Willoughby, *The Joint Organizations of Canada and the United States*, 41.

¹⁴¹ Clamen, and McFarlane, “Introduction,” 6-8; and Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 246.

¹⁴² Willoughby, *The Joint Organizations of Canada and the United States*, 41; and Norman Brandson, and Allen Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clemen (Calgary: University of Calgary Press, 2020), 218-219.

Fourth, the arbitral function (Article X), allows the IJC to investigate and render a binding decision on any boundary problem upon the request of both federal governments.¹⁴³ In the United States, this means obtaining advice and consent from the Senate, and in Canada, the approval of the Prime Minister.¹⁴⁴ If the IJC is unable to reach a decision, the issue will be referred to an umpire to be resolved in accordance with Article XLV of the Hague Convention for the Pacific Settlement of International Disputes of 1907.¹⁴⁵ Article X, however, has never been used, and it would be unwise to involve the Commission in a highly divisive issue because it might undo the IJC's cooperative nature creating tensions between the commissioners.¹⁴⁶

Of the IJC's two primary powers (quasi-judicial and investigative), the drafters of the BWT thought that the IJC's quasi-judicial role would be the primary function. Currently, however, its main function is investigative.¹⁴⁷ The Commission's predominate use of its investigative powers was solidified in 1997 when the national governments submitted a reference to investigate how the IJC might help them to address environmental challenges in the 21st century.¹⁴⁸ The Commission recommended a watershed approach¹⁴⁹ to water management through the International Watersheds Initiative (IWI). In 1998, Ottawa and Washington approved

¹⁴³ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article X.

¹⁴⁴ Willoughby, *The Joint Organizations of Canada and the United States*, 35.

¹⁴⁵ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article X. Article XLV of the Hague Convention outlines the process of resolving a split decision in an arbitral case. The Article states that an umpire should be assigned when an arbitral decision is equally divided between two parties. An umpire is a third party decided by the two parties to be a tiebreaker in the decision as per "Convention for the Pacific Settlement of International Disputes (Hague Convention I)," University of Oslo Faculty of Law, updated 2024, <https://www.jus.uio.no/english/services/library/treaties/01/1-09/settlement-international-disputes.html>.

¹⁴⁶ Willoughby, *The Joint Organizations of Canada and the United States*, 36.

¹⁴⁷ Willoughby, *The Joint Organizations of Canada and the United States*, 18.

¹⁴⁸ Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," 72-73.

¹⁴⁹ The goal of the watershed approach is to manage and develop water resources in a way that is sustainable while considering economic, social, and environmental interests in the region as per International Watersheds Initiative, *International Watersheds Initiative 25th Anniversary Showcase Report*, (IWI: October 2023), 1-2, <https://ijc.org/en/iwi-iibh/international-watersheds-initiative-25th-anniversary-showcase-report>.

of the IJC initiative and created three international watershed boards (St. Croix River, Rainy-Lake of the Woods, and Red River), and a pilot board for the Souris River watershed.¹⁵⁰

The IWI allows the Commission to independently initiate “IWI projects” through its boards of control and watershed boards without the approval of the governments of Canada and the United States.¹⁵¹ These projects are scientific and educational. For instances, they can report on “water quality, water quantity and aquatic ecosystem health”¹⁵² in non-watershed board regions, such as the Great Lakes, Kootenay Lake and Osoyoos Lake.¹⁵³ The goals of IWI boards and projects are threefold. First, the boards build a shared understanding of problems through the harmonization of scientific data and knowledge, develop tools, and expand cooperation among local stakeholders. Second, the boards communicate shared water issues with subnational and national governments, locals, and Indigenous peoples to increase awareness and understanding of watershed issues. Third, the boards contribute to resolving watershed issues by creating dialogue between interested groups, helping develop shared solutions, and bring issues to the attention of the IJC.¹⁵⁴ The IWI was a result of a fundamental shift in the approach to how transboundary waters should be managed and indicated that a transfer from the federal governments to other actors of water management responsibilities occurred. The IWI was the IJC’s solution to adapt to this shift in approach.¹⁵⁵

¹⁵⁰ “Project highlights- StoryMap,” International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>.

¹⁵¹ “Our principles and practices,” International Watersheds Initiative, updated 2024, <https://www.ijc.org/en/iwi-iibh/our-principles-and-practices>.

¹⁵² “Project highlights- StoryMap,” International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>.

¹⁵³ “Project highlights- StoryMap,” International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>; and International Watersheds Initiative, *International Watersheds Initiative 25th Anniversary Showcase Report*, 1-2.

¹⁵⁴ “Project highlights- StoryMap,” International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>.

¹⁵⁵ Noah D. Hall, A. Dan Tarlock, and Marcia Valiante, “The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance,” in *The First Century of the*

2.8: The Structure of the IJC

Article VII of the Treaty establishes the IJC and defines its basic structure. The Article states that the IJC consists of six commissioners. The commissioners are divided into a Canadian and US section with one member from each section serving as chair. The US section members are appointed by the President upon confirmation by the US Senate. The members of the Canadian section are appointed by the Governor in Council (in reality the Prime Minister).¹⁵⁶ The appointment process of commissioners is different in each country. In Canada, the selection of commissioners is often merit-based. Commissioners are usually bureaucrats, or have served in office and have either legal expertise or had an environmental or natural resource portfolio. In the United States, the appointment of commissioners is more political as the sitting President usually replaces their predecessors' appointments and they are mostly from states that border the CANUS boundary line or transboundary waters. Nonetheless, the US commissioners are qualified to serve on the commission as they often have experience in environmental management.¹⁵⁷ Terms of office for the commissioners vary but are normally three to four years. Technically, the commissioners appointments are independent from their governments as they are not representatives of the governments that appointed them and do not follow a government mandate.¹⁵⁸ Upon appointment, the commissioners declare in writing that they “will faithfully and impartially perform the duties imposed upon him/[them] under this treaty”.¹⁵⁹ The IJC, its

International Joint Commission, eds. Daniel Macfarlane, and Murray Clamen (Calgary: University of Calgary Press, 2020), 474-475; and Clamen, “The IJC and Transboundary Water Disputes: Past, Present, and Future,” 73, and 78.

¹⁵⁶ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VII; and Clamen, and McFarlane, “Introduction,” 7, and 10.

¹⁵⁷ Lee Botts, and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement*, 12-13; Willoughby, *The Joint Organizations of Canada and the United States*, 18-19; and “Commissioners,” International Joint Commission, updated 2023, <https://ijc.org/en/who/people/commissioners>.

¹⁵⁸ Clamen, and McFarlane, “Introduction,” 7, and 10.

¹⁵⁹ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article XII.

offices, and advisory and control boards are meant to act jointly, operate as a unit, and make decisions by consensus. The goal is to provide “win-win” solutions in the common interest of both Canada and the United States and prevent transboundary water disputes.¹⁶⁰

Communication between the Canadian section of the IJC and Ottawa is done through Global Affairs Canada, led by the Minister of Foreign Affairs who advises the Prime Minister. Communication between the American section of the Commission and Washington is done by the State Department. The Secretary of State advises the President. The federal governments interact directly via their respected IJC sections. For example, when a reference is submitted, a letter from Global Affairs Canada is sent to the secretary of the Canadian section of the IJC while an identical letter is sent to the American secretary of the US section from the State Department.¹⁶¹

The IJC’s case work is done through “dockets”. There are two different types of cases that make up dockets: Orders of Approval and references (explained in section 2.7).¹⁶² The Commission cannot require the federal governments to submit applications, nor is it the responsibility of the IJC to ensure that they obey the BWT.¹⁶³ The commissioners’ work is

¹⁶⁰ Willoughby, *The Joint Organizations of Canada and the United States*, 24.

¹⁶¹ Allan J. MacEachen, *Garrison Diversion Canada Letter of Reference*, (Ottawa: The Secretary of State for External Affairs Canada, 22 October 1975), <https://ijc.org/sites/default/files/Docket%20101%20Garrison%20Diversion%20Ca.%20Letter%20of%20Reference%201975-10-22.pdf>; Richard D. Vine, *Garrison Diversion U.S. Letter of Reference* (Washington D.C.: Department of State, 22 October 1975), <https://ijc.org/sites/default/files/Docket%20101%20Garrison%20Diversion%20U.S.%20Letter%20of%20Reference%201975-10-22.pdf>; and Office of the Chief Audit Executive, “Audit of the Expenditures of The Canadian Section Of The International Joint Commission: Executive Summary,” *Global Affairs Canada* (2016), https://www.international.gc.ca/gac-amc/publications/audits-verification/2016/expenditures_canadian_section_ijc-depenses_section_canadienne_cmi.aspx?lang=eng.

¹⁶² “Dockets- Applications & References,” International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>. For more details on the application and reference processes see section 2.7 of this chapter.

¹⁶³ International Joint Commission, “Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909,” 4.

supported by two secretaries (one per section), and two offices in Ottawa and Washington D.C. Since the signing of the Great Lakes Water Quality Agreement, a third office staffed by Canadians and Americans was created in Windsor, Ontario to aid the Commission with its Great Lakes' duties.¹⁶⁴

The commissioners may delegate work to control boards to ensure compliance with Orders. For references, the commissioners can create study or advisory boards to help with fact-finding and policy recommendations. IJC Boards can conduct their own public meetings to gather input from public and stakeholders, and report back to the IJC.¹⁶⁵ Currently, IJC Boards that have water level and flow responsibilities for dams or diversions include the Columbia River Board of Control, Kootenay Lake Board of Control, Osoyoos Lake Board of Control, Souris River Board, International Rainy-Lake of the Woods Watershed Board, Lake Superior Board of Control, Lake Ontario-St. Lawrence River Board, St. Croix River Watershed Board, and the Accredited Irrigation Officers of the St. Mary-Milk Rivers.¹⁶⁶ IJC Boards that investigate or monitor water quality upon request of the federal government are the Souris River Board, Red River Board, Rainy-Lake of the Woods Watershed Board, St. Croix River Watershed Board, the Great Lakes Water Quality Board, Great Lakes Science Advisory Board, and Health Professionals Advisory Board.¹⁶⁷

All Boards consist of an equal number of members from each country.¹⁶⁸ The salaries and personal costs of office staff and the commissioners are incurred by each national government

¹⁶⁴ Clamen, and McFarlane, "Introduction," 8.

¹⁶⁵ Clamen, and McFarlane, "Introduction," 8-9.

¹⁶⁶ "Water Levels and Flows," International Joint Commission, updated 2023, <https://www.ijc.org/en/what/water-levels>.

¹⁶⁷ "Water Quality," International Joint Commission, updated 2023, <https://www.ijc.org/en/what/water-quality>.

¹⁶⁸ International Joint Commission, *Rules of Procedure of the International Joint Commission*, rule 28.2.

while other IJC expenses, such as IWI projects, are shared jointly by Ottawa and Washington.¹⁶⁹ The IJC is deeply reliant on federal, provincial, and state bureaucracies to supply personnel for its monitoring, control, and investigative boards.¹⁷⁰ Upon request, the governments can, and typically do, make available qualified personnel from their agencies, along with information and technical data to help the IJC boards perform their duties.¹⁷¹ Board members are usually officials of municipal, state, provincial and national agencies, and academic institutions. Since the implementation of the IWI, however, local citizens, organizations, and Indigenous groups are encouraged to apply to become members. Board members are expected to serve the IJC independently from their municipal, state, provincial or national departments, institutions, or local groups they represent.¹⁷² Once the board members are determined, the Canadian and American section of the IJC separately appoint a Canadian and American chair and provide the Board with its mandate.¹⁷³

Despite government agencies' right to decline the IJC's request, and the Commission's reliance on "loaned" employees, cooperation between the different governmental agencies is "excellent."¹⁷⁴ Furthermore, bureaucrats have learned to work together¹⁷⁵ as board members have "not customarily been viewed as representatives of their own agencies, or of their governments

¹⁶⁹ Willoughby, *The Joint Organizations of Canada and the United States*, 23-24; and Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," 79. Since 2023 the total operating budget for the United States section is \$10,881,000 million in United States Dollars, and the total operating budget for Canada is \$10,379,194 million in Canadian Dollars as per International Joint Commission, *International Joint Commission 2023 Activities Report*, (IJC, 2024), 48-49, https://ijc.org/sites/default/files/2023%20IJC%20AAR%20Final_WEB_March13_SinglePages.pdf.

¹⁷⁰ Maxwell Cohen, "The Commission from the Inside," in *The International Joint Commission Seventy Years On*, eds. Robert Spencer, John Kirton, and Kim Richard Nossal (Don Mills, T.H. Best Printing Co. Ltd, 1981), 117.

¹⁷¹ Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 99.

¹⁷² Murray Clamen and Daniel Macfarlane, "Conclusion," in *The First Century of the International Joint Commission*, eds. Murray Clamen and Daniel McFarlane, (Calgary, University of Calgary Press, 2020), 531-532; and Clamen, and McFarlane, "Introduction," 8.

¹⁷³ Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 112-114.

¹⁷⁴ Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 100.

¹⁷⁵ Cohen, "The Commission from the Inside," 113.

in general, but as international civil servants with the single objective of finding solutions acceptable to all members of the board.”¹⁷⁶ Nonetheless, other challenges occur as members can only work part-time because they must continue with their normal workloads and responsibilities which can cause lengthy delays to IJC investigations.¹⁷⁷

In sum, the negotiators of the BWT, despite the unequalness of the two countries, envisioned the IJC to be equal (in terms of the composition of the body), have parity (in terms of value and powers of each member), and be impartial (all members are independent of their respected government).¹⁷⁸ Furthermore, the creators gave the Commission four unique powers (administrative, investigative, quasi-judicial, and arbitral) in hopes that the IJC would be able to effectively manage, and maintain peace in transboundary waters.¹⁷⁹ In theory, in examining the BWT and the IJC, it appears that its originators succeeded. However, what remains unclear is: can the IJC be truly classified as a joint commission, or is it some sort of other institution?

¹⁷⁶ Willoughby, *The Joint Organizations of Canada and the United States*, 22.

¹⁷⁷ Willoughby, *The Joint Organizations of Canada and the United States*, 23.

¹⁷⁸ Clamen, and McFarlane, “Introduction,” 7, and 10.

¹⁷⁹ Clamen and McFarlane, “Introduction,” 5-7.

Chapter Three: What are Commissions and What is Binationalism, Bilateralism and the Introduction of Two Case Studies

Chapter Two provided detailed insight into the architecture and mechanics of the IJC. But the commission definition of the IJC and its jointness has been assumed by IJC literature. This chapter unpacks these terms first and then introduces the two case studies that will confirm these two important terms.

Canada is famous for its commissions. Indeed, a common solution to intractable political decisions for a provincial, or federal government is to form a commission. In Canada, there are two main types of commissions: Commissions of Inquiry, and Royal Commissions. The two types are generally ad hoc, supposedly independent of government and impartial, and can examine witnesses and may hold public hearings. These are enacted by the Governor in Council (federal), or the Lieutenant Governor in Council (provincial) to advise or find facts (depending on the mandate), and report on a national or provincial concern. Cabinet decides the composition of the commissions i.e., who will be the commissioners -usually technocrats -and how many will sit on the commission.¹⁸⁰ However, the scope and focus between the two types of commissions are different. Commissions of Inquiry are set up to find the facts as to what happened in a specified “past event or series of events, generally involving ‘serious allegations of general public concern which require an impartial, thorough investigation’”¹⁸¹ which is usually a result of scandal or tragedy.¹⁸² For example, after the 1985 bombing of an Air India plane killing 268

¹⁸⁰ Hon. Stephen Goudge and Heather MacIvor, *Commissions of Inquiry* (Toronto: LexisNexis, 2019), 5, 25-29, and 31; and “About commissions of inquiry,” Government of Canada, updated 2017, <https://www.canada.ca/en/privy-council/services/commissions-inquiry/about.html>.

¹⁸¹ Goudge and MacIvor, *Commissions of Inquiry*, 25.

¹⁸² Goudge and MacIvor, *Commissions of Inquiry*, 25-26, and 38.

Canadians, the Government of Canada established the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. Its mandate was to investigate “the events surrounding the bombing and the subsequent investigation, and to identify gaps in Canada’s security and intelligence system”.¹⁸³ In contrast, Royal Commissions deal with and examine “a particular area, or issue of public policy and [...] make recommendations for future policy direction.”¹⁸⁴ Unlike a Commission of Inquiry, they do not focus on specific past events. They have a more broad mandate and the main objective is to advise government on (presumably a change in) policy.¹⁸⁵ For example, the Royal Commission on Canada’s Economic Prospects advised on the Government of Canada’s economic policies and recommended how the federal government should proceed with Canada’s natural resource industry and foreign business acquisitions.¹⁸⁶ In practice, most inquiries combine the fact-finding focus of a Commission of Inquiry and the advisement focus of a Royal Commission. For example, the Province of Manitoba’s Hughes’ Inquiry investigated the death of a girl (fact-finding focused with a specific mandate), and made recommendations for better protection of children in Manitoba (advisory focused with a broad mandate).¹⁸⁷ In addition to Royal Commissions and Commissions of Inquiry, permanent commissions exist in Canada, such as the Public Service Commission. The Public Service Commission is a national commission which conducts investigations, administers provisions under the Public Service Employment Act, and may create committees to aid with its

¹⁸³ “The Government of Canada Response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182,” Government of Canada, updated 2022, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rspns-cmmssn/index-en.aspx>.

¹⁸⁴ Goudge and MacIvor, *Commissions of Inquiry*, 26.

¹⁸⁵ Goudge and MacIvor, *Commissions of Inquiry*, 26, and 38.

¹⁸⁶ Walter Gordon, “Royal Commission on Canada’s Economic Prospects,” *The Canadian Encyclopedia*, 6 February 2006, <https://www.thecanadianencyclopedia.ca/en/article/royal-commission-on-canadas-economic-prospects>.

¹⁸⁷ Goudge and MacIvor, *Commissions of Inquiry*, 32-33.

duties.¹⁸⁸ However, such commissions in Canada are usually constrained to questions from one main actor (the Government of Canada, or a government of a province in Canada) about a Canadian or provincial topic.¹⁸⁹

The United States is also famous for their Congressional Commissions. For example, the National Commission on Terrorist Attacks Upon the United States (known as the 9/11 Commission Report).¹⁹⁰ A 2017 report written by the Congressional Research Service, which studied Congressional Commissions, observed that they are advisory tools appointed by Congress to “provide independent advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty.”¹⁹¹ The report defines a Congressional Commission as “a multi-member independent entity that: (1) is established by Congress; (2) exists temporarily; (3) serves in an advisory capacity; (4) is appointed in part or whole by Members of Congress; and (5) reports to Congress.”¹⁹² Additionally, there are three types of commissions. The first are policy commissions which review policy problems, such as the National Commission on Crime Control and Prevention. Second, investigative commissions review specific events, such as, the 9/11 Commission Report. Finally, commemorative commissions review ways to commemorate individuals, or milestone anniversaries of an event, for example, the John F. Kennedy Centennial Commission.¹⁹³

¹⁸⁸ “Operating Principles of the Public Service Commission,” Government of Canada, updated 2023, <https://www.canada.ca/en/public-service-commission/corporate/about-us/operating-principles-public-service-commission.html#toc3.1>.

¹⁸⁹ Goudge and MacIvor, *Commissions of Inquiry*, 3, and 210-211.

¹⁹⁰ Edward Wyatt, “For Publisher of 9/11 Report, a Royalty-Free Windfall,” *The New York Times*, 28 July 2004, <https://www.nytimes.com/2004/07/28/business/for-publisher-of-9-11-report-a-royalty-free-windfall.html>; and Jacob R. Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, CRS Report No. R40076 Version 18 (Washington, D.C.: Congressional Research Service, 2017), 5, <https://crsreports.congress.gov/product/pdf/R/R40076/18#:~:text=Congressional%20commissions%20are%20formal%20groups,or%20perform%20a%20specific%20duty>.

¹⁹¹ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 1.

¹⁹² Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 1.

¹⁹³ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 5, 6, 20, and 26.

Structurally, the members, organization, and arrangements of Congressional commissions are customizable depending on the desires of the members of Congress.¹⁹⁴ The report notes that the Congressional commissions are usually composed of technocrats, are fact-finding, have the ability to hear testimony from witnesses (in some cases witnesses can be subpoenaed), and each commission decides their own rules of procedure.¹⁹⁵

The US Congressional Commissions serve the United States only and are convened to tackle specific issues. Likewise, in Canada, the Royal Commissions, Commissions of Inquiry, and the Public Service Commission involve only Canadians, and examine specific Canadian problems (although both can call on international experts for advice).¹⁹⁶

The IJC is special because it is a joint commission.¹⁹⁷ While joint is a readily acknowledged term to describe two actors working together, in the case of the governments of Canada and the United States,¹⁹⁸ there is no agreed general definition of what constitutes a commission. Indeed, the lack of a definition seems to be a strength of sorts as a collection of pieces in *International Commissions and the Power of Ideas*, edited by Ramesh Thakur, Andrew F. Cooper, and John English acknowledge that “no two commissions are alike (in terms of

¹⁹⁴ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 2.

¹⁹⁵ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 16-17.

¹⁹⁶ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 1; “Government Publications: Canada, Royal Commissions,” The University of British Columbia, updated 2023, <https://guides.library.ubc.ca/c.php?g=307049&p=2051354>; and “Operating Principles of the Public Service Commission,” Government of Canada, updated 2023, <https://www.canada.ca/en/public-service-commission/corporate/about-us/operating-principles-public-service-commission.html#toc3.1>.

¹⁹⁷ Willoughby, *The Joint Organizations of Canada and the United States*, 8.

¹⁹⁸ Willoughby, *The Joint Organizations of Canada and the United States*, 7. Note: After 1942, in military terms, “joint” means different services (Army, Navy, Airforce, etc.), or two departments working together under one command while “combined” means two countries (like Canada and the United States) working together. “Joint” and “combined” are used by different disciplines in different ways as per “Origin of Joint Concepts,” Joint Chiefs of Staff, updated 2024, <https://www.jcs.mil/About/Origin-of-Joint-Concepts/>. In 1909, “joint” meant two actors. It is unclear why both “international” and “joint” are needed when describing the IJC. International Joint Commission, *The Boundary Waters Treaty of 1909*.

origin, purpose, or make-up)".¹⁹⁹ Similarly, the Congressional Research Service report identified that there is no legal definition for a Congressional Commission as many of them are labeled as task forces, boards, or advisory committees.²⁰⁰ However, Richard B. Bilder and Claude T. Bissell in *When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience* attempt to define a joint commission as a body that is composed of an equal number of members from each country. Bilder and Bissell claim that joint commissions make recommendations and help resolve disputes, but they normally cannot have decision-making powers when creating policies.²⁰¹ Furthermore, Bilder and Bissell state that joint commissions can "coordinate national policies, facilitate ongoing negotiation, or, in the case of a few of the institutions, [...] carry out certain regulatory, fact-finding or surveillance tasks."²⁰² Additionally, Thakur et al.'s definition of a commission includes:

being a distinctive type of international actor, deriving from their problem-solving purpose, investigative method, transnational character, and -critically- their intended impermanence. They can be described as temporary international non-governmental organizations, [...] defined as ad hoc transnational investigative mechanisms, involving a range of government officials (present and former) and non-governmental representatives and other experts whose purpose is to conduct a systematic inquiry designed to bring new general ideas and specific proposals to a problem of international or global significance.²⁰³

Thakur et al. further explain that commissions are convened by governments, recognized by decision-makers and the public²⁰⁴ and encourage governments to make policy decisions.²⁰⁵

¹⁹⁹ Marianne Hanson, "Regulating the possession and use of nuclear weapons: Ideas, commissions, and agency in international security politics- the case of the Canberra Commission," in *International Commissions and the Power of Ideas*, eds. Ramesh Thakur, Andrew F. Cooper, and John English (Tokyo: United Nations University Press, 2005), 136.

²⁰⁰ Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 2.

²⁰¹ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27.

²⁰² Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 27.

²⁰³ Wiseman, "The Palme Commission: New thinking about security," 60-61.

²⁰⁴ Cooper and English, "International commissions and the mind of global governance," 20.

²⁰⁵ Evans, "Foreword," xii.

Simply, based on the literature above, a commission may be defined as: a mechanism that is enacted by government(s) to investigate, or advise on an issue, and does not possess decision-making abilities. Commissions are usually temporary, composed of technocrats, and prides themselves on independence and impartiality from the government(s) that created it.²⁰⁶

The IJC shares many of the commission characteristics outlined by the literature, as well as the commissions that are used in Canada and the United States. But, the IJC also possesses some unique qualities that contradict Canadian and American commissions and the definition of commissions outlined above. The IJC is polyvalent because it can coordinate action between Canada and the United States and serve as a policy making body through its quasi-judicial and arbitral powers. This is contrary to the definition provided by Bilder and Bissell that commissions usually do not have decision-making powers and are different from the advisory and investigative nature of Royal Commissions and Commissions of Inquiry.²⁰⁷ Furthermore, unlike the temporary and ad hoc nature of a commission defined by Thakur et al and the Congressional Research Service, the permanency of the IJC is enshrined in the BWT.²⁰⁸

Despite the IJC's differences, it shares enough similarities with the other commissions to be categorized as a commission. Comparable to the Public Service Commission, the IJC can delegate its responsibilities to boards, committees and approve studies and has the ability to

²⁰⁶ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; Wiseman, "The Palme Commission: New thinking about security," 60-61; Cooper and English, "International commissions and the mind of global governance," 20; and Evans, "Foreword," xii.

²⁰⁷ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; Goudge and MacIvor, *Commissions of Inquiry*, 25; and Willoughby, *The Joint Organizations of Canada and the United States*, 17.

²⁰⁸ Wiseman, "The Palme Commission: New thinking about security," 60-61; Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 1; and Willoughby, *The Joint Organizations of Canada and the United States*, 17.

conduct investigations.²⁰⁹ Therefore, it can be assumed that its boards and committees are subordinate and are subsidiary bodies of the Commission. The IJC falls within Bilder and Bissell's definition of a joint institution as it has an equal number of Canadian and American members, is fact-finding, has monitoring abilities, examines technical issues, and can make recommendations.²¹⁰

In support of Thakur et al, the IJC is a creation of government, is recognized and accepted by the public and both federal governments, and is comprised of technocrats.²¹¹ Additionally, the IJC, similarly to Royal Commissions, Commissions of Inquiry, and Congressional Commissions, is an independent entity, has advisory and investigative functions, and can hold public hearings and examine witnesses.²¹² Hence, in theory, the IJC can be described as a joint commission: it is a permanent body that jointly serves two actors (Canada and the United States) with equalness in the number of impartial representatives that can delegate work to boards and committees, and is able to acquire evidence under oath and hear witnesses. Furthermore, the IJC takes on a variety of functions as it has the power to investigate, monitor, advise, and make binding decisions on issues.²¹³

However, the form of jointness matters. There are two types of jointness which the literature ignores. The first is when two actors do things in parallel at national levels that together

²⁰⁹ "Operating Principles of the Public Service Commission," Government of Canada, updated 2023, <https://www.canada.ca/en/public-service-commission/corporate/about-us/operating-principles-public-service-commission.html#toc3.1>; and Clamen and McFarlane, "Introduction," 8-9.

²¹⁰ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; and Clamen and McFarlane, "Introduction," 7-8.

²¹¹ Wiseman, "The Palme Commission: New thinking about security," 60-61; Evans, "Foreword," xii; Cooper, and English, "International commissions and the mind of global governance," 20; and Clamen and McFarlane, "Introduction," 7-8.

²¹² Straus, *Congressional Commissions: Overview, Structure, and Legislative Consideration*, 1, and 16-17; Clamen and McFarlane, "Introduction," 7-8; and Goudge and MacIvor, *Commissions of Inquiry*, 25-29.

²¹³ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; International Joint Commission, *Rules of Procedure of the International Joint Commission*, rules 23.5, 23.6, 29.6, and 29.7; and Willoughby, *The Joint Organizations of Canada and the United States*, 17.

achieve stated goals. The second is when two actors combine efforts with a single, agreed goal. The first arrangement is bilateral. The second is binational.²¹⁴ This distinction between the forms of jointness is important and will later allow this thesis to classify the IJC either as a binational joint commission, or a bilateral joint commission.

3.1: Binationalism and Bilateralism

A better understanding of binationalism and bilateralism will aid to differentiate the two types of jointness. Binationalism and bilateralism are two different types of functional arrangements, and it is important to define them as such.²¹⁵ Carolyn C. James in *Navigating A Changing World: Canada's International Policies in an Age of Uncertainties* clarifies this distinction by defining binationalism as acts that involve “joint decision-making or administrative process, is non-parochial, facilitating coordination and even harmonization.”²¹⁶ Lee Botts and Paul Muldoon in the article *Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime*, and in their publication *Evolution of the Great Lakes Water Quality Agreement* share similar ideas on binationalism. They view binationalism as the embodiment of the “principles of parity and equality of each country within joint institutions”,²¹⁷ require the cooperation of two parties where the common interest is greater than national interests, and confirm that consensus is imperative.²¹⁸ However, when pursuing

²¹⁴ Carolyn C. James, “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America,” in *Navigating a changing world: Canada’s international policies in an age of uncertainties*, eds. Geoffrey Hale and Greg Anderson, (Toronto: University of Toronto Press, 2021), 357.

²¹⁵ James, “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America,” 357.

²¹⁶ James, “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America,” 357.

²¹⁷ Lee Botts, and Paul Muldoon, “Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime,” *The Wayne Law Review* 54, no. 4 (2008): 1558, <https://heinonline-org.uml.idm.oclc.org/HOL/Page?handle=hein.journals/waynlr54&div=61&id=&page=&collection=journals>.

²¹⁸ Botts, and Muldoon, *Evolution of the Great Lakes Water Quality Agreement*, 198.

common objectives it is important to note that binationalism does not require identical policies when addressing an issue so long as actions are “based on common goals and objectives and mutual respect.”²¹⁹ Additionally, binational cooperation derives from formal institutions which create “international civil servants”,²²⁰ and “allow agency policymakers to discuss matters without home-agency constraints”.²²¹ Alan Smith’s 2000 *Doing the Continental: Conceptualizations of the Canadian-American Relationship in the Long Twentieth Century* explains that binationalism can be established when two countries become “enmeshed in an extraordinarily close and intimate relationship”.²²² In other words, a binational commission does not distinguish between the size or contribution of the joint actors, but rather on the agreed outcome. In theory, two actors act together to achieve a common goal regardless of the unevenness of size of the actors or their contributions. Actor A and actor B take action because it will result in the best outcome toward a common goal without bowing to selfish self-interests. Simply, both actors’ common interests are placed above their self-interests.²²³ Binationalism, therefore, is akin to a marriage in which both actors are considered equal in the relationship, and the size or contribution of the actors is not important. Rather, what is important is what is good for the marriage.

For example, an important bilateral agreement created the binational North American Aerospace Defence Command (NORAD) which mandates Canada and the United States to warn

²¹⁹ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 205.

²²⁰ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199.

²²¹ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199.

²²² Alan Smith, “Doing the Continental: Conceptualizations of the Canadian-American Relationship in the Long Twentieth Century,” *Canadian-American Public Policy*, (2000): 4, <https://go.gale.com/ps/i.do?id=GALE%7CA76712782&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=10471073&p=AONE&sw=w&userGroupName=anon%7Ebbd1caee&aty=open-web-entry>.

²²³ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199; and James, “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America,” 357.

and defend North America from air threats, and warn of maritime threats.²²⁴ The United States provides the bulk of the resources and capabilities.²²⁵ However, personnel assigned to NORAD protect North America, not their respective countries.²²⁶ The agreed goal of both actors (Ottawa and Washington) is to prevent any attack on either Canada or the United States (referred to as North America), and who does what is not important. What is crucial is that North America is protected from attacks.²²⁷

According to James, bilateralism, in contrast, is a partnership (or dating) where normal diplomacy entails give and take negotiations, and interactions that are often unbalanced as negotiators attempt to obtain their country's preferred needs.²²⁸ Botts and Muldon define bilateralism as the compromise between two parties where national interests are the priority, and the controlling factor in negotiations.²²⁹ In theory, these are two actors that act in parallel, but together can achieve common end goals. Generally, actor A takes action for A, and actor B takes action for B and collectively both actors are hopefully better off, but A is only thinking about A and B about B. Simply put, both actors' self-interests are placed above a common interest.²³⁰

For example, the signing of the 1988 Canada-US Free Trade Agreement (FTA) between Ottawa and Washington had the goal of reducing tariffs and creating freer trade between the two

²²⁴ Andrea Charron and James Fergusson, *NORAD in Perpetuity and Beyond* (Montreal & Kingston: McGill-Queen's University Press, 2022), 1

²²⁵ Nicolas Allaire, "Shelf Life Extended: The Longevity and Continued Relevance of the Binational North American Aerospace Defense Command," unpublished thesis at the University of Manitoba, 2016, 1, <https://mspace.lib.umanitoba.ca/items/8f09cc2b-346e-4bb2-8396-dd1b7d2ac85f>.

²²⁶ Charron and Fergusson, *NORAD in Perpetuity and Beyond*, 99.

²²⁷ Charron and Fergusson, *NORAD in Perpetuity and Beyond*, 1.

²²⁸ James, "Canada's Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America," 357.

²²⁹ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 199.

²³⁰ Botts, and Muldoon, "Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime," 1559; Botts, and Muldoon, *Evolution of the Great Lakes Water Quality Agreement*, 199; and Allaire, "Shelf Life Extended: The Longevity and Continued Relevance of the Binational North American Aerospace Defense Command," 9-11.

countries. The goal was for the FTA to benefit both economies on a bilateral basis.²³¹ The FTA did not coordinate or harmonize North American economies. However, the Agreement allowed Canada to expand its access to US markets (the world's largest market).²³² For the United States, the FTA represented a major shift in its free trade policy and allowed American companies more access to Canadian markets.²³³ The agreed goal of both actors (Ottawa and Washington) was to reduce trade barriers which allowed the actors to achieve their national interests. For Canada, it meant greater access to a large market, and for the United States to pursue a new global free trade policy for the possible betterment of their economies. In turn, the main concern was not if the other actor's economy gained from the FTA, but how the Agreement would benefit their economy on their side of the border.²³⁴

In sum, the literature defines binationalism, akin to a marriage, as the cooperation of two countries in the form of a joint body focused on common interests rather than separate, or national interests.²³⁵ Bilateralism is more akin to a partnership based on normal diplomacy where concessions are made, with national interests as the priority, and the power-dynamic within the relationship is usually uneven. Bilateral cooperation respects and enforces national boundaries (see Table 3.1).²³⁶

Table 3.1: Comparison of the Characteristics of Binationalism and Bilateralism

²³¹ Rachel McCulloch, "The United States-Canada Free Trade Agreement," *Proceedings of the Academy of Political Science* 37, no. 4 (1990): 79-80, <https://www-jstor-org.uml.idm.oclc.org/stable/1173774?seq=3>.

²³² McCulloch, "The United States-Canada Free Trade Agreement," 80, and 84.

²³³ McCulloch, "The United States-Canada Free Trade Agreement," 85-86.

²³⁴ McCulloch, "The United States-Canada Free Trade Agreement," 79-80, and 84-85.

²³⁵ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199, 205; and Botts, and Muldoon, "Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime." 1558-1559.

²³⁶ James, "Canada's Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America," 357; and Botts, and Muldoon, "Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime." 1559.

Characteristics of Binationalism	Characteristics of Bilateralism
International cooperation through a joint body to form a “marriage”	International cooperation through normal diplomacy to form a “partnership” (dating)
Common interests are the priority	National, or separate interests are the priority
Harmonization of policies focused on common interests, and an agreed outcome	Policies that might help common interests, but mainly focus on national interests
Joint decision-making leading to consensus	Give and take negotiations leading to compromises
Parity and equality among decision makers	Decisions are made based on who holds more power

Note: Information in the above table is consolidated by the author from sources used in chapter three of this thesis.

Within the IJC literature, distinguishing between binationalism and bilateralism is often confusing. Indeed, the terms are often used interchangeably and fail to note the significant difference in terms of arrangement and end goal. Bilateralism is a partnership; binationalism is a marriage.²³⁷ The IJC has been referred to as both bilateral and binational. For example, Peter Stoett and Owen Temby’s 2015 evaluation of North-America’s bilateral and trilateral environmental institutions in *Bilateral and Trilateral Natural Resource and Biodiversity Governance in North America: Organizations, Networks, and Inclusion* uses the terms interchangeably. On the one hand, they note: “binational institutionalism has been fairly strong in water relations, most notably in the Great Lakes region: the International Joint Commission (IJC) retains its reputation as a model of shared resource management”.²³⁸ Later, they claim that the IJC is an example of a “bilateral commissions [...]”²³⁹ stating that “[t]he most obvious of

²³⁷ James, “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America,” 357.

²³⁸ Stoett, and Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” 4.

²³⁹ Stoett, and Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” 12.

these is the IJC”.²⁴⁰ Another example of the literature using bilateralism and binationalism interchangeably is Barry Sadler’s 1993 *Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters* which observes the performance of the IJC in the Great Lakes and in western Canada and the United States. His article identifies the Commission as binational: “While it has a unique, binational, basin-wide perspective, the influence of the IJC[...],”²⁴¹ but later refers to the IJC as a bilateral institution.²⁴² Furthermore, a third example appears in the 1995 report *An Evaluation of the Effectiveness of the International Joint Commission* created by the Environmental Law Institute which states that the Commission is a “bilateral institution”.²⁴³ However, the report later asserts that the IJC is a “binational body”.²⁴⁴ Also, it claims that the IJC has “prestige and a binational nature”,²⁴⁵ and recommends that the Commission should “strengthen its binational character.”²⁴⁶ Regardless of whether or not the Commission is identified as binational or bilateral, in all cases, binationalism seems to be referenced as a special and an important term, but rarely why.²⁴⁷ Scholars only hint at the impact that binationalism has on outcomes and decisions (i.e., governing a natural resource in the case of Stoett and Temby),²⁴⁸ or influence and scope on shared water management (in the case of

²⁴⁰ Stoett, and Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” 12.

²⁴¹ Sadler, “Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters,” 386.

²⁴² Sadler, “Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters,” 392.

²⁴³ Environmental Law Institute, “An Evaluation of the Effectiveness of the International Joint Commission,” Research report by the *Environmental Law Institute* (Washington: D.C., 1995), 3.

²⁴⁴ Environmental Law Institute. “An Evaluation of the Effectiveness of the International Joint Commission,” 35.

²⁴⁵ Environmental Law Institute. “An Evaluation of the Effectiveness of the International Joint Commission,” 34.

²⁴⁶ Environmental Law Institute. “An Evaluation of the Effectiveness of the International Joint Commission,” 34.

²⁴⁷ Environmental Law Institute. “An Evaluation of the Effectiveness of the International Joint Commission,” 34; Sadler, “Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters,” 386; and Stoett, and Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” 4.

²⁴⁸ Stoett, and Temby, “Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion,” 4.

Sadler),²⁴⁹ or its prestige (in the case of the Environmental Law Institute’s assessment of the IJC).²⁵⁰

3.2: Introduction to the Study of Two Cases

To analyze whether or not the IJC is a binational or bilateral joint commission, two case studies will be employed: the Zosel Dam applications of 1942 and 1980 in the Osoyoos Lake/Okanagan River region,²⁵¹ and the Garrison Diversion Unit (GDU) reference of 1975 in the Red River Basin.²⁵² Both cases exhibit differences which will be outlined later in this section and in chapter four of this thesis provides a well-rounded picture of the Commission’s activities (see Table 3.2).

Table 3.2: Key Differences of the Two Case Studies

	Zosel Dam	GDU
Type of docket	Application	Reference
Main Issue at stake	A water control structure regulating water quantities which impacted water levels of a transboundary lake.	A water control structure moving water from one water basin to another possibly polluting the basin receiving the transfer of water.
Location	Western Canada and the United States, between the Province of British Columbia and the State of Washington.	Central Canada and the United States, between the Province of Manitoba and the State of North Dakota.
Powers used by the IJC	Quasi-judicial	Investigative
Which country had more at stake	United States	Canada
Type of waterway	Lake (Osoyoos Lake)	River (the Red River)
Other actors involved in the issue	Subnational governments, a local organization, Indigenous groups, and residences of the impacted area.	National and subnational governments, local organizations, Indigenous groups, and residences of the impacted area.

²⁴⁹ Sadler, “Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters,” 379, and 386.

²⁵⁰ Environmental Law Institute. “An Evaluation of the Effectiveness of the International Joint Commission,” 34.

²⁵¹ “49A,” International Joint Commission, updated 2023, <https://ijc.org/en/49a>.

²⁵² “101R,” International Joint Commission, updated 2023, <https://ijc.org/en/101r>.

Note: Information in the above table is consolidated by the author from sources used in chapters three and four of this thesis.

The IJC has worked on 124 cases from 1909 to 2023. The IJC has handled 60 references and 64 applications (excluding two applications that were submitted but withdrawn). The number of references and applications are almost even. By examining the breakdown of when applications and references were submitted one can reasonably conclude that the federal governments, throughout time, have reduced their reliance on the IJC, and favour using their investigative abilities. For example, during the first half of the twentieth century (1900 to 1949), the Commission managed 42 applications, but only 17 references. By the latter half of the twentieth century (1950 to 1997), the frequency of references became more numerous than applications with 21 applications, and 33 references. That trend has continued and since 1998, with the approval of the IWI, there has been only 1 application compared to 10 references submitted to the IJC.²⁵³

The large number of applications submitted to the IJC during the early to mid-twentieth century followed the original intent of the drafters of the BWT, and first commissioners of the IJC who assumed that its quasi-judicial ability would be more important than its investigative powers.²⁵⁴ One reason for this belief was the priority to develop megaprojects in shared waterways, such as dams and diversions for hydro-electricity, mining, and logging purposes which, as per Articles III, IV, and VIII of the BWT, had to seek the approval of the IJC. These

²⁵³ The calculation for the number of dockets, and separation of time periods originated from the author with use of “Dockets- Applications & References,” International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>.

²⁵⁴ Willoughby, *The Joint Organizations of Canada and the United States*, 18.

projects were driven by an increase in population, industrialization, increased resource extraction, and urbanization around shared waters on both sides of the border.²⁵⁵

However, during the latter half of the twentieth century, applications were reduced, and references became more common.²⁵⁶ This shift can be understood for two reasons. First, during the late 1960s, the IJC began to orient itself towards environmental protection of transboundary waters as better technologies and an increase in environmental awareness allowed the Commission to realize the negative impacts that megaprojects had on shared waters. This shift positioned the Commission against the development of more megaprojects which created distrust between government and the Commission as successive governments thought that the IJC was becoming too involved in environmental activism.²⁵⁷ In turn, the national governments limited the Commission's use to primarily an investigative body, and reduced its funding.²⁵⁸ Second, the proliferation of NGOs, local community organizations, Indigenous groups, and sub-national government agreements, such as the Great-Lakes-St. Lawrence River Basin Compact,²⁵⁹ created institutional changes in water resource management as management was no longer restricted to the federal government domain and by extension, the control of the IJC.²⁶⁰

²⁵⁵ Meredith Denning, "Construction of a Keystone: How Local Concerns and International Geopolitics Created the First Water Management Mechanisms on the Canada-US Border," in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clemen (Calgary: University of Calgary Press, 2020), 72-73.

²⁵⁶ "Dockets- Applications & References," International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>.

²⁵⁷ Clamen, and Macfarlane, "The international Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes," 41-42.

²⁵⁸ Botts and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 107, 209, and 217.

²⁵⁹ Hall, Tarlock, and Valiante, "The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance," 471, and 464.

²⁶⁰ International Joint Commission, *The IJC and the 21st Century*, Report of the International Joint Commission (1997), 15, and 22-25; Botts and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 107; and Hall, Tarlock, and Valiante, "The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance," 471.

From 1998 to present, Ottawa and Washington's relationships with the IJC improved with the creation of IWI. To re-establish the Commission's role, the IWI's holistic approach included local actors²⁶¹ in shared water management. Regardless of the IWI's "forever lasting" collaborative goal, which refined the IJC's role in transboundary water management, it did not lessen the interest in shared water issues amongst Canadian and American actors or encourage the federal governments to increase the IJC's workload. Hence, the commission still saw a limited number of IJC dockets during this period.²⁶²

Of the 124 cases the IJC has had, there have been failures and successes which the literature has thoroughly analyzed. Political scientists, such as Nigel Bankes and Elizabeth Bourget, Kim Richard Nossal, Timothy Heinmiller, and William Willoughby have examined what is widely regarded as the IJC's four "failures".²⁶³ Two cases stand out in particular. The first is the 1971 Point Roberts' border reference which involved a reference submitted to the Commission for how the federal governments should improve the access to the isolated American town (Point Roberts) which is surrounded by Canadian territory.²⁶⁴ The second is the 1954 application to construct Libby Dam on the Kootenai/y River.²⁶⁵ The Commission was

²⁶¹ Note: for more on the IWI see chapter two, section 2.7 of this thesis.

²⁶² Murray Clamen, "The IJC and Transboundary Water Disputes: Past, Present, and Future," 73, and 78; Hall, Tarlock, and Valiante, "The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance," 474-475; and "Dockets- Applications & References," International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>.

²⁶³ Kim Richard Nossal, "A Square Peg: The Lessons of the Point Roberts Reference, 1971-1977," in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clamen (Calgary: University of Calgary Press, 2020), 195-196; William R Willoughby, "Expectations and Experience," in *The International Joint Commission Seventy Years On*, eds. Robert Spencer, John Kirton, and Kim Richard Nossal (Don Mills, T.H. Best Printing Co. Ltd, 1981), 33; Nigel Banks, and Elizabeth Bourget, "Apportionment of the St. Mary and Milk Rivers," in *Water Without Borders? Canada, the United States, and Shared Waters*, eds. Emma S. Norman, Alice Cohen, and Karen Bakker (Toronto: University of Toronto Press, 2013), 167; and B. Timothy Heinmiller, "The Boundary Waters Treaty and the International Joint Commission in the St. Mary-Milk Basin," in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clamen (Calgary: University of Calgary Press, 2020), 152, and 154.

²⁶⁴ Nossal, "A Square Peg: The Lessons of the Point Roberts Reference, 1971-1977," 195-196.

²⁶⁵ Willoughby, "Expectations and Experience," 33.

unable to come to a consensus in either case and had to abandon both dockets. In the cases of the other two failures, the Commission split down national lines. In the case of the 1948 Waterton and Belly Rivers reference to use and control both rivers in the St. Mary-Milk Rivers region, neither state would compromise.²⁶⁶ The other case was the 1932 IJC vote to reopen an Order issued by the Commission on dividing the St. Mary-Milk Rivers. Again, it was a stalemate.²⁶⁷

Many more scholars have evaluated the IJC's success in highly politicized, and public cases where the Commission was able to make recommendations by agreement.²⁶⁸ For example, the 1928 Trail Smelter reference concerning air quality between the Province of British Columbia (BC) and the State of Washington (WA),²⁶⁹ and the 1985 Flathead River reference concerning the water quality of the Flathead River between the Province of BC and the State of Montana were solved by agreements.²⁷⁰ Moreover, scholars have examined the IJC's involvement in the implementation of the Great Lakes Water Quality Agreement (GLWQA)²⁷¹ and the Columbia River Treaty (CRT).²⁷² The Commission's investigations of water quantity and quality problems in the Great Lakes via two references in 1946 and 1964 contributed to the

²⁶⁶ Banks, and Bourget, "Apportionment of the St. Mary and Milk Rivers," 167; and Heinmiller, "The Boundary Waters Treaty and the International Joint Commission in the St. Mary-Milk Basin," 154.

²⁶⁷ Heinmiller, "The Boundary Waters Treaty and the International Joint Commission in the St. Mary-Milk Basin," 152; and "9S," International Joint Commission, updated 2024, <https://ijc.org/en/9s>.

²⁶⁸ Owen Temby, and Don Munton, "The International Joint Commission and Air Pollution: A Tale of Two Cases," in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clemen (Calgary: University of Calgary Press, 2020), 315-324; Harvey Locke, and Matthew Mckinney, "The Flathead River Basin," in *Water Without Borders? Canada, the United States, and Shared Waters*, eds. Emma S. Norman, Alice Cohen, and Karen Bakker (Toronto: University of Toronto Press, 2013), 193-194; Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 13-14; and Richard Moy, and Jonathan O'Riordan, "The International Joint Commission's Unique and Colourful Role in Three Projects in the Pacific Northwest," in *The First Century of the International Joint Commission*, eds. Daniel Macfarlane, and Murray Clemen (Calgary: University of Calgary Press, 2020), 255.

²⁶⁹ Temby, and Munton, "The International Joint Commission and Air Pollution: A Tale of Two Cases," 315-324.

²⁷⁰ Locke, and Mckinney, "The Flathead River Basin," 193-194.

²⁷¹ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 13-14.

²⁷² Moy, and O'Riordan, "The International Joint Commission's Unique and Colourful Role in Three Projects in the Pacific Northwest," 255.

governments of Canada and the United States establishing the GLWQA in 1972.²⁷³ In the case of the CRT, the IJC was directed by a 1944 reference to investigate how the Columbia River system can be better shared between Canada and the United States. The Commission's recommendations were later used by Ottawa and Washington when the CRT was created in 1961.²⁷⁴

No specific literature, however, was found dedicated to the Zosel Dam application despite it being an example of a routine, and non-controversial case for the IJC. In contrast, the Garrison Diversion Unit (GDU) was a politicalized issue, and some authors (Kim Nossal, Lynton K. Caldwell, John Welsted, Norman Brandson and Allen Olson) have focused specifically on the IJC's involvement in the issue.²⁷⁵ Despite being a "popular" IJC case to study, the GDU reference is a better case study compared to the other four well-documented and successful IJC cases as it provides an example of the IJC demonstrating its investigative function in a highly political issue for three main reasons. First, the main purpose of the GDU reference was to provide recommendations for an issue not to aid Ottawa and Washington in signing a treaty, or agreement, such as the references which led to the GLWQA and the CRT.²⁷⁶ Second, in contrast to the Trail Smelter reference, which was concerned with air quality, the GDU reference deals

²⁷³ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 13-14.

²⁷⁴ O'Riordan, "The International Joint Commission's Unique and Colourful Role in Three Projects in the Pacific Northwest," 255; and "51R," International Joint Commission, updated 2024, <https://ijc.org/en/51r>.

²⁷⁵ Kim Richard Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," *Canadian Institute of International Affairs* XXXVII, no. 1 (1978); Lynton K. Caldwell, "Garrison Diversion: Constraints on Conflict Resolution," *Natural Resources Journal* 24, no.4 (1984), <https://www-jstor-org.uml.idm.oclc.org/stable/24882579?seq=25>; John Welsted, "The Garrison Diversion Unit – An Update," *Canadian Water Resource Journal* 8, no.1 (1983), <https://www.tandfonline.com/doi/pdf/10.4296/cwrj0801051>; and Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 217-221.

²⁷⁶ Welsted, "The Garrison Diversion Unit – An Update," 54; Moy, and O'Riordan, "The International Joint Commission's Unique and Colourful Role in Three Projects in the Pacific Northwest," 255; and Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 13-14.

with a waterway issue which is the IJC's main responsibility.²⁷⁷ Third, after the IJC completed its work on the Flathead River reference, the Commission was removed from the Flathead River issue once it progressed into a larger political issue. In contrast, the GDU issue was already highly politicized before the IJC received the reference, and the Commission remains indirectly active in the issue as it monitors, and conducts projects in the Red River – the main shared waterway impacted by the GDU.²⁷⁸ Additionally, the Flathead River reference and the Trail Smelter reference are in a similar region as the Zosel Dam which manages water between the Province of BC and the State of Washington; whereas the GDU reference concerns the State of North Dakota (ND) and the Province of Manitoba.²⁷⁹

The Zosel Dam applications and the GDU reference were chosen as case studies because the combination of both dockets provide a good representation of the IJC's structure, powers, and activities in successful cases (unlike the four outlier cases, i.e., the Point Roberts' reference, the Libby Dam application, the Waterton and Belly Rivers reference, and the IJC's vote to reopen an Order for the St. Mary-Milk Rivers). The Commission's activities in transboundary waters create the best opportunity to evaluate whether it is binational or not. First, each case had a higher stake for either Canada or the United States. In the case of the Zosel Dam applications, the Americans were the recipients of downstream water making the application a priority for

²⁷⁷ "101R," International Joint Commission, updated 2024, <https://ijc.org/en/101r>; and Temby, and Munton, "The International Joint Commission and Air Pollution: A Tale of Two Cases," 315.

²⁷⁸ Locke, and Mckinney, "The Flathead River Basin," 199, and 205; and "Project highlights- StoryMap," International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>.

²⁷⁹ "International Osoyoos Lake Board of Control: 'Home'," International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc>; Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 216; and Locke, and Mckinney, "The Flathead River Basin," 197.

them. In the GDU case, Canada received downstream water causing great concern for Canadians.²⁸⁰

Second, the IJC was forced to use its two main functions. The Zosel Dam case is an application which prompted the IJC to use its quasi-judicial powers as Orders were issued, and a monitoring board was created. The GDU case is a reference which caused the Commission to use its investigative function as a board of experts was established, and policy was recommended.²⁸¹

Third, the two cases are in different regions. The Zosel Dam is located in the west whereas the GDU is in central Canada-United States; this contributes to a better understanding of how the IJC operates in different areas along the border.²⁸² The GDU impacts an international waterway (the Red River) which flows through a major city in Canada (Winnipeg), and drains into the tenth largest fresh water lake in the world (Lake Winnipeg).²⁸³ The Zosel Dam affects the flow of the international Osoyoos Lake which is surrounded by a lower population density than the Red River, but has an important agriculture, and recreational industry.²⁸⁴

Fourth, the IJC remains operational in the waterways impacted by the GDU reference and the Zosel Dam application. It actively conducts IWI projects which will demonstrate the Commission's current approach to water management. The Zosel Dam application is still in effect as the IJC oversees dam operations and water levels in collaboration with subnational governments, a local organization, and the Indigenous people of the area. The GDU reference

²⁸⁰ See map 4.1 and map 4.2 in chapter four.

²⁸¹ "101R," International Joint Commission, updated 2024, <https://ijc.org/en/101r>; and "49A," International Joint Commission, updated 2024, <https://ijc.org/en/49a>.

²⁸² See map 4.1 and map 4.2 in chapter four.

²⁸³ "Lake Winnipeg," Government of Manitoba, updated 2024, <https://www.gov.mb.ca/sd/water/lakes-beaches-rivers/lake-winnipeg.html#:~:text=With%20its%20beautiful%20beaches%20and,and%20hydroelectric%20generation%20in%20Manitoba>; and see map 4.1 in chapter four.

²⁸⁴ "Zosel Dam," The State of Washington Department of Ecology, updated 2024, <https://ecology.wa.gov/water-shorelines/water-supply/dams/info-for-the-public/dams-we-regulate/zosel-dam>; and see map 4.2 in chapter four.

was completed in 1977 but the issue is ongoing. Furthermore, the IJC is involved in the Red River Basin (an area of concern of the initial GDU reference) undertaking IWI projects to monitor the water quality in collaboration with subnational governments, local organizations, and Indigenous people.²⁸⁵

Fifth, both cases occurred in different eras of the IJC. The Zosel Dam application began in 1942 when the use of the Commission's quasi-judicial function was predominantly used, whereas the GDU reference occurred in 1975 when Ottawa and Washington primarily used the IJC's investigative powers.²⁸⁶

Collectively, both cases offer a useful overall representation of the IJC's actions in transboundary waters and the different type of scenarios that involve the Commission, in terms of: political popularity, importance to Canada and the United States, its use of powers, diverse regions along the border, relevancy to current IJC operations, and activities in different eras. The next chapter will explore both case studies in detail to allow for more insight into the IJC's actions in real world situations which will help this thesis confirm if the Commission is a binational joint commission.

²⁸⁵ "Project highlights- StoryMap," International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-ijbh/project-highlights-storymap>.

²⁸⁶ "Dockets- Applications & References," International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>; "101R," International Joint Commission, updated 2024, <https://ijc.org/en/101r>; and "49A," International Joint Commission, updated 2024, <https://ijc.org/en/49a>.

Chapter Four: A Tale of Two Waters: The Zosel Dam and the Garrison Diversion Unit (GDU)

4.1: Defining the IJC as a Binational Joint Commission

The previous two chapters have argued that the IJC is a joint commission and outlined the characteristics of a binational versus a bilateral organization. The evidence from chapters two and three confirms that the IJC is a binational joint commission as summarized in Table 4.1. The chapters explain that, as a binational joint commission, the IJC fosters international cooperation between Canada and the United States -this cooperation is enshrined in the Boundary Waters Treaty (BWT). Once a case/docket is submitted to the IJC, its members are required to approach issues not as representatives for their government who strive to achieve national advantages, but to act as a united body seeking mutual solutions to uphold the BWT. Reports by the IJC are founded jointly on fact-based evidence, and the Commission's recommendations and Orders of Approval are policies focused on resolving issues in the common interest of North America. The commissioners make their decisions on Orders of Approval and recommendations jointly and by consensus.²⁸⁷

Furthermore, the IJC members share elements of parity and equality during the decision-making processes. The Commission is equal because it has the same number of members per section (three commissioners, a chairman, a secretary, and an office).²⁸⁸ The IJC commission members have parity as they hold the same influence in the voting process, and no member of the IJC has more power in the decision-making process for a recommendation or an Order than

²⁸⁷ Bilder, "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience," 26-27; Clamen, and McFarlane, "Introduction," 6-8; Chacko, *The International Joint Commission between The United States of America and the Dominion of Canada*, 246; and Willoughby, *The Joint Organizations of Canada and the United States*, 17, and 24.

²⁸⁸ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VII; and Clamen, and McFarlane, "Introduction," 7, and 10.

another.²⁸⁹ For instance, American members and commissioners (being appointed by the larger and more powerful country) do not determine the agenda, or have the final say in decisions. Additionally, a commissioner is not subject to conform to the same opinions as their government, section, or fellow national commissioners. As such, a commissioner has the freedom from pressure of their peers to submit a separate opinion if they disagree with the collective decision.²⁹⁰

Former commissioners of the IJC seem to confirm these conclusions noting that the commissioners form a bond independent from government among commission members that is more akin to a marriage rather than a partnership. As former Canadian commissioner Arnold Heeney states, commissioners “engaged in informal discussions, travelled, and lived together” which formed “amicable personal relationships”.²⁹¹ This sentiment was also expressed by US commissioner Gordon K. Durnil as he felt a close connection with the other commissioners, and formed lifelong relationships which, he thought, helped make decisions by consensus easy.²⁹² Additionally, Stephen Brooks’ chapter *The International Joint Commission: The Promise and Limits of an Ambitious Model* in the book *Transboundary Environmental Governance across the World’s Longest Border* contains interviews conducted in 2007 with eight former Canadian and five former American commissioners.²⁹³ The commissioners agreed that consensus, decision making, and impartiality are the IJC’s strengths.²⁹⁴ The differences between binationalism, bilateralism and the IJC are summarized in the table below.

²⁸⁹ Clamen, and McFarlane, “Introduction,” 7, and 10.

²⁹⁰ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 218.

²⁹¹ Arnold Heeney, *The Things That Are Caesar’s*, (Toronto: University of Toronto Press, 1972), 187.

²⁹² Gordon K. Durnil, *The Making of a Conservative Environmentalist*, (Bloomington: Indiana University Press, 1995), 173, and 175-176.

²⁹³ Brooks, “The International Joint Commission: The Promise and Limits of an Ambitious Model,” 3.

²⁹⁴ Brooks, “The International Joint Commission: The Promise and Limits of an Ambitious Model,” 21-22.

Table 4.1: Characteristics of Binational, Bilateralism and the IJC

Characteristics of Binationalism	Characteristics of Bilateralism	Characteristics of the International Joint Commission
International cooperation through a joint body to form a “marriage”	International cooperation through normal diplomacy to form a “partnership” (dating)	International cooperation is conducted through a joint body (the IJC) akin to marriage rather than a partnership
Common interests are the priority	National, or separate interests are the priority	Dockets assigned to the IJC are agreed upon by both Ottawa and Washington. Once a docket is submitted to the IJC, its members are required to approach issues not as representatives for their government striving to achieve national advantages, but to act as a united body seeking mutual solutions to uphold the BWT.
Harmonization of policies focused on common interests, and an agreed outcome	Policies that might help common interests, but mainly focus on national interests	Reports by the IJC are founded jointly on fact-based evidence. The Commission’s recommendations and Orders are focused on resolving the common interest of North America.
Joint decision-making leading to consensus	“Give and take” negotiations leading to compromises	Joint decision-making is done by consensus. The members of the Canadian and American sections of the IJC do not engage in negotiations which position the two sections against each other.
Parity and equality among decision makers	Decisions are made based on who holds more power	The IJC is equal in terms of the composition of each section of the IJC (each section has three commissioners, a secretary, and chairman). Commissioners hold parity in the decision-making process. No member in the IJC has more power in the decision-making process to make a recommendation, or an Order than another. If one commissioner disagrees with the decision, they are free to submit a separate opinion.

Note: Information in the above table is consolidated by the author from sources used in chapters two and three of this thesis.

With the characteristics of the IJC confirmed, the thesis confirms the status of the IJC captured in Table 4.1 via two case studies: the Zosel Dam applications and the Garrison Diversion Unit (GDU). As outlined in section 3.3, these two cases are different in terms of political popularity, importance to Canada and the United States, the functions used by the IJC,

region, and era. Together, they provide a good representation of the Commission's main functions and current water management practices.

Notwithstanding the strong representation of IJC's functions, procedures, and activities, there remains some methodological challenges in using these two case studies. First, examining two out of 124 cases²⁹⁵ ignores actions taken in other cases, such as the outlier cases briefly explained in section 3.3 which could impact the conclusions of this research. Second, the Great Lakes (an area where the Commission performs the bulk of its duties²⁹⁶) was left out of the study. This is due to the complex nature of water management in the region which would make it more difficult to study the IJC's actions, and there is already an abundance of literature produced.

Third, the personalities of commissioners matter. It is difficult to assume, with certainty, that disagreement did or did not occur within the commission, or if commissioners were influenced by politics at the national or subnational level to approve an application or submit a joint report for a reference. It is assumed that there was minimal disagreement with the exception of the slight disagreement by one commissioner over the scope of recommendation three in the GDU reference. Interviews with commissioners, and transcripts of discussions would have provided a more in-depth analysis. However, transcripts of commissioner discussions, and IJC voting records of commissioners could not be found, and interviews with commissioners falls outside the scope of this research.

4.2: Case One: The Zosel Dam

²⁹⁵ "Dockets- Applications & References," International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>.

²⁹⁶ International Joint Commission, *International Joint Commission 2023 Activities Report*, 14-15.

The Zosel Dam is located in the State of Washington (WA) on the Okanogan²⁹⁷ River about six kms downstream of Osoyoos Lake²⁹⁸ which is the international body of water that occupies the border between the Province of British Columbia (BC) and the State of Washington. Populations located near the Lake are the City of Oroville (in the State of Washington), the Town of Osoyoos (in British Columbia), Osoyoos Indian Band (in British Columbia), the Confederated Tribes of the Colville Reservation (in the State of Washington), and the Syilx Okanagan Nation Alliance (in British Columbia and the State of Washington). In Canada, water flows downstream from snowmelt in BC's mountains into Okanagan Lake which then runs down through British Columbia via the Skaha and Vaseux Lakes on the Okanagan River, and into Osoyoos Lake. Once across the CANUS border the water flows down from Osoyoos Lake into the Okanogan River where it is met by the Zosel Dam located in the State of Washington. After the water passes through Zosel Dam it continues downstream on the Okanagan River until it reaches the Columbia River, and eventually discharges into the Pacific Ocean (see Map 4.2).²⁹⁹

Inflows of water to Osoyoos Lake are partially determined by outflows of water from Okanagan Lake located in Canada, and are controlled by British Columbia's Okanagan Lake Regulation System which consists of four dams (Kalamalka Lake Dam, Okanagan Lake Dam, Skaha Lake Dam, and McIntyre Dam) on Okanagan Lake, Kalamalka/Wood, Skaha, and Vaseux

²⁹⁷ United States spelling is "Okanogan" whereas in Canada is it "Okanagan" as per International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, (IOLBC, 2012), 1, <https://ijc.org/sites/default/files/Tab-11-Osoyoos-Order-Renewal-Recommendations-June-21-2012.pdf>.

²⁹⁸ This chapter will refer to Osoyoos Lake as "Osoyoos Lake", or "the Lake" interchangeably.

²⁹⁹ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 3-4; and Osoyoos Lake Water Science Forum, *Nk'Mip (Osoyoos Lake) Final Report*, (Osoyoos: Osoyoos Lake Water Science Forum, 2022), 7, https://www.ijc.org/sites/default/files/2022-olwsf-final-report_march_2023.pdf.

Lakes (see Map 4.1). These dams work in coordination with the American operators of the Zosel Dam.³⁰⁰ In addition to the Okanagan Lake Regulation System and the Zosel Dam, Osoyoos Lake levels can be influenced by two other factors. First, the water flow of Similkameen River located west of the Okanagan/Okanogan Basin which connects with the Okanogan River just below the Zosel Dam (see Map 4.2). During times of high water, the Similkameen River flowing into the Okanogan River can block the outflows coming from Osoyoos Lake. This water can exceed the Dam's capacity to control water levels in Osoyoos Lake causing temporary floods. Second, the Osoyoos Lake levels can be affected by water use for residential, commercial, municipal, and agricultural purposes. Too much water drawn from the Lake may trigger a drought.³⁰¹ Professional, factual and timely communication between Canadian operators of the Okanagan Lake Regulation System and the American operators of Zosel Dam are imperative because Zosel Dam operators try to mirror the water flow being released by the dams upstream in Canada.³⁰² Simply, Canadian and American operators work together as one unit to manage the Lake within the Orders set by the IJC (see section 4.2.1 for an explanation of IJC Orders).³⁰³ This coordination is especially important to US irrigators as the Okanagan River and Osoyoos Lake are the primary water sources for Oroville Tonasket Irrigation District which serves about 10,000 acres of American farms and residents.³⁰⁴

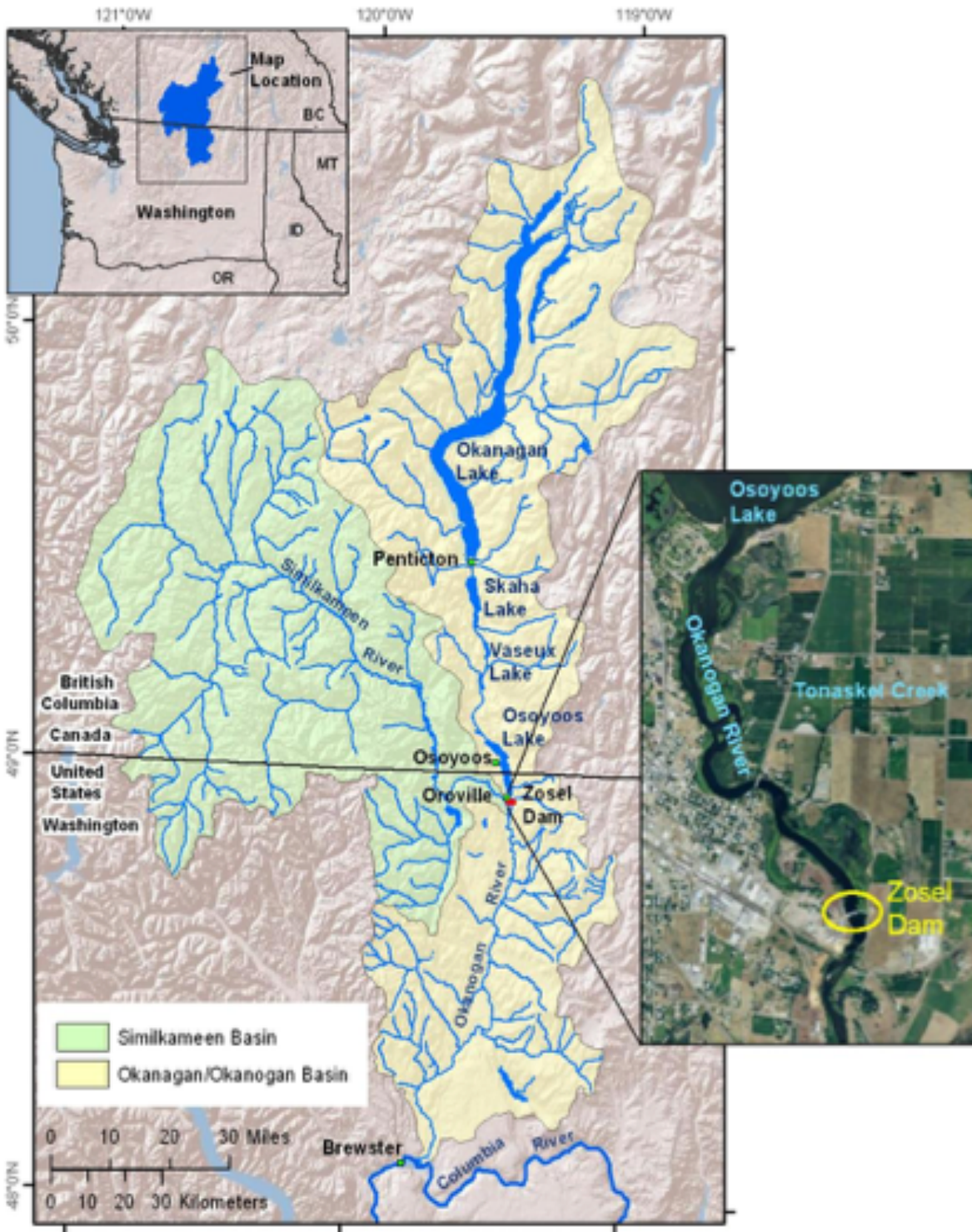
³⁰⁰ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 5-6.

³⁰¹ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 4-5.

³⁰² Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," YouTube, 17 September 2019, video, 9:35-9:53, and 12:25-13:25, <https://www.youtube.com/watch?v=P6IzkUhDpC0>.

³⁰³ Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 9:35-9:53, and 12:25-13:25.

³⁰⁴ Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 14:21-14:38.



Source: International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 4.

4.2.1: The Zosel Dam and the IJC

Water level issues on Osoyoos Lake first occurred in 1927 when the US Zosel Lumber Company (owned by William Zosel)³⁰⁵ in Oroville built a dam (the original Zosel Dam) to create a pond to store logs on the Okanogan River.³⁰⁶ The Zosel Lumber Company failed to submit an application before the construction of the dam (most likely due to ignorance and/or negligence of not knowing the possible impacts of the Dam on the transboundary Lake, or the existence of the BWT).³⁰⁷ However, in 1941, a flood occurred and it was alleged by American and Canadian residences of Osoyoos Lake that the Dam caused water to backlog on the Okanogan River which increased the water levels on the Lake.³⁰⁸ As a result, in 1942, the State of Washington (with approval from the US government) submitted an application to the IJC³⁰⁹ to consider the alleged effects of the operation of the Dam on water levels of Osoyoos Lake; and, if necessary, order adjustments to the water levels. The US government allowed the application because the suspected high-water levels on a transboundary lake (Osoyoos Lake) were a result of the Zosel Dam, and the structure caused damages to the Canadian side of the Lake. Thus, the Dam was in

³⁰⁵ International Joint Commission, *In the matter of the application of the State of Washington requesting that, under the provisions of article IV of the treaty of January 11, 1909, the International Joint Commission give consideration to such effects, if any, as the construction and operation of certain dams and dykes and the formation of bars, in the Okanogan River below the international boundary between the United States and Canada, may have upon the levels or stages of water in the said river, or in Osoyoos Lake at or above the international boundary*, (Windsor: IJC, 1946), 2, <https://ijc.org/sites/default/files/Docket%2040%20State%20of%20Washington%20Orders%201946-09-12.pdf>.

³⁰⁶ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 6.

³⁰⁷ "Brief Chronology of Zosel Dam's History," Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>; and International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 6.

³⁰⁸ R.Y. McNeil, *Factors Affecting the Level of Osoyoos Lake*, file 307580-1 (British Columbia: Department of Lands, Forests, and Water Resources, 1974), 1-2, https://www.obwb.ca/obwrid/docs/180_1974_Factors_Affecting_Level_of_Osoyoos_Lake.pdf; and International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 6.

³⁰⁹ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 6.

violation of Article IV of the BWT.³¹⁰ The IJC, under its quasi-judicial function, was employed to resolve the matter.

To gather information, the Commission appointed a Board of Engineers which consisted of an equal number of representatives from Canada and the United States. They held public hearings on both sides of the border. In 1946, the Board of Engineers released their report. It concluded that, under certain conditions, the Dam did impact Osoyoos Lake levels. In addition, the IJC collected feedback from the public hearings. Following the release of the Board of Engineers' report and public comments, the IJC commissioners voted in favour of the application. An Order of Approval was issued which required the Zosel Dam to maintain water elevation lower than 911 feet (ft) above sea level while allowing the Dam to discharge up to 2500 cubic feet per second (cfs) of water. William Zosel was ordered to make alterations to the Dam. In addition, a permanent International Osoyoos Lake Board of Control (IOLBC)³¹¹ was established to monitor water levels and to ensure the alterations of the Dam were completed.³¹²

In 1948, the modifications ordered by the Commission were completed, but, by the 1960s, the Zosel Lumber Company stopped using the Dam and its condition began to deteriorate. In 1974, the Dam partially collapsed which led to emergency repairs by the State of Washington and the United States Army Corps of Engineers (USACE).³¹³ By 1978, the IJC asked the

³¹⁰ Ed Davis, *Application to the International Joint Commission* (The State of Washington: Department of Conservation and Development, 1942), <https://ijc.org/sites/default/files/Docket%2049%20State%20of%20Washington%20Application%201942-09-26.pdf>.

³¹¹ This chapter will refer to the International Osoyoos Lake Board of Control as "IOLBC", or "the Board" interchangeably.

³¹² International Joint Commission, *In the matter of the application of the State of Washington requesting that, under the provisions of article IV of the treaty of January 11, 1909, the International Joint Commission give consideration to such effects, if any, as the construction and operation of certain dams and dykes and the formation of bars, in the Okanagan River below the international boundary between the United States and Canada, may have upon the levels or stages of water in the said river, or in Osoyoos Lake at or above the international boundary*, 2-3.

³¹³ "Brief Chronology of Zosel Dam's History," Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>.

USACE to provide a report on the condition of the Dam. The report indicated that Zosel Dam could completely collapse leading to a dangerous drop in water level in Osoyoos Lake. It recommended that a new dam be built, and that the current Zosel Dam be decommissioned. The Commission, under a provision to amend the initial 1946 Order, discussed the condition of the Dam, sought public input, and asked the USACE to design plans to replace the Dam.³¹⁴

In 1979, the USACE created a replacement plan for a new Zosel Dam almost one kilometer upstream from the original structure, and, in 1980, Washington submitted an application to the IJC along with a cooperation plan between the State of Washington and British Columbia for a new dam to be built. The cooperative plan, titled *British Columbia Washington State Co-operation Plan for Osoyoos Lake Levels and Trans-Border Flows*, indicated to the Commission that the State of Washington and British Columbia would be willing to jointly regulate Osoyoos Lake levels and build a new dam.³¹⁵ In 1982, after the Commission held local hearings in Oroville and Osoyoos, the commissioners voted and approved the project. The Commission's new Order of Approval was similar to the old 1946 Order of Approval. The new Order increased the maximum lake elevation from 911ft to 913ft and added a minimum lake elevation of 909ft.³¹⁶ The Order kept the same water discharge requirement of 2500 cfs but added mandatory water levels for drought and non-drought years (i.e., normal years). For example, Zosel Dam had to maintain water levels between 911ft to 911.5ft under normal conditions, and 910.5ft to 913ft under drought conditions between April 1st to October 31st; and

³¹⁴ "Brief Chronology of Zosel Dam's History," Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>.

³¹⁵ State of Washington Government, *State of Washington Application for Order of Approval by International Joint Commission*, (The State of Washington, 1980), 1-2, <https://ijc.org/sites/default/files/Docket%20108%20Osoyoos%20Dam%20Application%201980-12-24.pdf>.

³¹⁶ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Order of Approval*, (IJC, 1982), 8, <https://ijc.org/sites/default/files/Docket%20108%20State%20of%20Washington%20Order%201982-12-09.pdf>.

between November 1st to March 31st lake levels were to drop between 909.0ft and 911.5ft.³¹⁷ In addition, a set criterion for a drought to be declared by the IOLBC was established. The criteria for a drought required at least one of three conditions to exist: first, the volume of flow on the Similkameen River was less than one million acre-feet³¹⁸ (determined by US officials); second, the total inflow of Okanagan Lake was less than 195,000 acre-feet (determined by Canadian officials), and third, the level of Okanagan Lake failed to reach water elevations of 1122.8ft (determined by Canadian authorities).³¹⁹ In addition, the IJC added to the Order a renewal clause of twenty-five years to renew the Order after the new dam was built.³²⁰

However, in 1985, it was discovered through a preliminary design study that the 1982 Orders for the construction of the new Dam could not be met which forced the Commission to hold additional public hearings and approve a Supplementary Order of Approval. The Supplementary Order included approval for a new location further downstream closer to the original site of the old Zosel Dam, a different gate be used to manage the water flow, and a time extension for the construction of the project.³²¹ After IJC approval, British Columbia and the

³¹⁷ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake*, 8; and International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013*, (IJC, 2013), 3, [https://ijc.org/sites/default/files/Consolidation%20of%20Osoyoos%20Lake%20Orders December%202013_1.pdf](https://ijc.org/sites/default/files/Consolidation%20of%20Osoyoos%20Lake%20Orders%20December%202013_1.pdf).

³¹⁸ Acre-feet is a method to measure water. One acre-foot is the amount of water it takes to cover an acre of land one foot deep as per “Acre-Foot,” Water Education Foundation, updated 2024, <https://www.watereducation.org/aquapedia/acre-foot>.

³¹⁹ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Order of Approval*, 8-9.

³²⁰ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Order of Approval*, 8, and 12.

³²¹ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*, (IJC, 1985), 3-4, <https://ijc.org/sites/default/files/Docket%20108%20Supplemental%20Order%201985-10-17.pdf>; and International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission’s Osoyoos Lake Order*, 7.

State of Washington agreed on a Memorandum of Understanding (MOU) to share the costs associated with the project. The MOU awarded the design of the Dam to a Canadian engineering firm and contracted a US construction company to build the Dam. Once the new Zosel Dam was completed, the State of Washington would own the Dam and be responsible for its day-to-day operations and maintenance. The construction on the new Dam began with IOLBC overseeing the project and provided progress reports to the IJC.³²² By 1987, the new Zosel Dam was built. Once it began operations in 1988, the Board notified the Commission of the Dam's completion which triggered an Order renewal processes in 2013.³²³

In 2000, the IJC requested that the IOLBC start a work plan for a renewal of the Order, and in 2006, the Board finalized the plan. From 2006 to 2011, eight studies were completed and public consultations were held at two Board meetings and two Osoyoos Lake Water Science Forums. In 2012, the Board completed its report to renew the Order and the IJC held hearings in Canada and the United States on the Board's report and the Order renewal. Furthermore, the IJC sought the opinion of Indigenous peoples on the Board's report – something that was lacking in previous IJC reports. In 2013, the commissioners voted and approved a new Supplementary Order on the condition that British Columbia and the State of Washington would continue the *British Columbia Washington State Co-operation Plan for Osoyoos Lake Levels and Trans-Border Flows*.³²⁴ The new Order renewed the State of Washington's authority to operate the

³²² International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 8.

³²³ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 11.

³²⁴ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*, (IJC, 2013), 2-3, <https://ijc.org/sites/default/files/Docket%20108%20Supplemental%20Order%202013-01-29.pdf>.

Dam and made minor adjustments to how Osoyoos Lake levels would be managed.³²⁵ These minor modifications included an increased maximum elevation level from the 1982 Order (from 911.5ft to 912ft) during normal conditions between April 1st to October 31st; and, to satisfy concerns by Lake residence that 913ft caused excessive land erosion, a decreased maximum during drought conditions between April 1st to October 31st (from 913ft to 912.5ft). In addition, the requirements for the Board to declare a drought changed from one to two criteria (the Similkameen River criterion, and at least one of the two Okanagan Lake criteria).³²⁶ Furthermore, the 2013 Order allowed the Board to suggest a renewal at any time instead of a twenty-five-year fixed period so the IJC would be able to better adapt to climate change.³²⁷

4.2.2: Current Situation and Structure of Management of Osoyoos Lake

Currently, the IJC has mandated the IOLBC to monitor the applicant’s activities, in this case the State of Washington, to ensure the compliance of the IJC’s Orders,³²⁸ hold annual public and Board meetings in both Canada and the United States, and arrange quarterly Board conference calls.³²⁹ Additionally, the IOLBC issues an annual report to the Commission which usually includes an overview of the Board’s yearly activities, IWI progress, hydrological

³²⁵ “Mandate,” International Osoyoos Lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/mandate>; and “Brief Chronology of Zosel Dam’s History,” Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>.

³²⁶ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013*, 3.

³²⁷ International Osoyoos Lake Board of Control, “International Osoyoos Lake Board of Control annual public meeting – October 26, 2022,” Vimeo, 26 October 2022, video, 13:45-15:05, <https://vimeo.com/764619542>.

³²⁸ The 2013 Order the State of Washington’s Department of Ecology directs operations of Zosel Dam through a contract with the Oroville Tonasket Irrigation District; and British Columbia and Washington State have agreed on elevation levels for the Lake based on drought and flood forecasts within the limits outlined in the IJC’s 2013 Orders as per “Mandate,” International Osoyoos lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/mandate>.

³²⁹ “Meeting Minutes,” International Osoyoos Lake Board of Control, updated 2023, <https://www.ijc.org/en/olbc/library/minutes>.

conditions of the Lake, a review of Osoyoos Lake levels, and the compliance with IJC Orders.³³⁰ The IOLBC is an effective tool for the Commission as it communicates and collaborates with community members and is able to produce impartial annual reports for the IJC.³³¹ The IOLBC is composed of twelve members (six Americans, and six Canadians) including a secretary, and chair for each national section. The members hold expertise in hydrology, environmental sciences, water management, and Indigenous knowledge. The members also represent federal agencies (Environment and Climate Change Canada, the US Geological Survey, and USACE), provincial agencies (BC Ministry of Forest, Land, and Natural Resources Operations), a municipal government (the Mayor of Osoyoos), and local interest groups (Osoyoos Lake residences, the Confederated Tribes of the Colville Reservation, and the Okanagan Basin Water Board).³³²

Aside from the Board's main mandate to monitor the operation of the new Zosel Dam, it has been involved in six International Watersheds Initiative (IWI) projects between 2015 to 2024. Four of the projects are focused on public education, and community involvement in Osoyoos Lake which often highlights the relationship between Osoyoos Lake and the different demands for its water. For example, projects built local monuments to highlight the history of lake levels and helped fund a film named "A River Film" which examines the complex relationship between water management, farmers, tribes, First Nations, scientists, and local residences of the Okanagan/Okanogan Basin. Also, it co-hosted two Osoyoos Lake Water

³³⁰ International Osoyoos Lake Board of Control, *2021 Annual Report to the International Joint Commission*, 2021, 5-8, <https://www.ijc.org/sites/default/files/IOLBC-2021-Annual-Report.pdf>.

³³¹ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 8-9; and "Mandate," International Osoyoos lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/mandate>.

³³² "Members," International Osoyoos Lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/members>.

Science Forums in 2015 and 2022 with the goal to educate residences of the Okanagan/Okanogan region on water management, watershed issues, and climate change, as well as, hearing the shared concerns of various interest groups.³³³

In addition, the Board has two active scientific studies which were funded by the IWI. The goal of the first is to better understand hydrological conditions in different climate change scenarios of Osoyoos Lake levels. This study will allow for better water flow predictions in the Okanagan/Okanogan region which will hopefully let the IJC adjust its Zosel Dam Orders for future environmental changes in Osoyoos Lake.³³⁴ The second IWI project looks at ice jams on Osoyoos Lake and the meteorological conditions contributing to ice jams which has increased Lake levels, but decreased water discharge from Zosel Dam downstream negatively impacting sockeye salmon populations. The ice jam study will analyze temperature, wind direction and speed to see how the ice jams form and if the Board can do anything to reduce their impact on the salmon.³³⁵ The IWI projects are not solely conducted by the Board but in collaboration with other government agencies, organizations, and interest groups. These include the US Army Corps of Engineers, United States Geological Survey, Washington State Department of Ecology, Environment and Climate Change Canada, BC Ministry of Environment, BC River Forecast Centre, Real Estate Foundation of BC, Regional District Okanagan/Similkameen, Town of

³³³ “International Watersheds Initiative Project Highlights: Osoyoos Lake,” International Watersheds Initiative, updated 2023, <https://storymaps.arcgis.com/stories/2f332db7863b410f8249adeecc267f67>.

³³⁴ “Osoyoos Lake Climate Change Vulnerability: Phase 2 – Merging Similkameen/ Okanagan Basin Hydrologic Models,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-2-merging-similkameen-okanagan-basin>; and “Osoyoos Lake Climate Change Vulnerability: Phase 1 – Similkameen Basin Hydrologic Model,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-1-similkameen-basin-hydrologic-model>.

³³⁵ “History, Frequency, and Processes Contributing to Ice Jams on Osoyoos Lake,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/history-frequency-and-processes-contributing-ice-jams-osoyoos-lake>.

Osoyoos, City of Oroville, Syilx Okanagan Nation Alliance, Confederated Tribes of the Colville Reservation, the Okanagan Basin Water Board and the Osoyoos Lake Water Quality Society.³³⁶

As outlined above, collaboration in the region is a common theme. Although the IOLBC is mandated to focus on water quantities in Osoyoos Lake, it shares similar goals with local organizations that have an overall goal of protecting the Okanagan/Okanogan Basin ecosystem. Specifically, in Osoyoos Lake, there are three main groups. First, the Osoyoos Lake Water Quality Society is a grass-roots organization aimed to promote public awareness of the Lake, monitor pollution, and assist with the management of the Lake.³³⁷ Second, the Okanagan Basin Water Board focuses on the management of the Okanagan Basin and identifies and resolves critical water quality and quantity issues.³³⁸ Third, the Syilx Okanagan Nation Alliance is concerned with how changes in water quality and quantity impact the fish stocks in the region.³³⁹ As the IOLBC share similar objectives to the three groups, it appears that their overlapping goals have created more of a collaborative than adversarial environment. For example, all the IWI projects related to public education involve the Okanagan Basin Water Board and the Syilx Okanagan Nation Alliance as partners.³⁴⁰ Additionally, the executive director of the Okanagan Basin Water Board is a member on the Canadian section of the IOLBC.³⁴¹

Currently, water management in Osoyoos Lake faces pressures from competing interests. These include agriculture (irrigation of orchards and vineyards), fisheries, domestic water supply, tourism and leisure activities (boating, fishing, swimming, golfing) which all seek to

³³⁶ See Footnotes 327-331 of this chapter.

³³⁷ “What we do,” Osoyoos Lake Water Quality Society, updated 2024, <https://www.osoyooslake.ca/about/what-we-do/>.

³³⁸ “What We Do – Overview,” Okanagan Basin Water Board, updated 2024, <https://obwb.ca/overview/>.

³³⁹ “Fisheries,” Syilx Okanagan Nation Alliance, updated 2017, <https://www.syilx.org/fisheries/>.

³⁴⁰ “Members,” International Osoyoos Lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/members>.

³⁴¹ “Members,” International Osoyoos Lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/members>.

benefit from Osoyoos Lake and its tributary waterways. For example, for residences and property owners, lake levels greater than 912.5ft causes damage to property and business (i.e., flooding of campsites), but anything less than 912ft is not optimal for boating and poses safety concerns. Further, unstable lake levels cause inconvenience in terms of raising and lowering docks. For irrigators, lake levels less than 910.5ft causes concern for water supply- this can create tensions between golf course owners and farmers who both need a large amount of water to irrigate their lands. For fisheries, water levels are not as important as water flow, but lower or no water in tributaries from the Osoyoos Lake due to irrigation can be detrimental for fish stocks.³⁴² Sufficient water must be left in stream during the late summer months (when irrigators use the most water) for the sockeye salmon to swim upstream.³⁴³ It is the responsibility of the IOLBC and the IJC to direct Zosel Dam operators to set water levels that minimize conflict between economic interest groups. As such, the IJC, through its 2013 Order, has minimized these tensions by seeking more input from community members compared to previous Orders.³⁴⁴ The repercussions that different water levels have on peoples' livelihoods make the Zosel Dam's responsibilities to manage water levels for the Osoyoos Lake and Okanagan/Okanogan River extremely important.

4.2.3: Analysis

³⁴² State of Washington Water Research Center, *An Assessment of the Most Suitable Water Levels for Osoyoos Lake (Study 1)*, (Pullman: Washington State University, 2011), 34, https://www.obwb.ca/obwrid/docs/344_Osoyoos_Lake_Study_1_Final_20110203.pdf; and Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 14:40-15:30, and 17:31-23:55.

³⁴³ Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 15:05-15:30.

³⁴⁴ State of Washington Water Research Center, *An Assessment of the Most Suitable Water Levels for Osoyoos Lake (Study 1)*, 34.

Overall, the IJC’s jurisdiction, through its Orders of Approval overseeing management of Zosel Dam and the quantity of water in Osoyoos Lake, is relatively small, but it is an important role within the larger management of the Okanagan/Okanagan Basin (see Map 4.1).³⁴⁵ In 1942, the US government accepted that the Zosel Dam located on its territory might be in violation of the BWT and quickly approved the State of Washington’s request to submit an application to the Commission.³⁴⁶ The IJC Commissioners, the Province of British Columbia, and the State of Washington understood the importance of cooperation if the Basin was to be successfully managed. Within the Commission, the Order of Approval and Supplementary Order of Approval processes were properly followed³⁴⁷ and the commissioners came to an unanimous decision to approve two applications (in 1946 for the old Zosel Dam and in 1982 for the new Zosel Dam), and issued two Supplemental Orders (in 1985 for the construction of the new Dam, and in 2013 to renew the 1985 Order).³⁴⁸ Furthermore, there appears to be no indication that the Commission’s board of control (the IOLBC) members actively pursue their governmental agency or organization’s interests. In turn, the IOLBC has become successful working with local organizations and community members to protect Osoyoos Lake, monitoring compliance of the Orders, declaring droughts and producing reports on the Dam and Lake conditions.³⁴⁹ Part of this success has come from the cooperation of government agencies. For example, provincial and

³⁴⁵ Osoyoos Lake Water Science Forum, *Nk’Mip (Osoyoos Lake) Final Report*, 7.

³⁴⁶ “Brief Chronology of Zosel Dam’s History,” Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>; and International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission’s Osoyoos Lake Order*, 6.

³⁴⁷ “Brief Chronology of Zosel Dam’s History,” Osoyoos Lake Board of Control, updated 2012, <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>.

³⁴⁸ “49A,” International Joint Commission, updated 2024, <https://ijc.org/en/49a>; and “108A,” International Joint Commission, updated 2024, <https://ijc.org/en/108a>.

³⁴⁹ “Mandate,” International Osoyoos lake Board of Control, updated 2023, <https://www.ijc.org/en/olbc/who/mandate>; and International Joint Commission, *Directive to International Osoyoos Lake Board of Control*, (IJC, 2013), 1-3, https://www.ijc.org/sites/default/files/2018-08/IJC%20Directive%20for%20the%20Osoyoos%20Lake%20Board%20of%20Control%20v2013-04-16_1.pdf.

state officials have not misused their power to declare that a criterion for a drought has been met and are able to collectively gather data for the IOLBC.³⁵⁰

Today, the Okanagan/Okanogan Basin is viewed by its residences not as a separate water system divided by national boundaries, but as one water system that must be managed jointly from the Okanagan Lake in British Columbia to the Okanogan River in the State of Washington. Osoyoos Lake is part of this water system and the Zosel Dam is one water control mechanism that helps both Americans and Canadians share and benefit from the Basin's water.³⁵¹ The State of Washington is dependent on proper water management from British Columbia's Okanagan Lake Regulation System as it is the primary controller of water that flows into Osoyoos Lake and through the Zosel Dam. Consequently, the Canadian side of Osoyoos Lake depends on proper management of the Dam.³⁵² As such, the agreement between the State of Washington and British Columbia to manage the water of the Okanagan/Okanogan Basin has allowed the Zosel Dam to operate effectively within the limits of the IJC Orders.³⁵³ Despite the successful cooperation between subnational governments, local organizations, and the IJC, differences in how the water should be managed (i.e., what should Osoyoos Lake's water levels be during the different seasons to maximize benefits of water use?) appears to stem not from national identities (Americans and Canadians), but from different competing interests (i.e., American and Canadian

³⁵⁰ "Lake Level Status and Trends," International Osoyoos Lake Board of Control, updated 2024, <https://www.ijc.org/en/olbc/watershed/levels>.

³⁵¹ See Map 4.1; and Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 9:35-9:53, and 12:25-13:25.

³⁵² "FACTSHEET: Okanagan Lake Regulation System," BC Gov News, updated 2017, [https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20\(see%20map\);](https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20(see%20map);) and Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology, "A River Film," 14:21-14:38).

³⁵³ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*, (IJC, 2013), 2-3.

water irrigation interests versus American and Canadian fishery interests) that use the water from the Lake.

4.3: Case Two: The Garrison Diversion Unit (GDU)

The GDU reference was one of the IJC's most complex and political cases in the west.³⁵⁴ The GDU project is an extension of the Garrison Dam built in 1953, and is located in the central-west side of the State of North Dakota (ND) near Lake Sakakawea (see Map 4.3).³⁵⁵ The Garrison Dam was built as part of the Pick-Solan Missouri Basin Program which was a series of reclamation projects approved by the US government from 1930 to 1965 to aid semi-arid regions along in the Missouri River Drainage Basin with water irrigation for farming, flood control, and power generation.³⁵⁶ However, the Garrison Dam inundated 550,000 acres of land in North Dakota and for compensation of the flooded lands, the US government promised the ND government a multi-purpose water project (the GDU). The proposed project transported water from the flooded waters caused by the Garrison Dam through Snake Creek Pumping Plant on Lake Sakakawea into McClusky Canal in North Dakota. The proposed plan had the Canal transport the water to the Lonetree Reservoir where it would cross the Missouri River Drainage Basin to join the Hudson Bay Drainage Basin. The water would then be distributed to the rest of

³⁵⁴ Sadler, "Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters," 387.

³⁵⁵ Charles M. Carvell, "The North Dakota Diversion Project and International Environmental Law," *North Dakota Law Review* 60, no. 4 (1984): 604, <https://commons.und.edu/cgi/viewcontent.cgi?article=2137&context=ndlr>.

³⁵⁶ Roger S. Otstot, *Reclamation Managing Water in the West: An Overview of the Pick-Solan Missouri Basin Program*, (Great Plains Region: U.S. Department of the Interior Bureau of Reclamation, 2022), 2-3, 4-5, and 10-11, <https://commons.und.edu/cgi/viewcontent.cgi?article=1148&context=Indigenous-gov-docs>; and Caldwell, "Garrison Diversion: Constraints on Conflict Resolution," 841.

North Dakota through a series of canals for irrigation purposes, and supplementary water supply for residences and businesses (see Map 4.3).³⁵⁷

From the Lonetree Reservoir, the water from the Missouri River would flow into three rivers (the Souris River, the Wild Rice River, and the Sheyenne River) that are part of the Hudson Bay Drainage Basin in Canada (see Map 4.3). First, the Souris River originates in the Province of Saskatchewan, then crosses the border into North Dakota, then curves back north across the border into the Province of Manitoba where it connects with the Assiniboine River which discharges into the River Red and partially through the Portage Diversion, into Lake Manitoba. Second, both the Wild Rice River and the Sheyenne River originate in North Dakota, and empty into the Red River which flows from North Dakota across the border into Manitoba where it empties into Lake Winnipeg before ultimately discharging into Hudson Bay.³⁵⁸

Construction of the GDU began in 1967.³⁵⁹ However, the proposed project to transfer water from one basin into another garnered concern and opposition from the Manitoba government, the Canadian government, the State of Minnesota, and some area residents from North Dakota.³⁶⁰ However, the strongest opposition came from the governments of Manitoba and Canada that feared water from the Missouri River would adversely affect the water quality in the Red, Souris and Assiniboine Rivers, Lake Winnipeg and Lake Manitoba, as well as other lakes

³⁵⁷ “Facilities Information,” Garrison Diversion, updated 2024, <https://garrisondiversion.org/about-garrison-diversion/facilities/>; and Carvell, “The North Dakota Diversion Project and International Environmental Law,” 604-605.

³⁵⁸ Nossal, “The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters,” 2-3.

³⁵⁹ Carvell, “The North Dakota Diversion Project and International Environmental Law,” 605.

³⁶⁰ Nossal, “The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters,” 10-12.

and streams in Northern Manitoba.³⁶¹ Manitoban officials predicted that in a transfer of water from the Missouri River Drainage Basin to the Hudson Bay Drainage Basin, two watersheds that were detached for several millennia, and had developed distinct ecosystems, would carry foreign biota that could damage fish, animals and plants in Manitoba. In addition, more water irrigation on farmland in North Dakota could lead to more pesticide and fertilizer runoff polluting the Red and Souris Rivers. This would disrupt Manitoba's farming, wildlife, water supply for communities and recreational and commercial fisheries.³⁶² Conservative Members of Parliament (MP) representing Manitoba voiced their province's concerns in the House of Commons in 1975.³⁶³ As one Conservative MP stated, the Canadian government should "demand an immediate halt to the Garrison diversion project and stop turning Manitoba into a sewer or a toilet for this undertaking".³⁶⁴ Eventually, in 1977, Prime Minister Pierre Trudeau was pressured to take the issue up with US President Jimmy Carter in a planned meeting.³⁶⁵

³⁶¹ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, (IJC, 1977), 5-6, <https://ijc.org/sites/default/files/Dokcet%20101%20Garrison%20Report%20to%20Gov.%201977.pdf>.

³⁶² International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 5-6; Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 3; and Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 218.

³⁶³ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 7.

³⁶⁴ Canada, Parliament, *House of Commons Debates*, 30th Parl, 1st Sess, Vol. 6 (20 May 1975), 5954, https://parl.canadiana.ca/view/oop.debates_HOC3001_06/510.

³⁶⁵ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 7, and 19. Prime Minister Trudeau Sr. planned to discuss the GDU during a meeting with President Carter, however, before the meeting the President placed the GDU on his "hit list" to eliminate funding for projects that impact the environment, thus the discussion never happened as per Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 18-20. In 1981, after the release of the IJC report, Prime Minister Pierre Trudeau discussed the issue with US President Ronald Regan as per "Trudeau, Pierre Elliott and Ronald Reagan – Statement to the News Media," 11 March 1981, sound recording, 20:38 minutes, Privy Council Office fonds, accession number 1989-0279, item number ISN 191182, Library and Archives Canada (LAC), <http://central.bac-lac.gc.ca/.redirect?app=filvidandsou&id=191182&lang=eng>.

In 1969, two years after the construction of the project began, the governments of Manitoba and Canada began to investigate the possible impacts that the project might have on Canada's water systems, and hosted meetings with US State Department officials.³⁶⁶ However, after a lack of technical information provided by the State Department, the Canadian government "sent a stiffly worded diplomatic note to the State Department on 23 October 1973. The note stated that the Garrison Diversion, in Canada's view, would violate article IV of the 1909 Boundary Waters Treaty which prohibits transboundary pollution 'to the injury of health or property'."³⁶⁷ In addition, the Canadian government requested that a moratorium on construction be applied until both federal governments could reach an agreement. Washington's response was puzzling. The State Department responded by admitting that US officials "did not know"³⁶⁸ if the GDU violated the BWT, but it would temporarily suspend construction on parts of the GDU that might impact Canada until concerns were satisfied. Meanwhile, the Manitoba and ND governments agreed to establish a Garrison Monitoring Committee to examine the impacts of the project. However, disagreements about technical data made the committee short lived and tensions rose between citizens of North Dakota and Manitoba.³⁶⁹ In 1975, it became clear that an agreement would need to be reached between the governments of Manitoba and North Dakota. and Ottawa and Washington referred the issue to the IJC.³⁷⁰

³⁶⁶ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 5-6; and Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 3.

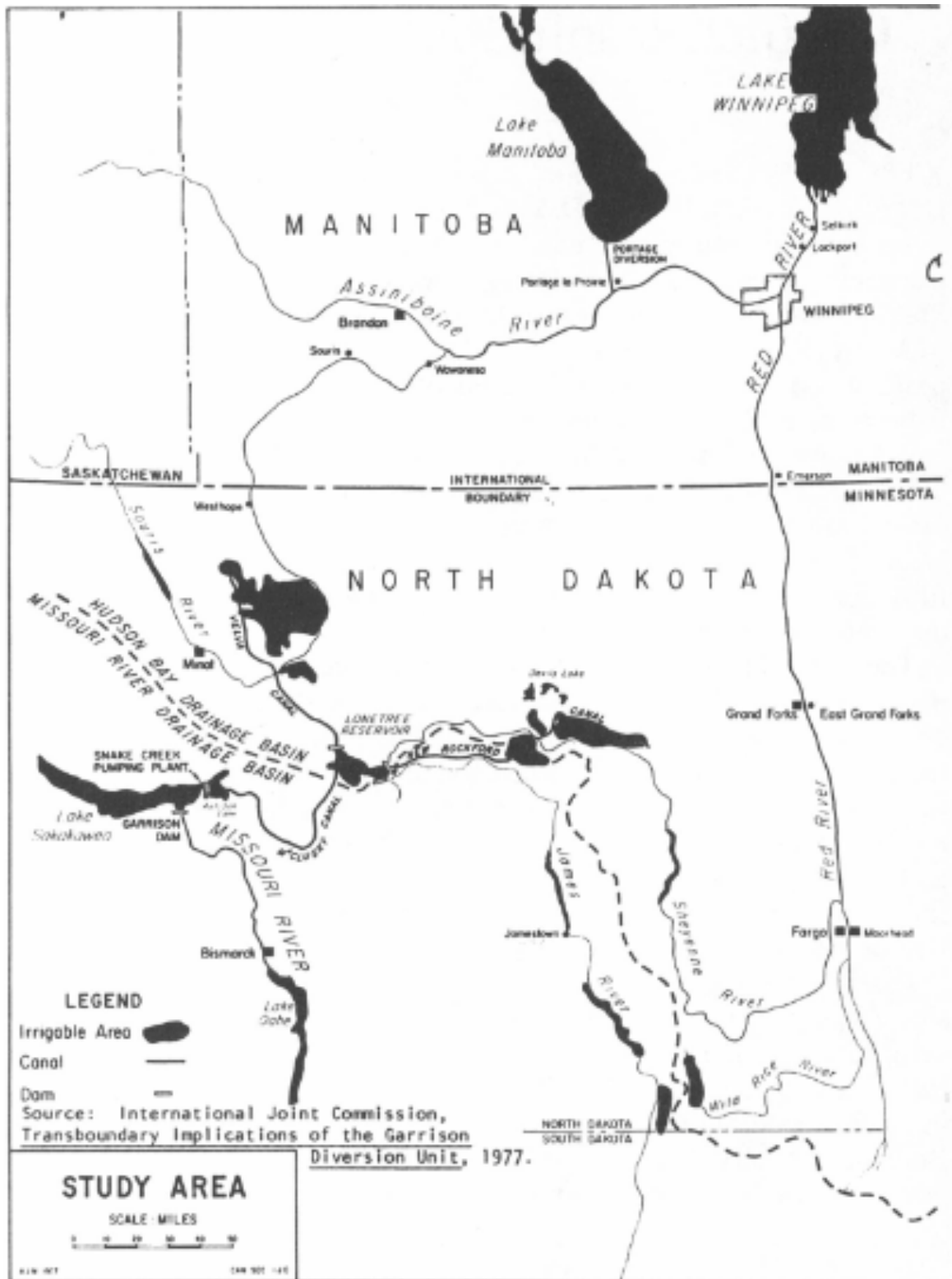
³⁶⁷ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 5.

³⁶⁸ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 5.

³⁶⁹ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 5-7.

³⁷⁰ Allan J. MacEachen, *Garrison Diversion Canada Letter of Reference*, 2-4.

Map 4.3: Original proposed route of the Garrison Diversion



Source: Caldwell, "Garrison Diversion: Constraints on Conflict Resolution," 840.

4.3.1: The IJC's Involvement in the GDU

The Commission's investigative function was enacted by the federal governments to help determine if Article IV of the BWT would be upheld if the project was completed.³⁷¹ Specifically, they instructed the IJC, within the short timeframe of one year (as the construction of sections of the GDU that connected the two basins were set to begin)³⁷² to study the present state of water quality of the Souris and Red Rivers, the Assiniboine River and their tributaries, and other downstream waterbodies like Lake Winnipeg and Lake Manitoba. Furthermore, the Commission was instructed to analyze how these waters are used and will be used in the future and evaluate the economic and environmental impacts on Manitoba if the GDU was completed.³⁷³ The commissioners quickly established the International Garrison Diversion Study Board which consisted of twelve members, six from each country. The members worked for North Dakota State University and government agencies from Minnesota, Manitoba, the United States, and Canada.³⁷⁴ The Board directed five technical committees: the Water Quality, Biology, Uses, Water Quantity, and Engineering committees. The committees were comprised of bureaucrats from North Dakota, Manitoba, Minnesota, and federal agencies. The goal of the committees was to aid the Board in conducting studies on the GDU's possible impacts on water quantity and quality, the ecosystem of the Hudson Bay Drainage Basin and how the uses of the Canadian waterways might change upon completion of the project.³⁷⁵ In addition, eight public

³⁷¹ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 6.

³⁷² Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 8-9.

³⁷³ MacEachen, *Garrison Diversion Canada Letter of Reference*, 2-3.

³⁷⁴ Welsted, "The Garrison Diversion Unit – An Update," 54; and International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 140.

³⁷⁵ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 2, and 142-144.

hearings (four in Canada and four in the United States) were held for public feedback on the GDU.³⁷⁶

Despite the short timeframe for the investigation and the political angst over the GDU, the International Garrison Diversion Study Board produced a report for the IJC in 1976.³⁷⁷ During the following year, in 1977, the commissioners were able to reach a consensus, voting to jointly release a final report.³⁷⁸ The report found the GDU would adversely affect the water quality and cause damage to Manitoba's domestic, industrial, and agricultural water uses and increase the costs to local water treatment plants. Furthermore, the introduction of new fish species would damage commercial and recreational fishing industries and wildlife³⁷⁹ and severely impact "Treaty Indians and other local residents who rely on fish for food."³⁸⁰ Within the report the commissioners provided three recommendations. First, because of the risk of transferring harmful biota due to ineffective water filtration methods, the ND government should not build sections of the GDU that would allow water from the Missouri River to be transferred into the Hudson Bay Drainage Basin. Second, both federal governments must come to an agreement on methods that would greatly reduce the risk of biota transfer before the sections that impact Canadian waters were built. Third, the federal governments should negotiate a water quality agreement for the Red and Souris Rivers. The third recommendation was not unanimous

³⁷⁶ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 80, and 87; and Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 10.

³⁷⁷ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 1.

³⁷⁸ Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 218-219.

³⁷⁹ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 59.

³⁸⁰ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 59-60, and 102-104.

as a Canadian commissioner filed a separate opinion which stated that the negotiations of a water quality agreement for the Red and Souris Rivers should be extended to all shared water tributaries of both rivers.³⁸¹

The IJC's final report and recommendations angered supporters of the project. Some politicians in North Dakota even suggested that the IJC should be disbanded.³⁸² The report and recommendations did confirm environmental concerns regarding interbasin water transfer which provided Canada with a political tool for lobbying. For example, in 1980, using the IJC's report to lobby against US federal funding for the GDU, Manitoba's Premier Sterling Lyon sent a letter to every member of the US Congress expressing concern that the project would cause damage to Canadian waterways that would violate the BWT.³⁸³ In 1977, soon after the IJC released their report, the GDU was placed on President Jimmy Carter's "hit list" of costly water projects that impacted the environment.³⁸⁴ This marked the beginning of an environmentalism era in the United States and decades of delays in the construction of the GDU due to temporary pauses of federal funding and opposition from government agencies, such as the Environmental Protection Agency, and American environmental interest groups from North Dakota, South Dakota, and Minnesota.³⁸⁵ In 1981, Ottawa and Washington acted upon the Commission's second recommendation establishing the "US-Canada Consultative Group". However, the group was

³⁸¹ Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 218-219.

³⁸² Welsted, "The Garrison Diversion Unit – An Update," 55.

³⁸³ Manitoba Information Services Branch, "Lyon Writes Congress about Garrison Issue: Cites Serious Concern of any Water Diversion," *News Service*, 30 May 1980, https://news.gov.mb.ca/news/archives/1980/05/1980-05-30-lyon_writes_congress_about_garrison_issue.pdf.

³⁸⁴ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 18.

³⁸⁵ Welsted, "The Garrison Diversion Unit – An Update," 56; and Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 26.

unable to come to a consensus on water treatment methods and disbanded.³⁸⁶ As time progressed, the water irrigation element of the GDU was almost eliminated and in 2000 the GDU was officially abandoned when Congress passed the *Dakota Water Resource Act*.³⁸⁷ Only some sections of the GDU were built, such as the Snake Creek Pumping Plant and a section of McClusky Canal. However, Lonetree Reservoir was never completed, and, to date, water has yet to cross from the Missouri River into the Hudson Bay Drainage Basin.³⁸⁸ Ultimately, the GDU project was abandoned from budget cuts, strong opposition by Canada, and the beginning of an environmentalism era especially in the United States.³⁸⁹

4.3.2: Current Situation

After the Dakota Water Resource Act of 2000, a new version of the GDU emerged through an ND funded project with use of state revenue from oil and gas named the “Red River Valley Water Supply Project” (RRVWSP). Since the IJC’s 1977 investigation, water treatment technology has improved, there is better knowledge regarding invasive species and massive irrigation using imported water is no longer popular. The RRVWSP eliminated the irrigation component which was the main tension point in the GDU issue and is focused on transferring treated emergency potable water supply to communities throughout North Dakota.³⁹⁰ The project proposes an underground water pipeline be built from the Missouri River to the McClusky Canal. From the McClusky Canal, a pipeline will be built to the Sheyenne River (which

³⁸⁶ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 219.

³⁸⁷ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 220.

³⁸⁸ “Facilities Information,” Garrison Diversion, updated 2024, <https://garrisondiversion.org/about-garrison-diversion/facilities/>.

³⁸⁹ Nossal, “The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters,” 18, and 26; and Welsted, “The Garrison Diversion Unit – An Update,” 56.

³⁹⁰ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 220.

discharges into the Red River) (see Map 4.4). The RRVWSP has yet to transfer water across the two water basins (construction began in 2020 and is expected to be completed in 2029).³⁹¹ However, the people of Manitoba continue to oppose any project that promotes interbasin water transfer. In 2018, a petition was introduced in the House of Commons by a MP from Manitoba with concerns that the RRVWSP will potentially have “adverse environmental impacts”³⁹² on Manitoba waters. In addition, a resolution (resolution to “Protect Manitoba Waterways from Transboundary Water Projects”)³⁹³ was introduced in the Manitoba Legislative Assembly to have the IJC investigate the project.³⁹⁴ Despite Manitoba’s call for action, Ottawa and Washington have not ordered the IJC to investigate the RRVWSP.

However, in 2021, the Red River watershed was placed under the IJC’s jurisdiction when the International Red River Watershed Board (IRRWB) was established through the IWI.³⁹⁵ Similar to the International Osoyoos Lake Board of Control, the IRRWB is composed of twenty-four members, twelve on the US section and twelve on the Canadian section of the Board including a secretary, and chair for each section. The members hold expertise in hydrology, environmental sciences, water management, and Indigenous knowledge. Members represent federal, provincial, and state agencies, municipal governments, Indigenous groups, a local commission and academia.³⁹⁶ The IRRWB collaborates with local Indigenous groups, such as the

³⁹¹ “Construction Updates,” Red River Valley Water Supply Project, updated 2024, <https://www.rrvwsp.com/construction-updates/>.

³⁹² Daniel Blaikie on behalf of Don Sullivan, *Petition (Protection of the environment) to the Minister of Foreign Affairs*, e-1244, petition no. 421-02014, (Ottawa: House of Commons, 2018), <https://www.ourcommons.ca/petitions/en/Petition/Details?Petition=e-1244>.

³⁹³ Manitoba, Legislature, *Legislative Assembly of Manitoba*, 41st Leg, 3rd Sess, (10 May 2018), 2129, https://www.gov.mb.ca/legislature/hansard/41st_3rd/hansardpdf/45a.pdf#page=18.

³⁹⁴ Manitoba, Legislature, *Legislative Assembly of Manitoba*, 41st Leg, 3rd Sess, (10 May 2018), 2129, https://www.gov.mb.ca/legislature/hansard/41st_3rd/hansardpdf/45a.pdf#page=18.

³⁹⁵ “About Us,” International Red River Watershed Board, updated 2023, <https://ijc.org/en/rrb/who/about>.

³⁹⁶ “Members,” International Red River Watershed Board, updated 2023, <https://ijc.org/en/rrb/who/members>.

Southern Chiefs' Organization,³⁹⁷ the Manitoba Métis Federation and Tribal Nations (Turtle Mountain Band of Chippewa Indians, and the White Earth Nation)³⁹⁸ and shares watershed responsibilities with the Red River Basin Commission. Both commissions host workshops and conferences to educate the public on regional water issues and receive public feedback.³⁹⁹ In addition, like the IOLBC, the IRRWB releases annual watershed progress reports, conducts annual meetings with the public and works on IWI projects. These projects include: tracking water quality trends, the movement and number of fish species, and increasing engagement with Indigenous peoples in the Red River watershed.⁴⁰⁰ However, unlike the IOLBC, the IRRWB is not in control of a water diversion and has no decision-making abilities. Instead, the Commission instructs the IRRWB to “[m]aintain an awareness of current and emerging land use and development and socio-economic activities and condition on the Aquatic Ecosystem Integrity of the Red River Basin”.⁴⁰¹ The IRRWB is mandated by the IJC to monitor the “ground and surface water quality, quantity, levels, flows, and biological elements”⁴⁰² of the Red River watershed.⁴⁰³ The IRRWB is not directed by either federal government to investigate the RRVWSP although, as the project progresses, its development poses a risk to the Red River ecosystem which

³⁹⁷ Southern Chiefs' Organization is comprised of thirty-four Anishinaabe and Dakota Nations. For full list refer to “About SCO,” Southern Chiefs' Organization Inc., updated 2024, <https://scoinc.mb.ca/about-sco/>.

³⁹⁸ Celeste McKay Consulting Inc., *Indigenous Nations RoundTable International Red River Watershed Board (IRRWB) of the International Joint Commission (IJC)*, (Winnipeg: Celeste McKay Consulting Inc., 2023), 2, <https://ijc.org/sites/default/files/Report%20of%20the%20Indigenous%20Nations%20Roundtable%20January%2016-17%2C%202023%20Final.pdf>.

³⁹⁹ “What’s New with the International Red River Watershed Board: Binational Collaboration on Water,” International Red River Watershed Board, updated 2024, <https://ijc.org/sites/default/files/IRRWB-Poster-EN.pdf>; and “About the Red River Basin Commission,” Red River Basin Commission, updated 2024, <https://www.redriverbasincommission.org/about-us>.

⁴⁰⁰ “International Watersheds Initiative Project Highlights: Red River,” International Watersheds Initiative, updated 2023, <https://ijc.org/en/iwi-iibh/project-highlights-storymap>; and International Joint Commission, *Directive to the International Red River Watershed Board*, (IJC, 2022), 4, <https://ijc.org/sites/default/files/Revised-IRRWB-Directive-5.26.2022.pdf>.

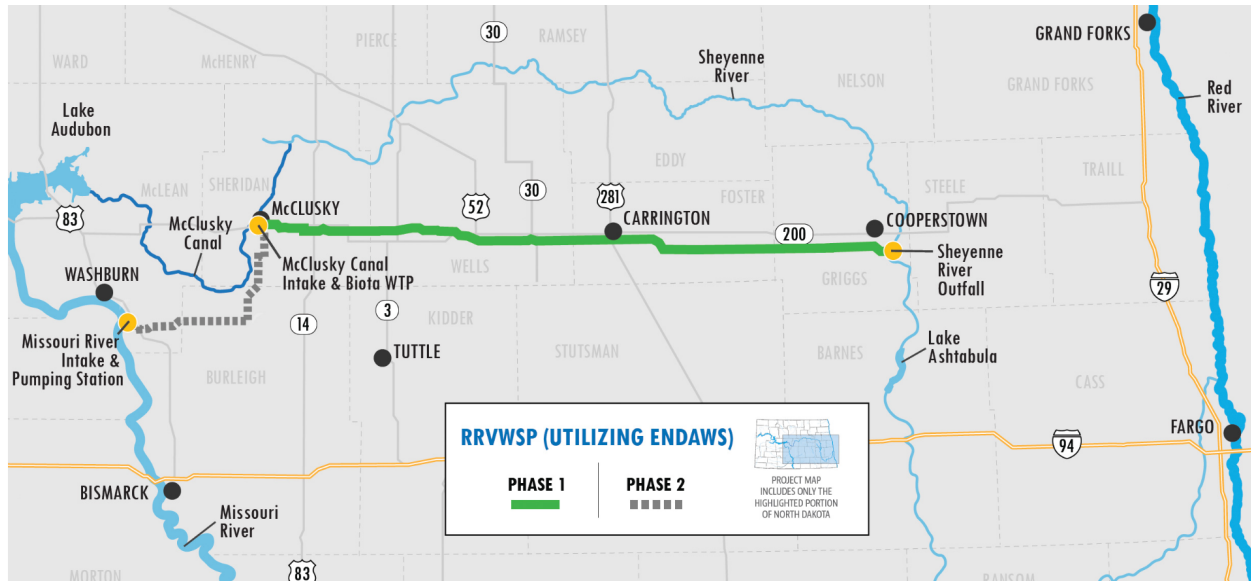
⁴⁰¹ International Joint Commission, *Directive to the International Red River Watershed Board*, 2.

⁴⁰² International Joint Commission, *Directive to the International Red River Watershed Board*, 2.

⁴⁰³ “About Us,” International Red River Watershed Board, updated 2023, <https://ijc.org/en/rrb/who/about>.

empowers the IRRWB to monitor the RRVWSP by releasing annual updates and to study the impacts of interbasin water transfer.⁴⁰⁴

Map 4.4: Proposed route for the RRVWSP



Source: “Red River Valley Water Supply Project,” Lake Agassiz Water Authority, updated 2024, https://lakeagassiz.org/red_river_valley/.

4.3.3: Analysis

Unlike the Zosel Dam case in which the subnational governments (British Columbia and the State of Washington) cooperated to resolve the issue, the Garrison Diversion Unit case was public and highly political as hostilities between subnational governments (Manitoba and North Dakota) arose and the IJC was employed through a reference rather than via an application after bilateral negotiations broke down.⁴⁰⁵ It is unlikely that the IJC’s final report had a large impact in the unraveling of the GDU project compared to the domestic policies to limit mass irrigation.

⁴⁰⁴ International Red River Watershed Board, *24th Annual Progress Report*, (IRRWB, 2023), 108, <https://ijc.org/sites/default/files/IRRWB%2024th%20Annual%20Progress%20Report%20Final%20-%20NF%20-%20Dec%202023%20-IBYML%20.pdf>.

⁴⁰⁵ Caldwell, “Garrison Diversion: Constraints on Conflict Resolution,” 842.

However, it did re-enforce Canada's opposition to the project. As political scientist Kim Richard Nossal suggests:

In assessing the case [the GDU] of boundary waters management, it is important to note that the objections of the Canadian government, and the adverse findings of the International Joint Commission, were not central to the outcome. Rather, the concerns of the government in Ottawa can be regarded as contributing fuel to the opposition within the United States. The final report of the IJC merely confirmed objections to the scheme. In sum, the unmaking of Garrison was a result of domestic, rather than foreign, opposition.⁴⁰⁶

Nevertheless, the GDU reference is remarkable. Despite failed attempts to resolve the dispute by the governments of Manitoba and North Dakota, the IJC was able to effectively use its investigative function to provide evidence and recommendations.⁴⁰⁷ External pressures from American and Canadian politicians, and time constraints to have a report and recommendations submitted before sections of the GDU that connected the two basins were completed did not significantly impact the Commission's investigative procedure.⁴⁰⁸ The IJC appointed an investigative board, and held public meetings in both countries. The International Garrison Diversion Study Board members were able to study and release a report for IJC approval, and all six commissioners were able to unanimously provide a final report along with recommendations to the US and Canadian governments.⁴⁰⁹ Ottawa and Washington accepted the IJC's findings and recommendations as efforts were made to reach an agreement, and no water was transferred

⁴⁰⁶ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 25.

⁴⁰⁷ Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 6; and Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 219.

⁴⁰⁸ For IJC reference procedures see sections 2.8 and 2.9 in chapter two of this thesis. Nossal, "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters," 7-9; and Welsted, "The Garrison Diversion Unit – An Update," 55.

⁴⁰⁹ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 121-123; and Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 220.

between basins. As the GDU project was reborn via the RRVWSP, the IJC has had a minor role in the new project as its watershed board (the IRRWB) monitors and reports on its progress.⁴¹⁰ Only time will tell if the RRVWSP will be as controversial as the GDU, and if the IJC will become further involved.

4.4: The Conclusion of the Two Cases

The two federal governments found common ground to refer the Zosel Dam and the GDU cases to the IJC, although both cases had different outcomes. At the subnational level, unlike the cooperation exemplified between British Columbia and the State of Washington in the Zosel Dam case, the governments of Manitoba and North Dakota could not come to an agreement as the problem of interbasin water transfer which was never entirely resolved.⁴¹¹ The key difference is likely due to the nature of who benefits most from the water management. The management of the Zosel Dam is to ensure proper water levels are met in Osoyoos Lake which benefits both subnational governments (the State of Washington and British Columbia) as Americans and Canadians use the water from Osoyoos Lake.⁴¹² The GDU's water management, in contrast, only benefited one party -the government of North Dakota. Manitoba was convinced its waters were being threatened, and its economic industries (fisheries and farming) and water supply for communities were at risk of being negatively impacted. North Dakota wanted a

⁴¹⁰ International Red River Watershed Board, *24th Annual Progress Report*, 88-89; and Brandson, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 220.

⁴¹¹ As explained in section 4.3.2 of this chapter a similar project called RRVWSP has replaced the GDU and is currently being constructed.

⁴¹² "Mandate," International Osoyoos lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/mandate>.

reliable water source during periods of drought.⁴¹³ In both cases, however, the IJC was able to provide a solution. In the case of the Zosel Dam, the IJC used Orders of Approval and Supplementary Orders of Approval and in the case of the GDU, the IJC was able to use its investigative function to provide evidence and recommendations.⁴¹⁴

The Zosel Dam and GDU cases demonstrate that the status of the IJC is indeed binational (see Table 4.2). When it was recognized by the Commission that a diversion of water might violate the BWT, Ottawa and Washington facilitated international cooperation through a joint body (the IJC) and employed the Commission’s quasi-judicial (for the Zosel Dam case), and investigative (for the GDU case) functions.⁴¹⁵ Based on the outcome of both cases the IJC’s priorities are to ensure that the common interests of the two regions (Osoyoos Lake and the Red River watersheds) were satisfied.⁴¹⁶ For instances, in the Zosel Dam case, the Commission’s priority is to ensure water levels and flows of Osoyoos Lake remain at manageable levels for all user groups, and to avoid extreme flooding and droughts.⁴¹⁷ For the GDU case, the IJC’s priority,

⁴¹³ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 5-6; Nossal, “The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters,” 3; “Facilities Information,” Garrison Diversion, updated 2024, <https://garrisondiversion.org/about-garrison-diversion/facilities/>; and Carvell, “The North Dakota Diversion Project and International Environmental Law,” 604-605.

⁴¹⁴ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*; and International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013.*

⁴¹⁵ “49A,” International Joint Commission, updated 2024, <https://ijc.org/en/49a>; “108A,” International Joint Commission, updated 2024, <https://ijc.org/en/108a>; and “101R,” International Joint Commission, updated 2023, <https://ijc.org/en/101r>.

⁴¹⁶ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*; and International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013.*

⁴¹⁷ “Mandate,” International Osoyoos lake Board of Control, updated 2023, <https://ijc.org/en/olbc/who/mandate>.

regardless of the political environment was to ensure sections of the GDU which potentially could transfer harmful foreign biota into Canadian waterways did not violate Article IV of the BWT.⁴¹⁸ Throughout the processes for the Zosel Dam applications and the GDU reference, the IJC, the IOLBC and Board of Engineers (in the Zosel Dam case) and the International Garrison Diversion (in the GDU case) maintained equality and parity. The Commission and its boards equally had the same number of members/commissioners, a chairman, a secretary, and an office per Canadian and American section.⁴¹⁹ In the case of Zosel Dam, the IJC and its boards exhibited parity in terms freedoms and power to independently make decisions. For example, although Zosel Dam is located in the United States, the US sections of the IJC and the board does not have more power to make a decision when declaring a drought, or altering the Orders.⁴²⁰ In the case of the GDU, parity existed in terms of freedoms and power to decide independently to submit a final report and recommendations regardless of the hostile political environment that surrounded the commissioners and Board members. Further, in the case of the GDU, one Canadian commissioner exercised his freedom to submit a separate opinion for the second recommendation which did not have an impact on the overall decision to submit the report jointly to both federal governments.⁴²¹

⁴¹⁸ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 218-219; and International Joint Commission, *The Boundary Waters Treaty of 1909*, Article IV.

⁴¹⁹ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article VII; and Clamen, and McFarlane, “Introduction,” 7, and 10.

⁴²⁰ “Mandate,” International Osoyoos lake Board of Control, updated 2023, <https://www.ijc.org/en/olbc/who/mandate>; and International Joint Commission, *Directive to International Osoyoos Lake Board of Control*, 1-3.

⁴²¹ Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 219.

In both cases, the IJC made decisions by consensus as all Zosel Dam Order of Approvals (two applications and two supplemental orders) were approved unanimously.⁴²² Further, the GDU investigative report and recommendations were also approved with unanimity, with exception of a minor technical disagreement from one commissioner on the second recommendation which resulted in a separate opinion.⁴²³

The outcome of the decisions in the two cases illustrates the IJC's attempt to harmonize policies designed to fulfil common interests in the two regions. The IJC's Orders of Approval for its Zosel Dam applications were based on joint studies completed by the IOLBC, and a balance of preferred water levels from the public feedback.⁴²⁴ In turn, this means a set threshold at which water levels must be maintained, and the subnational governments (the State of Washington and British Columbia) must jointly manage Osoyoos Lake. Furthermore, IWI projects conducted in Osoyoos Lake allow the Commission to educate and interact with the public and conduct scientific studies⁴²⁵ in hopes of improving water management in Osoyoos Lake regardless of citizenship. In the GDU case, overall, the IJC's investigation and recommendations were focused on an agreed outcome to prevent foreign biota from entering the Hudson Bay Drainage Basin⁴²⁶-

⁴²² International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*; and International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013.*

⁴²³ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*; and Brandon, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 219.

⁴²⁴ "49A," International Joint Commission, updated 2024, <https://ijc.org/en/49a>; and "108A," International Joint Commission, updated 2024, <https://ijc.org/en/108a>.

⁴²⁵ "International Watersheds Initiative Project Highlights: Osoyoos Lake," International Watersheds Initiative, updated 2023, <https://storymaps.arcgis.com/stories/2f332db7863b410f8249adeecc267f67>.

⁴²⁶ Brandon, and Olson, "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project," 218-219.

something which benefits the health of the region’s ecosystem. IWI activities in the Red River watershed continue to study possible impacts of interbasin water transfer.⁴²⁷ However, the IJC is no longer involved in the issue. Simply put, in both cases, the IJC had a North American view of the situation not just a Canadian or US view, and decided, by consensus, on policies that would mitigate the impacts of water control structures had on local waterways.

Table 4.2: Case Studies Compared

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
International cooperation through a joint body to form a “marriage”	International cooperation is conducted through a joint body (the IJC) akin to marriage rather than a partnership	The governments of Canada and the United States choose to resolve the issue of rising water caused by Zosel Dam on Osoyoos Lake by cooperating through the IJC (a joint body). The Dam continues to operate under jurisdiction of the IJC.	The IJC (a joint body) was directed by Ottawa and Washington to investigate and provide recommendations on the GDU dispute between Manitoba and North Dakota.
Common interests are the priority	Dockets assigned to the IJC are agreed upon by both Ottawa and Washington. Once a docket is submitted to the IJC, its members are required to approach issues not as representatives for their government striving to achieve national advantages, but to act as a united body seeking mutual solutions to uphold the BWT	The IJC’s priority is to ensure water levels and flows of Osoyoos Lake remain at manageable levels, and to avoid extreme flooding and droughts in the region regardless of national boundaries.	The IJC’s priority was to make sure that some sections of the GDU did not violate Article IV of the BWT regardless of the strong support for the project in the United States, and strong opposition to the project in Canada.

⁴²⁷ “International Watersheds Initiative Project Highlights: Red River,” International Watersheds Initiative, updated 2023, <https://ijc.org/en/iwi-iibh/project-highlights-storymap>; and International Joint Commission, *Directive to the International Red River Watershed Board*, 4.

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
Harmonization of policies focused on common interests, and an agreed outcome	Reports by the IJC are founded jointly on fact-based evidence. The Commission's recommendations and Orders are focused on resolving the common interest of North America.	<p>The IJC's Orders of Approval for its applications regarding Zosel Dam are based on the common interest of the region. These Orders are accepted and followed by subnational governments.</p> <p>IWI is an extension of the IJC's effort to collectively improve the quality of the Osoyoos Lake.</p>	<p>Overall, the IJC's investigation and recommendations were focused on an agreed outcome to prevent foreign biota from entering the Hudson Bay Drainage Basin. The recommendations were acted upon by the national governments but were unsuccessful. The subnational governments remain in disagreement.</p> <p>IWI in the region continues to study possible impacts of interbasin water transfer.</p>
Joint decision-making leading to consensus	Joint decision-making is done by consensus. The members of the Canadian and American sections of the IJC do not engage in negotiations which position the two sections against each other.	All Zosel Dam applications were approved by consensus as a joint commission not as a commission with a Canadian section negotiating with the American section.	The GDU investigative report and recommendations were approved with unanimity with exception of a minor technical disagreement from one commissioner on the second recommendation which resulted in a separate opinion.
Parity and equality among decision makers	<p>The IJC is equal in terms of the composition of each section of the IJC (each section has three commissioners, a secretary, and chairman).</p> <p>Commissioners hold parity in the decision-making process. No member in the IJC has more power in the decision-making process to make a recommendation, or an Order than another. If one</p>	<p>The composition of the IJC and the IOLBC is equal between both Canadian and American sections.</p> <p>IJC commissioners, and Board of Engineers and IOLBC members had parity in their decision-making abilities when ruling on the studies of Zosel Dam, applications, issuing Order of Approvals, and declaring</p>	<p>The composition of the IJC and the International Garrison Diversion Study Board were equal between both Canadian and American sections.</p> <p>The IJC and the International Garrison Diversion Study Board had parity in their decision-making abilities when they submitted their final report, and recommendations.</p>

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
	of the commissioner's disagree with the decision, they are free to submit a separate opinion.	a drought in Osoyoos Lake.	One commissioner exercised his independence, and submitted a separate opinion for the second recommendation without having an impact on the overall decision to submit the report jointly to both federal governments

Note: Information in the above table is consolidated by the author from sources used in chapters two, three, and four of this thesis.

However, bilateral qualities can also occur within the Commission. The most obvious is when commissioners disagree on an issue and split on national lines, or one commissioner openly advocates for their country's national interests. This usually occurs in cases where the issue becomes highly politicalized, and the IJC risks becoming a bilateral joint commission splitting down national lines as explained in the Commission's four outlier cases reviewed in section 3.3.⁴²⁸ Furthermore, it is difficult to determine true parity among the commissioners without reviewing their discussion and debates when making a decision. Each commissioner may bring different values to the Commission based on their past careers. It would be difficult to claim that a trained lawyer on the IJC has more, equal, or less value than a trained biologist. In addition, it would be difficult to assume, without observing the personalities of each commissioner, who drives the discussions, or has the most informal clout among the commissioners of the IJC.

⁴²⁸ Nossal, "A Square Peg: The Lessons of the Point Roberts Reference, 1971-1977," 195-196; Willoughby, "Expectations and Experience," 33; Banks, and Bourget, "Apportionment of the St. Mary and Milk Rivers," 167; and Heinmiller, "The Boundary Waters Treaty and the International Joint Commission in the St. Mary-Milk Basin," 152, and 154.

Outside the Commission, every transboundary water issue can become a bilateral matter if Ottawa and Washington choose not to use the IJC to resolve an issue instead opting to enter bilateral negotiations. The Canadian and American governments can ignore recommendations and bypass Orders by entering agreements which could result in policies that focus on national interests.⁴²⁹ Once the IJC completes its final report Ottawa and Washington can decide to remove the Commission from the issue by entering bilateral negotiations. For example, in the GDU case, after the IJC's joint report was submitted, it was not asked to conduct further investigations or provide any additional opinions. This led to bilateral negotiations between subnational and national governments. Other issues, such as the management of Zosel Dam and Osoyoos Lake, have strong binational qualities similar to the IJC and has a permanent presence. However, the effectiveness of the IJC in this case relies on a cooperative bilateral agreement negotiated by British Columbia and the State of Washington.⁴³⁰

The next and final chapter of this thesis will conclude by examining why the IJC and binationalism is important and explain the significance of the IJC in the Canada-United States relationship going forward.

⁴²⁹ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article III, IV, and VIII.

⁴³⁰ International Joint Commission, *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*, (IJC, 2013), 2-3.

Chapter Five: The Future of the IJC and Binationalism

For over 100 years, the International Joint Commission has worked to manage shared waters between Canada and the United States. Its main objective is to prevent disputes and to keep peace along the international border⁴³¹ contrary to American writer Mark Twain's suggestion that "whiskey is for drinking, water is for fighting."⁴³² The IJC is often regarded by the literature as a successful, prestigious, and an independent *binational joint commission*.⁴³³ This thesis set out to analyze whether or not the IJC is truly a binational joint commission. The research examined key pieces of IJC literature and found that the Commission was often referred to as "a binational joint commission", but what that meant was not well-defined. To fill this gap in the literature three main questions were asked: **Is the IJC truly a binational joint commission? If so, what counts as a binational joint commission? And is the IJC still needed within the CANUS relationship?** This chapter focuses on this last question in particular.

The introductory chapters of the thesis provided the fundamentals of the Commission and the BWT by explaining transboundary water management before the Treaty, the shared water issues that led to the governments of Canada and the United States to negotiate the BWT, and how the Treaty gave the IJC its main functions. Further, the Commission's functions and structure were analyzed. Next, the research unpacked the definitions of commissions and jointness (i.e., binationalism and bilateralism) and tested whether or not the IJC is a binational

⁴³¹ "Role of the IJC," International Joint Commission, updated 2023, <https://www.ijc.org/en/who/role>.

⁴³² Ted Poe, "Whiskey is for drinking, water is for fighting," *The Hill*, 14 May 2018, <https://thehill.com/blogs/congress-blog/foreign-policy/387545-whiskey-is-for-drinking-water-is-for-fighting/#:~:text=Mark%20Twain%20is%20believed%20to,this%20world's%20conflict%20and%20suffering>.

⁴³³ Willoughby, *The Joint Organizations of Canada and the United States*, 8; Holmes, "Introduction: The IJC and Canada-United States Relations," 6; and Lee Botts, and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement*, 11.

joint commission. To do so, two case studies were employed: the Zosel Dam applications of 1942 and 1980 and the Garrison Diversion Unit (GDU) reference of 1975. Based on the analysis of the two case studies, the observations expressed by most of the literature about the IJC as a binational joint commission stand. Moreover, by examining the literature on commissions and jointness (i.e., binational or bilateral) this thesis confirms that a binational joint commission is a body that jointly serves two actors with representatives that share parity (in terms of value and powers) and equality (in terms of the composition of the body) focused on making decisions by consensus based on common interests rather than separate self-interests.⁴³⁴

Based on the research this thesis concludes that the Commission is still needed within the CANUS relationship for two reasons. First, the IJC, as a binational joint commission, can be a useful mechanism for Ottawa and Washington to bring stability to transboundary water issues during times of uncertainty which can be brought on by competing environmental, economic and/or political interests. To relieve various uncertainties that can surround a problem, as noted by political scientist Debora L. VanNijnatten, decision makers must overcome three common issues: i) incomplete knowledge (i.e., not enough information/data to resolve an issue effectively), ii) ambiguity (i.e., matters that have little consensus which can lead to conflict), and iii) unpredictability (i.e., matters that cannot be predicted).⁴³⁵ Appropriately, the solution to

⁴³⁴ Botts, and Muldon, *Evolution of the Great Lakes Water Quality Agreement*, 198-199, 205; Botts, and Muldon, "Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime," 1558-1559; and Willoughby, *The Joint Organizations of Canada and the United States*, 17.

⁴³⁵ Debora L. VanNijnatten, "Canada, the United States and Climate Change: Is the Bilateral Relationship 'Uncertainty-ready'?", *Association for Canadian Studies in the United States 26th Biennial Conference, Canada: Near and Far*, Notes taken by Jay Dion at Keynote presentation, 18 November 2023, Hyatt Regency, Crystal City, Washington D.C; and Yena Bassone-Quashie, Debora VanNijnatten, and Carolyn Johns, "Water, climate change and uncertainty in the Great lakes and Rio Grande/Bravo Regions," *Journal of Water and Climate Change* 14, no. 3 (2023): 715, <https://iwaponline.com/jwcc/article/14/3/712/93468/Water-climate-change-and-uncertainty-in-the-Great>.

alleviate these common problems that create uncertainty can be managed by the binational qualities and functions of the IJC.⁴³⁶

First, in the case of incomplete knowledge, the IJC's ability to produce final reports for the governments of Canada and the United States through its Orders of Approval and investigations and its inclusion of local actors on IWI projects produce information and data which fill information gaps of an issue.⁴³⁷ For example, in the GDU case, the Commission helped clarify the knowledge gaps of the impacts that interbasin water transfer might have on Canadian waters with current water filtering methods.⁴³⁸ Further, in the management of Zosel Dam, the IOLBC, in cooperation with local organizations and government agencies, has employed two studies (the study of ice jams, and study of hydrological predictions in Osoyoos Lake). The goal of the studies is to gain knowledge of how ice jams impact sockeye salmon in Osoyoos Lake and how climate change will impact water levels and flows of Osoyoos Lake.⁴³⁹

The second problem often faced by decision makers is ambiguity. Again, the Commission is able to manage ambiguity as its members and commissioners often offer

⁴³⁶ VanNijnatten, "Canada, the United States and Climate Change: Is the Bilateral Relationship "Uncertainty-ready"?"; Bassone-Quashie, VanNijnatten, and Johns, "Water, climate change and uncertainty in the Great lakes and Rio Grande/Bravo Regions," 715; and see chapter two of this thesis for full explanation of the IJC's functions and structure, and section 3.2 of this thesis for the characteristics of binationalism.

⁴³⁷ "Role of the IJC," International Joint Commission, updated 2023, <https://www.ijc.org/en/who/role>; and "Our principles and practices," International Watersheds Initiative, updated 2024, <https://www.ijc.org/en/iwi-iibh/our-principles-and-practices>.

⁴³⁸ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*, 3-4.

⁴³⁹ "Osoyoos Lake Climate Change Vulnerability: Phase 2 – Merging Similkameen/ Okanagan Basin Hydrologic Models," International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-2-merging-similkameen-okanagan-basin>; "Osoyoos Lake Climate Change Vulnerability: Phase 1 – Similkameen Basin Hydrologic Model," International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-1-similkameen-basin-hydrologic-model>; and "History, Frequency, and Processes Contributing to Ice Jams on Osoyoos Lake," International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/history-frequency-and-processes-contributing-ice-jams-osoyoos-lake>.

objective, fact-based advice to the federal governments. Commissioners who serve the IJC are independent of their governments and are required to examine issues with mutual interests as the priority and suggest solutions by consensus⁴⁴⁰ for the betterment of the entire watershed. Effectively, this provides an impartial option approved by Canadians and Americans for subnational and national governments. This helps manage ambiguity by providing an agreed foundation for decision-making especially what is best for the overall ecological wellbeing of the waters under investigation. For example, in the GDU case there was little consensus as to how current water filtering methods would be effective in interbasin water transfers. Once the issue was submitted to the IJC, it was able to reduce ambiguity by producing a scientific report which determined that transferred water from the Missouri River to the Hudson Bay Drainage Basin would harm Canadian waters and that current filtration methods were insufficient in stopping harmful biota from entering Canadian waters.⁴⁴¹

Finally, the third common issue is unpredictability. The IJC is equipped to handle unpredictability as its rules of procedures and the BWT allow it to be flexible and adaptable especially given the unknown effects of climate change.⁴⁴² For instance, the Commission's capacity to have permanent jurisdiction to oversee the management of water control structures lets it adjust to changing conditions, such as having the power to modify Orders to reflect current conditions. This was exemplified in the Zosel Dam case as the IJC altered the water level and flow capacities.⁴⁴³ In sum, incomplete knowledge, ambiguity, and unpredictability can lead to

⁴⁴⁰ International Joint Commission, *The Boundary Waters Treaty of 1909*, Article XII; and Willoughby, *The Joint Organizations of Canada and the United States*, 24.

⁴⁴¹ International Joint Commission, *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*.

⁴⁴² International Joint Commission, "Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909," 6.

⁴⁴³ International Osoyoos Lake Board of Control, "International Osoyoos Lake Board of Control annual public meeting – October 26, 2022," 13:45-15:05.

conflict especially when dealing with two countries with different national interests. The IJC offers Ottawa and Washington the option to help curtail elements of uncertainty in situations of transboundary water management.

Second, the IJC is part of a larger network of joint boards, committees, and other organizations which include North American Aerospace Defense Command (NORAD)⁴⁴⁴ and the Permanent Joint Board on Defence (PJBD)⁴⁴⁵ that help form the close relationship between the governments of Canada and the United States. By giving up some decision-making control to these joint, binational organizations, Canada and the United States demonstrate a marriage and special trust each country has for the other.⁴⁴⁶ The joint boards, committees, and commissions are important to both countries, but often mean more to Canada than to the United States because they allow Canadian members (the smaller and less powerful country) to have equal decision-making abilities on North American issues.⁴⁴⁷ Canadians and Americans who are members of these organizations work with each other in a binational environment and form personal connections and personal relationships. These relationships help to forge a North American identity. For example, on IJC boards there are employees from state, provinces, and federal agencies working side by side who focus on a common goal to improve transboundary waters without regards to their national interests, but rather focus on a North American perspective.⁴⁴⁸ Likewise, the commissioners of the IJC develop an identity and bond independent of their national governments. Political scientist William Willoughby suggests that when members

⁴⁴⁴ Charron and Fergusson, *NORAD: In Perpetuity and Beyond*.

⁴⁴⁵ Willoughby, *The Joint Organizations of Canada and the United States*, 9-10. For more information on the PJBD see Nicholas Glesby, "The Canada-United States Permanent Joint Board on Defence (PJBD): An examination of its advice outcomes legacy, 1940-2023," unpublished thesis at the University of Manitoba, 2023, <https://mspace.lib.umanitoba.ca/items/1a0e01f0-fe34-41f8-8468-66feff0690a0>.

⁴⁴⁶ Murray Clamen and Daniel Macfarlane, "Conclusion," 536.

⁴⁴⁷ Brooks, "The International Joint Commission: The Promise and Limits of an Ambitious Model," 11.

⁴⁴⁸ Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 98-100.

continually serve together, a level of confidence and trust develops which helps “the commission to approach its problems, not as ‘ex parte’ advocates ‘striving for national advantage under instruction from their respective governments, but as members of a single body seeking solutions to common problems, in the common interest.’”⁴⁴⁹ These bonds between American and Canadian officials form lifelong relationships as expressed by former American and Canadian commissioners Gordon K. Durnil and Arnold Heeney in the previous chapter.⁴⁵⁰ Put simply, the International Joint Commission is useful to Canada and the United States as a relationship builder that fosters peace and cooperation, and demonstrates the deep trust each country has for one another. Joint organizations like the IJC, NORAD, and the PJBD will be important to maintain the Canada-US relationship during turbulent times.

5.1: Future of the IJC and the Study of Binationalism

Based on this study, Canadian and American policy analysts and decision-makers should continue to use the IJC as a tool to manage shared water issues, and foster cooperation and collaboration among local stakeholders. This will be especially important given the growing ideological polarization within countries where facts are thrown out to fit particular narratives for political gains. The Commission should avoid the use of its arbitral powers under Article X as the function could undermine the cooperative and impartial nature of the IJC. Extremely hostile controversies that warrant an external binding decision might cause the IJC to split down national lines, and fracture relationships built among the commissioners which would impact its ability to perform its other functions.⁴⁵¹ Nonetheless, the Commission should be used in the

⁴⁴⁹ Willoughby, *The Joint Organizations of Canada and the United States*, 55.

⁴⁵⁰ See section 4.1 of this thesis for the opinions expressed by Heeney and Durnil.

⁴⁵¹ Willoughby, *The Joint Organizations of Canada and the United States*, 36.

following three main capacities: 1) to monitor and provide direction; 2) to include local voices and concerns; and 3) to investigate.

The IJC's responsibilities to monitor and provide direction to existing water control structures are within its jurisdiction via Orders of Approvals.⁴⁵² The last application submitted to the IJC was in 1998⁴⁵³ and it is unlikely that an abundance of applications will be submitted in the future due to environmentalism, and pre-existing water control structures which have exhausted the capacity to build new structures on shared waters. However, as exemplified in the Zosel Dam case, the Commission has the ability to adjust its Orders to reflect current waterway conditions.⁴⁵⁴ As a result, so long as these water control structures exist, the IJC will be the primary organization to monitor, report, and act on changing conditions on waterways within its control.

Second, the International Watersheds Initiative (IWI) is the future of the IJC as subnational governments, local organizations, and locals become more involved in transboundary water issues. The federal governments' direct involvement in water management is becoming limited, and the Commission is dependent on regional agencies and organizations to staff its boards and help conduct studies.⁴⁵⁵ The IWI allows the IJC to engage in projects without approval of the federal governments through its boards of control and watershed boards in waterways already under its jurisdiction.⁴⁵⁶ For example, the ice jams' study and the hydrology

⁴⁵² Waite, "The International Joint Commission-Its Practice and Its Impact on Land Use," 99.

⁴⁵³ "Dockets- Applications & References," International Joint Commission, updated 2023, <https://www.ijc.org/en/library/dockets>.

⁴⁵⁴ International Joint Commission, "Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909," 6.

⁴⁵⁵ Hall, Tarlock, and Valiante, "The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance," 471; and Cohen, "The Commission from the Inside," 117.

⁴⁵⁶ "Our principles and practices," International Watersheds Initiative, updated 2024, <https://www.ijc.org/en/iwi-iibh/our-principles-and-practices>.

prediction study in Lake Osoyoos were initiated by the IOLBC (one of the IJC’s boards of control).⁴⁵⁷ The IWI builds relationships with subnational governments and local stakeholders as it is based on a collaborative approach with subnational government agencies, local organizations, and Indigenous peoples.⁴⁵⁸ Therefore, the IWI allows the Commission to decentralize water management to include local levels of governance.

Third, to date, the national governments appear to be interested in using the IJC for its investigative function. The submission rate of new references from the national governments has slowed but has not stopped as the IJC received its most recent reference on 8 March 2024.⁴⁵⁹ The Commission has demonstrated, exemplified in the GDU case, that its objective scientific reports and impartial recommendations can be informative and useful for Ottawa and Washington.⁴⁶⁰ Canadian and American policy analysts and decision-makers should keep in mind the IJC’s investigative function when faced with transboundary water disputes.

This research has important implications for the study of binationalism as it is not restricted to the IJC, or the management of shared waters. The study of binationalism will be useful when studying other domains, such as in defence, the economy, and other environmental problems facing North America. Uncertainties, like renewed competition between Russia, China,

⁴⁵⁷ “Osoyoos Lake Climate Change Vulnerability: Phase 2 – Merging Similkameen/ Okanagan Basin Hydrologic Models,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-2-merging-similkameen-okanagan-basin>; “Osoyoos Lake Climate Change Vulnerability: Phase 1 – Similkameen Basin Hydrologic Model,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-1-similkameen-basin-hydrologic-model>; and “History, Frequency, and Processes Contributing to Ice Jams on Osoyoos Lake,” International Osoyoos Lake Board of Control, updated 2024, <https://ijc.org/en/olbc/history-frequency-and-processes-contributing-ice-jams-osoyoos-lake>.

⁴⁵⁸ “Project highlights- StoryMap,” International Watersheds Initiative, updated 2023, <https://www.ijc.org/en/iwi-ijbh/project-highlights-storymap>.

⁴⁵⁹ Niall Cronin, *Elk-Kootenai/y Watershed Canada Letter of Reference*, (Ottawa: U.S. Transboundary Affairs-Global Affairs Canada, 2024), 1, https://ijc.org/sites/default/files/Elk_EN_March8.pdf.

⁴⁶⁰ Nossal, “The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters,” 6; and Brandson, and Olson, “The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project,” 219.

and the United States, the economy of North America, interest in biosecurity, and worsening climate change will have implications on these other issue areas and pose a threat to the security of North America. The study of binationalism will become increasingly important as further cooperation and harmonization between Canada and the United States will be required to deal with such issues. The literature on binationalism, however, is limited (explained in section 3.2). Future research should be conducted to see how binationalism can be utilized to help reduced these threats to both countries.

In addition, there is an opportunity to conduct further research on the IJC. The most recent reference concerns the water quality of the Elk-Kootenai/y watershed which is a transboundary watershed located between the Provinces of British Columbia and Alberta, and the States of Idaho and Montana. This reference has potentially set a new trend for how references are submitted to the Commission as Ottawa and Washington consulted with and included a joint reference letter with First Nations and tribal groups who are impacted by the water quality of Elk-Kootenai/y watershed.⁴⁶¹ If this trend continues, future studies of the IJC will want to examine how Indigenous groups will impact the type of issues brought to the Commission, and the submission process of references and applications. Furthermore, it raises questions about how the increased involvement of Indigenous peoples will reflect a change in the IJC's architecture, and activities. Further consideration into the IJC and binationalism can provide better explanation for the questions and issues highlighted in this chapter and improve the use of the Commission for future decision-makers.

⁴⁶¹ Cronin, *Elk-Kootenai/y Watershed Canada Letter of Reference*, 6.

Bibliography

- Accredited Officers of the St. Mary and Milk Rivers. "Mandate." Updated 2023. <https://ijc.org/en/aosmmr/who/mandate>.
- Allaire, Nicolas. "Shelf Life Extended: The Longevity and Continued Relevance of the Binational North American Aerospace Defense Command." Unpublished thesis at the University of Manitoba, 2016. <https://mspace.lib.umanitoba.ca/items/8f09cc2b-346e-4bb2-8396-dd1b7d2ac85f>.
- Allee, David J. "Subnational governance and the International Joint Commission: Local management of United States and Canadian boundary waters." *Natural Resources Journal* 33, no.1 (1993): 133-151. <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1979&context=nrj>.
- Banks, Nigel., and Bourget, Elizabeth. "Apportionment of the St. Mary and Milk Rivers." In *Water Without Borders? Canada, the United States, and Shared Waters*, edited by Emma S. Norman, Alice Cohen, and Karen Bakker, 159-178. Toronto: University of Toronto Press, 2013.
- Bassone-Quashie, Yena., Debora VanNijnatten, and Carolyn Johns. "Water, climate change and uncertainty in the Great lakes and Rio Grande/Bravo Regions." *Journal of Water and Climate Change* 14, no. 3 (2023): 712-729. <https://iwaponline.com/jwcc/article/14/3/712/93468/Water-climate-change-and-uncertainty-in-the-Great>.
- BC Gov News. "FACTSHEET: Okanagan Lake Regulation System." Updated 2017. [https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20\(see%20map\)](https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20(see%20map)).
- Bilder, Richard B. "When Neighbors Quarrel: Canada-U.S. Dispute-Settlement Experience." The Claude T. Bissell Lectures University of Toronto. *Institute for Legal Studies* 8, no.4 (1987): 1-94. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=909288.
- Blaikie, Daniel on behalf of Don Sullivan. *Petition (Protection of the environment) to the Minister of Foreign Affairs*. e-1244, petition no. 421-02014. Ottawa: House of Commons, 2018. <https://www.ourcommons.ca/petitions/en/Petition/Details?Petition=e-1244>.
- Botts, Lee., and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement*. East Lansing: Michigan State University Press, 2005.

- Botts, Lee., and Paul Muldoon. "Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime." *The Wayne Law Review* 54, no. 4 (2008): 1553-1570. <https://heinonline-org.uml.idm.oclc.org/HOL/Page?handle=hein.journals/waynlr54&div=61&id=&page=&collection=journals>
- Brandson, Norman., and Olson, Allen. "The International Joint Commission and Mid-continent Water Issues: The Garrison Diversion, Red River, Devils Lake, and the Northwest Area Water Supply Project." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 215-237. Calgary: University of Calgary Press, 2020.
- Brooks, Stephen. "The International Joint Commission: The Promise and Limits of an Ambitious Model." In *Transboundary Environmental Governance across the World's Longest Border*, edited by Stephen Brooks, and Andrea Olive. 1-30. East Lansing: Michigan State University, 2018.
- Caldwell, Lynton K. "Garrison Diversion: Constraints on Conflict Resolution." *Natural Resources Journal* 24, no.4 (1984): 839-863, <https://www-jstor-org.uml.idm.oclc.org/stable/24882579?seq=25>.
- Canada, Parliament. *House of Commons Debates*. 30th Parl, 1st Sess, Vol. 6. 20 May 1975. 5954. https://parl.canadiana.ca/view/oop.debates_HOC3001_06/510.
- Carvell, Charles M. "The North Dakota Diversion Project and International Environmental Law." *North Dakota Law Review* 60, no. 4 (1984): 603-657. <https://commons.und.edu/cgi/viewcontent.cgi?article=2137&context=ndlr>.
- Celeste McKay Consulting Inc. *Indigenous Nations RoundTable International Red River Watershed Board (IRRWB) of the International Joint Commission (IJC)*. Winnipeg: Celeste McKay Consulting Inc., 2023. <https://ijc.org/sites/default/files/Report%20of%20the%20Indigenous%20Nations%20Roundtable%20January%2016-17%2C%202023%20Final.pdf>.
- Chacko, Chirakaikaran Joseph. *The International Joint Commission between The United States of America and The Dominion of Canada*. New York: Columbia University Press, 1932.
- Charron Andrea., and James Fergusson, *NORAD in Perpetuity and Beyond*. Montreal & Kingston: McGill-Queen's University Press, 2022.
- Clamen, Murray. "The IJC and Transboundary Water Disputes: Past, Present, and Future." In *Water Without Borders? Canada, the United States, and Shared Waters*, edited by Emma S. Norman, Alice Cohen, and Karen Bakker. 70-87. Toronto: University of Toronto Press, 2013.

- Clamen, Murray., and Daniel Macfarlane. "Conclusion." In *The First Century of the International Joint Commission*, edited by Murray Clamen and Daniel McFarlane, 529-547. Calgary, University of Calgary Press, 2020.
- Clamen, Murray., and Daniel Macfarlane. "The International Joint Commission, Water Levels, and Transboundary Governance in the Great Lakes." *Review of Policy Research* 32, no.1 (2015): 40-59, <https://onlinelibrary-wiley-com.uml.idm.oclc.org/doi/full/10.1111/ropr.12107>.
- Clamen, Murray., and Daniel McFarlane. "Introduction." In *The First Century of the International Joint Commission*, edited by Murray Clamen and Daniel McFarlane, 1-31. Calgary, University of Calgary Press, 2020.
- Clarke, Tony. "Turning on the Tap? Water exports to the United States." In *Living with Uncle: Canada-US Relations in an Age of Empire*, edited by Bruce Campbell and Ed Finn, 94-118. Toronto: James Lorimer & Company Ltd, 2006.
- Cohen, Maxwell. "The Commission from the Inside." In *The International Joint Commission Seventy Years On*, edited by Robert Spencer, John Kirton, and Kim Richard Nossal, 106-123. Don Mills, T.H. Best Printing Co. Ltd, 1981.
- Cooper, Andrew F., and John English. "International commissions and the mind of global governance." In *International commissions and the power of ideas*, edited by Ramesh Thakur, Andrew F. Cooper, and John English, 1-26. Tokyo: United Nations University Press, 2005.
- Cronin, Niall. *Elk-Kootenai/y Watershed Canada Letter of Reference*. Ottawa: U.S. Transboundary Affairs-Global Affairs Canada, 2024. https://ijc.org/sites/default/files/Elk_EN_March8.pdf.
- Davis, Ed. *Application to the International Joint Commission*. The State of Washington: Department of Conservation and Development, 1942. <https://ijc.org/sites/default/files/Docket%2049%20State%20of%20Washington%20Application%201942-09-26.pdf>.
- Denning, Meredith. "Construction of a Keystone: How Local Concerns and International Geopolitics Created the First Water Management Mechanisms on the Canada-US Border." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clamen, 71-112. Calgary: University of Calgary Press, 2020.
- Dreisziger, N.F. "Dreams and Disappointments." In *The International Joint Commission Seventy Years On*, edited by Robert Spencer, John Kirton, and Kim Richard Nossal, 8-23. Don Mills, T.H. Best Printing Co. Ltd, 1981.

- Dreisziger, N.F. "International Water Management in Canadian-American Relations, 1894-1907." *Canadian Water Resources Journal* 8, no. 3 (1983): 58-76.
<https://www.tandfonline.com/doi/pdf/10.4296/cwrj0803058>.
- Durnil, Gordon K. *The Making of a Conservative Environmentalist*. Bloomington: Indiana University Press, 1995.
- Environmental Law Institute. "An Evaluation of the Effectiveness of the International Joint Commission." Research report by the *Environmental Law Institute*. Washington: D.C., 1995.
- Evans, Gareth. "Foreword." In *International commissions and the power of ideas*, edited by Ramesh Thakur, Andrew F. Cooper, and John English, x-xii. Tokyo: United Nations University Press, 2005.
- Farr, D.M.L., and Niko Block. "Alaska Boundary Dispute." *The Canadian Encyclopedia*. 6 February 2006. <https://www.thecanadianencyclopedia.ca/en/article/alaska-boundary-dispute>.
- Forsey, Eugene A., and Matthew Hayday. "Dominion of Canada." *The Canadian Encyclopedia*. 7 February 2006. <https://www.thecanadianencyclopedia.ca/en/article/dominion>.
- Garrison Diversion. "Facilities Information." Updated 2024. <https://garrisondiversion.org/about-garrison-diversion/facilities/>.
- Glesby, Nicholas. "The Canada-United States Permanent Joint Board on Defence (PJBD): An examination of its advice outcomes legacy, 1940-2023." Unpublished thesis at the University of Manitoba, 2023. <https://mspace.lib.umanitoba.ca/items/1a0e01f0-fe34-41f8-8468-66feff0690a0>.
- Gordon, Walter. "Royal Commission on Canada's Economic Prospects." *The Canadian Encyclopedia*. 6 February 2006.
<https://www.thecanadianencyclopedia.ca/en/article/royal-commission-on-canadas-economic-prospects>.
- Goudge, Hon. Stephen., and MacIvor, Heather. *Commissions of Inquiry*. Toronto: LexisNexis, 2019.
- Government of Canada. "About commissions of inquiry." Updated 2017.
<https://www.canada.ca/en/privy-council/services/commissions-inquiry/about.html>.
- Government of Canada. "Canada-United States relations." Updated 27 June 2023.
<https://www.international.gc.ca/country-pays/us-eu/relations.aspx?lang=eng>.

Government of Canada. “Exchange of Notes Between the United Kingdom and the United States Concerning the Naval Forces to Be Maintained on the Great Lakes (Rush-bagot Agreement).” Updated 2023. <https://www.treaty-accord.gc.ca/text-texte.aspx?id=101662>.

Government of Canada. “Operating Principles of the Public Service Commission.” Updated 2023. <https://www.canada.ca/en/public-service-commission/corporate/about-us/operating-principles-public-service-commission.html#toc3.1>.

Government of Canada. “The Government of Canada Response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.” Updated 2022. <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rspns-cmmssn/index-en.aspx>.

Government of Manitoba. “Lake Winnipeg.” Updated 2024. <https://www.gov.mb.ca/sd/water/lakes-beaches-rivers/lake-winnipeg.html#:~:text=With%20its%20beautiful%20beaches%20and,and%20hydroelectric%20generation%20in%20Manitoba>.

Hall, Noah D., Tarlock, A. Dan., and Valiante, Marcia. “The Boundary Waters Treaty, the International Joint Commission, and the Evolution of Transboundary Environmental Law and Governance.” In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 457-481. Calgary: University of Calgary Press, 2020.

Hanson, Marianne. “Regulating the possession and use of nuclear weapons: Ideas, commissions, and agency in international security politics- the case of the Canberra Commission.” In *International commissions and the power of ideas*, edited by Ramesh Thakur, Andrew F. Cooper, and John English, 123-141. Tokyo: United Nations University Press, 2005.

Heeney, Arnold. *The things that are Caesar’s*. Toronto: University of Toronto Press, 1972.

Heinmiller, B. Timothy. “The Boundary Waters Treaty and the International Joint Commission in the St. Mary-Milk Basin.” In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 143-164. Calgary: University of Calgary Press, 2020.

Holmes, John W. “Introduction: The IJC and Canada-United States Relations.” In *The International Joint Commission Seventy Years On*, edited by Robert Spencer, John Kirton, and Kim Richard Nossal, 3-7. Don Mills, T.H. Best Printing Co. Ltd, 1981.

International Boundary Commission. “Boundary Facts.” Updated 2023. <https://www.internationalboundarycommission.org/en/the-boundary-and-you/interesting-facts.php>.

International Joint Commission. “101R.” Updated 2023. <https://ijc.org/en/101r>.

International Joint Commission. “108A.” Updated 2024. <https://ijc.org/en/108a>.

International Joint Commission. “49A.” Updated 2023. <https://ijc.org/en/49a>.

International Joint Commission. “51R.” Updated 2024. <https://ijc.org/en/51r>.

International Joint Commission. “9S.” Updated 2024. <https://ijc.org/en/9s>.

International Joint Commission. “Boards, Studies, and Committee.” Updated 2023. <https://ijc.org/en/who/boards>.

International Joint Commission. “Commissioners.” Updated 2023. <https://ijc.org/en/who/people/commissioners#>.

International Joint Commission. “Dockets- Applications & References.” Updated 2023. <https://www.ijc.org/en/library/dockets>.

International Joint Commission. “Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909.” *International Joint Commission* (March 2012). <https://ijc.org/sites/default/files/2018-07/Guidance-in-Seeking-Approval-for-Uses.pdf>.

International Joint Commission. “History of the IJC.” Updated 2023. <https://ijc.org/en/who/history>.

International Joint Commission. “International Watersheds Initiative.” Updated 2023. <https://www.ijc.org/en/what/iwi>.

International Joint Commission. “Origins of the Boundary Waters Treaty.” Updated 2023. <https://ijc.org/en/who/mission/history/bwt>.

International Joint Commission. “Role of the IJC.” Updated 2024. <https://www.ijc.org/en/who/role>.

International Joint Commission. “The IJC and the Great Lakes Water Quality Agreement.” Updated 2023. <https://www.ijc.org/en/what/glwqa-ijc>.

International Joint Commission. *An IJC Report to the Government of Canada and the United States: Transboundary Implications of the Garrison Diversion Unit*. IJC, 1977. <https://ijc.org/sites/default/files/Dokcet%20101%20Garrison%20Report%20to%20Gov.%201977.pdf>.

International Joint Commission. *Directive to International Osoyoos Lake Board of Control*. IJC, 2013. https://www.ijc.org/sites/default/files/2018-08/IJC%20Directive%20for%20the%20Osoyoos%20Lake%20Board%20of%20Control%20v2013-04-16_1.pdf.

International Joint Commission. *Directive to the International Red River Watershed Board*. IJC, 2022. <https://ijc.org/sites/default/files/Revised-IRRWB-Directive-5.26.2022.pdf>.

International Joint Commission. *International Joint Commission 2023 Activities Report*. IJC, 2024. https://ijc.org/sites/default/files/2023%20IJC%20AAR%20Final_WEB_March13_Single_Pages.pdf.

International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Consolidation of the Order of Approval dated 12 September 1946 as amended by the Supplementary Order dated 18 October 1978 and the Order of Approval dated 9 December 1982 as amended by the Supplementary Order dated 17 October 1985 and the Supplementary Order dated 29 January 2013*. IJC, 2013. https://ijc.org/sites/default/files/Consolidation%20of%20Osoyoos%20Lake%20Orders_December%202013_1.pdf.

International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Order of Approval*. IJC, 1982. <https://ijc.org/sites/default/files/Docket%20108%20State%20of%20Washington%20Order%201982-12-09.pdf>.

International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*. IJC, 1985. <https://ijc.org/sites/default/files/Docket%20108%20Supplemental%20Order%201985-10-17.pdf>.

International Joint Commission. *In the matter of the application of the State of Washington for approval to construct a control structure near the outlet of Osoyoos Lake: Supplementary Order of Approval*. IJC, 2013. <https://ijc.org/sites/default/files/Docket%20108%20Supplemental%20Order%202013-01-29.pdf>.

International Joint Commission. *In the matter of the application of the State of Washington requesting that, under the provisions of article IV of the treaty of January 11, 1909, the International Joint Commission give consideration to such effects, if any, as the construction and operation of certain dams and dykes and the formation of bars, in the Okanagan River below the international boundary between the United States and Canada, may have upon the levels or stages of water in the said river, or in Osoyoos Lake at or above the international boundary*. Windsor: IJC, 1946. <https://ijc.org/sites/default/files/Docket%2040%20State%20of%20Washington%20Orders%201946-09-12.pdf>.

International Joint Commission. *Rules of Procedure of the International Joint Commission*.
<https://ijc.org/en/who/mission/principles/rules-of-procedure>.

International Joint Commission. *The Boundary Waters Treaty of 1909*.
<https://www.ijc.org/sites/default/files/2018-07/Boundary%20Water-ENGFR.pdf>.

International Joint Commission. *The IJC and the 21st Century*. Report of the International Joint Commission. 1997.

International Joint Commission. “Water Levels and Flows.” Updated 2023.
<https://www.ijc.org/en/what/water-levels>.

International Joint Commission. “Water Quality.” Updated 2023.
<https://www.ijc.org/en/what/water-quality>.

International Osoyoos Lake Board of Control. “History, Frequency, and Processes Contributing to Ice Jams on Osoyoos Lake.” Updated 2024. <https://ijc.org/en/olbc/history-frequency-and-processes-contributing-ice-jams-osoyoos-lake>.

International Osoyoos Lake Board of Control. “International Osoyoos Lake Board of Control: ‘Home’.” Updated 2024. <https://ijc.org/en/olbc>.

International Osoyoos Lake Board of Control. “International Osoyoos Lake Board of Control annual public meeting – October 26, 2022.” Vimeo, 26 October 2022. Video.
<https://vimeo.com/764619542>.

International Osoyoos Lake Board of Control. “Lake Level Status and Trends.” Updated 2024.
<https://www.ijc.org/en/olbc/watershed/levels>.

International Osoyoos lake Board of Control. “Mandate.” Updated 2023.
<https://ijc.org/en/olbc/who/mandate>.

International Osoyoos Lake Board of Control. “Meeting Minutes.” Updated 2023.
<https://www.ijc.org/en/olbc/library/minutes>.

International Osoyoos Lake Board of Control. “Members.” Updated 2023.
<https://ijc.org/en/olbc/who/members>.

International Osoyoos Lake Board of Control. “Osoyoos Lake Climate Change Vulnerability: Phase 2 – Merging Similkameen/ Okanagan Basin Hydrologic Models.” Updated 2024.
<https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-2-merging-similkameen-okanagan-basin>.

International Osoyoos Lake Board of Control. “Osoyoos Lake Climate Change Vulnerability: Phase 1 – Similkameen Basin Hydrologic Model.” Updated 2024. <https://ijc.org/en/olbc/osoyoos-lake-climate-change-vulnerability-phase-1-similkameen-basin-hydrologic-model>.

International Osoyoos Lake Board of Control. *2021 Annual Report to the International Joint Commission*. 2021. <https://www.ijc.org/sites/default/files/IOLBC-2021-Annual-Report.pdf>.

International Osoyoos Lake Board of Control. *Recommendations for Renewal of the International Joint Commission’s Osoyoos Lake Order*. IOLBC, 2012. <https://ijc.org/sites/default/files/Tab-11-Osoyoos-Order-Renewal-Recommendations-June-21-2012.pdf>.

International Red River Watershed Board. “About Us.” Updated 2023. <https://ijc.org/en/rrb/who/about>.

International Red River Watershed Board. “Members.” Updated 2023. <https://ijc.org/en/rrb/who/members>.

International Red River Watershed Board. “What’s New with the International Red River Watershed Board: Binational Collaboration on Water.” Updated 2024. <https://ijc.org/sites/default/files/IRRWB-Poster-EN.pdf>.

International Red River Watershed Board. *24th Annual Progress Report*. IRRWB, 2023. <https://ijc.org/sites/default/files/IRRWB%2024th%20Annual%20Progress%20Report%20-%20Final%20-%20NF%20-%20Dec%2020%2C%202023%20-IBYML%20.pdf>.

International Watersheds Initiative. “History.” Updated 2023. <https://ijc.org/en/iwi-iibh/history>.

International Watersheds Initiative. *International Watersheds Initiative 25th Anniversary Showcase Report*. IWI: October 2023. <https://ijc.org/en/iwi-iibh/international-watersheds-initiative-25th-anniversary-showcase-report>.

International Watersheds Initiative. “International Watersheds Initiative Project Highlights: Osoyoos Lake.” Updated 2023. <https://storymaps.arcgis.com/stories/2f332db7863b410f8249adeecc267f67>.

International Watersheds Initiative. “International Watersheds Initiative Project Highlights: Red River.” Updated 2023. <https://ijc.org/en/iwi-iibh/project-highlights-storymap>.

International Watersheds Initiative. “Our principles and practices.” Updated 2024. <https://www.ijc.org/en/iwi-iibh/our-principles-and-practices>.

- International Waterways Commission Progress Report*. Senate, 62D Congress 3d Session. 1912.
<https://babel.hathitrust.org/cgi/pt?id=uiuo.ark%3A%2F13960%2Ft9481xj8v&seq=7>.
- International Watersheds Initiative. “Project highlights- StoryMap.” Updated 2023.
<https://www.ijc.org/en/iwi-iibh/project-highlights-storymap>.
- James, Carolyn C. “Canada’s Arctic Boundaries and the United States: Binational vs Bilateral Policymaking in North America.” In *Navigating a changing world: Canada’s international policies in an age of uncertainties*, edited by Geoffrey Hale and Greg Anderson, 355-377. Toronto: University of Toronto Press, 2021.
- Joint Chiefs of Staff. “Origin of Joint Concepts.” Updated 2024.
<https://www.jcs.mil/About/Origin-of-Joint-Concepts/>.
- Jordan, F.J.E. *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission (Canada-United States)*. Prepared for the International Joint Commission. Ottawa, Canada, August 1966.
- Keohane, Robert O., and Joseph S. Nye. *Power and Interdependence*. Boston: Longman, 2012.
- Kirton, John., and Brittaney Warren. “The Importance of the international Joint Commission.” In *The First Century of the International Joint Commission*, edited by Murray Clamen and Daniel McFarlane, 483-506. Calgary, University of Calgary Press, 2020.
- Lake Agassiz Water Authority. “Red River Valley Water Supply Project.” Updated 2024.
https://lakeagassiz.org/red_river_valley/.
- Lemarquand, David. “International Joint Commission and Changing Canada-United States Boundary Relations.” *Natural Resources Journal* 33 no.1 (1993): 59-91.
<https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1965&context=nrj>.
- Locke, Harvey., and Mckinney, Matthew. “The Flathead River Basin.” In *Water Without Borders? Canada, the United States, and Shared Waters*, edited by Emma S. Norman, Alice Cohen, and Karen Bakker, 193-220. Toronto: University of Toronto Press, 2013.
- MacEachen, Allan J. *Garrison Diversion Canada Letter of Reference*. Ottawa: The Secretary of State for External Affairs Canada, 22 October 1975.
<https://ijc.org/sites/default/files/Docket%20101%20Garrison%20Divsersion%20Ca.%20Letter%20of%20Reference%201975-10-22.pdf>.
- Macfarlane, Daniel., and Noah D. Hall. “Transboundary Water Management and Governance in the Great Lakes—St. Lawrence Basin.” In *Transboundary Environmental Governance across the World’s Longest Border*, edited by Stephen Brooks and Andrea Olive, 31-50. East Lansing: Michigan State University Press, 2018.

- Manitoba Information Services Branch. "Lyon Writes Congress about Garrison Issue: Cites Serious Concern of any Water Diversion." *News Service*. 30 May 1980. https://news.gov.mb.ca/news/archives/1980/05/1980-05-30-lyon_writes_congress_about_garrison_issue.pdf.
- Manitoba, Legislature. *Legislative Assembly of Manitoba*. 41st Leg, 3rd Sess. 10 May 2018. 2129. https://www.gov.mb.ca/legislature/hansard/41st_3rd/hansardpdf/45a.pdf#page=18.
- McCulloch, Rachel. "The United States-Canada Free Trade Agreement." *Proceedings of the Academy of Political Science* 37, no. 4 (1990): 79-89, <https://www-jstor-org.uml.idm.oclc.org/stable/1173774?seq=3>.
- McNeil, R.Y. *Factors Affecting the Level of Osoyoos Lake*. File 307580-1. British Columbia: Department of Lands, Forests, and Water Resources, 1974. https://www.obwb.ca/obwrid/docs/180_1974_Factors_Affecting_Level_of_Osoyoos_Lake.pdf
- Milner, Helen. "Review Article: International Theories of Cooperation Among Nations: Strengths and Weaknesses." *World Politics* 44, no. 3 (1992): 466-496. http://www.rochelleterman.com/ir/sites/default/files/Milner1992_0.pdf.
- Moy, Richard., and Jonathan O'Riordan. "The International Joint Commission's Unique and Colourful Role in Three Projects in the Pacific Northwest." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 239-281. Calgary: University of Calgary Press, 2020.
- Munton, Don. "Paradoxes and Prospects." In *The International Joint Commission Seventy Years On*, edited by Robert Spencer, John Kirton, and Kim Richard Nossal, 60-97. Don Mills, T.H. Best Printing Co. Ltd, 1981.
- National Archives. "Treaty of Ghent (1814)." Updated 2022. <https://www.archives.gov/milestone-documents/treaty-of-ghent>.
- National Archives. "Treaty of Paris (1783)." Updated 2022. <https://www.archives.gov/milestone-documents/treaty-of-paris>.
- Nicholson, Norman L. "Convention of 1818." *The Canadian Encyclopedia*. 6 February 2006. <https://www.thecanadianencyclopedia.ca/en/article/convention-of-1818>.
- Noakes, Taylor C. "Oregon Treaty." *The Canadian Encyclopedia*. 7 February 2006. <https://www.thecanadianencyclopedia.ca/en/article/oregon-treaty>.
- Nossal, Kim Richard. "A Square Peg: The Lessons of the Point Roberts Reference, 1971-1977." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 195-214. Calgary: University of Calgary Press, 2020.

- Nossal, Kim Richard. "The Unmasking of Garrison: United States Politics and the Management of Canadian-American Boundary Waters." *Canadian Institute of International Affairs* XXXVII, no. 1 (1978): 1-31.
- Office of the Chief Audit Executive. "Audit of the Expenditures of The Canadian Section of the International Joint Commission: Executive Summary." *Global Affairs Canada* (2016). https://www.international.gc.ca/gac-amc/publications/audits-verification/2016/expenditures_canadian_section_ijc-dependes_section_canadienne_cmi.aspx?lang=eng.
- Office of the Historian. "Webster-Ashburton Treaty, 1842." Updated 2023. <https://history.state.gov/milestones/1830-1860/webster-treaty#:~:text=Webster%20and%20Ashburton%20agreed%20on,in%20several%20bodies%20of%20water>.
- Okanagan Basin Water Board. "What We Do – Overview." Updated 2024. <https://obwb.ca/overview/>.
- Okanagan WaterWise, the International Joint Commission, and the Washington State Department of Ecology. "A River Film." YouTube. 17 September 2019. Video. <https://www.youtube.com/watch?v=P6IzkUhDpC0>.
- Osoyoos Lake Board of Control. "Brief Chronology of Zosel Dam's History." Updated 2012. <https://ijc.org/sites/default/files/ZoselDamHistory.pdf>.
- Osoyoos Lake Water Quality Society. "What we do." Updated 2024. <https://www.osoyooslake.ca/about/what-we-do/>.
- Osoyoos Lake Water Science Forum. *Nk'Mip (Osoyoos Lake) Final Report*. Osoyoos: Osoyoos Lake Water Science Forum, 2022. https://www.ijc.org/sites/default/files/2022-olwsf-final-report_march_2023.pdf.
- Otstot, Roger S. *Reclamation Managing Water in the West: An Overview of the Pick-Solan Missouri Basin Program*. Great Plains Region: U.S. Department of the Interior Bureau of Reclamation, 2022. <https://commons.und.edu/cgi/viewcontent.cgi?article=1148&context=Indigenous-gov-docs>.
- Piper, Don C. "Two International Waterways Commissions: A Comparative Study." *Virginia Journal of International Law* 6, no. 1 (December 1965): 98-113. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/vajint6&div=10&id=&page=>

- Poe, Ted. "Whiskey is for drinking; water is for fighting." *The Hill*. 14 May 2018.
<https://thehill.com/blogs/congress-blog/foreign-policy/387545-whiskey-is-for-drinking-water-is-for-fighting/#:~:text=Mark%20Twain%20is%20believed%20to,this%20world's%20conflict%20and%20suffering.>
- Preston, David. *Response to IJC in 21st Century report*. Ottawa: Department of Foreign Affairs and International Trade, 19 November 1998.
<https://www.ijc.org/sites/default/files/Canadian%20IWI%20Mandate.pdf>.
- Q.C., Gordon Walker. "The Boundary Water Treaty 1909: A Peace Treaty?" *Canada-United States Law Journal* 39, no. 14 (January 2014): 170-186.
<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2526&context=cuslj>
- Randall, Stephen J., and John Herd Thompson. *Canada and the United States: Ambivalent Allies*. Georgia: University of Georgia Press, 2008.
- Red River Basin Commission. "About the Red River Basin Commission." Updated 2024.
<https://www.redriverbasincommission.org/about-us>.
- Red River Valley Water Supply Project. "About RRVWSP." Updated 2024.
<https://www.rrvwsp.com/about/>.
- Red River Valley Water Supply Project. "Construction Updates." Updated 2024.
<https://www.rrvwsp.com/construction-updates/>.
- Sadler, Barry. "Shared Resources, Common Future: Sustainable Management of Canada-United States Border Waters." *Natural Resources Journal* 33, no.2 (1993): 375-396.
<https://core.ac.uk/download/pdf/151600936.pdf>.
- Smedresman, Peter S. "The International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control along the Boundaries." *New York University Journal of International Law and Politics* 6, no. 3 (1973): 499-532.
<https://heinonline.org/HOL/P?h=hein.journals/nyuilp6&i=513>.
- Smith, Alan. "Doing the Continental: Conceptualizations of the Canadian-American Relationship in the Long Twentieth Century." *Canadian-American Public Policy*, (2000): 1-24.
<https://go.gale.com/ps/i.do?id=GALE%7CA76712782&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=10471073&p=AONE&sw=w&userGroupName=anon%7Ebbd1c aee&aty=open-web-entry>.
- Smith, Thomas L, ed. *Official Proceeding of the Third National Irrigation Congress*. Denver: The Local Committee of Arrangements, 1894.
<https://babel.hathitrust.org/cgi/pt?id=uc1.b2936541&seq=15&q1=canada>.

- Southern Chiefs' Organization Inc. "About SCO." Updated 2024. <https://scoinc.mb.ca/about-sco/>.
- Spencer, Robert., John Kirton, and Kim Richard Nossal, ed. *The International Joint Commission Seventy Years On*. T.H. Best Printing Co. Ltd, 1981.
- State of Washington Department of Ecology. "Zosel Dam." Updated 2024. <https://ecology.wa.gov/water-shorelines/water-supply/dams/info-for-the-public/dams-we-regulate/zosel-dam>.
- State of Washington Government. *State of Washington Application for Order of Approval by International Joint Commission*. The State of Washington, 1980. <https://ijc.org/sites/default/files/Docket%20108%20Osoyoos%20Dam%20Application%201980-12-24.pdf>.
- State of Washington Water Research Center. *An Assessment of the Most Suitable Water Levels for Osoyoos Lake (Study 1)*. Pullman: Washington State University, 2011. https://www.obwb.ca/obwrid/docs/344_Osoyoos_Lake_Study_1_Final_20110203.pdf.
- Stoett, Peter., and Owen Temby. "Bilateral and Trilateral natural Resources and Biodiversity Governance in North America: Organizations, Networks, and Inclusion." *Review of Policy Research* 32, no.1 (2015): 1-18. <https://onlinelibrary-wiley-com.uml.idm.oclc.org/doi/epdf/10.1111/ropr.12110>.
- Straus, Jacob R. *Congressional Commissions: Overview, Structure, and Legislative Consideration*. CRS Report No. R40076 Version 18. Washington, D.C.: Congressional Research Service, 2017. <https://crsreports.congress.gov/product/pdf/R/R40076/18#:~:text=Congressional%20commissions%20are%20formal%20groups,or%20perform%20a%20specific%20duty>.
- Syilx Okanagan Nation Alliance. "Fisheries." Updated 2017. <https://www.syilx.org/fisheries/>.
- Temby, Owen., and Munton, Don. "The International Joint Commission and Air Pollution: A Tale of Two Cases." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 313-345. Calgary: University of Calgary Press, 2020.
- The University of British Columbia. "Government Publications: Canada, Royal Commissions." Updated 2023. <https://guides.library.ubc.ca/c.php?g=307049&p=2051354>;
- The World Bank. "Water Resource Management." Updated 2022. <https://www.worldbank.org/en/topic/waterresourcesmanagement#2>.

- Toope, Stephen J., and Jutta Brunnée. “Freshwater Regimes: The Mandate of the international Joint Commission.” *Arizona Journal of International and Comparative Law* 15, no.1 (1998): 273-287.
https://repository.arizona.edu/bitstream/handle/10150/659311/17_15ArizJIntlCompL_273_1998.pdf?sequence=1.
- “Trudeau, Pierre Elliott and Ronald Reagan – Statement to the News Media.” 11 March 1981. Sound recording, 20:38 minutes. Privy Council Office fonds. Accession number 1989-0279. Item number ISN 191182. Library and Archives Canada (LAC). <http://central.bac-lac.gc.ca/.redirect?app=filvidandsou&id=191182&lang=eng>.
- Unknown. “Report on the Commission to Investigate Water Boundaries: Great Lakes’ levels June 13, 1902.” *Library of Congress Manuscript Division*. 1902.
<https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record/ImageViewer?libID=o282750>.
- Unknown. “River and Harbor Act of June 13, 1902.” *Library of Congress Manuscript Division*. 1902. <https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record/ImageViewer?libID=o38245&imageNo=1>.
- University of Oslo Faculty of Law. “Convention for the Pacific Settlement of International Disputes (Hague Convention I).” Updated 2024.
<https://www.jus.uio.no/english/services/library/treaties/01/1-09/settlement-international-disputes.html>.
- VanNijnatten, Debora, Carolyn Johns, Kathryn Bryk Friedman, and Gail Krantzberg. “Assessing Adaptive Transboundary Governance Capacity in the Great Lakes Basin: The Role of Institutions and Networks.” *International Journal of Water Governance* 4, no.2 (2016): 7-32. <https://journals.open.tudelft.nl/ijwg/article/view/5845/5018>.
- VanNijnatten, Debora L. “Canada, the United States and Climate Change: Is the Bilateral Relationship “Uncertainty-ready”?” *Association for Canadian Studies in the United States 26th Biennial Conference, Canada: Near and Far*. Notes taken by Jay Dion at Keynote presentation. 18 November 2023, Hyatt Regency, Crystal City, Washington D.C.
- Vine, Richard D. *Garrison Diversion U.S. Letter of Reference*. Washington D.C.: Department of State, 22 October 1975.
<https://ijc.org/sites/default/files/Docket%20101%20Garrison%20Diversion%20U.S.%20Letter%20of%20Reference1975-10-22.pdf>.

- Waite, G. Graham. "The International Joint Commission-Its Practice and Its Impact on Land Use." *Buffalo Law Review* 13, no. 1 (1963): 93-118.
https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=2763&=&context=buffalolawreview&=&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C5%2526q%253Dhow%252Bcommissioners%252Bare%252Bselected%252Bfor%252Bthe%252Binternational%252Bjoint%252Bcommission%2526btnG%253D#search=%22how%20commissioners%20selected%20international%20joint%20commission%22.
- Waite, P.B. "Treaty of Washington." *The Canadian Encyclopedia*. 7 February 2006.
<https://www.thecanadianencyclopedia.ca/en/article/treaty-of-washington>.
- Water Education Foundation. "Acre-Foot." Updated 2024.
<https://www.watereducation.org/aquapedia/acre-foot>.
- Water Science School. "Watersheds and Drainage Basins." *U.S. Department of the Interior*, 8 June 2019. <https://www.usgs.gov/special-topics/water-science-school/science/watersheds-and-drainage-basins>.
- Welsted, John. "The Garrison Diversion Unit – An Update." *Canadian Water Resource Journal* 8, no.1 (1983): 51-59, <https://www.tandfonline.com/doi/pdf/10.4296/cwrj0801051>.
- Whorley, David. "From IWC to BWT: Canada-US Institution Building, 1902-1909." In *The First Century of the International Joint Commission*, edited by Daniel Macfarlane, and Murray Clemen, 35-70. Calgary: University of Calgary Press, 2020.
- Willoughby, William R. "Expectations and Experience." In *The International Joint Commission Seventy Years On*, edited by Robert Spencer, John Kirton, and Kim Richard Nossal, 24-42. Don Mills, T.H. Best Printing Co. Ltd, 1981.
- Willoughby, William R. *The Joint Organizations of Canada and the United States*. Toronto: University of Toronto Press, 1979.
- Wiseman, Geoffrey. "The Palme Commission: New thinking about security." In *International commissions and the power of ideas*, edited by Ramesh Thakur, Andrew F. Cooper, and John English, 46-75. Tokyo: United Nations University Press, 2005.
- World Atlas. "North America." Updated 2023.
<https://www.worldatlas.com/webimage/countrys/na.htm>.
- Wyatt, Edward. "For Publisher of 9/11 Report, a Royalty-Free Windfall." *The New York Times*. July 28, 2004. <https://www.nytimes.com/2004/07/28/business/for-publisher-of-9-11-report-a-royalty-free-windfall.html>.

Yale Law School Lillian Goldman Law Library. "British-American Diplomacy: The Jay Treaty; November 19, 1794." Updated 2008. https://avalon.law.yale.edu/18th_century/jay.asp.

Appendix A

Tables:

Table 1.1: Summary of Key Variables⁴⁶²

Characteristics of a Binationalism Commission	IJC	Zosel Dam	GDU
In each case tested one country had more at stake than the other, but solutions were based on the common interest	The IJC is set up to ensure common interests are the priority	Canada had more to benefit than the United States	United States had more to benefit than Canada
A Commission is usually a mechanism that is enacted by government(s) to investigate, or advise on an issue, but do not possess decision making abilities. In addition, it is usually temporary, composed of technocrats, and prides itself on independence and impartiality from the government(s) that created it	IJC members are professional and independent experts who are appointed by Canada and the United States to collectively investigate, advise, and coordinate	In the Zosel Dam case IJC members exercised their professionalism and independence from governments	In the GDU case IJC members exercised their professionalism and independence from governments
Consensus is reached to favour a North American solution	The IJC seeks to find mutual solutions to an issue	The IJC used its quasi-judicial mechanism to seek a mutual solution	The IJC used its investitive function to seek a mutual solution

Table 3.1: Comparison of the Characteristics of Binationalism and Bilateralism⁴⁶³

Characteristics of Binationalism	Characteristics of Bilateralism
International cooperation through a joint body to form a “marriage”	International cooperation through normal diplomacy to form a “partnership” (dating)
Common interests are the priority	National, or separate interests are the priority
Harmonization of policies focused on common interests, and an agreed outcome	Policies that might help common interests, but mainly focus on national interests
Joint decision-making leading to consensus	Give and take negotiations leading to compromises

⁴⁶² Information in Table 1.1 is consolidated by the author from sources used in chapters one, two, three, and four of this thesis.

⁴⁶³ Information in Table 3.1 is consolidated by the author from sources used in chapter three of this thesis.

Parity and equality among decision makers	Decisions are made based on who holds more power
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Table 3.2: Key Differences of the Two Case Studies⁴⁶⁴

	Zosel Dam	GDU
Type of docket	Application	Reference
Main Issue at stake	A water control structure regulating water quantities which impacted water levels of a transboundary lake.	A water control structure moving water from one water basin to another possibly polluting the basin receiving the transfer of water.
Location	Western Canada and the United States, between the Province of British Columbia and the State of Washington.	Central Canada and the United States, between the Province of Manitoba and the State of North Dakota.
Powers used by the IJC	Quasi-judicial	Investigative
Which country had more at stake	United States	Canada
Type of waterway	Lake (Osoyoos Lake)	River (the Red River)
Other actors involved in the issue	Subnational governments, a local organization, Indigenous groups, and residences of the impacted area.	National and subnational governments, local organizations, Indigenous groups, and residences of the impacted area.

Table 4.1: Characteristics of Binational, Bilateralism and the IJC⁴⁶⁵

Characteristics of Binationalism	Characteristics of Bilateralism	Characteristics of the International Joint Commission
International cooperation through a joint body to form a "marriage"	International cooperation through normal diplomacy to form a "partnership" (dating)	International cooperation is conducted through a joint body (the IJC) akin to marriage rather than a partnership
Common interests are the priority	National, or separate interests are the priority	Dockets assigned to the IJC are agreed upon by both Ottawa and Washington. Once a docket is submitted to the IJC, its members are required to approach issues not as representatives for their government striving to achieve national

⁴⁶⁴ Information in Table 3.2 is consolidated by the author from sources used in chapters three and four of this thesis.

⁴⁶⁵ Information in Table 4.1 is consolidated by the author from sources used in chapters two and three of this thesis.

Characteristics of Binationalism	Characteristics of Bilateralism	Characteristics of the International Joint Commission
		advantages, but to act as a united body seeking mutual solutions to uphold the BWT.
Harmonization of policies focused on common interests, and an agreed outcome	Policies that might help common interests, but mainly focus on national interests	Reports by the IJC are founded jointly on fact-based evidence. The Commission's recommendations and Orders are focused on resolving the common interest of North America.
Joint decision-making leading to consensus	"Give and take" negotiations leading to compromises	Joint decision-making is done by consensus. The members of the Canadian and American sections of the IJC do not engage in negotiations which position the two sections against each other.
Parity and equality among decision makers	Decisions are made based on who holds more power	The IJC is equal in terms of the composition of each section of the IJC (each section has three commissioners, a secretary, and chairman). Commissioners hold parity in the decision-making process. No member in the IJC has more power in the decision-making process to make a recommendation, or an Order than another. If one commissioner disagrees with the decision, they are free to submit a separate opinion.

Table 4.2: Case Studies Compared⁴⁶⁶

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
International cooperation through a joint body to form a "marriage"	International cooperation is conducted through a joint body (the IJC) akin to marriage rather than a partnership	The governments of Canada and the United States choose to resolve the issue of rising water caused by Zosel Dam on Osoyoos Lake by cooperating through the IJC (a joint body).	The IJC (a joint body) was directed by Ottawa and Washington to investigate and provide recommendations on the GDU dispute between Manitoba and North Dakota.

⁴⁶⁶ Information in Table 4.2 is consolidated by the author from sources used in chapters two, three, and four of this thesis.

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
		The Dam continues to operate under jurisdiction of the IJC.	
Common interests are the priority	Dockets assigned to the IJC are agreed upon by both Ottawa and Washington. Once a docket is submitted to the IJC, its members are required to approach issues not as representatives for their government striving to achieve national advantages, but to act as a united body seeking mutual solutions to uphold the BWT	The IJC's priority is to ensure water levels and flows of Osoyoos Lake remain at manageable levels, and to avoid extreme flooding and droughts in the region regardless of national boundaries.	The IJC's priority was to make sure that some sections of the GDU did not violate Article IV of the BWT regardless of the strong support for the project in the United States, and strong opposition to the project in Canada.
Harmonization of policies focused on common interests, and an agreed outcome	Reports by the IJC are founded jointly on fact-based evidence. The Commission's recommendations and Orders are focused on resolving the common interest of North America.	The IJC's Orders of Approval for its applications regarding Zosel Dam are based on the common interest of the region. These Orders are accepted and followed by subnational governments. IWI is an extension of the IJC's effort to collectively improve the quality of the Osoyoos Lake.	Overall, the IJC's investigation and recommendations were focused on an agreed outcome to prevent foreign biota from entering the Hudson Bay Drainage Basin. The recommendations were acted upon by the national governments but were unsuccessful. The subnational governments remain in disagreement. IWI in the region continues to study possible impacts of interbasin water transfer.
Joint decision-making leading to consensus	Joint decision-making is done by consensus. The members of the Canadian and American sections of the IJC do not engage in negotiations which position the two sections against each other.	All Zosel Dam applications were approved by consensus as a joint commission not as a commission with a Canadian section negotiating with the American section.	The GDU investigative report and recommendations were approved with unanimity with exception of a minor technical disagreement from one commissioner on the second recommendation which

Characteristics of Binationalism	Characteristics of the International Joint Commission	Actions of the International Joint Commission in Case 1 (Zosel Dam)	Actions of the International Joint Commission in Case 2 (GDU)
			resulted in a separate opinion.
Parity and equality among decision makers	<p>The IJC is equal in terms of the composition of each section of the IJC (each section has three commissioners, a secretary, and chairman).</p> <p>Commissioners hold parity in the decision-making process. No member in the IJC has more power in the decision-making process to make a recommendation, or an Order than another. If one of the commissioner's disagree with the decision, they are free to submit a separate opinion.</p>	<p>The composition of the IJC and the IOLBC is equal between both Canadian and American sections.</p> <p>IJC commissioners, and Board of Engineers and IOLBC members had parity in their decision-making abilities when ruling on the studies of Zosel Dam, applications, issuing Order of Approvals, and declaring a drought in Osoyoos Lake.</p>	<p>The composition of the IJC and the International Garrison Diversion Study Board were equal between both Canadian and American sections.</p> <p>The IJC and the International Garrison Diversion Study Board had parity in their decision-making abilities when they submitted their final report, and recommendations.</p> <p>One commissioner exercised his independence, and submitted a separate opinion for the second recommendation without having an impact on the overall decision to submit the report jointly to both federal governments</p>

Appendix B

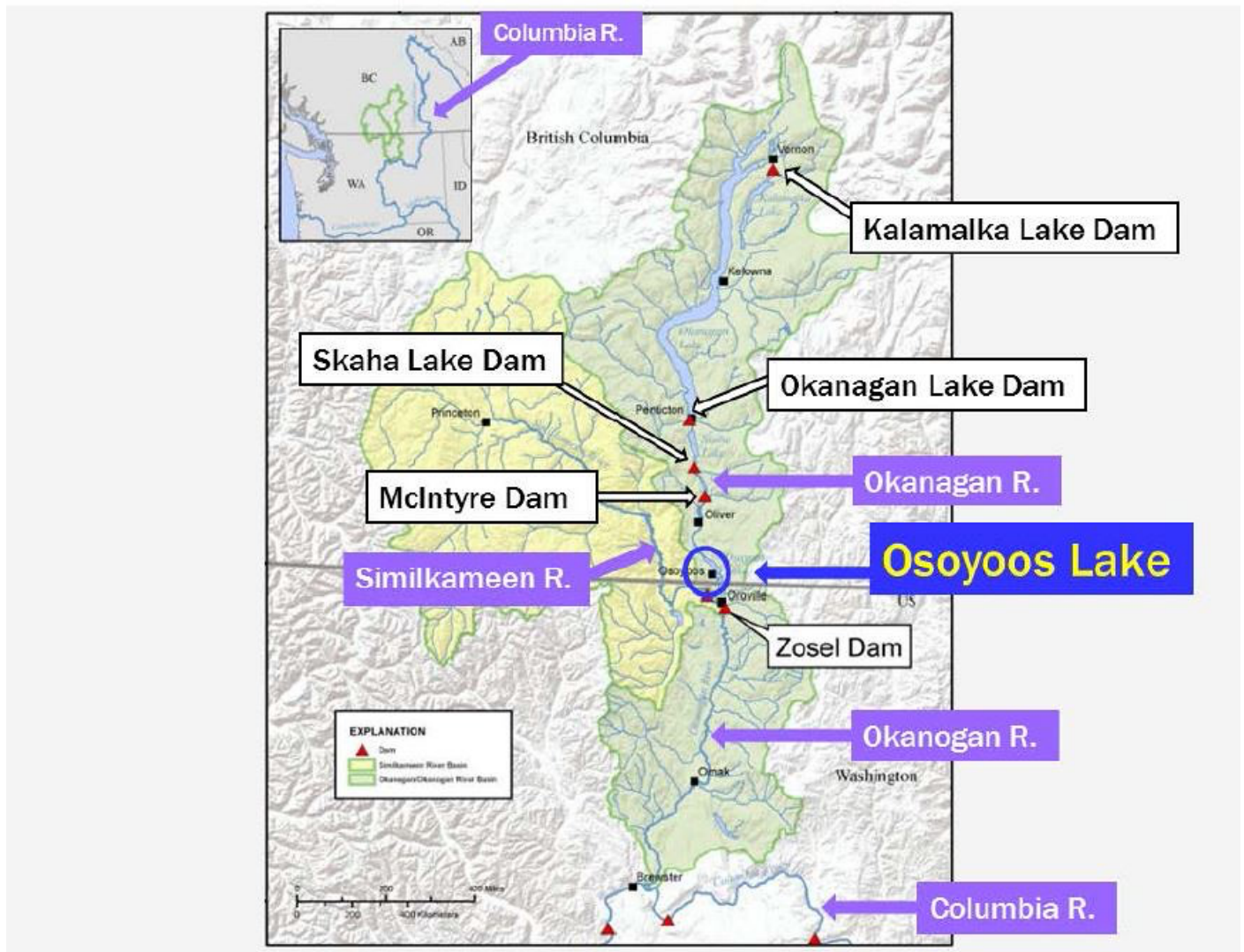
Maps:

Map 4.1: Map of the Okanagan Lake Regulation System⁴⁶⁷



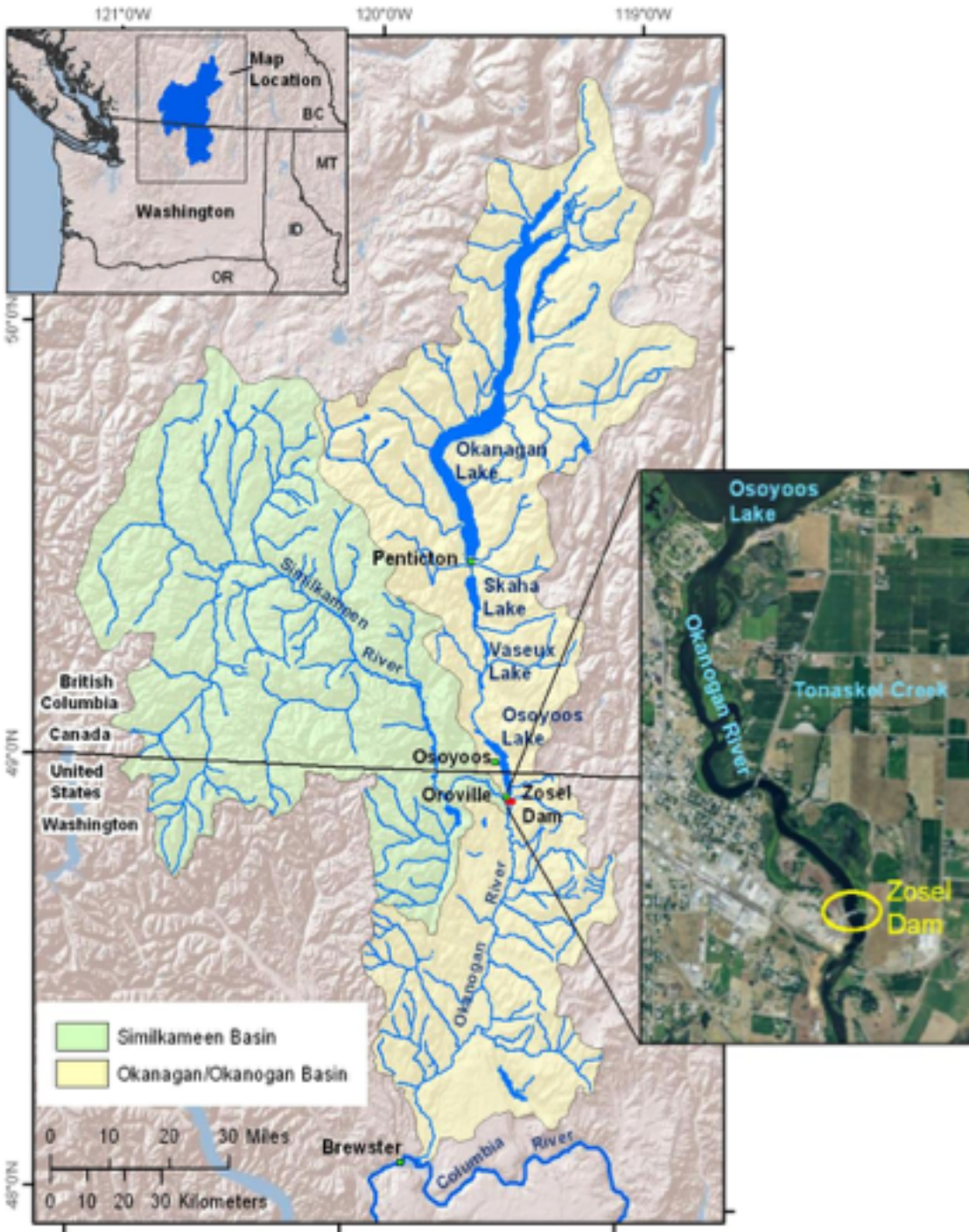
Ministry of
Forests, Lands and
Natural Resource Operations

The Okanagan Lake Regulation System



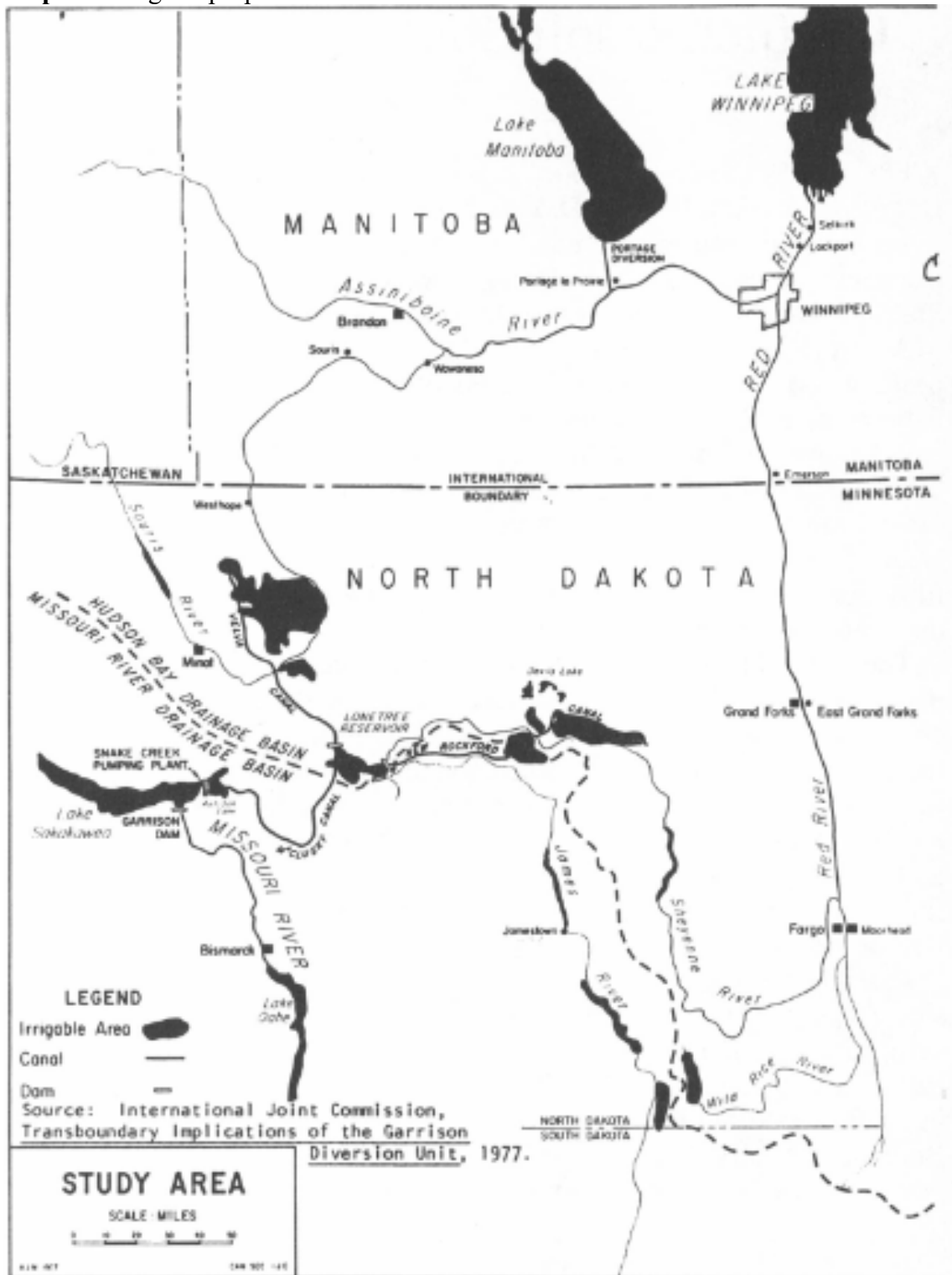
⁴⁶⁷ “FACTSHEET: Okanagan Lake Regulation System,” BC Gov News, updated 2017, [https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20\(sec%20map\).](https://news.gov.bc.ca/factsheets/factsheet-okanagan-lake-regulation-system#:~:text=The%20Okanagan%20Lake%20Regulation%20System,United%20States%20(sec%20map).)

Map 4.2: Map of Similkameen and Okanagan/Okanogan Basin with satellite view of Zosel Dam⁴⁶⁸



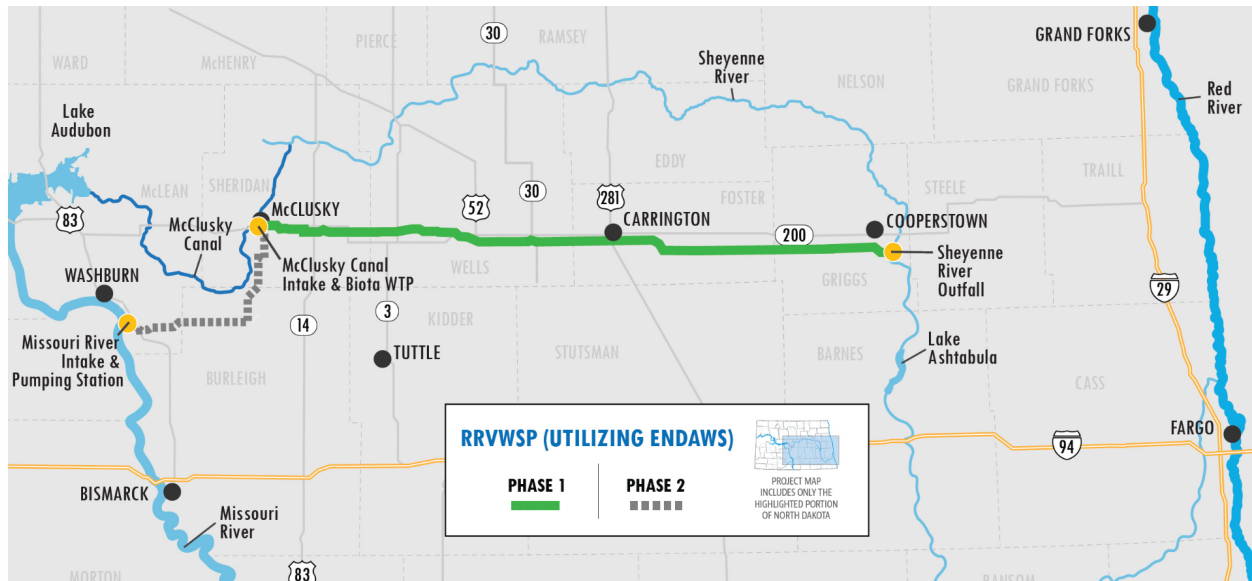
⁴⁶⁸ International Osoyoos Lake Board of Control, *Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order*, 4.

Map 4.3: Original proposed route of the Garrison Diversion⁴⁶⁹



⁴⁶⁹ Caldwell, "Garrison Diversion: Constraints on Conflict Resolution," 840.

Map 4.4: Proposed route for the RRVWSP⁴⁷⁰



⁴⁷⁰ “Red River Valley Water Supply Project,” Lake Agassiz Water Authority, updated 2024, https://lakeagassiz.org/red_river_valley/.

Appendix C

The Boundary Water Treaty of 1909⁴⁷¹

TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING TO BOUNDARY WATERS AND QUESTIONS ARISING BETWEEN THE UNITED STATES AND CANADA

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective Plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington.

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purpose of this treaty, boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

⁴⁷¹ International Joint Commission, *The Boundary Waters Treaty of 1909*,
<https://www.ijc.org/sites/default/files/2018-07/Boundary%20Water-ENGFR.pdf>.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE II

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE V

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

- The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.
- The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for the power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.
- The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

Note: The third, fourth and fifth paragraphs of Article V were terminated by the Canada-United States Treaty of February 27, 1950 concerning the diversion of the Niagara River.

ARTICLE VI

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally

between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Article III or IV of this treaty the approval of this Commission is required, and in passing on such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

- (1.) Uses for domestic and sanitary purposes;
- (2.) Uses for navigation, including the service of canals for the purposes of navigation;
- (3.) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirements for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division cannot be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of all interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred. If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission fails to agree.

ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner, upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRYCE [SEAL]

AND WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said treaty with the following understanding to wit:

“Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under, on either side of the international boundary at the rapids of the St. Mary’s River at Sault Ste. Marie, in the use of water flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary’s River, within its own territory, and further, that nothing in the treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty;”

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

NOW, THEREFORE, be it known that I, WILLIAM HOWARD TAFT, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty- fourth.

Wm. H Taft [SEAL]

By the President:
P C KNOX
Secretary of State

PROTOCOL OF EXCHANGE

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned Plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In WITNESS WHEREOF, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]

JAMES BRYCE [SEAL]