



Volume 33

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

Spring 1993

Commentary

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Recommended Citation

Michael J. Donahue, *Commentary*, 33 Nat. Resources J. 309 (1993).
Available at: <https://digitalrepository.unm.edu/nrj/vol33/iss2/8>

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MICHAEL J. DONAHUE, PH.D.*

Commentary

In examining the public participation process in the context of multi-jurisdictional institutions, I have been struck by an observation made some years ago by Donald Schon (1971) in his book titled *Beyond the Stable State*. He describes bureaucratic institutions as “memorials to old problems.” Typically, such institutions are created to address a real or perceived crisis, but the lag time between the manifestation of that crisis and the actual creation and operation of the institution can be substantial. The author goes on to explain that “When the problems and crises disappear or change dramatically in nature, the old organizational structure persists. In government, as in most other established institutions, the organizational equivalent of biological death is missing.” When new issues or problems arise within the institution, the studied response is one of “dynamic conservatism,” as he describes it, or in common parlance, “a tendency to fight to remain the same.”

These observations are extraordinarily relevant to our topic today. We are charged with the task of assessing the ability of two long-established institutions to confront new challenges that were never anticipated—or at least never acknowledged—many decades ago when treaties were signed and institutional frameworks were developed. The two institutions of interest here today have, on the whole, served their governments with distinction, but we all agree that so much more needs to be done. We must remember that form follows function, and public participation functions should dictate—rather than be dictated by—institutional form. In my remarks this afternoon, I will argue that the role of the public—however you wish to define that term—has and will play a pivotal role in shaping the institutional ecosystem as it relates to United States/Canada and United States/Mexico transboundary relations. I will also argue that public participation is a means to an end—it is a process, not a goal. Unless it is a carefully managed, constructive process, it is little more than an exercise in futility. Finally, I will argue that the pendulum of public participation is, in the case of the International Joint Commission (IJC), in danger of swinging too far and, in the case of the International Boundary and Water Commission (IBWC), not far enough.

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The three papers I have been asked to comment upon—with the possible exception of Mimi Becker's—are more descriptive than prescriptive. For that reason, and because I happen to be a full-time policy practitioner and only a part-time academic, I've taken the liberty to advance the focus of the papers one step further. I've attempted to weave some common threads among the authors' arguments and develop several specific recommendations as to how the public participation process—and the institutions in general—can better serve their respective regions and the natural and human resources that inhabit them.

I will proceed by identifying and discussing several of the common themes raised by the three authors; by highlighting several dilemmas in public participation that are either explicitly or implicitly discussed by the authors; and by sharing my views on how to overcome them, with a particular emphasis on the binational Great Lakes Basin.

COMMON THEMES

- (1) Even though assessments of institutional adequacy vis-a-vis public participation tend to be highly subjective, the three authors generally agree that the status quo is unacceptable. With respect to the IJC, a new paradigm for public participation appears to be emerging, but the process has been a difficult and awkward one, and the evolution is far from complete. Bob Hayton's judgment is reserved. He observes that the IJC is "justly renowned" for its past activities and suggests that only "minor tampering" is needed. Mimi Becker is considerably more emphatic in her observations.

With respect to the IBWC, it is generally agreed that the evolutionary process is in its infancy at best, and some fundamental institutional changes will be required to nurture its growth. Roberto Sanchez sums it up by observing that the "border has changed dramatically, the Commission has not." Bob Hayton is more emphatic in stating that "those who are extremely cautious about attempting any institutional alterations," will find his bold proposals "depressing if not shocking." To the contrary, I find them refreshing.

- (2) The authors also agree that changing border conditions over the last 10 to 20 years make broadened public participation not only desirable and politically appropriate, but also necessary to ensure well informed and implementable policies. Roberto Sanchez reviews fundamental demographic, economic, and environmental changes, and notes the emergence of trans-boundary relations at the local level, all of which demand broadened public participation. Mimi Becker documents the localization of IJC activities—through Remedial Action Plans

and Lakewide Management Plans, for example—and argues that public participation is now a fundamental requirement for generating the political, institutional, and financial support for environmental management activities.

- (3) The authors also appear to agree—either explicitly or implicitly—that the two institutions, when it comes to public participation, need to ‘lead, follow, or get out of the way.’ If the institutions themselves do not adequately address public participation needs in a prompt and definitive manner, the dynamics of the broader ‘institutional ecosystem’ will. Mimi Becker, for example, documents the explosive growth and increasing role of nongovernmental organizations in Great Lakes Basin governance. She describes the ‘extra-treaty network’ and emphasizes that it has developed, in part, due to the lack of public participation opportunities within the governmental component of the institutional ecosystem. Roberto Sanchez, in a similar vein, offers a ‘do or die’ scenario for the IBWC. Unless that organization undergoes a pronounced metamorphosis to incorporate public participation, he states that “the current demand and need for an agency dealing with border environmental problems probably will be filled up by another agency or agencies.” Again, it’s the notion that both the IJC and the IBWC need to decide whether to ‘lead, follow, or get out of the way.’

Allow me, then, to identify some of the institutional dilemmas in strengthening the public participation process. These dilemmas, I suspect, are universal in nature, but have particular relevance to the transboundary institutions of interest here today.

I would submit that there are at least three fundamental questions that must be asked—and answered—in structuring an effective public participation program. All are referenced—explicitly or implicitly—in the authors’ papers.

- (1) The first question is fundamental and straightforward, yet perplexing. Very simply: ‘Who is the public?’ Only one author addresses this in detail. Mimi Becker offers an epic 204-word sentence defining the IJC’s public. She follows this exhaustive statement by reciting the obvious. She states “Basically just about anybody who lives or works in the Basin is potentially an IJC stakeholder.” I would argue that the ‘public’ is even broader—one need not live or work in the Basin to be a stakeholder. We live in a global ecosystem and activities in the Great Lakes Basin affect and are affected by activities in other basins.

The more important question, however, relates to how an institution goes about identifying these publics and interacting with them to their mutual benefit. Public participation—as measured by inquiries, or

meeting attendance or correspondence—is of trivial significance. Meaningful public participation—as measured by an improved product and an informed citizenry—is much more elusive.

- (2) An equally perplexing question is: 'How much is enough?' This is a corollary to the age-old 'How clean is clean?' question the IJC has been confronted with since the signing of the Great Lakes Water Quality Agreement in 1972. At what point are the benefits of public participation maximized, after which the marginal utility of one more voice starts decreasing?

I would argue that the IJC—in its zeal to make amends for past transgressions—has overcompensated. The famous (or infamous) public hearing in Hamilton, Ontario, in 1989—at which the Commissioners were deluged with public statements into the late hours—symbolized the IJC's new-found receptivity to citizen input. But this new 'open door' policy does not come without a price; it has in some regard generated a degree of paranoia among commissioners. Whether it is a water quality initiative or a lake level reference activity, it seems that every public comment—well-founded or not—is elevated in stature, recorded in painstaking detail, thoroughly discussed and agonized over. Citizen input has become an integral part of the decisionmaking process, and, in general, that is a positive development. Unless it is carefully managed, however, it threatens to dominate the Commission and exert undue influence on its best professional judgments. This is a startling change over the past five years, but this emerging paradigm needs to be harnessed and directed. As I indicated earlier, the pendulum is in danger of swinging too far.

- (3) Finally, we must ask ourselves: How can a representative cross section of the public be secured? I also call this the 'professional citizen' dilemma. Bob Hayton observes that the IJC public participation program "benefits the highly interested and sophisticated audience." To be blunt, however, the vast majority of the tens of millions of citizens in this binational region are either ill-informed, misinformed, or ambivalent about resource management issues. The occasional water supply or flooding crisis, of course, can be the exception to the rule. Aside from crisis scenarios, however, public participation opportunities tend to draw only the most knowledgeable, the most interested, or the most upset members of the public. In general, these individuals are articulate, well-informed, constructive, and influential. But, do they represent a true cross section of the public? I think not. The Citizen's Advisory Committee of the IJC Lake Levels Study has steadfastly maintained that it does not speak for the general public. If the true 'public,' then is too large (or too unwilling) to be 'institutionalized' through a formal committee arrangement, how does one access public input?

A meaningful public participation program needs to actively seek out the uninformed, the uninterested, and the disenfranchised, and acknowledge their views (or lack thereof) in the decisionmaking process. We have yet to see this level of sophistication, I suspect, in either of our transboundary institutions.

I raise these questions not as an indictment of public participation programs, but as constructive advice as the IJC process matures and the IBWC process begins its development.

In conclusion, I offer one recommendation for the IJC that can formalize and strengthen its public participation process and, in so doing, strengthen lines of accountability and reinvigorate the interest and involvement of the federal, provincial and state governments. I suggest it as a complement to the six public participation program needs identified in the closing stages of Mimi Becker's paper. The United States Government Accounting Office has found that, historically, only one of three IJC recommendations are ever responded to or even acknowledged by the two federal governments. This fact compromises not only the impact of the Commission, but the quality of governmental and citizen input into its deliberations. Through treaty revision, legislation, or protocol, the federal governments should be required to respond to each and every recommendation in a timely and substantive manner and in a public forum. This, I believe, will force attention to the question of accountability and give the two governments and their state and provincial jurisdictions an incentive to participate in Commission activities and structure a broad, yet appropriately managed and meaningful public participation program.

Finally, I want to reiterate the point that institutional form must follow management function. Institution design and operation are means to an end—not an end in themselves. We must look at the resource first, determine its management needs and then, and only then, make a determination as to the appropriate institutional form. I don't think we should be in any way hesitant to do that. If we do not have great visions, we will not have great successes. If our visions are modest, our successes will be modest as well.