



## The International Joint Commission (IJC)

The International Joint Commission (IJC) was established under the 1909 Boundary Waters Treaty between the United States and Canada. The treaty directs the IJC to aid in the resolution and prevention of disputes concerning the waters that cross (transboundary) or form (boundary) the international border between the two countries, known collectively as *boundary waters*. The watersheds of these boundary waters are illustrated in **Figure 1**. The IJC may be asked to consider issues related to drinking water, commercial shipping, hydroelectric power generation, agriculture, industry, recreational boating, and shoreline property, among others. Congressional interest in the IJC often has focused on the IJC's scope of authority, its role in specific disputes, and funding for the U.S. portion of IJC activities.

### IJC Functions

The IJC functions as a nonpolitical research, advisory, and mediation body for the two national governments. The IJC has six commissioners: three appointed by the President of the United States with the approval of the Senate (these positions are reappointed by each incoming Administration) and three appointed by the Governor in Council of Canada with the advice of the Prime Minister. The commissioners of each country select a chair apiece. The two chosen chairs serve concurrently. Canadian commissioners have fixed terms that vary from two years to five years. The IJC needs a quorum of four commissioners to make decisions and generally reaches decisions through consensus. Commissioners do not formally represent their countries and must declare in writing that they will be impartial when

carrying out the duties of the treaty. The IJC's decisions and recommendations are the result of objective analysis and are not necessarily a reflection of U.S. or Canadian national policies.

The IJC has two primary duties under the treaty: 1) examine and report on questions or matters of difference between the U.S. and Canadian governments, known as a *reference*, and 2) approve any work in boundary waters affecting water levels on either side of the boundary, known as an *Order of Approval* (Order). The IJC currently supervises more than 20 expert boards and task forces that respond to references and monitor the implementation of Orders; these groups draw upon the expertise of around 300 representatives from various organizations.

### Reference

A *reference* addresses a question or a matter of difference between the United States and Canada. A reference can be submitted either by both countries or by one country. If jointly submitted, the reference contains specific questions for the IJC to answer and a timeframe for a response, among other provisions. Under Article IX of the treaty, the IJC is authorized to examine and report the facts of the questions under the reference and to draw conclusions and make recommendations as appropriate. Once the IJC receives a reference, it generally appoints a board or task force to conduct technical investigations. The IJC also holds public hearings and other forms of consultation and reports its findings and recommendations to both governments.

**Figure 1. U.S.-Canada Transboundary and Boundary Watersheds**



**Source:** CRS, modified from U.S. Geological Survey, at <https://www.sciencebase.gov/catalog/item/4fb697b2e4b03ad19d64b47f>, and IJC, "Transboundary Waters," at <https://www.ijc.org/en/transboundary-waters>.

**Notes:** State and province names are abbreviated. The areas denoted in dark blue designate transboundary and boundary watersheds along the border between the United States and Canada.

Upon the IJC's issuance of a report, the governments may request that the commission monitor progress in implementing the report's recommendations.

IJC recommendations in response to references are nonbinding. For example, according to the IJC, the two governments did not implement recommendations reported in 1962 regarding the Pembina River Basin. However, under treaty Article X, references that involve the rights, obligations, or interests of either government in relation to the other can be presented to the IJC for a binding decision.

### Order of Approval

Under treaty Articles III or IV, a government can submit an application seeking the IJC's approval for proposed works or activities (such as dams, diversions, or bridges) that would use, change (with respect to water level), obstruct, or divert boundary waters. The IJC then creates a board or uses an existing board to review the submitted application. The board determines whether the project should proceed and how it should be operated. The IJC also holds public hearings on the application and allows stakeholders to provide input.

If the IJC decides to approve the project with conditions, it is to issue an Order. For example, in 1952, the IJC received and approved an application from the United States and Canada to build and operate the Moses-Saunders Dam on the St. Lawrence River via an Order. Concurrent to the application filing, the two countries jointly submitted a reference to study whether dam outflows could be regulated to achieve certain objectives. In 1963, the two governments approved Plan 1958D, which included criteria to regulate flows through the dam. The IJC reviews Orders for projects from time to time and has the authority to amend an Order. For instance, the IJC amended the 1952 Order in 1956 and again in 2016. As required in the 1956 Order, the United States and Canada officially concurred with changes proposed in the 2016 Order and its associated conditions, known as Plan 2014.

### Congress and the IJC

Congress primarily interacts with the IJC through its appropriation of funds to the IJC and its approval of nominated IJC commissioners. Congress also may conduct oversight of the IJC or projects and activities influenced by IJC decisions through hearings and letters to U.S. commissioners. Additionally, Congress can address boundary water issues by working with the executive branch or through enactment of new legislation; however, legislation must adhere to the treaty and bilaterally approved IJC activities or run the risk of violating the treaty.

### Potential Issues for Congress

Although decisions related to applications are binding, IJC reference recommendations are nonbinding. Congress may consider whether issued or future reference recommendations should be binding. Some stakeholders contend that the nonbinding nature of IJC recommendations hampers the IJC's ability to effectively address issues involving the boundary waters. Others maintain that the nonbinding nature of IJC recommendations allows each country to decide how to best handle issues and retain sovereignty. Addressing the role of the IJC might involve revising provisions of the treaty, which would need the agreement of both the United States and Canada.

Congress also might consider new policy mechanisms to increase flexibility in implementing Orders and their associated conditions, as advocated for by some stakeholders. For example, Plan 2014 aims to provide for more natural flows of water in Lake Ontario to support ecosystem health, while continuing to regulate flooding along the lake and upstream of the Moses-Saunders Dam in Canada. Critics argue that Plan 2014 has led to increased property flooding in the United States; supporters contend that the plan supports healthy coastal habitats, thereby improving the economy of the area and enhancing the resiliency of natural shorelines. The IJC has concluded that operations under Plan 2014 have not significantly contributed to flooding but have instead aimed to minimize flooding from precipitation in the area. Some contend that Plan 2014 should contain broader mechanisms to adaptively manage flows into and out of Lake Ontario; whereas other stakeholders contend this would diminish environmental benefits. Some stakeholders also suggest that the IJC should receive appropriations by both countries to establish a fund to compensate property owners for their losses or to construct infrastructure to reduce flood damages.

Both the United States and Canada fund the IJC, with expenses for projects and reports shared equally between the two countries. Congress appropriated between \$7.51 million and \$8.05 million per year to the IJC from FY2016 to FY2019. The Administration has requested \$7.45 million in FY2020. Some stakeholders argue that Congress should increase funding to the IJC for additional monitoring of projects and actions in the boundary waters. Others suggest that Congress should establish and fund IJC grant programs to support boundary water projects. This proposal is opposed by those who contend that the authority to finance projects should be limited to states and provinces, and not an international body.

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### Great Lakes Water Quality Agreement

Since 1972, the IJC also has implemented the Great Lakes Water Quality Agreement (GLWQA). The GLWQA addresses water quality issues; the IJC provides technical assistance, assesses implementation effectiveness and progress toward meeting GLWQA objectives, and invites further public engagement.