

“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.”

Boundary Waters Treaty of 1909, Article IV

What are the Boundary Waters Treaty and the International Joint Commission?

The Boundary Waters Treaty was signed in 1909 to prevent and resolve disputes over the use of the waters shared by Canada and the United States and to settle other transboundary issues. The treaty established the International Joint Commission (IJC) to help the two countries carry out its provisions. Since 1912, when the IJC first became functional, it has addressed dozens of water quantity and water quality issues along the common boundary. The clarity and simplicity of the treaty have contributed greatly to its success over the past 100 years. The Treaty provides general principles, rather than detailed prescriptions, to guide the two countries in matters regarding potential and actual disputes about transboundary waters. The specific application of these principles is decided on a case-by-case basis. This approach has made the treaty adaptable over time as new issues arise. Yet, the original principles have provided clear guidance and stood the test of time.

The IJC is from time to time asked by the US and Canadian governments to study and recommend solutions to transboundary issues. Such requests, called “references,” have focused on water quality and air quality, as well as on issues related to the development and use of shared water resources. Usually, when the IJC receives a reference, it appoints a board consisting of equal numbers of experts from each country. Board members jointly establish the facts in their personal and professional capacities, not as representatives of a particular organization or region. Reports by the IJC in response to references are advisory only. However, they are made to the governments and the public following an impartial investigation by the IJC board, consulting with the public and building consensus among the Commissioners from both countries.

The IJC is comprised of three commissioners from the U.S., appointed by the President, and three commissioners from Canada, appointed by the Prime Minister. After appointment, they act as a body that is independent of the two countries, and are supported by administrative staffs located mostly in Washington, D.C. and Ottawa.

The U.S. and Canadian governments typically “activate” the IJC by sending joint letters of reference to each section of the IJC, asking the Commission to examine and report on a transboundary water issue. The IJC then sets up study boards and technical committees—often comprised of local experts from both countries—to investigate issues that are described in the Terms of Reference submitted by the IJC to the boards and technical committees. The IJC’s ultimate recommendations are not binding, but elevate the issue under study and provide a forum for public participation and comment. The findings of the IJC often offer the best option for real policy change and the protection of shared watersheds, consistent with Article IV of the treaty as quoted above.

In the case of the planned transboundary mines, the governments could ask the Commission to, among other things, study and report on the cumulative effects of multiple transboundary mines planned by B.C. on the full array of downstream resources and uses in Alaska.

Some Common Questions About the IJC:

Must both countries agree to a reference for the IJC to undertake a study?

Technically, under provisions of the treaty, either country can submit a reference to the IJC. However, in the history of the IJC, there has never been what would be called a “unilateral” reference, and the two governments have been highly resistant to breaking that tradition.

What department of government issues a reference request to the IJC?

The U.S. Department of State and the Canadian Ministry of Foreign Affairs jointly develop the reference request, and simultaneously forward the request to the respective sections of the IJC. The Department of State consults with other domestic departments that have expertise on the matter to be studied, and also would consult with the State of Alaska. The Ministry of Foreign Affairs also would consult with other relevant Canadian federal ministries and departments, and especially with the affected Province.

Does the IJC make decisions by majority vote?

Under terms of the Treaty, and in the IJC’s Rules of Procedure, there is provision for majority decisions. However, votes within the Commission are rare, and the practice of reaching decisions by consensus is highly valued, especially on reference reports.

Is the IJC bound by precedent?

No. The IJC treats every reference as a unique case to be decided by their current membership on the merits of the conclusions reached by the boards and technical groups, which also have a history of working by consensus.

Are IJC references only issued after damage has occurred to the downstream country?

No. There have been numerous instances where references have been given to the IJC as a way of determining whether a project, or set of projects would violate Article IV of the treaty in advance of project construction and operation.

Who comprises the membership of IJC boards and study groups?

Most members of boards and study groups are personnel from federal and state/provincial agencies. From time to time, these members are augmented by non-government personnel, at the discretion of the IJC sections in Washington and Ottawa.

Who shoulders the cost of an IJC reference?

Typically, each section of the IJC supports travel and subsistence costs of all of their respective board and study group members. If certain board or study group members are non-government members, the respective sections assume consultancy or honorarium costs at their discretion. Governmental members of boards and study groups are typically not reimbursed for their time committed to reference work.

What is the duration of a typical IJC reference?

There is no “typical” timeframe for the conduct of an IJC reference, and the time needed is tied to the complexity of the specific questions asked within the reference. The governments have in the past mandated a specific timeframe for the Commission to report its conclusions and recommendations.