

# Protecting Our Water

"... waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

(Article IV, *Boundary Waters Treaty* of 1909)



# Support for the International Joint Commission

There is broad-based support for Manitoba's call for an International Joint Commission reference on North Dakota's Devils Lake outlet project — a project that will divert water from Devils Lake to the Red River and then into Canada. Manitoba has advocated for an International Joint Commission reference on the outlet ever since it became clear that North Dakota planned to proceed unilaterally without considering the effects of the project on downstream jurisdictions.

## Leaders' Statement

released at the conclusion of the meeting of U.S. President George Bush, Mexican President Vicente Fox and Canadian Prime Minister Paul Martin in Waco, Texas  
March 23, 2005

"... The United States, Mexico and Canada will work together, and in consultation with stakeholders, to enhance water quality by working bilaterally, trilaterally and through existing regional bodies such as the International Boundary and Water Commission and the International Joint Commission (and) combat the spread of invasive species in both coastal and fresh waters."

## Great Lakes Water Commission

(Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, Ontario and Québec)

Letter to the Secretary of State  
January 21, 2005

"... the process to date has not respected the authority of the International *Boundary Waters Treaty* of 1909 and, consequently, has threatened to compromise U.S. - Canada relations on a matter of great interest to both countries."

"We urge you to promptly refer this matter to the International Joint Commission... and to ensure that construction activity is halted until such time that the analysis is completed."

## Prime Minister of Canada

Letter to the Honourable Gary Doer  
January 4, 2005

"Canada will continue to press for a joint reference to the IJC."

## Premier of Québec

Letter to the Prime Minister of Canada  
March 1, 2005

"I also support Mr. Doer's request that this dispute (be brought) before the International Joint Commission."  
(translation)

## Premier of Ontario

Letter to the Prime Minister of Canada  
February 24, 2005

"The Government of Ontario endorses the efforts... to refer this issue to the International Joint Commission..."

Ontario's support for this action reflects our concern, shared with Manitoba, that the Devils Lake outlet would create pollution and increase the risk of invasive species. We are also concerned that North Dakota is ignoring the authority of the *Boundary Waters Treaty*."

## Governor of Minnesota

Letter to former Secretary of State Colin Powell  
December 13, 2004

"Permit me to reiterate Minnesota's preference that this matter be referred to the IJC because it is an impartial, bi-national commission created specifically for such disputes pursuant to the *Boundary Waters Treaty* of 1909. Preserving the integrity of the treaty is critical for the state of Minnesota and referral to the IJC of this matter would seem to be a very prudent decision. Our long lasting relationship with our Canadian neighbors is worth a thorough scientific analysis."

## Governor of Missouri

Letter to former Secretary of State Colin Powell  
May 2004

"Missouri is fearful that this project is a first step toward an inter-basin diversion of water from the Missouri River basin into the Hudson Bay basin. We object to the outlet project because it will inevitably lead to an inlet to stabilize lake levels... The *Boundary Waters Treaty* of 1909 set up the IJC to assist in preventing and resolving disputes over shared boundary waters. For this and many other reasons, including potential violation of the *Boundary Waters Treaty* of 1909, I believe the Devils Lake outlet project warrants an independent review by the IJC."

## First Nations

The Red Lake Band, the White Earth Band, the Spirit Lake Band, the Assembly of Manitoba Chiefs  
(A joint resolution by the Red Lake Band of Chippewa, the White Earth Band of Chippewa, the Spirit Lake Band of Dakota and the Assembly of Manitoba Chiefs, signed on the 26th day of April 2004, at Thief River Falls, Minnesota on the lands of the Red Lake Indian Reservation)

"The current Devils Lake outlet plan proposed by the Corps of Engineers and the Devils Lake outlet plan proposed and currently being implemented by the State of North Dakota if implemented without further studies would result in an inherent and unacceptable risk for the transfer of chemical pollutants and biota, and in particular exotic species and pathogens from the currently closed Devils Lake system into the Red River basin."

# Protection of Boundary Waters

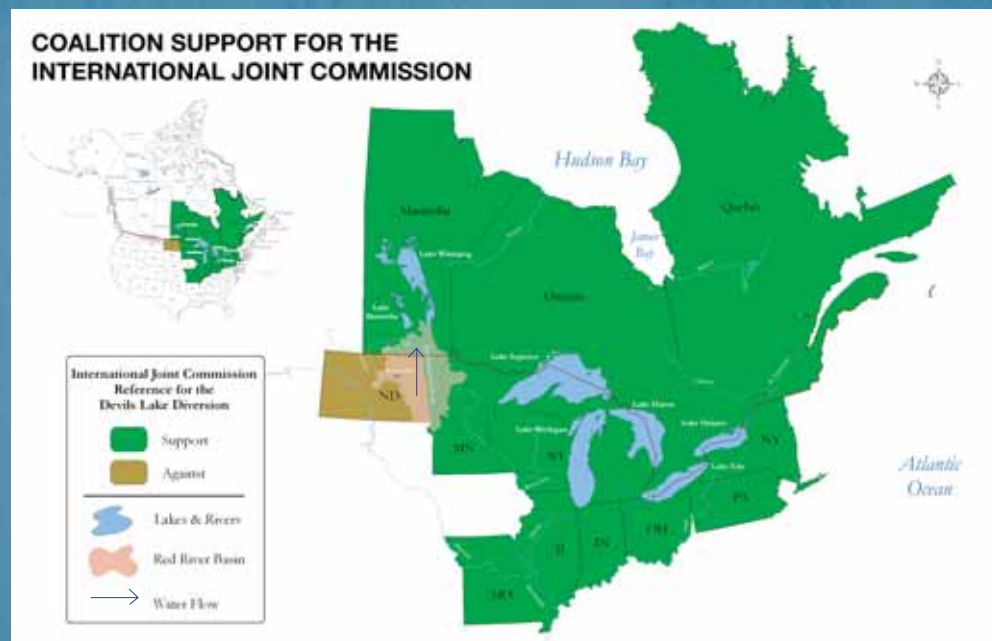
The *Boundary Waters Treaty* of 1909 provides equal protection to the United States and Canada. There are about as many water systems flowing northward into Canada from the United States as there are flowing southward into the United States from Canada. In addition, Canada and the United States share the waters of the five Great Lakes and many other boundary waters.

The International Joint Commission was established by the *Boundary Waters Treaty* to prevent and resolve trans-boundary water disputes. It is an independent, bi-national body that is held in the highest regard around the world. The International Joint Commission has worked very well for the past century to help the Canadian and American governments resolve water disputes in the trans-boundary region.

Manitoba, along with its partners on both sides of the border — the eight Great Lakes states, the State of Missouri, two Canadian provinces, the Prime Minister of Canada and environmental and First Nations organizations — have raised serious concerns about the environmental impact that would result from a Devils Lake outlet and have called for these concerns to be heard and arbitrated by the International Joint Commission.

Canada and the United States have a solid track record of respecting the *Boundary Waters Treaty* of 1909. The treaty to protect North America's shared water resources, and a means to resolve concerns related to cross-border waters, is in place. Manitoba is prepared to let this mechanism — the International Joint Commission — do its work and to respect its findings.

If the State of North Dakota were allowed to complete construction of an outlet at Devils Lake, without a review by the International Joint Commission, it has the potential to do irreparable harm to Canadian waters. It will also set a precedent for all other boundary water issues between the United States and Canada, potentially crippling a treaty that has helped protect water quality between our two countries for close to 100 years.



# Devils Lake Quick Facts

- Devils Lake, located in North Dakota, contains no natural outlets or inlets, and has been isolated from the Hudson Bay drainage basin for about 1000 years.
- Water quality in Devils Lake is much different than it is in downstream waters of the Sheyenne River, Red River and Lake Winnipeg.
- Water levels in the Devils Lake basin also tend to fluctuate widely. North Dakota wants an outlet that will discharge water into the Red River system when lake levels are high, ultimately flowing into Lake Winnipeg, Manitoba. Stabilizing water levels in Devils Lake continues to be a long-term goal of the region.
- Lake Winnipeg is the tenth largest fresh water lake in the world, supporting a vital commercial fishing industry, as well as being a world class tourism destination. Manitoba is taking action to save the lake from rising levels of harmful nutrients. However, North Dakota's artificial outlet from Devils Lake will pollute the lake with foreign biota, salts, sulfates and 40,000 pounds of phosphorus each year. The additional phosphorus contributed from North Dakota's outlet could create a layer of algae about five inches thick on nearly ten miles of Lake Winnipeg's beaches.
- Most of the fish population in Devils Lake has been created by artificial stocking programs because most fish died in the early 1940s when the lake was nearly dry. The U.S. Army Corps of Engineers has concluded that the biota of Devils Lake has been very poorly studied. It is already known, however, that two fish parasites occur in Devils Lake that have not been found in the Sheyenne or Red rivers.
- The U.S. Army Corps of Engineers has also projected that an outlet from Devils Lake would increase the rate of exceedances of water quality objectives established by the International Joint Commission causing predictable declines in water quality in Canada. The U.S. Army Corps of Engineers also acknowledged that the impact on Canada has not been explored.
- In January 2004, Secretary Powell wrote to the Governor of North Dakota cautioning against unilateral action on its state-funded outlet. If the U.S. Army Corps of Engineers' proposal were to proceed, he identified four conditions that should be met: plans should include a biota survey; plans should not include an inlet from the Missouri River; Canada should be invited to participate in the biota survey; and the surveys should thoroughly address issues related to the transport of

additional mercury into the Red River system. The unilateral outlet under construction in North Dakota addresses none of these conditions.

- North Dakota has already completed 80 per cent of its outlet from Devils Lake. This outlet contains none of the safeguards of an earlier U.S. Army Corps of Engineers' outlet proposal or the additional conditions recommended by former Secretary of State Colin Powell in January 2004.
- Proponents of the unilateral outlet often state that Canada refused the opportunity for an International Joint Commission reference in 2002. The reality was there was no specific project proposal at that time for the Commission to review since the U.S. Army Corps of Engineers did not complete its proposal until October 2003. In the meantime, North Dakota unilaterally proceeded with its own outlet project — which Canada requested be referred to the International Joint Commission in April 2004.

## DEVILS LAKE OUTLET



It is imperative that the International Joint Commission undertake a review of the State of North Dakota's Devils Lake outlet project. Postponing operation of the outlet while the International Joint Commission undertakes its review could prevent irreversible harm to the downstream environment.