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Emma S. Norman

Karen J. Bakker

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# Local Stakeholders Governing Water Across the 49<sup>th</sup> Parallel

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by Emma Spenner Norman and Karen Bakker \*

Web Address: [www.ac.wvu.edu/~bpri](http://www.ac.wvu.edu/~bpri)

**Introduction.** This article analyzes how local stakeholders along the Canada – U.S. border are increasingly involved in binational governance of water. The article highlights the growing influence of regional, multi-jurisdictional organizations such as the Washington – B.C. Shared Waters Alliance, as well as the changing role of long-standing supranational institutions such as the International Joint Commission. Particular emphasis is given to the topic of the relative institutional capacity of local groups within multi-jurisdictional, international structures. The article concludes with remarks that can guide public policy on local involvement in transboundary water issues.

**Background.** If a given water resource flows across an international boundary or itself serves as the boundary, the neighboring nations sharing that resource frequently have vital matters to resolve. These matters will grow in importance as global patterns of population growth place increasing pressure on water resources. Communities worldwide require effective techniques for transboundary water management, and the Canada – U.S. border is no exception. For more than one hundred years, disputes over pollution, water quality, downstream and upstream water rights, and water diversions and export have played out along the 49<sup>th</sup> parallel. In response, distinct types of transboundary institutions have emerged to address disagreements through political processes (see Table 1).

The 1909 Boundary Waters Treaty marks the earliest Canada – U.S. binational approach toward transboundary water governance. The Treaty led to establishment of the International Joint Commission (IJC), which has historically addressed a small number of major disputes in a formal nation-to-nation setting. The IJC will be discussed at greater length below. Since 1909 the characteristics of transboundary institutions have changed, with governance activities increasingly occurring

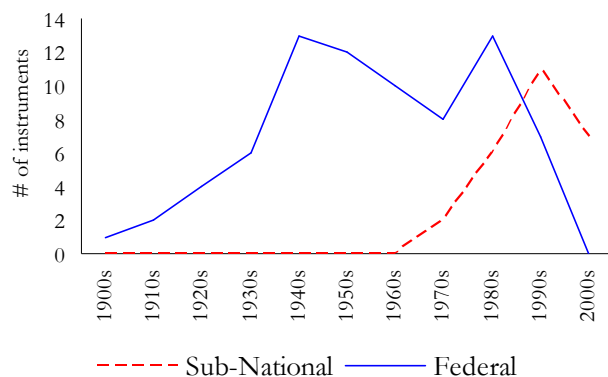
at a sub-national level. A recent study by Norman and Bakker documents this trend. A detailed database compiled by the authors identifies 166 bi-national governance instruments (treaties, Memoranda of Understanding, Memoranda of Agreement, institutions, exchange of notes) at multiple scales (local, state/provincial, federal, supranational). The database is publicly available at the University of British Columbia's Program on Water Governance website.<sup>2</sup> Of the 166 instruments created since 1909, 57 percent are federal, 21 percent state/provincial, 18 percent multi-level, and 4 percent solely local. Figure 1 presents a disaggregation of the data into national and sub-national instruments. The figure reveals that sub-national instruments have increased steadily since the 1960s, and federal instruments steadily declined from the 1940s–1970s, with a brief increase in the 1980s. Only recently (post-9/11) was a decline in both federal and sub-national instruments present. Thus, although the majority of instruments are controlled at the federal level, sub-national instruments are increasingly common since the mid-1960s and, if current trends prevail, will outnumber federal mechanisms within a decade.

The increased participation of local stakeholders has been enabled by the development of new kinds of forums, including state and provincially controlled watershed boards, environmental and citizens' groups, and regional binational boards. Binational cooperation at the state/provincial level is increasingly common, as exemplified by forums such as the Gulf of Maine Council (1989), the 1992 Washington – B.C. Environmental Cooperation Agreement (ECA) (which created the Environmental Cooperation Council) and, more recently, the 2003 Montana – B.C. ECA and the 2003 Idaho – B.C. ECA. As later discussed, the IJC has created opportunities for local participation through its "Watershed Initiative" program, which aims to serve regional interests through proactive col-

**Table 1. Cooperation Mechanisms for Transboundary Water Governance <sup>1</sup>**

Governing Mechanism	Scale	Function
International Joint Commission	Bi-national Federal U.S.–Canada	<ul style="list-style-type: none"> <li>• Advisory role, non-binding</li> <li>• "Prevent and resolve transboundary environmental and water-resource disputes .... through processes that seek the common interest of both countries"</li> </ul>
Environmental Cooperation Councils	Bi-national State–provincial	<ul style="list-style-type: none"> <li>• Advisory role, non-binding</li> <li>• "Help mitigate and address environmental issues of mutual concern"</li> </ul>
ENGO / Citizen Groups	Bi-national and domestic Local watershed	<ul style="list-style-type: none"> <li>• Participatory</li> <li>• Action-oriented</li> <li>• Non-binding, non-regulatory</li> <li>• "Consensus based negotiations, and implementation of policies through local voluntary efforts"</li> </ul>

**Figure 1. Number of Instruments Created per Decade: 1900 – 2007**



laboration rather than reactive negotiation.

The growing role of local stakeholders reflects a broad shift from “government” to “governance” of natural resources. This governance-based approach, which involves multiple public-private instruments at all levels, can be applied to various water issues, from the protection of marine habitat to equitable access to and distribution of water. For the latter, international organizations such as the World Water Council consider the role of the local authorities as critical to the fulfillment of community water needs through the provision of water services and access to water and sanitation. However, limited institutional capacity and nascent federal–local relationships continue to impede local governance activities.

**The IJC and Watershed Boards.** As noted earlier, the IJC was created in 1909 as an outgrowth of the enactment of the Boundary Waters Treaty. The IJC is an independent binational organization whose primary purpose is to help prevent and resolve issues (of both water quality and allocation) relating to the boundary waters of Canada and the U.S. The IJC operates through a “reference” system, becoming involved in an issue only at the request of *both* countries. A panel of experts, with an equal number of representatives from each country, is brought together to study an issue and make non-biased recommendations. Although the recommendations are not legally binding, the public nature of the process often provides the necessary pressure for governments to act according to the IJC recommendations. The St. Mary–Milk International Task Force is an example of a recent reference, established in 2005 to study the disputed allocation of river water between Alberta and Montana. The Great Lakes Water Quality Board, established in 1978, is an example of a long-standing reference designed to advise the IJC commission on issues surrounding the Great Lakes.

Cognizant of the increased importance of local governance of water, in 1997 the IJC laid the foundation for the creation of bi-national Watershed Boards with their report titled *The IJC and the 21<sup>st</sup> Century*. The report suggested that the Boards would “provide much improved mechanisms for avoiding and resolving transboundary disputes by building a capacity at the watershed level to anticipate and respond to the range of water-related and other environmental changes.”<sup>3</sup> The new Boards work within the framework of the IJC, but serve as additional institutional bodies that work proactively within the given transboundary watershed. That is, rather than waiting for

a reference to address a problem, the Boards work to maintain relationships and govern water in times of non-conflict or crisis. The premise behind this approach is that local people – as delineated at a watershed scale – are often best positioned to resolve difficult transboundary environmental situations.

The new Boards assume a multi-disciplinary, integrative approach that takes both governmental and non-governmental interests into account. Generally, the Boards may assume a multitude of roles, including: coordinate with existing institutions and agencies within the watershed; report to the IJC biennially on the state of the watershed; serve as liaison between the community and the IJC; develop monitoring indicators; run studies as directed by the IJC; facilitate the prevention of disputes; foster the development of an “informed transboundary community” regarding watershed management; field comments and complaints regarding the watershed; interface between different jurisdictional and ecological systems (i.e. freshwater, terrestrial and marine).<sup>4</sup> Additionally, the Boards work with the already established IJC boards – in particular, the control board in the specific watershed. Following the IJC process, in order for a Watershed Board to become established, a reference from both countries – and political support from sub-national stakeholders – is necessary.

Interestingly, this concept initially met with tremendous resistance from governmental employees both in Canada and the U.S., many querying “Why fix something that isn’t broken?” The IJC went on to defend the concept and clarify its position with two additional reports: *Transboundary Watersheds* and *A Discussion Paper on the International Watersheds Initiative*.<sup>5,6</sup> Most notably, the IJC stresses that the watershed approach is in addition to, rather than in place of, the “reference” system. Currently, there are three pilot Watershed Boards: Rainy River (Minnesota and Ontario), Red River (Minnesota, North Dakota, and Manitoba), and International St. Croix River (Maine and New Brunswick). Although the watershed approach has not been broadly applied, it shows institutional willingness to adapt to changing conditions.

For the local stakeholder, the Boards provide access to federal, state, and provincial actors which might be difficult to otherwise acquire. The opportunity for dialogue in this multi-jurisdictional format creates an opportunity for vertical integration of ideas among actors of different scales of governance. In many ways, the Board levels the playing field between scales of governance as well as between nations. This is particularly important for the local stakeholder, who may have interest in – and valuable knowledge of – the watershed, but may have difficulty accessing the governance mechanisms due to the international level of the issue. The Boards also provide a proactive approach to water governance. Fostering binational relationships at a watershed level helps deflect possible conflicts and encourage long-term cooperation.

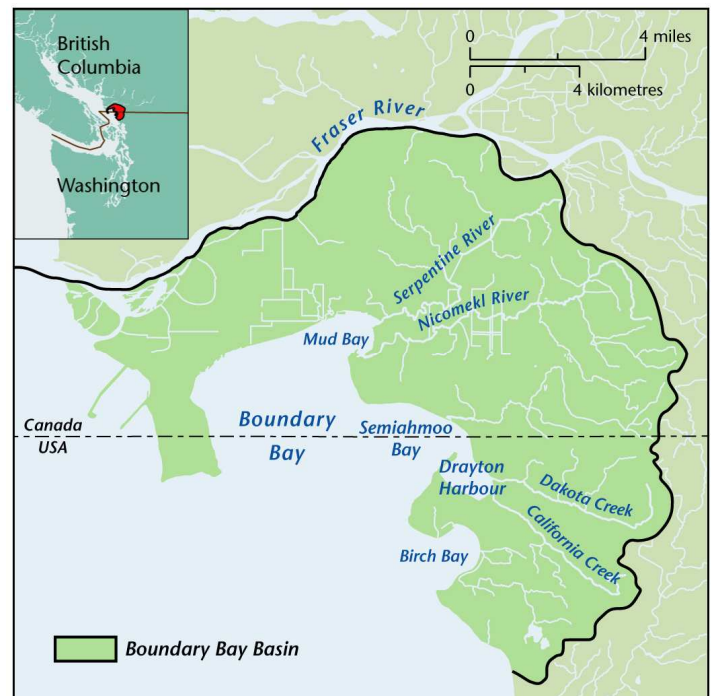
Access to federal-level actors is a benefit reported by many local stakeholders working in bi-national watersheds. This is particularly true for the local stakeholders in the Shared Waters Alliance – a multi-stakeholder group in B.C. and Washington – which mobilized around the issue of water pollution and subsequent shellfish contamination, in Boundary Bay.

**Shared Water Alliance – Boundary Bay.** The aptly named Boundary Bay is a small body of water straddling the 49<sup>th</sup> parallel at the western edge of the North American continent (Figure 2). At one time the Bay was one of the most productive shellfish harvesting locations in the western Pacific. However, degraded upland environments and excess *fecal coliform* contamination resulted in closure of the area to shellfish harvesting in 1962. In Washington, the Bay was recently opened for restricted use, but it remains closed in B.C.

Identification of contamination sources was hindered by obstacles such as the transboundary nature of the Bay, the divided managing authority, and political fragmentation. In order to address the Bay's problems, a multi-agency group known as the Shared Waters Alliance (SWA) mobilized in 1999. Initially, the SWA consisted of just a handful of actors interested in addressing the shellfish issue.<sup>7</sup> One of their first projects was a circulation study investigating the sources of pollution, which revealed that increased population pressure, agricultural runoff, and a faulty sewage system were all involved. As word spread about the on-the-ground efforts to deal with pollution inputs in the Bay, the SWA grew to include First Nations representatives and local stakeholder and environmental organizations from both British Columbia and Washington. The focus of the group also broadened to reflect wider issues such as storm water runoff and community outreach. Today, the group is a multi-stakeholder organization working towards the general health of the Boundary Bay ecosystem. Representatives include federal, provincial, state, local, NGO, public and private stakeholders from both Canada and the U.S. The local groups range from shellfish harvesters interested in preserving the social, political, and economic integrity of harvesting to naturalists interested in improving the general health of a degraded ecosystem. The SWA holds bi-monthly meetings, which facilitate information exchange and coordination of stewardship and educational activities. As one member notes, "The experiences of the SWA reflect how a multi-jurisdictional watershed with numerous non-point sources of pollution can be managed through a coordinated effort among different stakeholders."<sup>8</sup>

The SWA attracts local participation because of a shared desire to remediate poor water quality issues in Boundary Bay. The opportunity for dialogue with other people actively involved in this issue – at various levels of governance – draws a diverse range of representatives to the roundtable forum. The local actors bring on-the-ground experience and enthusiasm into the multi-agency group. As one of the governmental participants notes, "I wish we could be more like the local environmental groups – passionate and dedicated – but so often we get bogged down in bureaucracy." The inclusion of local groups in discussions gives the agencies direct access to community concerns and provides a virtual "sounding board" for goals, priorities, and action plans drafted by the agencies. In turn, the opportunity for reflexive decision-making benefits the local stakeholders, as they can design their programs in concert with wider efforts. For example, knowing what funding opportunities may be in the pipeline can help the local groups position themselves to benefit from grants and program assistance that support the attainment of agency goals, but also meet local needs.

**Figure 2. Map of Boundary Bay**



The presence of local stakeholders in a multi-jurisdictional, multi-level governance forum provides another benefit, in that the locals can assume the role of inter-agency connectors (or "switchboard operators," as described by one SWA member). The positioning of local stakeholders outside of bureaucratic frameworks often allows those stakeholders to navigate more freely between agencies. In the SWA, one local player who had previously undertaken cooperative projects with many of the agencies knew the relative strengths, interests, and capacities of individuals (and organizations) working within the Boundary Bay region. With this knowledge, that person was able to connect individuals with specific projects. Orchestration of the logistical fabric of the SWA – such as who will take notes, who can provide meeting venues, and who will chair the meetings – is another task enthusiastically tackled by local players. The initiative, local knowledge, and passion for the issues demonstrated by local stakeholders continue to play a critical role in maintaining the SWA's momentum.

A tangible example of the local contribution is a habitat mapping project which ultimately resulted in the production of the *Boundary Bay Habitat Atlas*. Multi-level connections served to bring volunteers together – both in B.C. and Washington – who mapped the shoreline using GPS devices and then entered the information into digital databases. Local players implemented the mapping project by using personal contacts and a community outreach campaign to assemble a large binational volunteer cohort. In the end, the project was completed by drawing on funding and expertise from various institutions – both governmental and non-governmental – in both Canada and the U.S.

**Obstacles to local effectiveness.** The preceding discussion has emphasized positive aspects of the involvement of local stakeholders, but there also are associated drawbacks and obstacles. While local players may wish to exhibit flexibility,



access to funding can limit flexibility.<sup>9</sup> Donor dollars tend to hinder flexibility, as federal funds are often restricted to projects within the respective nation. Even local NGO fundraising efforts tend to have a national bias, as donors are often reticent to fund projects outside of their immediate political jurisdiction.<sup>10</sup> Furthermore, capturing donor dollars has become increasingly difficult post-9/11 as security and economic integration projects largely overshadow transboundary environmental governance activities. The recent closure of NAFTA's Commission for Environmental Cooperation, one of the main granting agencies for local, bi-national projects, exemplifies this trend.

Finally, the increased presence of local stakeholders in transboundary environmental governance is not equated in all cases with an increase in institutional capacity. The efficiency of a local group is still largely dependent upon the skills of individual participants and upon the group's leadership.

**Conclusion.** The increased presence of local stakeholders in transboundary environmental governance activities is a positive trend that should be supported through public policy. The involvement of such stakeholders provides many benefits:

- Focus and passion. Locals are able to focus on single issues – such as the preservation of a specific species or geographic region – while governmental actors often have multiple (and sometimes conflicting) charges. By focusing their energies on specific (and tangible) goals, locals serve to ground an effort in a way that governmental actors cannot.
- Flexibility. Locals are often less bound to bureaucratic processes than their governmental counterparts, and locals have more control over their organizational mandates and areas of concentration.
- Local knowledge. An agency official typically has responsibility for a large region and may therefore be unable to delve into the particulars of a specific watershed. Locals can bring detailed history and knowledge to the table.
- Vertical exchange of information. Information sharing allows for diverse perspectives to be considered in policy making processes. Thus, vertical integration is a crucial component in multi-governance processes, particularly at bi-national scale, where sub-national representation is less common.
- Sustained binational relationships. Fostering and maintaining binational relationships at a sub-national, watershed level is an investment in proactive coordination, rather than reactive dispute resolution.

The effectiveness of local stakeholders is varied and may change over time, depending upon the abilities of leaders and individuals. Additionally, the regulations associated with funding sources can hamper the flexibility of locals. The capacity of local groups could be greatly enhanced through relatively small increases in institutional support. In particular, providing more flexibility in grant spending by allowing donor dollars to first stretch across international borders would be a significant first step in increasing local transboundary capacity.

The SWA and the IJC Watershed Boards are excellent examples of the benefits of relationship building and inclusive governance. Both the SWA and the Watershed Boards exemplify how local groups participating in transboundary govern-

ance can foster multi-jurisdictional relationships and networks. These networks are critical in working towards the resolution of long-term environmental issues such as generally degraded watersheds. These pre-established relationships are particularly vital in times of crisis, when quick decision making is required. In short, policy measures to support local participation in groups such as the SWA and the IJC's Watershed Boards will continue to have positive impacts for the wider border region.

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\* Emma Spenner Norman is a doctoral candidate in the department of geography at the University of British Columbia. Karen Bakker, Ph.D., is an associate professor in the department of geography at the University of British Columbia.

### Endnotes.

1. Table from Norman, E. and K. Bakker, 2005. *Drivers and Barriers of Cooperation in Transboundary Water Governance: A Case Study of Western Canada and the United States*. Report available at: [http://www.gordonfn.org/resfiles/UBC\\_TransboundaryWater.pdf](http://www.gordonfn.org/resfiles/UBC_TransboundaryWater.pdf)
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