

May 3, 2002

Dear Fellow Sustainable Water Workers,

Enclosed is a package of materials from the meeting of the Provincial/International Subcommittee April 23<sup>rd</sup> meeting in Chicago. As you will notice from the Quebec City agenda the work of this subcommittee is the subject of a lot of their deliberations, probably because they have more on paper.

I was the sole outside party at this meeting with the exception of George Kuper who dropped in briefly. His only contribution was to ask that tribes and first nations be brought into discussions soon. I was grilled for my opinions on their work so far. Since I had not seen anything before the meeting and our group had no discussion of these topics, I was less than forthcoming. I limited myself to the general principles that there should be public access to all stages of the process as well as transparency. I warned them that mechanisms for enforcement of agreements and decisions will be key to public acceptance. I have tried to get a sense of why they have focused only on non-binding models. According to Bill Carr, in conversations afterward, they have determined that binding international agreements would run afoul of both countries' constitutions and in my opinion are probably politically impossible.

They have spent considerable time looking at models for agreements between Provinces and have settled on administrative arrangements similar to ones that already exist for matters such as allowing workforces to move between provinces.

They have also examined various agreements between states and provinces. I provided them with background on a joint program between the New England States and eastern Maritime Provinces on mercury elimination from incinerators that has resulted in an agreement. George however, thought this was a bad precedent.

- . a dispute between Hungary and Slovakia over the Danube where the parties were ordered to negotiate,
- . Missouri verses Holland regarding economic considerations and the Migratory Bird Treaty, and
- . a U.S. Supreme Court decision regarding GATT applicability to efforts of Massachusetts to limit trade with Burma (I think for bad behavior on human rights or environmental practices)

We may want to gather these precedents and also the others she refers to in her written text so we can deepen our knowledge on the perils of international dispute resolution. Perhaps it is time we invited our own expert to advise us. I could ask Michelle Swenarchuk our international lawyer, who originally recommended the roster of lawyers Russ Van Herrick used to select his legal team.

The rest of the afternoon was given to the power point presentation by the IJC legal team. Jim Chandler (Ottawa) and Mike Vechsler (Washington) reviewing the history of dispute resolution as it has arisen from the Boundary Waters Treaty They also provided us with copies of three agreements the Columbia River, Rainey River and Lake of the Woods agreements (attachments 5,6 & 7). The essence of their presentation was their preference to continue to react to requests from the governments and not to expand the narrow interpretation of their mandate. They expressed concerns about limited resources. Of interest in their power point presentation is the information on recent disputes they have been part of that we may have not been aware of.

I'm not sure I have captured all of the meeting points because it was hard to be in the hot seat and take notes at the same time. I do think they have gone quite far down the path to accepting Professor O'Connell's advice and we should devote some time to the International realm in our upcoming phone calls. Bill Carr has said he would update me on how Quebec City goes. I certainly will not be accepting Maggie's kind invitation to spend another \$1,500.00 to be an observer. Chao comrades, Sarah