

**Sorting out the sequence and stages of the
diagram of proposed review process for projects requiring regional review
03/01/2003**

Rationale

It is important to understand the differences between the Canadian and American constitutional and jurisdictional division of powers in order to design a system that will be able to be consistent, uniform and implementable across the border and between states and between the provinces.

1. Federal Government Role

We have changed the previous diagram and have removed the seat at the table for the federal governments we previously had designated in the state/provincial decision-making circle. We have left provision for them to be consulted with others at this stage. We have done this because:

- there is no constitutional basis in Canada for water allocation decisions to be adjudicated in the Federal Courts. These powers are provincial. The exception to this is removals from the Great Lakes and other Basins as defined in the Boundary Waters Treaty. The new *Boundary Waters Treaty Act* regulations, passed by Canadian Parliament last month grants sole discretion to the Minister of International Trade and Foreign Affairs over any application over 50,000 liters,
- from a legal perspective, it is not advisable or necessary to repeat the Boundary Water Treaty Provisions within the Annex state/provincial binding legislation to avoid interpretative conflicts, and
- state/provincial annex legislation and implementation needs to stand alone and be independent from federal legislation

2. Applicant Rights

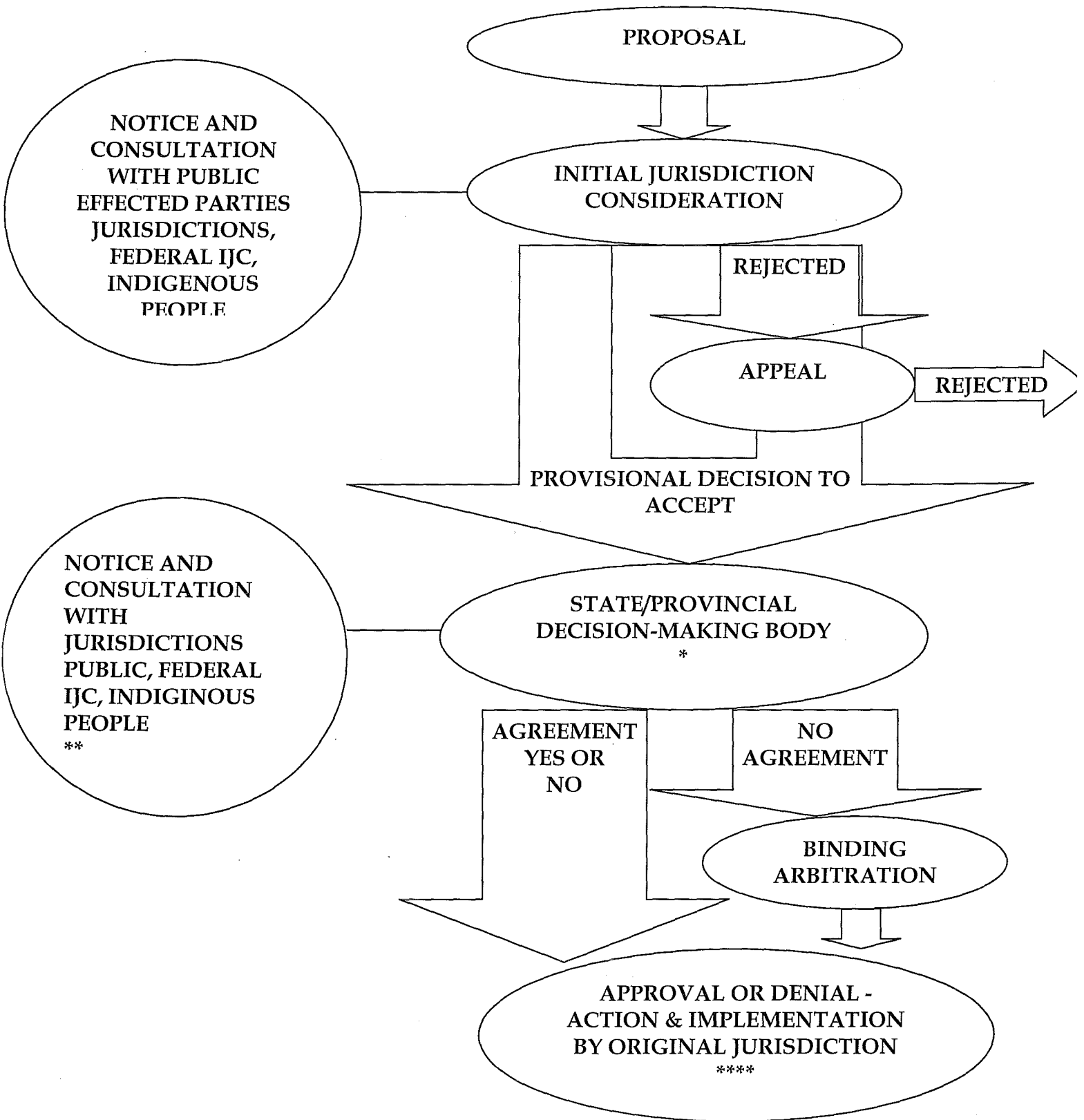
Applicant rights should be adjudicated in the jurisdictions of the state and provincial laws that set out their rights. Consequently, we have moved the Appeal procedure into the jurisdictional consideration section of the diagram. We should avoid bringing third parties into the annex contract that is only between states and provinces. It would be dangerous to grant a third party equal standing at this level. They would continue to be consulted along with others at this stage.

3. Dispute Resolution

We have moved dispute resolution to apply only to the parties of the annex. As you will see from the background materials from the May meeting that Reg will send out, The Inter-Provincial and International Committee has sent considerable time discussing a variety of dispute resolution mechanisms. They rejected binding arbitration because they think it will impinge on sovereignty.

However because it is so crucial within a legislative framework that is intended to be legally binding, we should continue to argue for it. However, if they choose another method of dispute resolution, the placement will not need to change.

**REVISED
DIAGRAM OF PROPOSED REVIEW PROCESS REQUIRING
REGIONAL REVIEW**



* NOT INCLUDING FEDERAL WHOSE RIGHTS

WATER TREATY

** NO SPECIAL STATUS FOR APPLICANT

*** MUST BE SET OUT IN EACH STATE/PROVINCIAL LEGISLATION

**** EXPRESS PROVISION IN LEGISLATION OF NO RIGHT OF APPEAL
IN A VERY STRONG CLAUSE