

### Environmental Law

The Boundary waters Treaty of 1909 and in particular the reciprocal obligations created by Article IV continued to play a prominent role in bilateral environmental discussions between the Governments of Canada and the United States over the past year. That article stipulates that 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".

This obligation has formed the basis for discussions between the two governments on the Garrison Diversion Unit, an irrigation scheme which would divert the waters of the Missouri River to irrigate one quarter million acres in North Dakota and direct return flows into the Souris and Red Rivers. On the basis of studies conducted in the United States and in Canada, the Canadian Government has concluded that if the project is completed according to present plans, it will have adverse effects on the Canadian portions of the Souris, Assiniboine and Red Rivers and on Lake Winnipeg which would cause injury to health and property in Canada in contravention of Article IV of the Boundary Waters Treaty.

The United States Government has formally confirmed its obligations under Article IV of the treaty, and has informed the Canadian Government that this obligation will be honoured. The discussions between officials of the two governments had been directed toward ensuring that transboundary pollution resulting in a breach of the treaty does not occur and resulted in the preparation of a reference to the International Joint Commission (IJC) under Article IX of the Boundary Waters Treaty.

In October 1975, the Canadian Government formally requested the IJC to prepare a report on the potential effects of the Garrison Diversion Project on Canadian portions of transboundary waterways in order "to assist both the Governments of Canada and the United States in ensuring the provisions of Article IV of the Boundary Waters Treaty are honoured".

The Commission was requested to investigate the following matters:

- a) the present state of water quality in the Souris and Red Rivers, the tributaries and other downstream waters with particular reference to the Canadian portions thereof, which may be affected by the proposed completion and operation of the Garrison Diversion Unit;