

ENVIRONMENTAL LAW

The reciprocal obligations of Canada and the United States under Article IV of the Boundary Waters Treaty of 1909 continued to play a prominent role in bilateral environmental discussions between the two governments over the past year. Under that article, the two countries agreed 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 obligation 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 have been directed toward ensuring that transboundary pollution resulting in a breach of the Treaty does not occur, and have resulted in the preparation of a reference to the International Joint Commission under Article IX of the Boundary Waters Treaty.

The Commission will be requested to examine into the transboundary implications of the Garrison project and to make recommendations as to such measures, including modifications, alterations or adjustments to the Garrison Diversion Unit, ensuring that the provisions of Article IV are honoured. The recommendations of the Commission in response to a reference under Article IX of the Treaty are not binding, and under the terms of that Article shall in no way have the character of an arbitral award. The text of a reference has been drafted by officials of the two Governments and has been approved by the Government of the United States. It is currently under consideration at the political level in the Government of Canada.