

The Columbia River Treaty and Local Interests: A Shared Responsibility



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Executive Summary

Purpose and Methodology

In this document we ask: **How might local governments/local interests in the BC Columbia Basin best be involved in discussions and possible negotiations related to the Columbia River Treaty (CRT)?**

We reviewed potential case studies (Appendix A) and selected seven case studies (Appendices B) to assess those that appear to involve local interests in the negotiation and/or implementation of an (international) agreement.

We sought case studies that:

1. were international in geographic scope;
2. incorporated local interests in the negotiation and/or implementation;
3. dealt with trans-boundary / international watercourses or trans-boundary resources tied to freshwater resources (i.e. Pacific Salmon Treaty).

Observations

There is no formal legal obligation for the federal Canadian government to incorporate local interests¹ into the negotiation/implementation of international agreements. However, there are no formal legal impediments to including local interests/local governments in the negotiation/implementation of international agreements and there are compelling moral, political² and pragmatic reasons to argue for their inclusion.

According to international law each individual nation state has the discretion to decide whether, and to what extent, to incorporate local interests in international treaty negotiations and there is arguably an increasing trend towards involving local interests. In addition to this growing international practice that seeks participation and input from local communities and affected populations in international agreements, there are convincing pragmatic and policy reasons to include local interests in the negotiation and/or implementation of international agreements. In the Columbia River Basin the British Columbia government has also made various political and ethical commitments to engage all residents of the Columbia Basin in such matters, including through the Columbia Basin Trust Act.³

The case studies provide various informative examples of how local interests in the international Columbia River Basin might be involved in the negotiation and/or

implementation of the CRT. These range from having a seat in the room next to the negotiating table (e.g. PST initially) to having observer status (e.g. Great Lakes Binational Executive Committee), or more commonly, to serving in a formal advisory capacity (e.g. IJC case studies). Local interests are seen acting in key advisory roles in most of the case studies examined in negotiation. Local interests also had formal implementation roles in all but one of the case studies examined. Generally local interests seem to be providing advice to government decision makers and managers, acting to monitor management regimes and water resources and coordinating public input.

Some of the strengths of including local interests, lie in the ability of local interests/local governments to build consensus and legitimacy regarding an agreement, as well as their ability to provide on-the-ground monitoring, implementation and knowledge.

Involving local interests in future governance of the Columbia River Basin or possible future negotiations of CRT amendments could help redress some of the alienation felt by Basin residents and local interests after being excluded from involvement in the current CRT.

Different groups already provide various opportunities for local interests to be engaged to some degree within the Columbia River Basin, including the Columbia Basin Trust (CBT), the Columbia River Treaty Local Governments' Committee and the CBRAC.

The case studies suggest that not only can local interests be involved in both the negotiation and implementation of international agreements like the CRT through various mechanisms, but also that there are compelling and real benefits and opportunities that international agreements and state parties can derive from the engagement of local interests, from early in negotiations and continuing on into implementation.

Summary of Observations:

The following observations regarding local interest involvement derive from the lessons learned from the case studies analyzed in this document:

Negotiations:

1. Local interests have been engaged in **advisory roles, education, outreach and consultations**, thereby informing the negotiations of nation states.
2. Participation of local interests in negotiating international agreements takes **diverse forms and includes varying degrees of formality, often coordinating through existing bodies**.
3. Processes involving public consultations, especially those led by public advisory boards or groups, **incorporate many and diverse local interests**. However, in some cases local interest engagement appears to have eventually been curtailed to simplify the negotiation challenge.

Implementation/Operations:

1. The majority of local interest involvement in the implementation of international agreements appears to be in the form of **advisory roles to government decision makers** and managers on such topics as: monitoring, implementing agreements and plans, assisting in preventing and resolving disputes, identifying options for sharing water, outreach and engagement, and research.
2. Local interests have been represented on **Boards or Committees, often along with other levels of decision makers in what could be termed “nested governance,”**⁴ allowing for coordination and flow of information across various levels of governance and among experts. In one case study, observer status is granted to various local interests.
3. **A range of local interests are represented** in the implementation of the case studies examined.⁵ **The representation of local interests does vary from case study to case study** – sometimes including local governments; environmental and other non-governmental organizations; commercial fishing and shipping; recreational boating and fishing; and farming, agriculture and irrigation interests. Through the involvement of local interest coalitions and the public education and outreach functions of various bodies we see **increasingly broad engagement of local interests.**

Project Description

Background

Discussions at the February 2016 LGC strategy session highlighted the critical need for BC local governments to reciprocally collaborate with senior governments at key stages of the negotiation process including to fully understand and provide input about trade-offs that are being considered. The two important things that the LGC can do are to help write the government's negotiation mandate and to be represented in an ongoing/meaningful role in all subsequent matters involving the mandate.

Advisors Richard Paisley (UBC), Nigel Bankes (University of Calgary) and Jim Mattison (retired BC Water Comptroller) recommended that the Columbia River Treaty Local Governments Committee (LGC) commission a background paper on the involvement of local governments and non-state interests in international water resource treaties and agreements.

The paper [] would include recommendations, objectives, principles and appropriate collaboration models based on this research.

The project will strengthen the capacity of the LGC in assisting local governments and international Columbia Basin residents to engage in decisions around the future of the CRT. The paper will also identify relevant lessons learned from other water management processes which the Committee can use to effectively collaborate with the BC and Canadian governments about the future management of the Columbia River.

Agreed upon Outcomes:

- Brief summary of lessons learned from a review of selected transboundary water, and related, management processes, highlighting findings that are most relevant to the role of BC local governments in possible future Columbia River Treaty negotiations and transboundary management of the international Columbia River Basin.
- A reference document of research findings in note form
- Summary specifically designed and customized for local government use.

Introduction

The Columbia River Basin covers an area roughly equal to 70% of the size of British Columbia.⁶ Only 15% of the Basin is in Canada but, reportedly, 25% of the water currently comes from Canada, primarily snowmelt from the mountains.⁷ This makes the dams in British Columbia extremely important both for flood control and for regulation for power generation in both Canada and the United States. The Columbia River Basin is also home to many diverse local interests,⁸ whose voices have not always been heard in the negotiation or implementation of the current CRT.

In this document we ask: **How might local governments/local interests in the BC Columbia Basin best be involved in discussions and possible negotiations related to the Columbia River Treaty?**

We reviewed potential case studies (Appendix A) and selected seven case studies (Appendix B) to assess those that appear to involve local interests in the negotiation and/or implementation of an (international) agreement. We have mainly confined our examination to agreements similar to the CRT, meaning much of our focus is on agreements between the United States of America and Canada, although we have also looked at a few examples from federal jurisdictions outside these two States.

Section 1.0: briefly describes the CRT and the background of local interests' involvement in the CRT.

Section 2.0: provides a summary of international law considered to be relevant to local interests' participation in future negotiations of the CRT and outlines growing state practice regarding public participation in international agreements.

Section 3.0: describes the role of local interests outlining the key interests of residents in the Canadian Columbia Basin. We then analyze the involvement of local interests in the negotiation and implementation of agreements embodied in our selected case studies, providing various lessons learned. In this section we also provide key pragmatic and policy reasons for including local interests' participation in international agreements such as the CRT.

Section 4.0: provides some brief concluding remarks regarding the engagement of local interests in future negotiations and/or implementation of the CRT.

Section 5.0: lists appendices (contained in separate documents), containing 'snap shots' of the various case studies in note form, and an accompanying table of the case studies considered. There is also an annotated and hyperlinked list of sources for this document, which we hope can be of help for further research.

Due to the constraint of space, and the objectives of this document, the focus is on the involvement of Canadian local interests.

Section 1.0: The Columbia River Treaty

The Columbia River arises in the Rocky Mountains of British Columbia and flows 2,000 kilometers (1,243 miles) to the Pacific Ocean. The Columbia passes through British Columbia, Canada and portions of seven U.S. states: Washington, Oregon, Idaho, Montana, Nevada, Utah and Wyoming.⁹

The Columbia River Treaty (CRT)¹⁰ between Canada and the United States (the parties) was concluded in 1961 and entered into force in 1964. The CRT addresses the cooperative management of the Columbia River with regard to power, flood control and sharing the associated benefits between the parties. Over time various mutually beneficial agreements have also been reached to refine the implementation of the CRT.¹¹ Effective September 2014 either Canada or the United States has had the ability to unilaterally terminate portions of the CRT with at least ten years notice, otherwise the CRT continues indefinitely. The CRT may also be terminated at any time by mutual consent of the Parties. Absent a new agreement to the contrary the flood control provisions in the CRT change automatically in 2024.¹²

Although the CRT addressed flood control and power values, it purposefully did not directly accommodate other values, such as fish and related ecological values. Local fish and wildlife populations were significantly impacted by the inundation of the rivers and lakes systems. The Canadian dams also flooded large areas in Canada and had substantial impacts on the basin as a whole.¹³ For example, altering ecosystems, affecting local fish and wildlife, degradation of local economies, loss of productive agricultural and forest lands, and flooding of First Nations cultural sites. In addition the Canadian dams required the displacement of approximately 2,300 people and the inundation of more than a dozen communities.¹⁴

The province of British Columbia was substantively involved in the negotiations of the original CRT.¹⁵ However, local interests, including local governments and various Indigenous groups were not involved in the development and negotiation of the CRT in “any significant way”.¹⁶ Many of these communities have since felt marginalized and there has long been a strong call for greater participation in the management of the river by local communities.

The implementation of the current CRT possesses a reasonable degree of flexibility between the U.S. and Canada and suggests a realistic ability to alter implementation under the existing framework to achieve various benefits for both Canada and the United States.¹⁷

Recently both [B.C.](#)¹⁸ and the United States¹⁹ have conducted separate formal reviews on the future of the CRT²⁰ and released recommendations regarding the future of the CRT to their respective constituencies.

In Canada, the province of British Columbia and the Columbia River Treaty Local Governments’ Committee helped to facilitate the regional review.²¹ A series of public

consultation events and mechanisms²² were convened which helped inform decisions.²³ These public consultations helped the Columbia River Treaty Local Governments' Committee produce a set of recommendations in December 2013 based on interests and issues identified by local basin residents.²⁴

Released in March 2014, the British Columbia's decision document listed 14 principles that British Columbia says should guide any changes, or improvements, to the CRT. These principles include adaptation to climate change and continued engagement with First Nations and communities. Both the reviews by the U.S. Entity and the Province of British Columbia "reveal common ground on the need for flexibility in future arrangements and implementation."²⁵

There are a variety of groups providing assistance for local interests within the Columbia River Basin including the Columbia Basin Trust, the Columbia River Treaty Local Governments' Committee and the Columbia Basin Regional Advisory Committee (CBRAC). "Continuing with the open engagement that took place during the Columbia River Treaty Review process, the Province, the Columbia River Treaty Local Governments' Committee, and BC Hydro initiated [CBRAC], a diverse Basin-wide group representing a broad range of perspectives, interests and geography, which help inform hydroelectric operations in the Columbia Basin and potential future improvements to the Columbia River Treaty."²⁶

Section 2.0: International Legal Perspective

Public international law, in general, of which the CRT is but one example, focuses on "nation-states". The CRT is an international treaty between the federal governments of Canada and the U.S. governed by international law rather than the domestic law of either the U.S. or Canada.

The Vienna Convention on the Law of Treaties (VCLT)²⁷ entered into force January 27, 1980. Canada is a party to the VCLT, and although the United States is not, numerous decisions of the International Court of Justice and other tribunals confirm that much of the content of the VCLT is merely a codification of customary international law and therefore binding on all nation states.²⁸

Pursuant to the VCLT an international treaty must be:²⁹

1. a written agreement;
2. the agreement must be between nation-states; and
3. the parties to the agreement must intend that the agreement is to be governed by international law.

Despite the historical focus of public international law on nation-states, there has recently been a growing international practice towards the inclusion or 'participation' of local and non-state interests in the formulation and implementation of transboundary resource and environmental management plans.³⁰

Power to Make Treaties

In Canada, the conclusion of international agreements is the constitutional responsibility of the federal government. However, "Canada has largely deferred to British Columbia in matters related to the Columbia River Treaty. This deference is rooted in the constitutional division of legislative powers and property."³¹

There are two intergovernmental agreements between British Columbia and the Canadian federal government,³² of July 8, 1963 and January 13, 1964 regarding the CRT.³³ Strictly as a matter of Canadian constitutional law local governments have no particular role in negotiations. British Columbia has made a political and ethical commitment to engage residents of the Columbia River Basin³⁴ in CRT matters through the creation of the Columbia Basin Trust.³⁵ More specifically, the Preamble to the Columbia Basin Trust Act states:

WHEREAS the desires of the people of the Columbia Basin were not adequately considered in the original negotiations of the Columbia River Treaty;

AND WHEREAS the government desires to include the people of the Columbia Basin in decisions that affect their lives and determine their future;

AND WHEREAS the government intends to work with the people of the Columbia Basin to ensure that benefits derived from the Columbia River Treaty help to create a prosperous economy with a healthy, renewed natural environment...”³⁶

The CRT, the 1964 Protocol clarifying the CRT, and the inter-governmental agreements between the government of Canada and the province of B.C. appear to be silent on the role of local interests. However, there is no international legal reason prohibiting the federal government of Canada from exercising their discretion and including local interests in treaty re-negotiation and/or implementation. As discussed in more detail in the next section, various case studies show the involvement of local interests, in the negotiation and/or implementation of international agreements such as the CRT, can occur in a variety of forms, including through advisory committees or public consultation process. Specific examples include developing the most recent Great Lakes Levels Orders plans case study. Informal arrangements or channels can also produce practical on-the-ground results, as shown in the negotiations of the Pacific Salmon Treaty case study and the *ad hoc* solutions in the St. Mary and Milk Rivers case study.

Section 3.0: Role of Local Interests

The Canadian portion of the international Columbia River Basin is large and contains diverse local interests.

The key interests of Canadian residents of the Columbia River Basin identified in the 2013 recommendations of the CRT Local Governments' Committee include:³⁷

1. local governments directly involved in international discussions;
2. continued engagement with Basin residents;
3. assess benefits and impacts;
4. reduce negative impacts to the Basin;
5. share benefits equitably;
6. expand the focus of the CRT to include ecosystems and other interests;
7. seek new flood risk management approach;
8. ensure Canadian input to Libby Dam operations;
9. continued reliable power generation;
10. continue treaty rights to water use in BC;
11. integrate climate change; and
12. pursue salmon restoration.

Case Studies

This section describes a number of international case studies that were chosen and critically reviewed for this paper. Further information on the case studies are in the appendices to this document.

In selecting case studies, an attempt has been made to keep the focus on international agreements where local interests appear to have played a role in the negotiation/implementation of, ideally, international water management agreements. More specifically, case studies have been selected in order to try to answer the question: how might local governments and interests in the BC Columbia Basin best be involved in discussions and negotiations related to the CRT?

We sought case studies that:

1. were international in geographic scope;
2. incorporated local interests in the negotiation and/or implementation;
3. dealt with trans-boundary / international watercourses or trans-boundary resources tied to freshwater resources (i.e. Pacific Salmon Treaty).

In selecting our case studies we were mindful of the previously articulated “key interests of the Canadian Basin Residents.”³⁸

Table 1: Summary of Case Studies

Table 1 below summarizes the seven most relevant case studies selected from a scan of twenty-six potential case studies.

Case study	Description	Local Interest Involvement	
		Negotiation	Implementation
Souris River Basin - Canada/ US	Water supply and flood control under the 1989 Treaty administered by the IJC	No apparent formal joint decision making role in the negotiation of the final agreement. Public consultation before reconstituting the Board in 2006.	Representation on the International Souris River Board which advises the IJC by monitoring water apportionment, helping implement the water quality monitoring program and assisting in preventing and resolving disputes.
Milk and St. Mary Rivers – Canada/ US	1921 Boundary Waters Treaty Order regarding water apportionment administered by the IJC	No apparent formal joint decision making role in the negotiation of the final agreement. The 1921 order provides for joint officers. Public process/hearings on 1921 order. IJC established St. Mary / Milk Rivers Administrative Measures Task Force with public input for 2003 review.	Representation on the Montana-Alberta Water Management Initiative (WMI) which will provide recommendations to both governments on preferred options for sharing water. The WMI on the St. Mary and Milk Rivers has so far been inconclusive.
Great Lakes Levels Orders – Canada/ US	IJC order to regulate lake levels on transboundary Great Lakes-St. Lawrence River	No apparent formal joint decision making role in the negotiation of the final agreement. IJC appointed Public Interest Advisory Groups to assist scientific and policy Study Boards by providing advice and assisting in development of extensive public consultation on lake level options.	No representation on the Lake Superior Board of Control which sets outflows and oversees operation of controls under Plan 2012. NGO representation on the International Lake Ontario – St. Lawrence River Board responsible for implementing Plan 2014, including adaptive management plans, promoting outreach and engagement with the public and industry.

Case study	Description	Local Interest Involvement	
		Negotiation	Implementation
Great Lakes Water Quality - Canada-US	IJC agreements between Canada/US since 1972 to restore and maintain water quality in the Great Lakes and St. Lawrence River	No apparent formal joint decision making role in the negotiation of the final agreement. IJC established a binational advisory committee, working groups and review committees and conducted extensive public consultation before the agreement was renegotiated in 2012.	Representation on the Great Lakes Water Quality Board which advises the IJC on the implementation of agreements. Representation, including as observers on the Great Lakes Binational Executive Committee which oversees bilateral activities under the Agreement.
Pacific Salmon Treaty	1985 Treaty establishing the Pacific Salmon Commission, a bilateral body that recommends to the U.S. and Canada the ocean salmon fishing levels in SE Alaska and BC	Initially First Nations and commercial fishing interests were directly involved. When this became cumbersome the negotiations were completed by state representatives, with informal communication with these local interests.	No local government representation. Commercial and recreational fishing and environmental interests represented on Pacific Salmon Commission, panels and committees.
Colorado River -US/ Mexico (Glen Canyon Dam Adaptive Management Plan	1922 Compact apportions water between states; 1944 Treaty allocates and governs water; Glen Canyon Dam Adaptive Management Plan guides adaptive reservoir management.	No apparent formal joint decision making role in the negotiation of the final Compact or Treaty. Public comment on the Plan.	Representation on the Adaptive Management Working Group (AMWG) which conducts long-term research and monitoring, facilitates stakeholder input, and advises on cultural impacts as the basis for recommendations for dam operations and management actions.
Murray Darling Basin, Australian States	Promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the basin	No apparent formal joint decision making role in the negotiation of the final agreement. Alliances of specific interests (e.g. irrigators) made submissions and lobbied during the development of the Basin Plan.	Representation on a) the Authority which develops and monitors the Basin Plan and conducts research, data exchange and education; b) the Basin Community Committee who are key local contacts to provide community perspectives to the Authority; and c) special advisory committees. Ongoing public education and consultation consistent with stated principles.

Negotiations

1. Role of Local Interests

Key Observations: Local interests have been engaged in advisory roles, education, outreach and consultations, thereby informing the negotiations of the nation states. There were no cases in which local interests/local governments appear to have had a formal joint decision making role in the final agreement. In the Pacific Salmon Treaty case local interests were arguably initially engaged directly in the negotiations. However, the negotiations were eventually completed by a small group of senior government representatives who communicated more informally with local interests.

The case studies surveyed show that the nation states, party to the relevant agreements, appeared to make all final decisions. However local interests appear to have served in an important advisory capacity. Through their involvement throughout these negotiation processes local interests appeared to help influence the discussions and ultimate suggestions that were put to the sovereign states. Many of these agreements or plans thus ultimately reiterate the importance of involving local interests and building innovative means of information sharing and engagement.

Local interests, in nearly all of the case studies considered, were also a catalyst for renegotiation, review and/or implementation of existing agreements.

2. Form of Local Interest Involvement

Key Observations: Participation of local interests in negotiating international agreements takes diverse forms and includes varying degrees of formality, often coordinated through existing bodies. For example, clear formal public input, consultation and comment occurred in the Great Lakes Levels Orders, Great Lakes Water Quality Agreement, St. Mary & Milk Rivers, Colorado River/Glen Canyon Dam Adaptive Management Plan. In the example of the Murray/Darling, interest groups made submissions and lobbied during the development of the Plan. Various IJC-led processes tended to include Task Forces, Study Boards and/or Advisory Groups/Committees to facilitate advice from local interests.³⁹ However this does not seem to have occurred in relation to the Souris Basin.

From the formal International Joint Committee (IJC) lead process of the 2012 Great Lakes Water Quality Agreement and Levels Orders, operating through and supplementing established structures and organizations, to the somewhat *ad hoc* approach taken during the later stages of negotiating the Pacific Salmon Treaty (PST),⁴⁰ “form” appears to largely follow “function” with regard to the involvement of local interests in the negotiation and/or implementation of international agreements. This argues for a degree of flexibility in regards to form.

Many of the negotiation processes explored appeared to illustrate historical ‘top-down’ approaches dominated by the federal government. However, the St. Mary and Milk

Rivers illustrate a bottom-up approach to reviewing existing 1921 Order. In 2009 Alberta and Montana established the [Water Management Initiative \(WMI\)](#), a joint initiative comprising local water users and government officials, in what could be termed “nested governance”, facilitating cooperation, communication and information exchange across diverse cross-sections of interests. The WMI is a good illustration of various provincial and state governments leading the process and involving local interests.

Most forms of local interest participation in negotiations analyzed in the case studies were coordinated through existing bodies. Many of the case studies involved the IJC and illustrate the ability to coordinate and organize a broad range of interests through a variety of mechanisms. The review of the St. Mary and Milk Rivers 1921 Order, the 2012 Great Lakes Water Quality Agreement (GLWQA) and the plans for the levels of Lake Superior and Lake Ontario were coordinated through the structure of the IJC and its various subsidiary boards and groups. To a somewhat lesser extent the PST negotiations were also structured around the existing Pacific Salmon Commission. Most commonly, local interests were engaged through public advisory boards or through formalized public outreach and consultation, formal broad public consultation being the most common, being coordinated through various established structures. Beginning in 1999 the Canadian negotiators involved in the PST negotiation pared down their negotiating group and engaged in ‘technical discussions’ in informal settings (sometimes over dinner) with various levels of negotiators from the U.S. side, at the same time they began a strong second track of diplomatic negotiations.⁴¹ The PST is an illustration that in some circumstance less formal channels can still lead to practical outcomes.

3.Scope and Scale of Local Interest Involvement

Key Observations: Processes involving public consultations, especially those led by public advisory boards or groups, incorporate many and diverse local interests. However, in some cases local interest engagement appears to have been curtailed to simplify the negotiation challenges.

The IJC-led processes in the 2010 Great Lakes Quality Agreement, The Great Lakes Levels Orders and the St. Mary and Milk Rivers, as with the non-IJC Colorado/Glen Canyon Dam Adaptive Management Plan, tended to involve broad cross-sections of local interests in public consultations. These consultations generally took place over long time periods and involved in-depth communication and reporting, showing evidence of significant input from local interests for case studies where this information was readily available to this research. Where public advisory boards were employed that involved local interests, there seemed to be a tendency to allow more opportunities for increased local interests/local governments involvement in the process.

At the outset of renegotiating the PST a broad cross-section of stakeholders and local interests was represented in the negotiating process. The delegations on both the Canadian and American sides would consist of 30-50 people each, making compromise nearly impossible.⁴² This process was deemed cumbersome⁴³ and the delegation on the Canadian side was pared down to three, with technical advisors.⁴⁴

The experience of the IJC in adopting [Plan 2014](#) on Lake Ontario-St. Lawrence River (after 14 years of scientific study and public engagement)⁴⁵ illustrates the reality that, at times, win-win solutions are not possible given the diversity of interests on transboundary watercourses. During the IJC held hearings and technical sessions, the plan received strong opposition from south shore communities and widespread support from other communities along the river, leading the IJC and the independent Public Interest Advisory Group from the International Lake Ontario – St. Lawrence River Study to come to the conclusion that “no plan could satisfy all interests.”⁴⁶

The PST and Lake Ontario–St. Lawrence River Plan illustrate the sometimes difficult nature of reconciling and streamlining all interests in a negotiation. Local interests may be able to make their inclusion by the parties to an agreement more attractive by coordinating, consolidating and managing interests under one (or a few) umbrella(s), articulating principles central to local interests. This is illustrated by the Public Interest Advisory Groups established to coordinate public outreach, consultation and to assist the Study Boards on both Lake Superior and Lake Ontario-St. Lawrence River in regard to the levels orders.

Local Public Interest Advisory Groups or coordinating bodies, examined in the case studies, draw from various local interests and government. The Lake Superior Public Interest Advisory Group was comprised of [20 members](#) appointed by the IJC from diverse interests throughout the upper Great Lakes, and helped to engage and inform the public, holding more than 60 public meetings.⁴⁷ The Lake Ontario-St. Lawrence River [Public Interest Advisory Group](#),⁴⁸ included members from local power authority, recreational boating interests, First Nations/Tribes, environmental/conservation non-governmental organizations, local governments and commercial shipping interests. In regard to the GLWQA, the IJC conducted extensive public consultations in partnership with local governments across the basin including through the Great Lakes and St. Lawrence Cities Initiative⁴⁹ and created a 22 member advisory committee of key U.S. and Canadian leaders from various local government and non-governmental interests.⁵⁰ On the St. Mary and Milk Rivers, the WMI was composed of 14 members from diverse local interests and government.

Broad public consultation processes that were employed in many of the case studies took years, included numerous public meetings and hearings, received submissions from large numbers of the public (the GLWQA had a total of 4,133 participants⁵¹). In the case of the St. Mary and Milk Rivers, public meetings were advertised on local media, and in some case studies online submissions were taken. Usually the smaller Public Interest Advisory Groups, or other similar groups that had members representing local interests, were charged with coordinating these public consultations. The Environmental Impact Statement (EIS) conducted under the *Grand Canyon Protection Act of 1992*, in regard to the Glen Canyon Dam, required public comment and called for the establishment of the Glen Canyon Dam Adaptive Management Program (GCDAMP) “including an entity for consultation with basin interests which became the Adaptive Management Working Group (AMWG).”⁵²

Implementation/Operations

1. Role of Local Interests

Key Observations: The majority of local interest involvement in the implementation of international agreements appears to be in the form of an advisory role to government decision makers and managers on such topics as: monitoring, implementing agreements and plans, assisting in preventing and resolving disputes, options for sharing water, outreach and engagement, and research. With the exception of the IJC Lake Superior Board of Control, local interests provide advice to government decision makers and managers in all case studies examined. In the Murray/Darling Basin, local interests are included in the Authority, which has a role in preparing the Basin management plan for the area and reports to the Australian Government Minister for Agriculture.

Examples of involvement of local interests in advisory roles include the Great Lakes Water Quality Board and the Great Lakes Science Advisory board⁵³ in advising the IJC under the GLWQA and the role of local interests on the St. Mary and Milk Rivers under the 1921 Order.

The Colorado River Compact / Glen Canyon Dam Adaptive Management Program (GCDAMP) Adaptive Management Working Group (AMWG) is designed to provide advice and recommendations to the Secretary of the Interior on program framework, goals, actions, and monitoring, facilitate stakeholder input, and advise on impacts on cultural resources. Much of the function of the AMWG is related to monitoring and data collection, which local interests may be specially suited for and interested in.

Another example of an adaptive management body is the Great Lakes-St. Lawrence River Adaptive Management Committee. Although its membership is comprised only of federal and provincial government officials, the concept of adaptive management⁵⁴ may argue for greater involvement of local interests. [The Lake Ontario – St. Lawrence River Board](#) is responsible for implementing Plan 2014, including adaptive management plans, and its membership does include local interests.⁵⁵ Some Boards have very limited capacity, the Souris River Board, for example, is almost solely focused on monitoring and reporting to the IJC.⁵⁶

There are examples in the case studies of limited flexibility in regard to management of water resources while being constrained by existing priorities and frameworks protected under existing agreements. The St. Mary/Milk Rivers and the Great Lakes Levels Orders are examples of this sort of limited flexibility. Even within these limitations new interests can be incorporated, as in the Great Lakes Levels Orders, as they embody an example of bargaining for optimal utilization within a framework of protected interests still able to incorporate new interests where they do not conflict with protected ones. The limited flexibility shown in these examples illustrates how such arrangements can provide both stability and flexibility.⁵⁷

2. Form of Local Interest Involvement

Key Observations: Local interests are mainly represented on Boards or Committees, often along with other levels of decision makers in what could be termed “nested governance,”⁵⁸ allowing for coordination and flow of information across various levels of governance and among experts. In one case the form of involvement is via observer status.

The case studies provide excellent examples of implementation through various binational political bodies and advisory bodies (these advisory bodies were largely discussed in the previous section on negotiation).

The PST provides a somewhat unique structure: a 16-person body with four Commissioners and four alternates each from the US and Canada. The Commissioners also receive support and advice from various committees and panels, composed of six representatives from each country.⁵⁹ Canada and the US each have one vote on the commission, there must be collaboration between the respective country’s delegates to present a common stance.

The Murray-Darling provides an example of an implementation authority that has a diverse array of various advisory committees serving different functions, and layered levels of structures to provide coordination amongst the diverse state level stakeholders (and the public in some cases).

The division of various decision making and technical bodies into separate entities can be seen in the case studies, such as the GLWQA, The Murray-Darling, The Great Lakes Levels Orders and the PST. Nigel Bankes and Barbara Cosens argue that by the separation of political and technical bodies in decision making, and the included use of advisory bodies and public participation, the legitimacy of decision making is increased.⁶⁰

The GLWQA and the PST are examples of standing, binational political bodies and of “nested governance” approaches, although degrees of “nested governance” seem to be present in many of the case studies. “Nested governance” is used to “describe a hierarchy in which coordination results from representation of lower levels of governance in decision making at higher levels.”⁶¹ A particular example is the GLWQA advisory bodies having representatives from national and subnational agencies and governments; another example is [The Lake Ontario – St. Lawrence River Board](#). Nested governance “has the potential to improve coordination and flow of information among various levels of governance.”⁶²

The [Great Lakes Binational Executive Committee](#) allows the Province of Quebec, the Great Lakes Commission, Great Lakes Fishery Commission, International Joint Commission and non-governmental organizations that have been granted [observer status](#) to be represented at Binational Executive Committee meetings.⁶³

3. Scope and scale of Local Interest Involvement

Key Observations: A range of local interests are represented in the implementation of the case studies examined, except the IJC Lake Superior Board of Control. The scope and scale of representation of local interests does vary from case study to case study. Through the involvement of local interest coalitions and the public education and outreach functions of various bodies we see increasingly broad engagement of local interests. Some of the local interests that are involved in implementation include Native American Tribes, First Nations, Métis, local governments, environmental organizations, non-governmental organizations, commercial fishing and shipping, recreational boating and fishing, farming and agriculture and irrigation interests.

Membership in the various bodies examined in the case studies shows involvement of diverse local interest and government officials, illustrating nested governance approaches. Membership in the AMWG⁶⁴ includes Native American Tribes located in the affected area, representatives of the Basin States, environmental organizations, relevant State and Federal agencies, and recreation and power interests.

The case studies illustrate some broad engagement of local interests in implementation, such as involving local interest coalitions, public education and outreach and the granting of observer status for various interests. For example the [membership](#) of the International Lake Ontario–St. Lawrence River Board’s Canadian delegation includes members of federal and provincial governments as well as power authorities, seaway management corporations and [Stratégies Saint-Laurent](#). The Souris River Board has membership from local municipal governments. Some bodies have provided public participation and outreach, such as the [The Lake Ontario – St. Lawrence River Board](#) or the Great Lakes Public Forum, held every three years, under Article 5 of the GLWQA. Through these outreach and education functions, as well as through Local Interest coalitions and constituent members of the public, the scope of local interests represented on these bodies can be expanded. By allowing observer status to local interests, such as in the [Great Lakes Binational Executive Committee](#), the scope of interests engaged by this body is greatly enhanced.

Pragmatic and Policy reasons to include local interests

The case studies above are helpful examples of the roles that local governments and local interests are taking in transboundary water management today. These case studies inform how similar roles might be designed for the CRT. In addition to whatever legal, moral and political reasons that arise to include local interests in the renegotiation and/or implementation of the CRT there are also compelling pragmatic and policy reasons⁶⁵ to involve local interests in the renegotiation and/or implementation of international agreements such as the CRT including.⁶⁶

1. Practical Local Experience: Formal participation by local interests in negotiating transboundary agreements may help to ensure that the goals established by the resulting

agreements are technologically, economically, and politically realistic. For example, since local interests regularly deal with water and related problems on-the-ground, they can contribute much of the information necessary to develop solutions for management problems. Local interests often possess a unique perspective and knowledge of trends in local systems based on their familiarity with the region.⁶⁷

2. Improve Substance of Agreement: The direct participation of local interests in the negotiation process is likely to improve the substance of resulting agreements because the process will have dealt openly with local interests and concerns. An open and honest exchange of views among participants will enable negotiators to focus on central issues and increase the number of issues negotiated.

3. Legitimacy: To the extent that participation in the negotiation of international agreements gives local interests a stake in their success, such participation is also likely to increase the legitimacy of the international legal regime. Put another way, the direct participation of local interests is likely to enhance the willingness⁶⁸ of local interests to comply with international agreements.

4. Implementation: Through formal participation, local interests are more likely to support any resulting norm(s). Also, because local interests are on-the-ground they are often in a very good position to assist in implementation. The cooperation of local interests in areas such as information gathering also contributes to effective monitoring and on the ground management, especially important in any adaptive/flexible management technique.

5. Create a Record: International agreements are likely to be more effective when they reflect the interests and concerns that local interests have raised through the negotiating process. Formal participation in that process will place local interests' positions "on the table" and "on the record" at an early stage, increasing the likelihood that the concerns of local interests will be incorporated into resulting norms.

Section 4.0: Concluding Thoughts

There is no formal legal obligation for the federal Canadian government to incorporate local interests⁶⁹ into the negotiation/implementation of international agreements. However, there are no formal legal impediments to including local interests/local governments in the negotiation/implementation of international agreements and there are compelling moral, political⁷⁰ and pragmatic reasons to argue for their inclusion.

According to international law each individual nation state has the discretion to decide whether, and to what extent, to incorporate local interests in international treaty negotiations and there is arguably an increasing trend towards involving local interests. In addition to this growing international practice that seeks participation and input from local communities and affected populations in international agreements, there are convincing pragmatic and policy reasons to include local interests in the negotiation and/or implementation of international agreements. In the Columbia River Basin the British Columbia government has also made various political and ethical commitments to engage all residents of the Columbia Basin in such matters, including through the Columbia Basin Trust Act.⁷¹

The case studies provide various informative examples of how local interests in the international Columbia River Basin might be involved in the negotiation and/or implementation of the CRT. These range from having a seat in the room next to the negotiating table (e.g. PST initially) to having observer status (e.g. Great Lakes Binational Executive Committee), or more commonly, to serving in a formal advisory capacity (e.g. IJC case studies). Local interests are seen acting in key advisory roles in most of the case studies examined in negotiation. Local interests also had formal implementation roles in all but one of the case studies examined. Generally local interests seem to be providing advice to government decision makers and managers, acting to monitor management regimes and water resources and coordinating public input.

Some of the strengths of including local interests, as outlined earlier, lie in the ability of local interests/local governments to build consensus and legitimacy regarding an agreement, as well as their ability to provide on-the-ground monitoring, implementation and knowledge.

Local interests can help build legitimacy in implementation of agreements and facilitate information dissemination and communication through nested governance approaches as found in the case studies.

Flexibility and ability for agreements and management schemes to adapt are gaining in importance in water management. The B.C. and U.S. Entity Reviews articulated a desire to implement such measures in the future of the CRT. Such management can argue for the inclusion of local interests, as they are valuable on-the-ground resources in monitoring and managing a flexible and adaptive regime.

By emphasizing their presence on the ground, local interests could be invaluable in implementing and monitoring flexible governance even in situations, as in the case studies, where there are limits imposed by existing frameworks.

Involving local interests in future governance of the Columbia River Basin or possible future negotiations of CRT amendments could help redress some of the alienation felt by Basin residents and local interests after being excluded from involvement in the current CRT.

The case studies suggest that not only can local interests be involved in both the negotiation and implementation of international agreements like the CRT through various mechanisms, but also that there are compelling and real benefits and opportunities that international agreements and state parties can derive from the engagement of local interests, from early in negotiations and continuing on into implementation.

Summary, Objectives and Recommendations

Initial thoughts

The case studies, including the IJC case studies, show examples of how local interests can be included in the governance of transboundary watercourses. This is not to suggest greater IJC involvement in the Columbia River Basin and the CRT – it is only to explore models of local interest involvement in transboundary water processes.

Different groups already provide various opportunities for local interests to be engaged to some degree within the Columbia River Basin, including the Columbia Basin Trust (CBT), the Columbia River Treaty Local Governments' Committee and the CBRAC.

The CRT Local Governments' Committee was established in 2011 to 'assist Local Governments and Region residents to engage in decisions around the future of the CRT.'⁷² During 2011 the Committee participated with the CBT in a series of community meetings to inform Basin residents about the CRT and the potential for changes in the future. In 2012 and 2013 the Committee collaborated with the BC CRT Review Team in extensive community consultations throughout the Basin. The Committee also secured independent advice from technical and policy advisors. Late in 2013 the Committee submitted its recommendations to the provincial and federal governments. The Committee has continued provide advice to the Review Team and began to establish contacts with federal officials in 2016.

CBRAC was created by the Ministry of Energy and Mines, the CRT Local Governments' Committee and BC Hydro in 2014. The objective of CBRAC is to provide an advisory function for local interests on the CRT and regional hydro operations. CBRAC is structured in a "nested governance approach,"⁷³ its [membership](#)⁷⁴ includes local interests alongside representatives from higher levels of governance.⁷⁵ The CBRAC is also supposed to serve as a forum for public engagement and information exchange and education between the various interests, governments and corporations represented in its [membership](#). CBRAC members advise BC Hydro on regional hydro operations. BC Hydro is supposed to consider this advice as follows - "BC Hydro will take this advice

under consideration⁷⁶ when balancing multiple interests in operations planning and provide feedback on its ability to accommodate the advice in operations.”⁷⁷ Some case study examples may illustrate advisory roles and local interest engagement that is more incorporated into the governance of transboundary resources than CBRAC. However, a thorough examination of CBRAC was outside the scope of this document.

The case studies suggest that not only can local interests be involved in both the negotiation and implementation of international agreements like the CRT through various mechanisms but there are also compelling real benefits and opportunities that can be derived from the engagement of local interests, from early in negotiations and continuing on into implementation.

Summary of Observations:

The following observations regarding local interest involvement derive from the lessons learned from the case studies analyzed in this document:

Negotiations:

1. Local interests have been engaged in **advisory roles, education, outreach and consultations**, thereby informing the negotiations of nation states.
1. Participation of local interests in negotiating international agreements takes **diverse forms and includes varying degrees of formality, often coordinating through existing bodies**.
2. Processes involving public consultations, especially those led by public advisory boards or groups, **incorporate many and diverse local interests**. However, in some cases local interest engagement appears to have eventually been curtailed to simplify the negotiation challenge.

Implementation/Operations:

1. The majority of local interest involvement in the implementation of international agreements appears to be in the form of **advisory roles to government decision makers** and managers on such topics as: monitoring, implementing agreements and plans, assisting in preventing and resolving disputes, identifying options for sharing water, outreach and engagement, and research.
2. Local interests have been represented on **Boards or Committees, often along with other levels of decision makers in what could be termed “nested governance,”**⁷⁸ allowing for coordination and flow of information across various levels of governance and among experts. In one case study, observer status is granted to various local interests.

3. **A range of local interests are represented** in the implementation of the case studies examined, except the IJC Lake Superior Board of Control. **The representation of local interests does vary from case study to case study** – sometimes including local governments; environmental and other non-governmental organizations; commercial fishing and shipping; recreational boating and fishing; and farming, agriculture and irrigation interests. Through the involvement of local interest coalitions and the public education and outreach functions of various bodies we see **increasingly broad engagement of local interests**.

Objectives:

Based on the case study findings and the experience of the authors and reviewers, some key objectives that local interests could pursue include:

1. Representing a broad cross-section of local interests on formal bodies;
2. Coordinating and organizing the involvement of diverse local interests with government decision makers, to form concentrated points of contact for government bodies and decisions makers.
3. Articulating what Basin residents and local interests cannot live with or without, defining the minimum outcomes that need to be incorporated into the negotiation mandate to help conceptualize trade-offs between various interests;⁷⁹
4. Having a genuine voice in the creation of the government negotiation mandate through advisory bodies and consultation processes as well as an ongoing/meaningful role in all subsequent matters involving the mandate; and
5. Ensuring local interest involvement in advising, monitoring and implementing agreements.

Recommendations:

Some key recommendations that the CRT Local Governments' Committee could pursue include:

1. Managing expectations; based on the case studies, local interests may not yet have an obvious direct role in negotiating international agreements but their value as observers and in advisory functions can be a great asset to government decision makers;
2. Presenting the positive benefits of including local interests to government decision makers, such as the assistance that local interest involvement can have in building legitimacy, improving the substance of resulting agreements, aiding

implementation, building local support and providing local knowledge/information and monitoring regarding the governance of the Columbia River Basin.

3. Undertaking early and continued engagement and organization through existing bodies,⁸⁰ education, and outreach; working to coordinate a broad base of interests, maximizing benefits to government decision makers and informing the evolution of negotiation positions.
4. Developing strategic minimum outcome requirements for local interests with the goal of incorporating these into the negotiation mandate of the province or the position of the Canadian government and continuing to seek advisory roles during CRT related processes and negotiations.⁸¹
5. Encouraging the use of adaptive management as a logical inroad for including local interests. Adaptive management is an excellent tool when faced with uncertainty. It requires monitoring to improve knowledge and a commitment to make changes determined by increased knowledge. Local interests could play a key role in planning and monitoring under such a management regime. Adaptive management could also help in responding to changing and emerging local interests.

Further Inquiry:

There remain many areas for future study on the involvement of local interests in the international Columbia River Basin, including:

- An analysis of existing local interest coalition groups elsewhere, such as the Great Lakes – St. Lawrence River Water Resource Regional Body, and their functions regarding international transboundary water agreements;
- An analysis of the successes and failures of the models of local interest involvement in the case studies examined here; and
- An analysis of the role of local interests and adaptive management that could be applied to the future governance of the Columbia River Basin.

ENDNOTES

¹ For the purposes of this document the term ‘local interests’ can be identified with non-state actors under international law, but does not include First Nations, Métis, Tribes, Aboriginal peoples, Indigenous peoples, provincial governments or state governments. There may be formal legal obligations for the federal Canadian government to incorporate First Nations and various provincial governments into the negotiation/implementation of international agreements.

² Such as the commitment made by the B.C. provincial government when creating the CBT. Embodied in the Preamble to the [Columbia Basin Trust Act, RSBC 1996, c.53](#).
http://www.bclaws.ca/civix/document/id/complete/statreg/96053_01 , (accessed February 11, 2017).

³ e.g. Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012),
<http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/> , (accessed February 2, 2017), p.29, 55.

⁴ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p. 19, 75.

⁵ Except the IJC Lake Superior Board of Control.

⁶ International Water Governance: Columbia River Case Study,
https://www.unece.org/fileadmin/DAM/env/documents/2014/WAT/05May_22-23_Geneva/case_studies/4.4.R.Paisley_ColumbiaRiver_case_study.pdf (accessed February 6, 2017), p.1; The Columbia River Basin watershed covers 671,000 square kilometers (259,500 square miles) roughly the size of France. About 15% of the Basin lies in Canada and the remainder is in the United States. The U.S. portion of the basin includes the lands of fifteen tribal nations and the Canadian portion of the basin includes the lands of eleven First Nations residing within the basin and an additional six First Nation with interests in the Basin. Barbara Cosens, *The Columbia River Treaty: an Opportunity for Modernization of Basin Governance*, (Speech), 27 COLO. NAT. RESOURCES, ENERGY & ENVTL. L. REV. 27,
http://www.colorado.edu/law/sites/default/files/CNREELR-V27-II-Cosens%20Final_0.pdf, (accessed February 6, 2017).

⁷ Personal communication, James Mattison, February 15, 2017.

⁸ For the purposes of this document the term ‘local interests’ can be identified with non-state actors under international law, but does not include First Nations, Métis, Tribes, Aboriginal peoples, Indigenous peoples, provincial governments or state governments.

⁹ Barbara Cosens, *The Columbia River Treaty: an Opportunity for Modernization of Basin Governance* (Speech), 27 COLO. NAT. RESOURCES, ENERGY & ENVTL. L. REV. 27,
http://www.colorado.edu/law/sites/default/files/CNREELR-V27-II-Cosens%20Final_0.pdf (accessed February 6, 2017).

¹⁰ Treaty between Canada and the United States of America relating to the Cooperative Development of the Water Resources of the Columbia River Basin [“Columbia Treaty”], Jan. 17, 1961, 15 U.S.T. 1555, 542 U.N.T.S. 244, <http://crtlibrary.cbt.org/archive/files/8ead1170f227746e2531a241b4977495.pdf>.

¹¹ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.75-94.

¹² Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.iv-v.

¹³ International Water Governance: Columbia River Case Study, available at
https://www.unece.org/fileadmin/DAM/env/documents/2014/WAT/05May_22-23_Geneva/case_studies/4.4.R.Paisley_ColumbiaRiver_case_study.pdf (accessed February 6, 2017), p.17.

¹⁴ Government of British Columbia, Ministry of Energy, Mines and Natural Gas. “Review of the Range of Impacts and Benefits of the Columbia River Treaty”, 2012, George E. Penfold.
<https://engage.gov.bc.ca/app/uploads/sites/6/2012/07/A-Review-of-the-Range-of-Impacts-and-Benefits-of-the-Columbia-River-Treaty6.pdf>, (accessed February 15, 2017), p.vii.

¹⁵ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.iv-v.

¹⁶ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.iv; See also Government of British Columbia, Ministry of Energy, Mines and Natural Gas. “Review of the Range of Impacts and Benefits of the Columbia River Treaty”, 2012, George E. Penfold, <https://engage.gov.bc.ca/app/uploads/sites/6/2012/07/A-Review-of-the-Range-of-Impacts-and-Benefits-of-the-Columbia-River-Treaty6.pdf>, (accessed February 15, 2017), p.vii.

¹⁷ “[I]ncluding the 1964 Exchange of Notes that filled gaps in the implementation of the flood control provisions and in doing so made more specific agreements than were spelled out in the CRT. Similarly, the operating entities have used supplemental agreements to achieve benefits to both parties including those related to fisheries. This flexibility parallels the increasing use of unilateral Executive action in general and suggests a relatively high degree of flexibility in dealings between the U.S. and Canada to alter implementation under the existing treaty”. Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, the Program on Water Issues of the Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.ix.

¹⁸ Government of British Columbia, Columbia River Treaty Review, <http://engage.gov.bc.ca/columbiarivertreaty/> (accessed March 1, 2017).

¹⁹ U.S. Entity, U.S. Entity Regional Recommendation for the Future of the Columbia River Treaty after 2024, (U.S. Entity, 2013), <https://www.crt2014-2024review.gov/Files/Regional%20Recommendation%20Final,%2013%20DEC%202013.pdf>, (accessed Feb 6, 2017).

²⁰ Canadian and United States Entities, Columbia River Treaty 2014/2024 Review: Phase 1 Report, (Canadian and United States Entities, 2010). Subsequent BC reports: <http://engage.gov.bc.ca/app/uploads/sites/6/2012/05/BackgroundJuly29Noon.pdf>, (accessed Feb 16, 2017); subsequent U.S. reports: <https://www.crt2014-2024review.gov/Files/Columbia%20River%20Treaty%20Review%20-%20Purpose%20and%20Future%20Fact%20Sheet--REVISED%20June%202014--FOR%20WEB.pdf>, (accessed Feb 2, 2017).

²¹ See Government of B.C., Columbia Treaty Review BC Decision, https://engage.gov.bc.ca/app/uploads/sites/6/2012/03/BC_Decision_on_Columbia_River_Treaty.pdf, (accessed February 10, 2017).

²² See Government of B.C., Columbia River Basin Sounding Board Group: Terms of Reference, Ministry of Energy, Mines and Natural Gas – Columbia River Treaty Review, February 2013, <http://engage.gov.bc.ca/app/uploads/sites/6/2013/04/Sounding-Board-TOR-April-2.pdf>, (accessed February 10, 2017).

²³ Government of B.C., Columbia Treaty Review BC Decision, https://engage.gov.bc.ca/app/uploads/sites/6/2012/03/BC_Decision_on_Columbia_River_Treaty.pdf, (accessed February 10, 2017).

²⁴ Columbia River Treaty Local Governments’ Committee, Columbia River Treaty Recommendations, December 2013, <https://akblg.civicweb.net/document/210/CRT%20LGC%20Dec%202013%20Recommendations%20FINAL.pdf?handle=D2819FEBEED24A268A345B7A585D2919> (accessed February 10, 2017).

²⁵ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.75.

²⁶ Government of British Columbia, Columbia River Treaty, Columbia Basin Regional Advisory Committee, <http://engage.gov.bc.ca/columbiarivertreaty/columbia-basin-regional-advisory-committee/>, (accessed February 18, 2017).

²⁷ Vienna Convention on the Law of Treaties (1969) Article 2(1)(a), UN Doc. A/Conf.39/27, available at http://legal.un.org/diplomaticconferences/lawoftreaties-1969/docs/english/confdocs/a_conf_39_27.pdf (accessed November 20, 2016).

²⁸ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), <http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/>, (accessed February 2, 2017), p.18.

²⁹ “...an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” Vienna Convention on the Law of Treaties (1969) Article 2(1)(a), UN Doc. A/Conf.39/27, http://legal.un.org/diplomaticconferences/lawoftreaties-1969/docs/english/confdocs/a_conf_39_27.pdf (accessed November 20, 2016).

³⁰ First, the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (June 25, 1998) arguably points the way towards standardization of participation rules in the domestic context by paving the way for internationally agreed upon rules for participation.

Second, The Guide to Public Participation under Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (United Nations Economic Commission for Europe, 2013) stipulates that the public has both a right and an obligation to participate in the formulation and implementation of transboundary water management plans. According to the Guide, the public “should be involved in setting targets and target dates, in drawing up water-management plans and in the reporting exercise.” The Guide goes on to explain that “Public participation ... can be hard to achieve due to the lack of awareness of the public’s rights and of the public authorities’ obligations, as well as the lack of national legal frameworks and cross-sectoral cooperation. There may also be political reluctance to engage the public, lack of access to information, and budgetary constraints to running public participation processes.” (Water Without Borders: Canada, the United States, and Shared Waters, 2013).

Note: neither Canada nor the United States of America are parties to either of the above international instruments.

³¹ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), <http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/>, (accessed February 2, 2017), p.12; “[S]ince the subject matter of the CRT engages the [constitutional] rights and interest of the province, British Columbia will take a leadership role in concluding any arrangements. Both governments will need to consult with First Nations if their interests may be affected by the negotiations.” Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), <http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/>, (accessed February 2, 2017), p.vi.

³² Government of B.C., Columbia River Treaty Review, Treaty Highlights, <http://engage.gov.bc.ca/columbiarivertreaty/treaty-highlights/>, (accessed February 17, 2017).

³³ Agreements available at <http://blog.gov.bc.ca/columbiarivertreaty/files/2012/04/Columbia-River-Treaty-Protocol-and-Documents.pdf>, (accessed February 10, 2017).

³⁴ Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, the Program on Water Issues, <http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/>, Munk School of Global Affairs at the University of Toronto, (2012), (accessed February 2, 2017), p.vi-vii.

³⁵ *Columbia Basin Trust Act*, RSBC 1996, c.53. http://www.bclaws.ca/civix/document/id/complete/statreg/96053_01, (accessed February 11, 2017).

³⁶ *Columbia Basin Trust Act*, RSBC 1996, c.53. http://www.bclaws.ca/civix/document/id/complete/statreg/96053_01, (accessed February 11, 2017).

³⁷ Columbia River Treaty Local Governments’ Committee, Columbia River Treaty Recommendations, December 2013, <https://akblg.civicweb.net/document/210/CRT%20LGC%20Dec%202013%20Recommendations%20FINAL.pdf?handle=D2819FEBEED24A268A345B7A585D2919> (accessed February 10, 2017); See also Columbia River Treaty Local Governments Committee, *Columbia River Treaty: Key Interests of Canadian Columbia Basin Residents*, <https://akblg.civicweb.net/document/214/Key%20BC%20Basin%20residents%20CRT%20Interests%20Fall%202013.pdf?handle=FFED9E8F24314E92A557CC823E6E65D7> (accessed January 10, 2017).

³⁸ See Columbia River Treaty Local Governments Committee, *Columbia River Treaty: key Interests of Canadian Columbia Basin Residents*,

<https://akblg.civicweb.net/document/214/Key%20BC%20Basin%20residents%20CRT%20Interests%20Fall%202013.pdf?handle=FFED9E8F24314E92A557CC823E6E65D7> (accessed January 10, 2017).

³⁹ This does not seem to have occurred in relation to the Souris Basin.

⁴⁰ *Treaty Between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon*, amended as of May 16, 2014, Can.-U.S., January 28, 1985, available at <http://www.psc.org/publications/pacific-salmon-treaty/> (accessed January 28, 2017).

⁴¹ Donald McRae, *The Negotiations of the 1999 Pacific Salmon Agreement*, 27 CANADA-UNITED STATES L.J. 267, (2001), <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1558&context=cuslj>, (accessed February 15, 2017), pp.268-278.

⁴² Donald McRae, *The Negotiations of the 1999 Pacific Salmon Agreement*, 27 CANADA-UNITED STATES L.J. 267, (2001), <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1558&context=cuslj>, (accessed February 15, 2017), pp. 267, 269.

⁴³ Donald McRae, *The Negotiations of the 1999 Pacific Salmon Agreement*, 27 CANADA-UNITED STATES L.J. 267, (2001), <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1558&context=cuslj>, (accessed February 15, 2017), pp. 267, 269.

⁴⁴ Donald McRae, *The Negotiations of the 1999 Pacific Salmon Agreement*, 27 CANADA-UNITED STATES L.J. 267, (2001), <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1558&context=cuslj>, (accessed February 15, 2017), pp.268-278.

⁴⁵ International Joint Commission, *Lake Ontario – St. Lawrence River Plan 2014: Protecting against extreme water levels, restoring wetlands and preparing for climate change*, http://www.ijc.org/files/tinymce/uploaded/LOSLR/IJC_LOSR_EN_Web.pdf (accessed February 5, 2017), p.iii.

⁴⁶ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.98.

⁴⁷ International Joint Commission, *International Joint Commission's Advice to Governments on the Recommendations of the International Upper Great Lakes Study, A Report to the Governments of Canada and the United States, April 15, 2013*, <http://ijc.org/iuglsreport/wp-content/uploads/2013/04/IUGLS-IJC-Report-Feb-12-2013-15-April-20132.pdf>, (accessed February 5, 2017), p. 3..

⁴⁸ “The International Joint Commission (IJC) decided prior to the initiation of this Study to have the public represented at the “table” right from the start. The Public Interest Advisory Group (PIAG) had a separate mandate from the IJC, allowing it to act independently. We were an internal “peer review” group for the Study... Another facet of our mandate was to ensure effective communication between the public, which we represented, and the Study and its technical work groups. We provided input to Study decisions and communication and education to the public. We were there at the table for all Study Board discussions. The PIAG assisted the decision process, ensuring that the public input was considered and that the process remained transparent... We have to realize that the Study cannot satisfy the needs of all of the interests all of the time. This is indeed the case as the PIAG as a group does not favor any one candidate plan over another. Communications cannot be an ad hoc procedure. The IJC must commit funds to ensure proper communications of the Board of Control by means of dedicated communication person(s) and budget to allow publication of meetings and other important communications, using techniques developed by PIAG during this Study and other valid methods of ensuring two-way communication”. International Joint Commission, *Lake Ontario – St. Lawrence River Plan 2014: Protecting against extreme water levels, restoring wetlands and preparing for climate change*, http://www.ijc.org/files/tinymce/uploaded/LOSLR/IJC_LOSR_EN_Web.pdf, (accessed February 5, 2017), p.16.

⁴⁹ International Joint Commission, Canada and United States, *Great Lakes Water Quality Agreement, Synthesis of Public Comment on the Forthcoming Review by the Federal Governments of Canada and the United States of the Great Lakes Water Quality Agreement, January 2006*, <http://www.ijc.org/php/publications/pdf/ID1588.pdf>, (accessed February 2, 2017), p.1.

⁵⁰ International Joint Commission, Canada and United States, *Great Lakes Water Quality Agreement, Synthesis of Public Comment on the Forthcoming Review by the Federal Governments of Canada and the*

United States of the Great Lakes Water Quality Agreement, January 2006,

<http://www.ijc.org/php/publications/pdf/ID1588.pdf>, (accessed February 2, 2017), p.2.

⁵¹ International Joint Commission, Canada and United States, Great Lakes Water Quality Agreement, *Synthesis of Public Comment on the Forthcoming Review by the Federal Governments of Canada and the United States of the Great Lakes Water Quality Agreement, January 2006,*

<http://www.ijc.org/php/publications/pdf/ID1588.pdf>, (accessed February 2, 2017), p.3.

⁵² U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Glen Canyon Dam: Adaptive Management Program, Adaptive Management Working Group,

<http://www.gcdamp.gov/aboutamp/member.html>, (accessed February 3, 2017). *Cited in* Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), p.67, <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017).

⁵³ International Joint Commission, Great Lakes Science Advisory Board,

http://ijc.org/en/_sab/Great_Lakes_Science_Advisory_Board, (accessed February 3, 2017).

⁵⁴ See Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017) p.17-21.

⁵⁵ International Joint Commission, Regulation Plan 2014 for the Lake Ontario and the St. Lawrence River Compendium Document, (December 2016),

http://www.ijc.org/files/tinymce/uploaded/Plan2014_CompndiumReport_1.pdf, (accessed February 3, 2017), p.1-4.

⁵⁶ International Joint Commission, Souris River, http://ijc.org/en/_isrb_, (accessed February 5, 2017).

⁵⁷ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.75.

⁵⁸ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p. 19, 75.

⁵⁹ See Richard Kyle Paisley, Matthew J. McKinney and Molly Smith Stenovc, *A Sacred Responsibility*, Universities Consortium on Columbia River Governance, http://www.columbiarivergovernance.org/A_Shared_Responsibility_2015_FINAL.pdf, (accessed February 3, 2017), p. 7, 8, 27, 54, 56, 60, 61, 64, 131, Appendix 6.9.

⁶⁰ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017) p.76.

⁶¹ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.19.

⁶² Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.75.

⁶³ Binational.net. Canada-United States Collaboration for Great Lakes Water Quality, Great Lakes Executive Committee to the Great Lakes Water Quality Agreement, Terms of Reference, April 23, 2013, <https://binational.net/wp-content/uploads/2014/10/20130423-glec-tor-en.pdf>, (accessed February 4, 2017).

⁶⁴ U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, *Glen Canyon Adaptive Management Program, Adaptive Management Working Group Membership*, https://www.usbr.gov/uc/rm/amp/amwg/amwg_members.html, (accessed February 4, 2017).

⁶⁵ This section draws substantially on Richard Kyle Paisley, Matthew J. McKinney and Molly Smith Stenovec, *A Sacred Responsibility*, Universities Consortium on Columbia River Governance, (2015), http://www.columbiarivergovernance.org/A_Shared_Responsibility_2015_FINAL.pdf, (accessed February 3, 2017), p. 49-54-55

⁶⁶ Adapted from Barbara A. Boczar, “Avenues for Direct Participation of Transnational Corporation in International Environmental Negotiations,” 3 N.Y.U. ENVTL. L.J. 1 1994; and Richard Kyle Paisley, Matthew J. McKinney and Molly Smith Stenovec, *A Sacred Responsibility*, Universities Consortium on Columbia River Governance (2015), Universities Consortium on Columbia River Governance, (2015), http://www.columbiarivergovernance.org/A_Shared_Responsibility_2015_FINAL.pdf, (accessed February 3, 2017), p. 7, 8, 27, 54, 56, 60, 61, 64, 131, Appendix 6.9.

⁶⁷ In recent years, natural resource managers and others have paid increasing attention to “traditional ecological knowledge.” TEK, as it is often referred to, describes aboriginal, indigenous, or other forms of traditional knowledge regarding sustainability of local resources. It refers to a cumulative body of knowledge, belief, and practice handed down through generations through traditional songs, stories and beliefs. For an introduction to this emerging field, see R. Barnhardt and A.O. Kawagley, “Indigenous Knowledge Systems and Alaska Native Ways of Knowing,” ANTHROPOLOGY AND EDUCATION QUARTERLY, 2005 (36) (1): 8-23.

⁶⁸ The formal participation of Local Interests in the negotiation of international agreements is likely to reduce, if not eliminate, political and/or legal opposition to the negotiation process and its outcomes. To the extent that Local Interests’ inability to participate formally in the negotiation of international agreements that are or could be adverse to Local Interests, Local Interests might seek political and legal options to address these problems.

⁶⁹ For the purposes of this document the term ‘local interests’ can be identified with non-state actors under international law, but does not include First Nations, Métis, Tribes, Aboriginal peoples, Indigenous peoples, provincial governments or state governments. There may be formal legal obligations for the federal Canadian government to incorporate First Nations and various provincial governments into the negotiation/implementation of international agreements.

⁷⁰ Such as the commitment made by the B.C. provincial government when creating the CBT. Embodied in the Preamble to the [Columbia Basin Trust Act, RSBC 1996, c.53](http://www.bclaws.ca/civix/document/id/complete/statreg/96053_01). http://www.bclaws.ca/civix/document/id/complete/statreg/96053_01, (accessed February 11, 2017).

⁷¹ e.g. Nigel Bankes and Barbara Cosens, *The Future of the Columbia River Treaty*, The Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2012), <http://munkschool.utoronto.ca/research/the-future-of-the-columbia-river-treaty/>, (accessed February 2, 2017), p.29, 55.

⁷² Columbia River Treaty Local Governments’ Committee Terms of Reference. <https://akblg.civicweb.net/document/204/CRT%20Local%20Govt%20Committee%20Terms%20of%20Reference.pdf?handle=C36F80E4D41F4E49861B85EBBC21AE0A> (accessed March 24, 2017)

⁷³ “Nested governance” is used to “describe a hierarchy in which coordination results from representation of lower levels of governance in decision making at higher levels.” Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p.19.

⁷⁴ Government of British Columbia, Columbia Basin Regional Advisory Committee Members, <https://engage.gov.bc.ca/app/uploads/sites/6/2017/02/CBRAC-Member-List.pdf> (accessed March 1, 2017).

⁷⁵ Columbia Basin Regional Advisory Committee Members, <https://engage.gov.bc.ca/app/uploads/sites/6/2017/02/CBRAC-Member-List.pdf> (accessed March 1, 2017).

⁷⁶ “The activities of the CBRAC will respect and not alter the responsibilities, rights and obligations of BC Hydro and other hydroelectric facility operators to make planning and operational decisions, considering the advice and input provided”. Government of British Columbia, Columbia River Treaty, Columbia Basin Regional Advisory Committee, Terms of Reference (October 6, 2016), <https://engage.gov.bc.ca/app/uploads/sites/6/2017/01/2016-10-06-Columbia-Basin-Regional-Advisory-Committee-Terms-of-Reference-UPDATED.pdf>, (accessed February 21, 2017).

⁷⁷ Government of British Columbia, Columbia River Treaty, Columbia Basin Regional Advisory Committee, Terms of Reference (October 6, 2016),

<https://engage.gov.bc.ca/app/uploads/sites/6/2017/01/2016-10-06-Columbia-Basin-Regional-Advisory-Committee-Terms-of-Reference-UPDATED.pdf>, (accessed February 21, 2017).

⁷⁸ Nigel Bankes and Barbara Cosens, *Protocols for Adaptive Water Governance: The Future of the Columbia River Treaty*, the Program on Water Issues, Munk School of Global Affairs at the University of Toronto, (2014), <http://powi.ca/wp-content/uploads/2014/10/Protocols-for-Adaptive-Water-Governance-Final-October-14-2014.pdf>, (accessed February 1, 2017), p. 19, 75.

⁷⁹ “One principle that I adopted in the BC Hydro Water Use Planning Process that we would “do no further harm”. I promised First Nations that things would get better for them or things would not change further. But we would do no more harm. This set a floor to the negotiations and some people realized they could not get all they wanted because of the harm it would cause others. It helped in that trade-off.”. Personal communication, James Mattison, February 15, 2017.

⁸⁰ Groups such as the Columbia Basin Trust, Columbia River Treaty Local Governments’ Committee and CBRAC.

⁸¹ Outcome of discussions amongst the reviewers.

Section 5.0 Appendices

Appendix A: Table of Case Studies Considered

(In a separate document)

Appendix B: Case Study Notes

(In a separate document)

Appendix C: Sources

(In a separate document)