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Chair

Mr. Alan Tonks

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• (1535)

[English]

The Chair (Mr. Alan Tonks (York South—Weston, Lib.)):
Good afternoon, members of the committee.

Welcome to our witnesses.

I do apologize for my tardiness. I came in from Toronto and was just flying low, I guess. We were lucky to get to Ottawa.

Thank you for being here today, and thank you for your understanding.

We're meeting pursuant to Standing Order 108(2), a study of the diversion of waters from Devils Lake in North Dakota, United States, into the Sheyenne River and eventually Lake Winnipeg.

We welcome the following representatives from the Department of Foreign Affairs and International Trade: Mr. Bill Crosbie, director general of the North America bureau; and Mr. Peter Fawcett, deputy director, U.S. relations division. From the Department of the Environment we have Mr. John Carey, director general, National Water Research Institute; Mr. McRae; and Mr. Cash.

I'll take a moment to generally explain the order. We usually invite the witnesses to make a deputation, but try to keep it within ten minutes. After that has been completed we will have ten minutes from each of the parties represented on the committee. Once the ten minutes are finished we will have five-minute question-and-answer periods.

Perhaps Mr. Crosbie would like to lead off.

Mr. William Crosbie (Director General, North America Bureau, Department of Foreign Affairs and International Trade): Thank you, Mr. Chair.

I'm going to make a statement. I believe my colleagues from Environment Canada are here to assist in answering questions, but I don't believe they have a statement to make themselves at the beginning. So I'll be quite short. My understanding is we're first going to address the issue of Devils Lake and then turn to the issue of the Great Lakes.

On Devils Lake, Peter Fawcett and I were here about a year ago, along with colleagues from Environment Canada, to talk about a number of boundary water issues, and this was one of them. Since then there's been a major effort on the part of the Government of Canada, working with the Province of Manitoba, other provinces, and our allies in the United States, to try to reach an agreement on

resolving this longstanding dispute involving what is a big problem for North Dakota, and that's Devils Lake.

The effort has really involved people from the top of both governments. The Prime Minister and the President have spoken about this, and the White House, through the Council on Environmental Quality, has been engaged with our Privy Council Office. Ambassador McKenna has also been heavily involved in the negotiations to reach an agreement. Beyond that, Premier Doer, Premier Charest, and Premier McGuinty have also been involved, and have spoken out in support of getting a resolution of this matter.

With respect to our allies in the United States, we have worked very closely with the governors of Missouri and Minnesota and many non-governmental groups to build support for the Canadian approach. I'm happy to say all of that resulted in an announcement in August by the two federal governments, with the participation and support of the Province of Manitoba, the State of North Dakota, and the other affected states, on the elements of an agreement.

The August announcement addresses many of the concerns of Canada and Manitoba about the operation of the outlet. We now have a commitment with the United States to build a more advanced system of filtration and/or disinfection at the outlet. We have an agreement for enhanced monitoring of the entire Red River basin, working to the International Joint Commission's international Red River board.

In terms of next steps, before a final agreement can be signed we need to complete our joint analysis of environmental conditions in Devils Lake. We're expecting that analysis to be completed and released very soon. The August announcement set forth the key elements of an agreement. However, the design of the permanent filtration and/or disinfection system still needs to be completed. We are working towards an agreement that is consistent with the Boundary Waters Treaty, which calls on both governments to cooperate on transboundary issues.

On the role of the International Joint Commission, the August announcement calls for joint monitoring through the International Joint Commission's international Red River board. This will permit Canada to obtain water quality information on the Sheyenne River, Devils Lake, and the broader Red River watershed. The results of this joint monitoring will inform decisions about the outlet's operations.

On the Boundary Waters Treaty, from the outset Canada has been committed to pursuing a joint solution that protects our shared environment, reflecting the spirit of that treaty. Whether it was through the International Joint Commission or another mechanism consistent with the treaty, our goal was to work toward a solution that addressed Canada's environmental concerns.

The August statement is consistent with our history of cooperation under the Boundary Waters Treaty, and we are working hard to get a complete agreement with all the parties concerned.

That's my short statement, Mr. Chair.

• (1540)

The Chair: Thank you, Mr. Crosbie.

Is there anybody else who wishes to make a statement?

Okay, thank you very much.

Mr. Mills.

Mr. Bob Mills (Red Deer, CPC): Welcome.

I guess my problem is we had Mr. Gray here earlier in the week, and he described a two-month study to understand the ecology of Devils Lake. The question to him, obviously, was "Do you think a two-month study in fact would tell you about the climate changes, the temperature effects, and cycles within the lake?" I've never heard of an ecological study being completed in two months. If you want to understand the ecology, I always thought it took a minimum of two years of seasons, cycles, and so on.

It just seems to me that unless we have an agreement that involves that before the water starts to flow, it won't do us very much good to say that now Lake Winnipeg has a parasite in it that we obviously just found. I don't quite understand the nature of this agreement.

Mr. Gray again described that the filtration could be some sand and some gravel, and some UV treatment—maybe. Obviously again, my knowledge of biology tells me that you should know, before you start the process, the kind of treatment you're going to use. That would be my first question in terms of the science and how much you're going to be pushing to get that science in place before anything happens.

Mr. William Crosbie: Thank you.

Well, we're fortunate that we have the experts who have been directly involved in these negotiations, so Kevin Cash can speak to the science and the biology, and then with respect to the engineering, I know John Carey is well qualified to do that. But I'd turn it over to Kevin first.

Mr. Kevin Cash (Chief, Ecological Sciences Division, Environment Canada): Thank you.

Your point is well taken. It is extremely difficult to conduct a thorough ecological survey in a very brief timeframe. However, this initiative was instigated by the Council on Environmental Quality in Washington; our participation was invited, and we agreed to participate.

The rationale behind it was simply that there was so little information available on the biological structure of Devils Lake that

even a rapid and cursory approach, as was carried out in July of this year, would be a significant contribution to our body of knowledge.

The report itself very clearly identifies that the survey does not constitute an exhaustive characterization of the biological community in Devils Lake. It cannot be used as a risk assessment with regard to the transfer of any biota from Devils Lake to the Red River system.

And finally, it really doesn't address, it informs; but it shouldn't be used by itself to determine what kind of mitigation is required. So it doesn't purport to be a complete and exhaustive examination of the lake. That would require, as you suggest, a much longer time, sampling through a variety of seasons and a much more vigorous approach. But it does make a contribution in light of the tremendous unknowns that are still there.

• (1545)

The Chair: If you wish, we have a witness here to deal with the engineering aspect.

Mr. Bob Mills: I guess that doesn't make me feel very happy, particularly if I was depending on my livelihood from Lake Manitoba or if I was a resident along that watershed. Unless I know with assurance that something is going to be done completely, I just have real trouble with why we would not negotiate much harder and say, "Listen, we've got to have this in place, then we know what we're doing". And then Mr. Carey knows what kind of engineering he's got to put in place. Maybe it's all fine; I'm not saying that it might not be. I'd certainly like to know that the science was in place before we would proceed to have water flowing next spring into the Red River.

Mr. Kevin Cash: I think that this cursory examination, together with data that has been collected in years gone by, does position us well to really evaluate what sort of mitigation is required, and I'll defer that to Dr. Carey. However, it doesn't completely describe the biological community present in the lake. Frankly, that's a very challenging long-term task, and it's almost impossible to prove a negative. It's also, at best, only a snapshot in time, because a new species could be introduced to Devils Lake a week after the completion of any such study.

So we have focused more on the kind of mitigation required to prevent the movement of any biota from the lake into the Red River rather than on a detailed species list of what might be—

Mr. Bob Mills: So that engineering will go far beyond what might be necessary to be sure that we're going to get it right?

Mr. John Carey (Director General, National Water Research Institute, Department of the Environment): To begin with, I should say we were informed by a previous project designed by the Army Corps of Engineers, a larger project, and the mitigation they proposed was a sand filter that basically gave the same kind of filtration as for drinking water treatment. They did not propose ultraviolet light or disinfection. The problem North Dakota had with that, of course, was it was a large project. I haven't verified this, but the corps told us in a conference call that it would require 45 acres to install.

So what we did was review other mitigation options that perhaps wouldn't be quite as large and demanding in both resources and time to construct. It would take years to construct that plan. We looked at the types of technologies that are used to treat stormwater runoff both in terms of disinfection and filtration, and we looked at options for filtration at different size scales.

We came to the conclusion—the “we” in this case were colleagues in Minnesota, our own department, and Manitoba—in studying the effectiveness of UV in handling known fish parasites and viruses that a simpler level of filtration, one that at least took out down to the size range of algae but not bacteria, coupled with UV treatment to handle viruses and bacteria designed to give doses that would comfortably kill all known fish parasites that were present in the lake, would be an option that should be considered.

We've asked the CEQ to consider that option, a series of screen filters to take out things as low as 10 microns in size and then UV treatment, and we have investigated the potential for that to be installed quickly. We believe it can be installed quickly if it is funded, in the order of a couple of months. UV treatment could be installed in that system before water flowed if there was a decision to do that.

Mr. Bob Mills: I can understand the political part of this; it's going to lower the lake by one inch. I suppose that's going to really impress the people of North Dakota, that in fact action has been taken, but it seems to me that the risk we're taking biologically.... I think we should negotiate a lot tougher terms. We're using a treaty that's pretty old.

I wonder if you could comment on using the Boundary Waters Treaty from...what is it, 1916? A lot has changed since then. There's a lot more pollution; there's a lot more chemistry involved. There are a lot more things that can happen because of the phosphorus and the other chemicals there. Has that all been considered as well?

• (1550)

Mr. William Crosbie: In terms of changing the treaty itself?

Mr. Bob Mills: Yes.

Mr. William Crosbie: My colleagues, particularly Peter, have been involved with this and could advise us on whether there have been any specific reviews of the treaties recently.

I think from a Canadian perspective what we would have to ask ourselves is whether we felt that the environment in the United States would lead to a more positive conclusion for us if we were to reopen that treaty. That's always a question when you enter into a negotiation: have we got sufficient support on the other side of the border such that we're going to end up with a treaty that would be better than what we currently have? That's largely a political question, but if we were going to embark upon that enterprise, I would like to have answers before I actually formally asked the United States to consider reopening the treaty.

Mr. Bob Mills: When you look at the map and see the number of rivers that cross our border, it is quite surprising. You basically stop counting at about forty, and there are still more.

I have real questions about the IJC and how effective it is, since you have to have both governments requesting it. It just seems a very awkward sort of law that handles this. I'm not sure that we won't

always be the losers unless we become a little more hard-nosed about how we deal with our environment and with the water and the air that move back and forth.

Again, these guys are going to be tired of me talking about Sumas, but the Sumas River is going to accept the sewage from a new power plant. It is going to come right into the Fraser River, and basically nobody is even talking about that. That's another issue totally, but it's just an example. We have all these rivers criss-crossing our border. Maybe it's a lot bigger than Devils Lake.

I would suggest that probably Environment Canada and Foreign Affairs should be looking at something a lot broader than just this for this very reason. It's only going to get worse.

The Chair: I'm going to have to interject just for a moment.

In your response to other questions, Mr. Fawcett, you may want to come back to some of those points Mr. Mills has made, but we're out of time on that round for the moment.

Mr. Bigras, would you like to ask your questions, please?

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Yes, Mr. Chairman.

Thank you for being here. When I see the history of the project, there are some things I don't understand. I don't understand why the Canadian reaction came so late, when North Dakota issued calls to tender for a temporary diversion project in July 2001. Judging from the way the matter has developed, I wonder whether there might not be other projects like this one. I'm thinking of Quebec; I'm thinking, among other things, of projects in which the U.S. corps of engineers is considering expanding the St. Lawrence Seaway or modernizing the St. Lawrence, without Canada being a participant.

I'll have other questions to ask about the current situation, but why did Canada react so slowly, when we knew perfectly well that certain American states were calling for tenders, that they were moving forward and that they clearly intended to carry out this project? Why did diplomatic pressure by the Prime Minister and pressure by all stakeholders not come until 2005?

[*English*]

Mr. William Crosbie: This is a criticism I've heard in many disputes we've had to deal with when it comes to the United States, be they disputes with the U.S. Congress, with U.S. states, or with the U.S. federal government. We know in many cases what these disputes are and we know what the differences are.

Devils Lake was not a surprise. This has long been a bone of contention. It's long been a source of frustration for Manitoba and North Dakota. We have been involved and have tried to find reasonable ways to resolve what for North Dakota is an ongoing problem with Devils Lake. We've been unsuccessful in doing so.

North Dakota has frequently been at loggerheads with the federal government in the United States and with other U.S. states, Missouri and Minnesota, which are as upset as Canada with the proposal that was put forward by North Dakota. They, along with us, have been fighting plans to build an outlet from Devils Lake for many years.

We don't control all of the circumstances. North Dakota decided to proceed unilaterally. It decided to proceed without getting the participation of the U.S. federal government. It determined, because it could not get federal support from the U.S. government, that it was going to go ahead on its own.

Our ability to negotiate this announcement in August, I think, reflects the concerted efforts not just of the Canadian government but of other U.S. parties who are working as hard as we are to try to prevent this outlet from happening. The fact that it got so far down the line is testimony to the determination of the North Dakotans to find what they regard as a solution to Devils Lake. It may be more of a political solution than a real solution, but they have been very determined over the years.

I don't think that the Government of Canada has been ignoring this. We, along with Manitoba and with American states and the U.S. federal government, have been working very hard to try to find a solution.

• (1555)

[Translation]

Mr. Bernard Bigras: When did the diplomatic pressure really begin? Did the government take tougher legal measures? We can talk to the U.S. government, but, at some point, you have to change gears and move on to another stage. You can see that in the context of the softwood lumber dispute. There comes a time when there's no point in raising your voice; you have to use the legal means available to you.

In the current context, in that of the IJC and the Boundary Waters Treaty, what legal measures does Canada have at its disposal to ensure that this kind of situation doesn't reoccur? We're afraid that what happened at Devils Lake will set a dangerous precedent for the rest of Canada and Quebec. What means are available to Canada to ensure that the spirit of the Boundary Waters Treaty is complied with?

[English]

Mr. William Crosbie: I'm going to ask my colleague, Mr. Fawcett, to elaborate.

Mr. Peter Fawcett (Deputy Director, U.S. Relations Division, Department of Foreign Affairs and International Trade): If I might, perhaps a general statement about the Boundary Waters Treaty of 1909.... Article IV of that treaty was very forward-looking, as it refers to neither party being able to cause pollution on the other side of the boundary to the injury or health of the other. It is a very forward-looking treaty, even for 1909. It created the International Joint Commission. Through this long period there has been further interpretation of what the exact interpretation of that treaty is, including in 1975 a reference to the Garrison diversion project, which was the first time that North Dakota tried to divert water out of the Missouri basin into the Red River basin. There was a very favourable interpretation of the treaty in the 1977 reference. Since

that time we've worked very closely with Manitoba to try to address these issues.

With respect to the specifics of Devils Lake, we have been raising this with the U.S. government and talking with our allies, as Mr. Crosbie has mentioned, for some considerable time. As he mentioned, North Dakota has decided unilaterally to go ahead and proceed. The moment they issued contracts or a notice of contracts, the Minister of Foreign Affairs wrote to the Secretary of State to raise our concerns. That was in October 2003. We have been continuously pursuing this issue with the United States, including submitting a formal request for a reference in April 2004. I think we have pursued it.

In answer to your other question, we have examined very carefully all of the legal avenues that are at our disposal to see if there are ways of doing that. On other Garrison projects, such as the NAWA project, we have joined with Manitoba in seeking legal recourse. We were in fact quite successful in that case, and a resolution of that case is still pending. We've looked at the water permits that were issued by North Dakota, and there were court challenges proceeded in U.S. courts with our NGOs and other allies in the United States.

I think we have done a fairly reasonable job in terms of pursuing all possible avenues to try to address our concerns about these projects.

• (1600)

[Translation]

Mr. Bernard Bigras: Now that the thing is done, we see that the outlets were open and that, for 10 days, a certain amount of water flowed out and that sulfate contamination was recorded and measured. They had to close the outlet because of contamination. As to how things will turn out, in view of current relations between Canada and the United States on this issue, I'm concerned about the information transmission method that you've put in place to ensure this kind of situation does not reoccur. The federal government often says it has trouble getting water quality reports from the provinces. So I can imagine what it's like when Ottawa has to get them from the United States. In terms of transmitting information, have you made sure there is a smooth process for water quality information?

Then filters were installed. That involves costs. Since this project will have an impact and negative secondary effects in Canada, have we ensured that the cost of those filters and impact reduction measures will be borne by the United States, not Canada?

[English]

Mr. William Crosbie: I'm going to let Kevin respond to your question, but with respect to the question of the cost of the filtration system, as John has mentioned, this is something that is still to be designed, based upon what we found out from the environmental analysis. There are a number of engineering technical issues that need to be resolved there.

With respect to the question of cost, that is something that still remains to be considered. Obviously we will be concerned about setting any precedent there on how those costs are assumed vis-à-vis issues that might arise elsewhere, on our side of the border or on theirs.

Kevin.

Mr. Kevin Cash: With respect to the first part of your question, regarding sulphates, there were, and always will be, sulphates in the water pumped out of Devils Lake in the Sheyenne. Sulphates are naturally occurring salts. They occur naturally in the Sheyenne and the Red Rivers. For approximately the last 30 years or 40 years, there have been guidelines on the Red River at the international boundary at Emmerson that were established by the International Joint Commission and agreed to by all of the jurisdictions. These guidelines for sulphate were not exceeded this year, nor did the concentrations of sulphate come close to the guidelines whatsoever, largely because of the dilution fact of the Red River. Under the operating licence, the outlet must shut down when sulphate concentrations in the Sheyenne River exceed 300 milligrams per litre. The water in the Sheyenne is then greatly diluted by the water in the Red River.

Under the licence agreement—if this followed—we don't anticipate that sulphate levels from Devils Lake outlet operation would cause exceedances of International Joint Commission guidelines at the Canada-U.S. boundary.

The Chair: Thanks, Mr. Bigras.

We're out of time on that round.

We'll go to Mr. McGuinty now.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chairman.

Thank you very much for joining us this afternoon.

I wanted to pick up on some points made by both previous colleagues who spoke. My recollection is there's been a series of studies in Canada that have indicated it's unlikely we're moving towards a series of megaprojects for inter-basin transfers of water, megadiversions, or whatever the term might be. This has been reported or analyzed by a number of different players over the last decade. Instead, what we're going to see are a series of forthcoming flashpoint water issues between Canada and the United States like this one—a flare-up, kind of like a bad barbecue.

In terms of where we're going and your predictive capacity, I think, Mr. Crosbie, you mentioned this is something you've been monitoring for a while: this particular flashpoint, this particular issue. There will be more of them: Garrison, the St. Croix River, New Brunswick, Maine.... We don't know what's going to come, but they will come. As we prepare for the next one, just lifting our heads a bit from the immediacy of this particular situation, I want to talk to you about an element of this non-binding agreement that may or may not be there, and we may need for the future. This is about the remedies that might be available to this country, the liability provisions in these subsequent agreements I think we're going to have to negotiate, and the enforceability of these.

Can you give us some insight in terms of this particular non-binding agreement? Where does it sit with respect to what can we do, and what does the agreement build into its text? What can we do in terms of remedies? What does it speak to when it comes to liability? And how enforceable will it be?

● (1605)

Mr. William Crosbie: Mr. Fawcett can add any details I don't have.

I would say we haven't gotten far enough down the road to provide answers to those questions. Those are good questions that will have to be considered. Our intention is to negotiate a binding agreement between the two governments. What was announced in August were essentially the key elements of an agreement. We have yet to negotiate the language around those key elements and then all the other dimensions of an agreement, which would help us in terms of implementation or disputes arising from it, and which would be a natural part of any agreement.

Mr. Peter Fawcett: I'll try to address your larger question.

Regarding the issue of larger megaprojects, I think you're probably right. If you look at this simply from an economic perspective, there are certainly no megaprojects currently on the horizon. We have to be ever vigilant because there are always potential proponents we'll be looking at with these kinds of projects. In fact, that's one of the reasons why, as this committee knows well, we've prohibited bulk water removal from major water basins in Canada federally, and all provinces and territories have done the same. We pretty well have a national water policy in Canada that would prevent those kinds of water projects from occurring.

Mr. David McGuinty: So is Mr. Mills' supposition correct, that the existing treaty is just not built to handle the kinds of differences that will emerge here as we see perhaps a series of successive flashpoint issues that will crop up in one geographic location over another?

Mr. William Crosbie: I wouldn't draw that conclusion, because I think the treaty, as it should be, is written in very broad terms. How we actually take those treaty terms and then implement them in terms of institutions, in terms of science, in terms of genuine cooperation, those are all things that flow from the treaty, and those are probably the areas where we have to continue to do the most work.

I would have thought that actually changing the treaty language itself is probably the least profitable route. We really need to concentrate on ways in which we can build on the great work that the IJC does. The IJC has some 22 boards, all looking at specific issues related to specific water systems, and the spirit of cooperation that entails.

In terms of Devils Lake, gosh, would you call something that has been a point of contention for so many years a flashpoint? I think it's fair to say that this is a real problem for North Dakota. None of us want to deny that. In fact, North Dakota has had to deal with the problem of Devils Lake for a long period of time. Maybe they haven't dealt with it in the right way, but there's no doubt that they have a real issue for their citizens.

What we need to do is, through the boards, through greater cooperation at the provincial and state level, working with the federal agencies and experts, try to find some joint ways to manage these disputes. We do it as best we can. We do better with some than with others. But they are highly political disputes, and it sometimes gets in the way of the best science and gets in the way of finding what would be in the best interests of the environment.

•(1610)

Mr. David McGuinty: This first agreement, if it becomes binding, will be precedent-setting for potential future water disputes. Is that right?

Mr. William Crosbie: I think any agreement between governments is to some extent setting a precedent, and it's certainly something we would have on our minds, but there have been other agreements. This is not the only one.

Mr. David McGuinty: In your discussions with Washington, is there any appetite in Washington whatsoever, from what you can divine with your water-divining rod, to look at some kind of more transparent, predictable approach to this issue, as opposed to waiting until it may be a seven-year-old flashpoint but what we have is a flashpoint reaction? Although we've been tracking it and monitoring it, now we're sitting here trying to figure out the basic terms of an agreement. These are basic terms in an agreement—remedies, liability, enforceability. Every contract ever devised that I've ever seen speaks to these in boilerplate form.

So here we're dealing with a situation that may arise again in another geographic location. What's the attitude in Washington now, or have we raised this as part of a more concerted effort to deal with inter-basin, transborder water problems?

Mr. William Crosbie: Peter has actually been sitting in on the negotiations—I haven't—under the leadership of the PCO and with Ambassador McKenna. Our main interlocutor, in addition to the Environmental Protection Agency, is the Council on Environmental Quality, in the White House, which really got involved because the Prime Minister and the President spoke about this. So the President asked the agency that is part of the White House, the CEQ, to assist in trying to find a solution. We took it as a very good sign, in fact, that at that high level of the U.S. government they are very much engaged in negotiating the terms of the agreement. So this has put it at the centre of the attention in Washington.

Peter, do you want to talk a little bit about the atmospheric in the negotiations?

Mr. Peter Fawcett: Sure. I want to pick up on your question about the view in Washington as to how to manage these issues, and quite clearly we've heard from the United States government, as Mr. Crosbie has said, that they want to make better use of the international watershed boards, like the International Red River Board. This is the way, I think, to bring all the regional players together and discuss the matter and try to find a regional solution to these regional problems. That's very much the view that we've heard from Washington: make better use of the IJC's 22 boards and try to find solutions at that level before they become bigger national issues.

The Chair: We're out of time on that one.

Thank you, Mr. McGuinty.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Mr. Chair, and thank you to the folks who have come here.

I'm going to try to avoid some of the nuance detail in this and try to get an overview of this process we've just gone through—call it a flashpoint or not.

North Dakota has a problem with the lake. It's an environmental issue and a big political issue for them. The Army Corps of Engineers proposed a project for some—I don't know, I've seen some numbers—\$50 million or more, which would have been a pretty decent filtration system, from what I've heard. Maybe it could have been better, but it was not bad. North Dakota decided that was too expensive. They couldn't get any federal funding support for it. The feds in the States said no.

They designed a project that was not acceptable by Canadian standards. We told them not to do it and they did it anyway. They then turned on the taps for a number of days, and then they turned them off for phosphorus reasons...or sulphates.

At the end of that, we have a non-binding agreement with them for a filtration system that may be better in the future. Meanwhile, the consequences of this.... The process is so opposite to the precautionary principle of what we try to do with our environment—the stated Canadian goals for our environment—I find it confusing that your presentation didn't raise more of an alarm today. I'm getting some sense that we should be relaxed about this and that this is an okay process in terms of the precedent that my colleagues have tried to understand for the rest of our dealings with the U.S.

Mr. Crosbie, you made a comment when Mr. Mills asked about opening up the agreement, that we'd have to first understand the environment within the United States. I assume you mean the political environment, not the physical environment. This environment is quite disturbing.

Ms. Rice was in the capital just recently. As we go ahead with trying to find an agreement like NAFTA, which has a very, very clear definition about how to resolve disputes—we have an over-90-year agreement with them in this dispute resolution—why should Canadians have any hope for the next Devils Lake? Why should we have any prospect of hope in dealing with the North Dakotans on this particular project when we have had so few tangible results and we had them open up the gates anyway?

I would suggest, from the environmentalists we heard from and the people working on the science, that we just put a whole ecosystem at risk.

•(1615)

Mr. William Crosbie: I'll ask my colleagues from Environment Canada to address that question on the risk to the environment.

What we have are the elements of an agreement. The two governments, the States and the province concerned have said that this is what they want to have enshrined in an agreement. We get to negotiate that agreement.

Mr. Nathan Cullen: Canada asked for a referral to the IJC, did we not? It was in April, I think you said. In April 2004, we said we needed to refer this to the IJC. What did the Americans say?

Mr. William Crosbie: At that point in time, the American government was not willing to make a reference to the IJC.

Mr. Nathan Cullen: So they said no.

Mr. William Crosbie: Yes.

Mr. Nathan Cullen: For what reason did we feel it was important to move it to the IJC? Why did we take it to such a high level of influence and power?

Mr. William Crosbie: Our preference would be to use the IJC because it is a body that can bring together the experts. It already exists; it's used to working in a binational format. We felt this was the preferable forum to resolve this kind of dispute.

Mr. Nathan Cullen: So this forum that we're in right now is new territory for us?

Mr. William Crosbie: What we negotiated in terms of the August announcement and in terms of the follow-up for a binding agreement is not the IJC alone. The IJC does have a role to play, and that's the International Red River Board. So the IJC is involved, not just now, but for the future. It's going to be an important component to finding an overall solution to what's driving this water dispute.

Mr. Nathan Cullen: As for the ways of going about solving our disputes, as Mr. Mills mentioned, we have many shared boundaries, and going ahead, this seems most precarious. I understand it went right up to the Prime Minister and presidential levels, and that's very impressive. But in terms of the results at the end of the day for Canadians, in terms of our diplomatic influence within the U.S., we are now into what we're calling new territory. We had an agreement. We had a 90-year pact and it worked pretty well; it's done lots of things, but we've gone away from that.

I want you to clarify what you meant by this "environment" in the United States that you talk about. You raised it cautiously in terms of ever considering the renegotiation of the transboundary water agreement. What is this environment that you're talking about?

Mr. William Crosbie: First of all, what we have negotiated does not go contrary to the Boundary Waters Treaty. It is not contrary to the spirit of that, of working cooperatively.

Mr. Nathan Cullen: I didn't suggest it was contrary; I suggested it was in a new place in a new form. This is not what we've done in the past. We have an agreement set up to settle this exact type of dispute, and we're not using it. We're using a piece of it.

Mr. William Crosbie: I don't have enough of a record to answer how we've dealt with every single one of the water issues that we've had in the past, but I would imagine that they have not always been to the IJC, that there are various ways in which we address issues that have arisen between us that affect the environment on the boundary.

The fact that we're not using the IJC, which was our preference, does not condemn the IJC, does not condemn the treaty, nor does it set a precedent that we will not use the IJC or are not being consistent with it.

• (1620)

Mr. Nathan Cullen: I think you might be following suggestions that I'm not actually making in terms of the quality of the IJC. That's not my reference.

My reference is when Canada has, formally and officially at the highest levels of our government, the highest forms of diplomacy that we have, suggested a path—requested, as good neighbours, a path—and the Americans have rejected it, we then enter into a new space, a different format of doing this. I'd be curious—and we can

ask Mr. Carey and his colleagues—to know how many times in the past we've formally requested a referral and then been denied. I think it would be informative to this committee to find that out.

I think you understand where I'm trying to go with this. Our relations with the United States are strained right now, at best. We, as a committee, took this issue on to find out how it is that we're going to improve upon relations, because we have so many contiguous boundaries, as Mr. McGuinty pointed out, that we share so much, and yet this environment you spoke to seems to go counter to our continued productive relationship.

Mr. William Crosbie: I guess I spoke about what I regard as the political environment for changing what is a treaty. A treaty is not something that you want to negotiate frequently and change often.

You would approach any change in a treaty with extreme caution. It doesn't matter what the topic is. And before you did that you would make sure you'd laid the groundwork to do so.

Peter, do you want to address a couple of issues with which you are more familiar?

Mr. Peter Fawcett: I'd just like to remind members of the history of the Boundary Waters Treaty. It's almost 100 years old now, and throughout that history all references to the International Joint Commission have been made jointly by the two governments. There's never been precedent for one country simply going it alone, if you will.

Mr. Nathan Cullen: Yet the treaty allows for it.

Mr. Peter Fawcett: It does, but it's never been utilized.

The second point I would make—and this goes to your other question, I guess—is there have been approximately 90 different projects that have come up over 90 years where we've either referred the matter to the IJC or proceeded with projects under what we call a special agreement under the Boundary Waters Treaty. Over 60 of those projects have in fact been done by special agreement between the two parties.

There's lots of precedent for other kinds of arrangements. We rely on the IJC not only, as I mentioned earlier, for the work they do on an ongoing basis, but also for references in making recommendations that the governments then take into account when they reach agreements.

The Chair: Mr. Crosbie, there also was the issue Mr. Cullen had raised with respect to whether we are putting the system in jeopardy, the risk that was associated. We're out of time on that question, but I would hope that maybe we might come around to the second part of Mr. Cullen's question in terms of your rejoinder.

We're going to have to go back up to the top of the batting order, to Mr. Watson. These are now five-minute rounds.

Mr. Watson, please.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

I'm trying to follow the logic going around here as we're listening. I want to start first by picking up on comments from our colleague Mr. McGuinty.

We have an agreement working towards another agreement, but we have no basic elements to that agreement. Essentially, I think what we have here, if we were to boil it down, is U.S. goodwill that's allowing us to move forward. Yet when you talk about opening up the Boundary Waters Treaty, it almost sounds like you're afraid that the treaty would be weakened.

Are you concerned that if we opened up the treaty in efforts to try to strengthen it, perhaps making a referral mechanism to the IJC automatic in these types of disputes, the Boundary Waters Treaty would be weakened by the United States in negotiations?

Mr. William Crosbie: Thank you, and then I'll ask my colleague, John Carey, if he has any comments.

First of all, I think it's wrong to say we just have the goodwill of the U.S. We have the announcement made in August, approved by the two federal governments, by the states involved, and by the province of Manitoba. It clearly outlines what the elements of the agreement will be. It will take time to complete the elements of the agreement.

On the technical and biological sides, we have the environmental analysis and then the engineering work that need to be done, and that's going to inform us in terms of remedial measures we're going to take to avoid a problem down the road—what kind of filtration system we'd have to put in.

I should say that since the August announcement, a lot of work has been going on involving Kevin and others at the table. We are working towards fulfilling the elements of the agreement, and there have been and continue to be discussions between the Government of Canada, the Privy Council Office, Ambassador McKenna, and corresponding federal government agencies in the United States.

With respect to my concerns on what a reopened Boundary Waters Treaty would look like, all I'm saying is we haven't done the work among Canadian stakeholders to begin with, in terms of what we would want to see if we were to reopen the treaty. Would we be able to get Canadians to agree on a common approach that we would bring to a negotiation? Then, working with our embassy in Washington, our other missions, and our allies in the U.S., could we have a very clear sense of what the demands will be on the other side? That work hasn't been done. If the government decided that's what it would like to do, those are the steps it would follow, first in Canada and then down in the United States, so you go into the negotiation with a very clear sense of what you think you can achieve.

• (1625)

Mr. Jeff Watson: I understand that. My question was whether you are concerned that the Boundary Waters Treaty would be weakened by the United States in reopened negotiations. You're saying you have clearly no idea whether it would be or not. Is that your position?

Mr. William Crosbie: I have no idea whether or not, and I'm sure if we asked different people, we'd get different views.

John, did you want to add something? I know you wanted to earlier.

Mr. John Carey: I wanted to address the ecosystem and risk question. I don't know if that's out of line at this time.

The Chair: Does Mr. Watson have a follow-up question?

Mr. Jeff Watson: Yes, I want to continue on here.

The Chair: We can leave that. We'll take a note on that.

Mr. Watson.

Mr. Jeff Watson: Just picking up on Mr. Cullen's line of questioning, I think I see where Mr. Cullen is going on this one. If we're looking ahead, we are charting some ground from which we are looking to obtain binding agreement outside the IJC.

If a subsequent agreement is achieved and it's violated, where do we go for recourse? If it's not within the IJC, do we refer to the IJC? Where do we go if someone defaults on one of these special agreements you talk about?

Mr. William Crosbie: That depends on what we actually put into the agreement, and whether we outline in that agreement how we will resolve any differences of view. That is usually the case in an agreement—you specify what you will do when you cannot agree.

Mr. Jeff Watson: Would you take the position, then, in negotiating, that this special agreement should automatically be referred to the IJC if someone were to default? Is that the position you would take, or do you think there's a better mechanism?

Mr. William Crosbie: I really don't feel I have enough expertise, either on the legal or the environmental side, to decide whether, in the case of a difference, we would be willing to refer aspects of the agreement or all of the agreement to the IJC. I just don't feel I know enough.

Mr. Jeff Watson: I think the sense—by some of us around the table, at least—is that currently what would strengthen the IJC would be some sort of automatic referral in cases of interbasin issues. We don't currently have an automatic referral.

One way to do that, certainly, is by changing the Boundary Waters Treaty. Another way might be to make these automatic in these new special agreements you keep talking about. If that's the route you're going to go, I think the feeling is that having an automatic referral, and both parties at that point agreeing it would be the dispute mechanism, would be the preferable course. That's what I'm getting at.

Would you agree with that or not agree with that?

Mr. William Crosbie: I think the principle of referring it to the IJC or a similar binational process is the ideal way of achieving this. As was pointed out, the treaty does allow for unilateral referral, but

—

• (1630)

Mr. Jeff Watson: But it would be non-binding. We're looking for a binding—

Mr. William Crosbie: Exactly. We think that it would in fact weaken the Boundary Waters Treaty.

The Chair: Thank you, Mr. Watson.

Thank you for that, Mr. Crosbie. We'll leave that on the floor, because I think there is going to be further pursuit of that concept.

Mr. Cardin.

[Translation]

Mr. Serge Cardin (Sherbrooke, BQ): I only have a brief question to ask. Under this treaty, no deviation of boundary waters may be made on either side of the border if it influences the flow or natural level of boundary waters on the other side of the border, except with the prior approval of the International Joint Commission.

You'll probably tell me I'm wrong, but here's how I interpret my predecessor's question: if a question has to be submitted for the approval of the International Joint Commission, one country does not need the permission or cooperation of the other country in order to submit it. That should be automatic.

Yes or no?

[English]

Mr. Peter Fawcett: If I might, I believe the member is referring to article III of the Boundary Waters Treaty, the obligation not to affect levels and flows on the other side of the boundary. It would be a violation of the treaty if one party were to cause an effect on levels and flows on the other side. That article, unfortunately, just refers to boundary waters, which would include the Great Lakes, Lake of the Woods, the St. Croix River, and the Saint John River.

In the case of Devils Lake, we're talking about a transboundary body of water, the Red River in this case. And the operative article and the concern that we have expressed as it relates to the Boundary Waters Treaty and this Devils Lake project refer to article 4.2 of the act, which is that thou shalt not pollute on the other side. And that includes not just water quality, but invasive species.

Those are the operative articles of the treaty that refer to the obligations. Throughout the history of the Boundary Waters Treaty, as I mentioned earlier, when there has been a concern expressed on one side, then the parties have agreed to jointly refer matters to the International Joint Commission.

The Chair: Thank you, Mr. Cardin, for bringing that distinction up between transboundary and the International Boundary Waters Treaty Act. We hadn't heard about the distinction in the legislation before.

Mr. Paradis.

[Translation]

Hon. Denis Paradis (Brome—Missisquoi, Lib.): Thank you very much, Mr. Chairman.

I'll pick up the question where the others left it. I'm speaking to Mr. Crosbie. It was asked earlier what should be changed in this treaty. I think it's important to amend it, and, if I've understood clearly, everyone here pretty much agrees. There should be an automatic reference. That would facilitate matters for everyone, on both sides of the border. I don't think it's necessary to change anything else; we need only add an automatic reference. I'll explain.

I've been a member for 11 years, and I've been monitoring the files of the International Joint Commission for 10 years. I want to praise the Commission, which is doing an outstanding job. I'd like that to be recognized by all the federal departments, particularly by the Department of Foreign Affairs and the Environment Department. Those two departments have caused a lot of problems for me in references to the International Joint Commission.

We had to wait seven years to get a report, a reference from the International Joint Commission on Lake Champlain. We had to work hard to get that request from the two departments and a simultaneous request from the U.S. Department of the Secretary of State. It worked. The six commissioners gave us a report dated February 2005, finding in favour of Canada and asking the United States to remove earthworks that were blocking water circulation between the two countries. It was an utterly outstanding job.

There's another problem in Lake Memphremagog, and requests have been made to the International Joint Commission for approximately two years now. My colleague from Sherbrooke will no doubt join with me in this request. We'd like the International Joint Commission to look into the expansion of a dump in Coventry, on the Vermont side. We're not asking for money, but rather that the matter be put before the Commission. There's some reluctance on the part of our government and on the American side, but I insist on it and I'm still insisting.

I don't know who Mr. Levy from the Department of Foreign Affairs works for. I don't know whether he works with you, but he doesn't like to refer cases to the International Joint Commission. I don't understand why. I don't know what he has against it, but he doesn't like it at all; that was very clear.

There's also the American side. Last week, I met an officer from the U.S. Embassy. He explained that the same was true on the other side. Sometimes they're reluctant to give us access to the International Joint Commission, but Canada also denies them access when they want to submit projects to the Commission. He didn't tell me which ones, but I'll try to find that out. Perhaps you know. I think the Commission is extraordinary.

Why don't we make every effort to ensure it has the necessary budget to play its role, which is to resolve disputes between Canada and the United States?

•(1635)

[English]

Mr. Peter Fawcett: If I might, Mr. Chairman, I think it does warrant some further elaboration and an explanation of the process that we do follow in making a reference to the International Joint Commission.

First of all, both the U.S. and Canadian governments generally take the view, as I mentioned earlier, that we should try to find regional solutions to regional problems, so that they're dealt with among the people who are directly affected and directly interested.

Partly through the experience we've had with the Boundary Waters Treaty and the International Joint Commission—and I'll speak to this from the Canadian perspective—Canadians do have standing now in the U.S. licensing and environmental assessment process, and this goes to a broad range of projects that occur near the border regions.

So our first approach is to try to encourage Canadians to participate in the U.S. environmental assessment or other kinds of licensing processes, so that our views are taken into account. We have had some success, I think, in these areas.

We look at that at the first level. If we are not satisfied that our views have been taken into account, then we can consider making referrals to the IJC. But there are two further conditions there that warrant further elaboration, I guess. One—and this goes to the situation in Devils Lake, and for projects that occur on the Canadian side—the International Joint Commission won't take up a joint reference unless it's assured that states and provinces are also onside with respect to a referral. They do not want to get into the middle of a controversy between the federal and provincial or state governments, so all of the parties have to agree, and agree that this is a bona fide project. There are a number of projects that come up that don't survive either the licensing or the environmental assessment process, and the commission itself will not take on a referral of a project until the domestic process, either in Canada or the United States, has been completed.

So it's important that we keep this in mind. Even though I would say, from the Canadian perspective, that the Boundary Waters Treaty and the International Joint Commission have protected Canadian interests for almost 100 years, we can't jump to that process automatically with respect to any potential project that comes along. We go through this process, and then we make the referral if we're not satisfied.

[Translation]

Hon. Denis Paradis: Mr. Fawcett, your two arguments...

[English]

The Chair: Mr. Paradis, we're out of time, I'm sorry. But if the committee will allow, seeing that Mr. Cardin did not take his full time and that there is some sort of interchange going on between Mr. Paradis and Mr. Cardin....

Mr. Cardin, would you allow Mr. Paradis to have that time? Is the committee in agreement on that? Thank you.

Then you have the floor.

• (1640)

[Translation]

Hon. Denis Paradis: Thank you, Mr. Chairman.

I'm going to respond to your two arguments.

First, you would like people to follow the procedure of the state or province concerned. Very often, a state or province carries less political weight than Washington or Ottawa.

In the case of this sanitary landfill site, the local authorities in Vermont are not in as good a position as Washington. I was told that the company that wants to install its waste centre is paying for the studies and paying the taxes of everyone in the village. You know how profitable the waste sector can be. Local authorities find themselves in a delicate position, and perhaps it would be better for Washington to study it in a more independent, deliberate and transparent manner.

Then you suggest taking advantage of the licences and commissions of U.S. states and Canada. People from the Sherbrooke and Magog regions went to Vermont to address the Coventry issue in accordance with Vermont's rules and procedures, but also with the limits they entail. As a result, we don't feel we're being treated as

fairly as we are by the International Joint Commission, where three Canadians and three Americans review the case impartially. In that sense, this is the ideal mechanism for solving the border problems that we have.

[English]

Mr. Peter Fawcett: I'll try to be brief, Mr. Chairman.

When we first heard of this proposed landfill project, we knew very little about it. We raised our concerns with the State Department. In fact the State Department intervened with the State of Vermont to ensure that Canadian concerns and Canadian participants in this licensing process were seriously taken into account in the licensing process.

A final decision on this, I understand, is still pending. Of course, if we're not satisfied with the results, then we can look at other possible recourses.

The Chair: Mr. Paradis, I am sorry; I have to now interject. We've exhausted that amount of time and exhausted, I think, Mr. Cardin and the time he had allowed you.

We will go now to Mr. Cullen.

Mr. Nathan Cullen: Thank you, Chair.

I have some specific questions on the project as it stands right now. Mr. Cash, you mentioned that the two-month study of the ecosystem is insufficient for—I think you used the term—“establishing a proper risk assessment”.

As these negotiations go on over the wintertime, I assume the water is not flowing right now. When is it the plan for them to open the pipes again?

Mr. Kevin Cash: Under the licence agreement by which North Dakota is operating the outlet, there is no flow from the end of November until the beginning of May. However, flows are constrained by the sulphate concentrates in the Sheyenne that we've already discussed and by the total flows in the Sheyenne River as well.

Mr. Nathan Cullen: Imagining that those two conditions involving the sulphate and the total flow are okay, at the beginning of May, regardless of whether we have this agreement, could the outflows be turned on again?

Mr. Kevin Cash: Under the current licence they could, yes.

Mr. Nathan Cullen: In not having enough environmental assessment done of what's in this ecosystem, and with the concerns that have been raised about this project from the outset, what assurances are we able to give to the people of Manitoba that the flows that will be potentially starting in May will be safe?

Mr. Kevin Cash: I think it really goes to your earlier reference to the precautionary principle. To completely understand the biological communities in both Devils Lake and in the Red River Valley is a huge undertaking. To do the risk assessment that would quantify the possibility of any organisms moving from one region to the other and becoming successfully established there is difficult. And then to predict the effects of that establishment, should it occur, is very difficult.

Science in general has had a very poor track record of successfully predicting this. From our perspective at Environment Canada, the emphasis should be on the appropriate mitigation to prevent that from occurring in the first place.

Mr. Nathan Cullen: Allow me to understand, then. In the context of what we have with this potential agreement, there seems to be some call for an enhancement of the filtration process, a sense that the current one is not good enough. Is there some proposal that this will be built before the outflow is turned back on again?

•(1645)

Mr. Kevin Cash: I haven't—

The Chair: I wonder if we could have Mr. Carey, who has been wanting to answer part of that question, respond to it.

Mr. John Carey: I was hoping to discuss the fact that North Dakota has attempted to do a version of a risk assessment. They have used existing data in the past to try to identify the potential for species present in Devils Lake to become invasive in the Red River.

They point, in their arguments to us, to the fact that something like eight or ten times since the last glaciation Devils Lake has naturally overflowed into the Red River. They point to the fact that in 1940 Devils Lake was virtually dry, and the ecosystem that exists there has more or less grown since 1940. They have done an analysis of existing data and have not found a species they can point to that they would believe to be invasive.

Mr. Nathan Cullen: That's the Dakotan position and the argument they are using. My concern is the Canadian position. We're only talking about this issue because there is obviously a serious risk caused by this project.

Mr. John Carey: There's a potential risk, a theoretical risk.

A barrier exists now. They have removed the barrier to water transfer, and if there are species there, even though we haven't identified them yet, that could be invasive, those would now be available to the Red River.

Our position is you can't really prove a negative. Mr. Mills was absolutely correct when he pointed out you can go to different seasons, different depths, different places, and even when you did all that you could still come back and say we didn't find anything, and someone could say "Maybe it was just the ice cover this year." It's very difficult to prove a negative.

What we've said is you are removing a barrier; you should reconstruct a barrier as a precaution, even though we have not identified a single species yet that could be said to be a threat.

Mr. Nathan Cullen: Aside from the megafauna and the fish that could potentially not get through such a barrier, we're talking about a range of potential invasives. I assume that's what you mean by species, you're talking right across to the bacterial, microbial-

Mr. John Carey: From fish parasites to fish to—

Mr. Nathan Cullen: What's confusing to me in understanding this entire file is the Devils Lake as a body of water holds a great number of concerns for Canadians. We don't want that water. We don't want what's in that water. If we didn't mind, then we, as a standing committee, would not have stood up in front of the country in a press conference and raised the concerns. Because we, using

what intelligence we had, said there's a problem with this body of water.

My concern is they've put in a filtration system that we're not satisfied with. We have a pending potential agreement, a non-binding one right now, and for the people in Manitoba we're meant to assure them with "we just don't know". We simply don't know what's there. We don't know if the Dakotans are planning to build something for sure better and bigger and spend the money and whether that will be in place before the outflow pipes are turned on again.

Is that...? What have I said that's wrong?

Mr. John Carey: We don't know that.

Mr. William Crosbie: One thing I would say is wrong is that we have a commitment from the U.S. government, and North Dakota has signed on to this, that we will put in the appropriate filtration system to address the identified risks.

Mr. Nathan Cullen: Prior to the flow being turned on again?

Mr. William Crosbie: That is our position, yes.

Mr. Nathan Cullen: Is that their position?

Mr. William Crosbie: You'd have to ask them.

Mr. Nathan Cullen: I know, but this is why we've called you here: we want to know that their position is that they're not going to turn the tap on again, with the inherent risks that we've been made aware of, until the scenario you just described exists.

Mr. William Crosbie: It would make no sense from the U.S. government perspective to enter into this agreement in August, the announcement that we made, if they had no intention of implementing it. To implement it, the barrier has to be there before the project is in operation. Otherwise, why would you go through the environmental analysis that they've agreed to do? Why would we go to the engineering study to look at the kind of filtration system we put in unless you're going to do it before it was...?

•(1650)

The Chair: Final point.

Mr. Nathan Cullen: Yes. This is very confusing.

Have the Americans publicly declared that they will not turn on the outflow until the risks that we have raised as a Canadian government have been completely mitigated?

Mr. William Crosbie: I think you'd have to go to what was written in the negotiated release that came out, the announcement. It says:

To protect against the ongoing risks of any aquatic nuisance species entering the Basin through Devils Lake or through other parts of the watershed, the participants have agreed upon the following layered approach involving both mitigation measures and joint monitoring.

Specifically:

North Dakota will put in place a rock and gravel intermediate filter before opening the outlet, to prevent the release of macroscopic aquatic nuisance species

—which is what they did do—

from Devils Lake;

The United States and Canada will cooperate in the design and construction of a more advanced filtration and/or disinfection system for the Devils Lake outlet, taking into account the results of ongoing monitoring and risk assessment;

This is the work that Kevin has been involved in, and the environmental analysis is expected out very shortly, which will attempt to deal with this whole question of how big is the risk. Because that's the question. It wasn't that Canada had identified that there's a specific thing that was going to come out of Devils Lake, we wanted to make sure that we did the risk assessment and we didn't want to take something that was unknown.

So that's what the effort of Environment Canada officials has been working with the U.S. counterparts, and then working with the International Red River Board of the IJC to develop and implement a shared-risk management strategy, taking immediate measures to prevent the spread of any aquatic nuisance species.

So we believe that we have a commitment from the United States government that there will be put in place the appropriate filtration system to guard us against the risks that are identified through the environmental analysis.

The Chair: I have to interrupt. Is the document you're referring to the actual memorandum of understanding? Is that what it is, or is it...?

Mr. William Crosbie: It is an announcement made by the two federal governments, the states concerned, and the Province of Manitoba.

The Chair: I see.

Was this distributed, Mr. Clerk, to members? Our research has just showed me that we have a copy. We'll have that distributed to members of the committee.

Thank you, Mr. Cullen.

We're going to go to Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): First, how many person-hours were put into this two-month study in field testing?

Mr. Kevin Cash: The actual field work was conducted over a five-day period near the end of July.

Mr. Brian Jean: Five whole days?

Mr. Kevin Cash: Yes.

Mr. Brian Jean: How much lab work was done?

Mr. Kevin Cash: I don't think I could really quantify that for you very easily. The U.S. Fish and Wildlife Service was involved in several months of testing for pathogens and parasites in the fish samples that were collected.

Certainly—

Mr. Brian Jean: I'm more interested in the Canadian side, to be blunt.

Mr. Kevin Cash: On the Canadian side.

Mr. Brian Jean: What was done by the Canadian side? How many person-hours were put into it on this five-day study?

Mr. Kevin Cash: I would think it would be fair to say that the Canadian investment in the study, in the design and in the interpretation of it, certainly is well into the hundreds of hours.

Mr. Brian Jean: That wasn't my question. I was talking about the person hours on the on-site study.

Mr. Kevin Cash: The only people on-site from Canada were from the Province of Manitoba.

Mr. Brian Jean: How many people would that be?

Mr. Kevin Cash: There were two to three people from the province.

Mr. Brian Jean: So two to three people from the Province of Manitoba for five days.

Mr. Kevin Cash: Yes.

Mr. Brian Jean: That's depressing. So I understand that this new trap, in essence, or filter, won't take out bacteria and won't take out parasites under the size of 10 microns.

Mr. John Carey: That was our suggestion, yes. That's why we have included disinfection in the request.

● (1655)

Mr. Brian Jean: What kind of disinfection?

Mr. John Carey: Ultraviolet.

Mr. Brian Jean: All right, and will this take out parasites and bacteria under that size?

Mr. John Carey: Yes.

Mr. Brian Jean: Will anything be able to leak through that could cause problems, like parasites or bacteria?

Mr. John Carey: Theoretically, yes. No disinfection is guaranteed 100%. Also, there are viruses that are not susceptible to doses that parasites are.

Mr. Brian Jean: Would you give me some examples of viruses?

Mr. John Carey: I could go and look some up for you.

Mr. Brian Jean: That would be great if you could. I would appreciate that. Could you get back to me?

Mr. John Carey: There's a range. The doses we suggested were doses that were based on a specific parasite that causes whirling disease in fish, doses of UV that are known to kill that, and then we added a conservative factor and suggested that something in the order five to ten times that dose should be the design dose for the system.

Mr. Brian Jean: Could you get back to the committee with types that could?

Mr. John Carey: There are organisms that are not killed at that dose, and I can give you a list of those.

Mr. Brian Jean: Thank you very much, sir.

How often do you plan to do testing on these sulphates—is it once a year, once every ten years, or every day?

Mr. John Carey: Testing at the border or—

Mr. Brian Jean: The sulphate levels that we're going to be doing testing on.

Mr. Kevin Cash: At the border we are testing for sulphates every two weeks and we are testing for total dissolved solids on a continuous basis. We're measuring those about every 11 minutes. And just by way of clarification, sulphates are the major component of total dissolved solids, so we have a very accurate real-time measure of those.

In the Sheyenne River, which receives the discharge from the outlet, the licence from North Dakota requires them to test for sulphates at least five times a week for the first year and to measure total dissolved solids, again on a continuous basis.

Mr. Brian Jean: I am not a biologist. Fortunately, I'm sitting next to one, but I'm curious as to how toxic sulphate is as a substance. What part per million would be considered to be dangerous to a human?

Mr. Kevin Cash: The IJC guidelines that have been established at the boundary are 250 milligrams per litre, and that is considered protective for all uses, including the protection of aquatic life.

Mr. Brian Jean: All right. How about for humans?

Mr. Kevin Cash: Aquatic life is generally considered the most sensitive use for these waters, so it would be at higher elevations, once you're up well into the thousands, that you could start to see human health problems related to diarrhea, other mechanisms, and that would require enhanced water treatment.

Mr. Brian Jean: Is that at 250 milligrams per litre?

Mr. Kevin Cash: No. Sorry, those are well into the thousands when we would see that. We're well below that.

Mr. Brian Jean: It's just that I find it very curious that Agriculture Canada won't let honey through our borders that is I think 0.003%, or parts per trillion, and yet you've got here one part per million. That's what it is, one part per million, isn't it?

Mr. Kevin Cash: It is. I think, though, that we have to keep in mind that there are sulphates in the water that is around this table right now. It is a naturally occurring salt. It is a natural component of the water that we are all consuming and using on a regular basis, and by itself is no cause for alarm. It only becomes a problem when the salt levels are elevated to the point where they impair aquatic ecosystem health or human uses of that water.

Mr. Brian Jean: Much like uranium, when you add it to.... Very similar?

Mr. Kevin Cash: Uranium is a naturally occurring substance as well, but it's certainly not as ubiquitous as these salts are.

Mr. Brian Jean: I have a lot in my riding, a lot of uranium, and not much sulphur, but I'd be concerned with it the same as I am with this.

You mentioned as well that a lot of work has been done since August of this year. I'm just wondering what work has been done, what has been accomplished.

Mr. Kevin Cash: With respect to the biota survey?

Mr. Brian Jean: With respect to anything concerning the Red River issue.

Mr. Kevin Cash: There are a couple of elements. The focus has been largely on the biological survey itself and on efforts to try to reach an agreed-upon way to go forward with the CEQ report, and we have been involved heavily in that.

I'd also point out that the IJC, through the International Red River Board, is very active in developing strategies at the watershed level for the appropriate monitoring and assessment of the water resources in the Red River Valley. That is a very active group now, supported by all of the jurisdictions. For example, there's a workshop next

week involving North Dakota, Minnesota, Manitoba, and the two federal governments to explore the best ways to sample and report on and share all the information related to the biota in the Red River Valley, as well as the water chemistry.

So those activities are ongoing as well. In addition, Manitoba has done its own surveys and sampling, and has brought in experts to help them and assist in the analysis of those data. There should be a report coming out on that as well.

So there is quite a bit of activity.

Mr. John Carey: In addition, since August we in Canada have done a literature review of potential mitigation technologies, up to and including membrane filtration, and have contacted potential suppliers with respect to their availability and their cost, and then have discussed with Minnesota and Manitoba these technologies. That's how we arrived at the request to the Americans to have an engineer consider the feasibility of installing large screens and screen technology down to ten microns and UV treatment. That's happened since August.

● (1700)

Mr. Brian Jean: I see my time is up, but if I may summarize it, I understand then that we in essence have spent two persons, five days. We've spent less money on this and less investment on this than we have as a government on the mating effects on butterflies. That's pretty much what I understand. It's quite depressing. We have millions of people who depend on this area for livelihood and everything, and it just seems very strange that we would do this so quickly and so fast.

The Chair: No, Mr. Cash, I think that Mr. Jean has made his point, and it's again around the precautionary principle. I think you can see that the committee is trying to focus on whether we have taken everything into consideration in terms of oversight and the responsibility of keeping within that precautionary principle.

Mr. Scarpaleggia has a question.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Welcome.

I would like to clarify something that I may have missed at the beginning and then I'll go on to my main question.

The U.S. had a project in mind. They were ready to refer it to the IJC, initially. We did not want to go to the IJC. Then we wanted to go to the IJC and the U.S. didn't want to go to the IJC. Is this a correct understanding? Could you clarify for me again why we didn't want to go originally to the IJC when the Americans did?

Mr. Peter Fawcett: In May 2002 the other project, which my colleagues have described, was that the Army Corps of Engineers had designed a project. To go back to an earlier comment, it in fact cost over \$200 million, of which North Dakota would have had to pay about \$80 million, and it had a rather elaborate sand filter as part of that process. In any event, the United States Army Corps of Engineers did a comprehensive environmental impact statement on that project. It had just released its initial assessment when the United States wanted to go to the IJC, and at that time, in May of 2002, we said it was premature. There were a number of options for dealing with Devils Lake flooding that were on the table at the time, and in fact the environmental assessment was not completed until October 2003.

So as I mentioned earlier, it's important that there is a real bona fide project on the table that we would then refer to the IJC. That's why we said in 2002 that it was premature to refer this matter to the IJC.

As I mentioned earlier, on the state project, when this project, the federal project, did have—

Mr. Francis Scarpaleggia: Can I just stop you there before you lose me?

What would the harm have been in going to the IJC while still looking at other alternatives to the \$200-million project?

Mr. Peter Fawcett: It's a matter of what it is. You have to be very specific in terms of what it is that you're going to refer to the IJC. You can't just tell them, study this. Letters of reference that are sent by the Secretary of State and the Minister of Foreign Affairs to the IJC are very specific. As Mr. Paradis knows on Missisquoi Bay, they are very specific in terms of looking at a project. That was why we viewed referring the matter to the IJC as premature at that time.

Mr. Francis Scarpaleggia: Yet again the Americans thought it was specific enough and important enough that they were prepared to go. Or am I just misunderstanding?

Mr. Peter Fawcett: No, but there's another thing you should understand as well. At the time, there was a legislative requirement for this federal project, once the environmental assessment was completed, to refer the matter to the IJC. The legislation was subsequently changed, so it no longer required an IJC reference. But in 2002 there was a legislative requirement that it be referred.

Mr. Francis Scarpaleggia: In the U.S.?

Mr. Peter Fawcett: Yes.

Mr. Francis Scarpaleggia: In addition to Devils Lake, what do you see as other potential flashpoints in terms of these smaller cross-boundary conflicts or flare-ups or whatever? Are there any others that you see on the horizon that we should know about?

Mr. Peter Fawcett: We have to be ever vigilant of any project on either side of the border, frankly, that affects interests on the U.S. side. That's why we have the IJC.

As I mentioned earlier, they have 22 different boards that look at these issues and look at watershed management. We have some very good examples. Again, just to elaborate a little bit on the work that is done by the IJC, they just completed a study of Lake Ontario's St. Lawrence outlet. They're currently consulting through a multi-stakeholder process. They're just embarking as we speak, this week,

on a review of the Great Lakes Water Quality Agreement, with meetings throughout the basin.

The IJC has taken on some very difficult issues. They have a task force that is currently looking at the apportionment or sharing of the St. Mary River and Milk River in Montana and in Alberta and Saskatchewan. And we mentioned the International Red River Board.

Those are the ways in which we hope to be able to try to manage the issues that do affect interests on the other side.

• (1705)

Mr. Francis Scarpaleggia: Do you feel you have the scientific resources you need to monitor the situation? As a government, do we have the money, the resources that we need? It sounds like we probably do, Mr. Carey, from your answers.

Mr. John Carey: I wouldn't want to turn this into a plea for resources, although our resources are stretched. We do have a significant amount of resources to conduct priority activities, although we don't monitor for everything everywhere.

Mr. Francis Scarpaleggia: No, but in this particular case....

Mr. John Carey: There has recently been an increase in resources for monitoring in the Red River, and I believe we feel we have enough to conduct monitoring for the Canadian portion of the Red River, yes.

Mr. Francis Scarpaleggia: Thank you.

The Chair: Thank you, Mr. Scarpaleggia.

Mr. Mills.

Mr. Bob Mills: I know it's not all your fault, but I guess what I've heard has been pretty discouraging today. Maybe it's why we have 300 to 500 boil-water warnings, where we can't drink the water in our country; it's why three cities dump their sewage into the oceans; it's why we now have over 70 smog days in Toronto for one year; and it's why we have landfills seeping into adjacent property. I could go on and on. Our pristine Canada is not so pristine any more because we are so lax in terms of what we're doing.

The hair goes up on the back of my neck when I think that you did a five-day study, and you even call that a study. That's insulting. A high-school student would go out and do something like that and call it a study. That is no study. Two Manitoba provincial government people were involved on it. What the hell were the feds doing? Do we have no biologist? Do we have nobody who cares about the environment? I find the answers that we got pretty upsetting.

This is certainly a bad example for the future. We just checked the EPA drinking water standards. You said it was in the thousands for having a laxative effect; the EPA says it's 500. Not even your information seems to be accurate. I certainly wouldn't want to appear in Manitoba and say, "Well, guys, hey, everything's fine." I can't imagine why the Manitoba government agreed to this. I met with the environment minister from Manitoba this week, and he seems to think this is all great and it's all fine. You seem to think it's all great and it's all fine. Yet I'm not convinced. I sure wouldn't want to live in that area. Then, what's even worse? With all those rivers, obviously, what about the future? This is setting a precedent, and the precedent I don't think is a very good one.

I would suggest that when you're negotiating, think about these things. If it's been going on for, what, seven years, why didn't we do an adequate study for a couple of years, at least? Why didn't we have federal people involved? The questions go on and on.

This is not a very good example of good stewardship, and it is why we have all those problems in our environment across the country.

Mr. William Crosbie: I'll let Mr. Cash respond to some of the specifics on the biology, but I think the picture you're painting is an unfair one. I also met with the minister of our water stewardship of Manitoba. We work extremely closely with Manitoba. Of course that government has focused so much effort and attention on this particular problem and on other problems in that water basin, and I don't think anybody needs to be persuaded of that.

So I don't think we're trying to display a sense of there isn't a problem here, and we're not doing anything about it. There's been a lot of work on the biology side, but also in terms of the management side. In terms of what remains to be done, that will determine whether or not the people of Manitoba can be content that their interests have been adequately addressed. That's who we're working with, with the Government of Manitoba and our U.S. counterparts.

Kevin, do you want to talk a bit about the biology?

• (1710)

Mr. Kevin Cash: Sure. I'll mention the sulphates briefly.

The question was this. At what point do concentrations cause human health effects? Those are clearly in the thousands, which is why a guideline is set around 500, to be protective. We don't like to set these guidelines at the point where negative impacts happen. They should be protective before that.

On the question on the survey, I think your point is well taken, Mr. Mills, and I don't disagree with it. This was not intended to address all of the questions. It was a U.S.-designed-and-led survey, and they invited Canadian participation. We did participate in the design and the analysis of those data. We lent equipment to the effort. Although we didn't have staff on site, they employed very standard, technical, field-oriented techniques. We had complete confidence in our colleagues from Manitoba, Minnesota, North Dakota, and the U.S. federal government. We had complete confidence in their ability to collect those data in a sound way and to participate in the analysis of this data, once collected.

There is a great deal to do. There is a great deal that has been done as well. The EIS report that was referred to earlier by the corps was a very exhaustive, several-thousand-page report, but it doesn't answer all of the questions. There is still a great deal more work to be done if we need all those questions answered.

To go back to Dr. Carey's point, and to a point that was made earlier, from our position we still feel the key is mitigation. We still feel that it's impossible to prove a negative; it's impossible to have all of the information we'd like to have from Devils Lake, Lake Winnipeg, and the Red River Valley. So we really need to focus on establishing appropriate mitigation prior to the operation of the outlet.

The Chair: Thank you, Mr. Mills.

At this point, I'm cognizant of the time. I think we'll have to get some direction from committee here, but we were also going to go into the Great Lakes Charter Annex. In relation to the time, my suggestion for the committee would be that if Mr. Crosbie and Mr. Cash could forward to the committee a coordinated paper, the committee could then reschedule, if it deems appropriate, a time when we could focus in on that matter.

Would that be agreeable to the committee? Okay.

With respect to the subject matter at hand, I would say on behalf of the committee at this point that I think you can appreciate the committee's sense of accountability, and I sense that you also feel accountable for what you are doing. So we share that together.

I think the questions that have been raised are in keeping with what we have applied as the precautionary principle, that as we go through each step in terms of the treaty as it relates to the best science, there is a congruity and always an element of minimizing risk.

I think, Mr. Cash, it was your last comment, with respect to the dynamics of mitigation. On that, Mr. Mills, it would appear from the chair's perspective that we would want to have an update from time to time on what the mitigation schedule is going to be and the discipline associated with it, because I think the committee has brought those elements out very well in terms of its questioning and in terms of the response.

I emphasize that these are on behalf of our greater public. This is the greater public in terms of the legacy that is at stake with respect to this issue.

Unless there is anybody who has an additional question...

Mr. Mills.

Mr. Bob Mills: Just to complete this, I think the seriousness of it is can we go back once something has happened, once we find out what's wrong?

I read that exposures over safe limits can result in a variety of serious health problems, ranging from liver or kidney damage to higher cancer rates, nervous system disorders, skin discolouration, hypertension, and so on.

Obviously, with drinking water in the news as the number one story, I think we've learned something, and I don't think the people of Manitoba need to learn it from this experiment. So I would like to know, if the mitigation isn't what we think it needs to be, if the studies aren't complete, can we go back? Is there any room for North Dakota to say "We'll wait and do it the right way", or is it just going to happen and we're just to take it?

•(1715)

Mr. William Crosbie: The commitment we have from the U.S. side is that we will continue and complete the environmental analysis jointly, so we have an agreed sense of what the environmental issues are regarding the lake. That's what we will be completing very shortly. It should be available shortly. Then, based upon that, John and his colleagues, working with U.S. authorities, are going to design and propose the filtration system that we think will safeguard our interests.

Let's remember, this is not just Canada that is at stake here, not just Canadian citizens. There are citizens in other U.S. states who are equally concerned about this. So I don't think we have to feel that this is a Canada versus U.S. issue only. It is an issue with larger dimensions.

Whether or not those mitigation measures are sufficient will depend upon the science and on the engineers. It won't depend upon the politics. The politics will come into play when we finalize all the details of the agreement, but we're satisfied that we have the

elements of what an agreement will contain and we're negotiating those particular pieces of it.

Mr. Bob Mills: Mr. Chair, if they can keep us informed about that, that would be—

The Chair: Mr. Mills, I was going to suggest that our researcher attempt to draw a synopsis of the concerns raised and place that as a minute and that we forward it on to Mr. Crosbie, outlining what the committee is looking for in terms of an update on the mitigation, in keeping with the report that you say is forthcoming; that this is a dynamic process and that we don't have you before us, we raise some questions, and then we forget about it; that we attempt to keep the synergy between us.

On behalf of the committee, thank you very much for being here. I think you can see from the line of questioning and the substantive nature of that questioning that the committee is very serious in its wanting to continue to monitor what's happening in the Devils Lake area and in terms of water quality generally.

The meeting is adjourned.

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