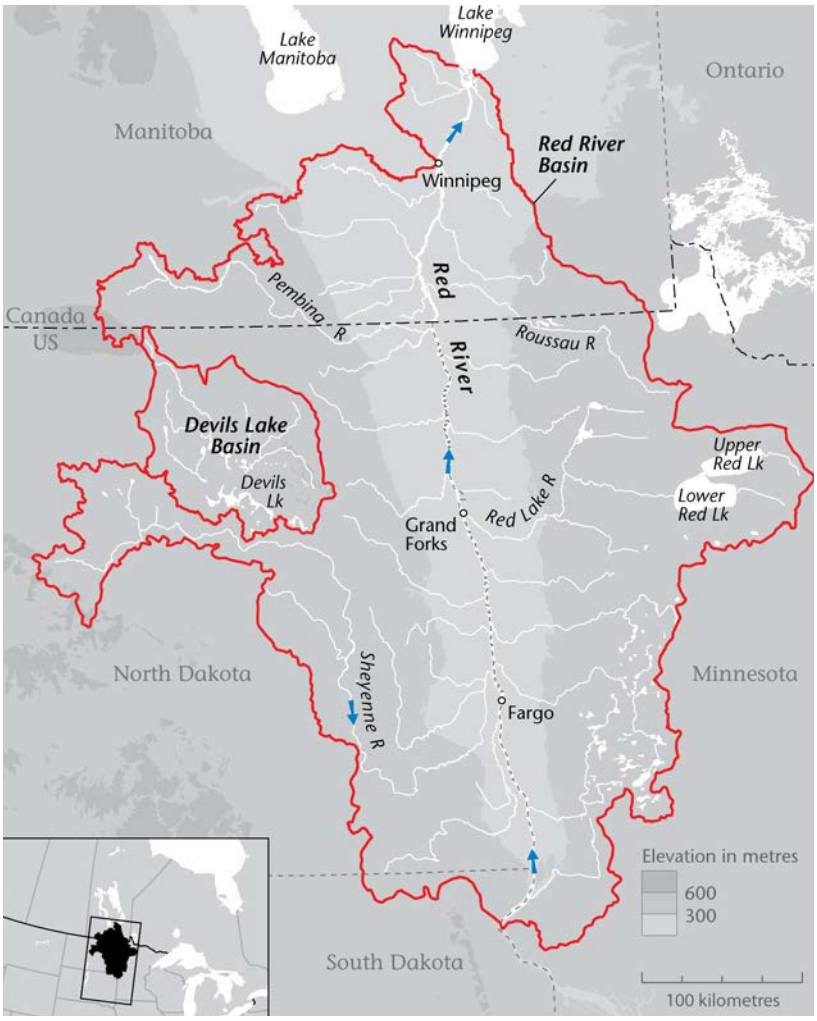
Policy Brief:
Devils Lake and Red River Basin

June 2012

Background and Context

Located in the Red River Basin of northeastern North Dakota, Devils Lake is the largest lake in the state. Due to its lack of natural outflow, the lake's water levels rise and fall dramatically, leading to cyclical periods of flooding. In order to mitigate this flooding, which has become an urgent priority for politicians and water managers in North Dakota, the state of North Dakota has initiated interbasin transfer projects which would move water north of the international border into the Red River, Lake Winnipeg, and ultimately the Hudson Bay (see map). North Dakota's unilateral action on this front, which has been strongly opposed by the Province of Manitoba, has led to a protracted transboundary water conflict.



Source: Original map. Cartographer: Eric Leinberger, Department of Geography, UBC.

Concerns about the interbasin transfers are grounded in particular features of the basin. First, its relative isolation has protected the region from invasive species that plague other freshwater ecosystems; second, recent algal blooms due to phosphorous and nitrogen pollution threaten the health of Lake Winnipeg; and third, the basin is extremely flat, making it susceptible to flooding in times of high precipitation and to drought when water levels decrease.

Challenges and Opportunities

The central challenge is the heated and protracted conflict between North Dakota and Manitoba on this issue. The conflict dates back to 1993, when more frequent and intense summer storm events caused rapid water-level increases in Devils Lake. The resulting damage to communities, farmland, and roads rendered this flooding a priority for local politicians and water managers. In 2002, the US requested a joint referral to the IJC for an outlet from Devils Lake to the Sheyenne River, which flows into the Red River and ultimately into Lake Winnipeg and Hudson Bay. Canada declined and requested a broader proposal to include other interbasin transfers. At this point, North Dakota decided not to wait for federal approval and funding, instead authorizing the construction of a 14-mile (22.5 km), $28 million emergency outlet. Upon construction of the outlet, Canada requested a referral to the IJC. The US government refused.

The vastly differing perspectives between the two jurisdictions had become clear: Manitoba felt that provincial waters – especially Lake Winnipeg – could be negatively impacted by the transfer of invasive species and significant amounts of total dissolved solids and nutrients from Devils Lake, while North Dakota considered these concerns groundless and remained focused on reducing the risk of flooding and related damages. The failure of these neighbouring regions to make use of the established United States-Canada dispute resolution mechanism has led to increased tension.

Nevertheless, both Manitoba and North Dakota seek a fair resolution to the long-standing dispute. Both criticize unfavourable scientific evidence and downplay the other side's concerns. Several factors make a mutually satisfying agreement unlikely, the most salient of which is the failure to obtain in IJC reference. Many fear that supplanting the IJC process with unilateral action has set a dangerous precedent for transboundary relationships resulting in inflammatory rhetoric, disrespect for science-based risk assessment, and further distancing from the well-regarded IJC process.

Recommendations

The central recommendation is for an IJC reference for this case. An IJC reference would offer many benefits, including:

- An objective, scientific assessment of environmental risks and possible storage through wetland restoration;
- Increased "elbow room" for each jurisdiction to be able to accept actions that might not align perfectly with local politics; and
- An improved climate for discussion of other Manitoba-North Dakota water issues.

Note: This Policy Brief draws on the research presented in *Water Without Borders? Canada, the United States and Shared Waters* (University of Toronto Press), edited by Dr. E. Norman, Dr. A. Cohen, and Dr. K. Bakker. This Brief draws in part from the chapter written by Norman Brandson and Robert Hearne. It forms part of a set of Policy Briefs funded by the Walter & Duncan Gordon Foundation on 'flashpoints' in Canada-US Trans-boundary Water Governance. The full set of Policy Briefs can be found at www.watergovernance.ca.

PROGRAM ON
WATER GOVERNANCE
Institute for Resources, Environment, and Sustainability
The University of British Columbia
439 – 2202 Main Mall, Vancouver BC Canada V6T 1Z4
Phone 604 822 6474 | Fax 604 822 9250
www.watergovernance.ca | www.geog.ubc.ca

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