
Assembly of First Nations

Assemblée des Premières Nations



Via Facsimile & Mail

May 5, 2005

Dr. Condolezza Rice
U.S. Secretary of State
2201 C Street NW
Washington, DC 20520

Dr. Condolezza Rice
U.S. Secretary of State
The White House
1600 Pennsylvania Avenue N.W.
Washington, DC 20500

Dear Dr. Rice

Re: Effect of Devils Lake Outlet in North Dakota on Canada's First Nations

I am writing to you in my capacity as National Chief of the Assembly of First Nations, the National elected, representative voice of Canada's First Nations citizens. Our constituent Tribes include 633 First Nations across Canada.

I write to request that you immediately refer the proposed Devils Lake Outlet in the State of North Dakota to review by the International Joint Commission ("IJC").

The proposed operation of the Devils Lake Outlet is a source of grave concern to First Nations in Canada. The project, undertaken by the State of North Dakota, has the potential to cause irreparable harm to our people by transferring previously unknown biota, as well as other pollutants, to the Red River system which flows through our Traditional Territories and into Lake Winnipeg, a major reservoir in which we exercise our Aboriginal and Treaty rights. First Nations in Canada have rights that are recognized by the Constitution of Canada, the supreme law of this country, to use rivers and waters for human consumption, sanitation, fishing, navigation and other means necessary to continue our traditional way of life in modern times. We share those rights - without reference to the Canada-U.S. border not of our making - with our brothers and sisters who reside in the United States. We believe your Constitution provides similar protections.

We have learned from experience that best intentions and local environmental reviews are not adequate to prevent catastrophic damage to river systems. Given the international dimension of this project, only an expert review conducted by a panel drawn from both sides of the Canada-U.S. border can provide a credible assessment of the risks inherent in this project and its conformity with the International Boundary Waters Treaty (the "Treaty").

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Article IV of the Treaty states plainly, and without qualification, that there shall be no cross-border pollution. This promise is clear, plain and of immediate force and effect. We understand it to be part of the supreme law of the United States, and it must be honoured by both state and federal authorities.

Where, as here, there is a real threat that a proposed project will breach Article IV, the appropriate path under the Treaty is for both parties to agree to an international panel to consider the issues. It would be incompatible with the objects of the Treaty for the project to proceed without such a panel being assembled, when so many public authorities and citizens in Canada have expressed grave and reasonable concerns about the prospect of profound and irreparable harm.

I would respectfully note that the Treaty is not the only international law that is of importance with respect to this issue.

Customary international law requires that rivers be used in a manner that is equitable to all concerned, including indigenous peoples. That body of law also requires that states refrain from inflicting environmental harm on others.

Moreover, under the North American Agreement on Environmental Cooperation, the three North American Free Trade Agreement ("NAFTA") partners have committed to enforcing their own environmental standards. Article III thereof states that "each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations." Such laws and regulations include international agreements that have been signed by each party's own executive and ratified by the constitutionally responsible branch of its legislature. Article V thereof further states that, "With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action."

I would also note that as a member of the Organization of American States, the United States is bound by the American Declaration of the Rights and Duties of Man, and the Inter-American Commission on Human Rights has authority to receive complaints directly from First Nations who are adversely affected by departures from that Declaration, including actions that affect human health.

A joint referral to the IJC, pursuant to the Treaty, promises to be a constructive alternative to adversarial actions, whether the latter take place in U.S. domestic forums, or those provided by NAFTA, the Inter-American system or international law. An IJC panel could engage in a forward looking exercise in planning and consultation, and consider in a balanced and scientifically grounded manner all the interests at stake. An IJC panel is entirely capable of carrying-out its investigation and problem-solving mission in a manner that is reasonably prompt and efficient.



We are party to a Declaration of Kinship and Cooperation among the Indigenous Peoples and Nations of North America. In that spirit, the Assembly of Manitoba Chiefs has joined with several American First Nations in a resolution, which is attached, opposing any plan to proceed with the Devils Lake Outlet without further study, including one conducted by international experts.

As a representative government of First Nations, we look to the United States to respect the ideals contained in its international agreements, and to demonstrate in its international, as well as domestic policies, a genuine respect for the rights and interests of Indigenous peoples.

North Dakota intends to put the project into operation within a matter of weeks. This should not be allowed to happen before there is a full and credible international study. We call upon your assistance in avoiding the devastating and irreversible consequences that might follow from unilateral action in disregard of international law, including the rights of First Nations.

Sincerely,



Phil Fontaine
National Chief
Assembly of First Nations

cc. The Right Honourable Prime Minister Paul Martin
The Honourable Reg Alcock
The Honourable Premier Gary Doer
The Honourable Stéphane Dion
Governor Tim Pawlenty
Governor John Hoeven
Chief Dennis Whitebird (AMC)

