



October 16, 2019

VIA U.S. MAIL

Chair Corwin
Commissioner Sission
Commissioner Yohe
International Joint Commission
U.S. Section
1717 H Street NW, Suite 835
Washington, DC 20006
United States

Chair Béland
Commissioner Lickers
Commissioner Phare
International Joint Commission
Canadian Section
234 Laurier Avenue West, 22nd FLR
Ottawa ON K1P 6K6
Canada

RE: Request for a public hearing on proposed numeric nutrient targets for the Red River proposed by the International Red River Board, IJC Reference 81R

Dear Chairs Corwin, Béland and Commissioners:

We are writing on behalf of the Minnesota cities of Breckenridge, Moorhead, Roseau, Thief River Falls and Warroad to request a hearing regarding the International Red River Board's ("IRRB" or "Board") proposed nutrient targets for the Red River of the North. Our communities care deeply about the health of the Red River and are supportive of the International Joint Commission's ("IJC" or "Commission") and IRRB's efforts to develop numeric nutrient targets and adaptive management strategies designed to protect the Red River.

Our cities are interested in this matter because we each have wastewater treatment facilities that discharge within the Red River watershed. If the proposed nutrient targets are adopted, they will lead to costly regulatory requirements for our communities. Our independent assessment and the peer review conducted by the IRRB confirmed that there are fundamental flaws with the proposed nutrient targets. Nonetheless, it is our understanding that the peer review team and the Board decided to forward those nutrient targets to the IJC for approval. Therefore, it is critical that the Commission hold a public hearing on the proposed nutrient targets to allow us a fair opportunity to be heard and explain the fundamental deficiencies at issue before taking any formal action on numeric nutrient targets for the Red River.

Background

In 2018 our cities became aware that the IRRB was in the process of developing numeric nutrient targets for the Red River based on an analysis and report entitled, *The Development of a Stressor-Response Model for the Red River of the North Topical Report RSI-2611, RESPEC*, June 2016

(“RESPEC Report”). At that time, we hired a consulting firm, Hall & Associates, to review and comment on the RESPEC Report on our behalf. Our consultant identified several significant technical deficiencies with the underlying analysis and proposed nutrient targets.¹ As a result, we submitted a letter² to the IRRB on July 18, 2018, with a copy of our expert’s analysis requesting that the Board initiate an independent and public peer review process consistent with the practice of the Minnesota Pollution Control Agency (“MPCA”) and the U.S. Environmental Protection Agency (“EPA”).³ We specifically requested that any peer review process be open to the public and that we be allowed to provide input on the scope of review and the charge questions to ensure a comprehensive peer review occurred. We also presented a summary of our concerns to the IRRB at its August 2018 Board Meeting.

The IRRB, in part, granted our request by authorizing a peer review the RESPEC Report and the concerns raised by our consultant; however, despite multiple requests, we were not afforded the opportunity to provide input on this review to ensure the concerns were actually addressed. In fact, we were not informed of the result of the review until September 26, 2019, when our representative received a letter informing us that the peer review was complete, precluding any additional input into the process.⁴ It is our understanding that the IRRB met in Gimli, Manitoba, on September 10-11, 2019, with no notice to our group, elected to forward the proposed nutrient targets to the IJC for consideration, and will be presenting those recommendations to the Commission at its Semi-Annual Meeting, October 21-25, 2019 in Ottawa, ON. To our knowledge this meeting is not open to the public.

Summary of Concerns

We are deeply concerned that (1) we were not given the opportunity to meaningfully participate in the peer review process as requested; (2) we did not receive prior notice of the September 2019 meeting of the IRRB—to our knowledge this meeting was not open to the public and was not posted on the IRRB’s website⁵ or public calendar; and (3) based on the date that we received the letter and Consensus Report from the IRRB, it appears that the Board elected to move the proposed nutrient targets forward before we were provided notice that the peer review had been complete, or had an opportunity to review the Consensus Report⁶ and respond.

As it stands, we have had limited time to review the Consensus Report; however, it is apparent from our initial review that many of our key questions and concerns were not addressed (see attachment D). Given the environmental importance and the potential wide reaching economic impact of any IJC nutrient targets, we believe a more robust peer review should be conducted by

¹ See attachment A, Review of: The Development of a Stressor-Response Model for the Red River of the North RESPEC June 2016, prepared by Hall & Associates, Washington, DC.

² See attachment B, Letter to IRRB from cities of Breckenridge, Moorhead, Roseau, Warroad, and Thief River Falls dated July 11, 2018.

³ See *MPCA’s Directive Regarding Peer Review of New or Revised Numeric Water Quality Standards* (July 14, 2017), which was later codified at Minn. Stat. § 115.035.

⁴ See attachment C, Letter from the IRRB to Daniel Marx, Flaherty & Hood, P.A., re peer review of the 2016 RESPEC Report.

⁵ See <https://ijc.org/en/rrb/news/releases> (last visited 10/14/2019).

⁶ See attachment E, Consensus Report for the International Joint Commission on RESPEC 2016 Report “The development of a stressor-response model for the Red River of the North” (Dodds & Baulch).

independent experts that are selected and charged in a transparent process. Based on our preliminary review of the Consensus Report we have identified the following high-level concerns:

- The overall objective of the RESPEC Report was to identify biological use impairment thresholds and develop a stressor-response model to determine nutrient criteria necessary to protect those uses. The Consensus Report acknowledged that biological thresholds were **not** identified by the RESPEC analysis and then claimed that the proposed TP and TN targets were appropriate simply because they reflect water quality from “higher quality” areas. This is not a defensible position and this issue needs to be further evaluated.
- The Consensus Report supported the derivation of numeric nutrient targets for TN, claiming this position is supported in the literature. Whether some literature supports setting TN requirements in addition to TP requirements is generally not at issue. The specific issue is whether TN reduction is necessary in the Red River to ensure ecological protection, and neither the RESPEC Report nor the Consensus Report made that demonstration specific to the Red River. The assertion that TN control is necessary to protect designated uses is also contrary to (1) the MPCA’s recently adopted (and approved by U.S. EPA) River Eutrophication Standards,⁷ which currently apply in Minnesota to the Red River; and (2) the long-standing approach used by the IJC in the Great Lakes. Neither the RESPEC Report or the Consensus Report have demonstrated that the TN target selected for the Red River is necessary to protect aquatic life or other uses.
- The Consensus Report supported the use of floating periphytometers to characterize periphyton characteristics in the Red River of the North while acknowledging the well-known masking effects of turbidity and TSS on algal responses to nutrients. There was no attempt to demonstrate that the periphytometer results bear any relationship to existing or future potential conditions in the river. If anything, these results show that periphyton growth, as measured by chlorophyll-a concentration, does not cause use impairment even under the most favorable growing conditions.

To address our concerns and present information that will be helpful to the Commission in this matter, we hereby request that the Commission hold a public hearing on this issue and provide our communities notice and opportunity to be heard pursuant to Article XII of the Boundary Waters Treaty of 1909 and IJC Rules of Procedure Rule 26 – 30.⁸

In addition, we request the opportunity to meet with the IJC to discuss our concerns and to submit additional information and analysis prior to any hearing in this matter.

⁷ See Minn. R. 7050.0150, 7050.0220, and 7050.0222, which established numeric nutrient criteria for total phosphorus paired with response variables such as sestonic Chlorophyll-a.

⁸ The original IJC Reference at issue is 81R, which was filed in October of 1948 requesting that the IJC investigate whether the Red River was being polluted to an extent that was causing or likely to cause injury to health or property on the other side of the U.S./Canada boundary. Pursuant to that reference the Governments of U.S. and Canada accepted the IJC recommendation for water quality objectives and monitoring in 1969 based on the *Report of the International Joint Commission, Canada and United States on the Pollution of the Red River* (1968). However, it is our understanding that the governments of U.S and Canada provided further authorization in May of 1969 “to establish continuous supervision over the quality of the waters crossing the boundary in the Red River and to recommend amendments or additions to the objectives when considered warranted by the International Joint Commission.” See Directive of the IJC to the IRRB (Feb. 7, 2001) available at <https://ijc.org/en/rrb/who/mandate>.

Thank you for your attention to this important matter, we look forward to working with you in the future. To respond to this letter and coordinate the requested meeting, please contact our representative Daniel Marx at dmmarx@flaherty-hood.com or 651-259-1907.

Sincerely,

Jeff Pelowski, Mayor of Roseau
Brian Holmer, Mayor of Thief River Falls
Renaë Smith, Breckenridge City Administrator
Christina M. Volkers, Moorhead City Manager
Bob Marvin, Mayor of Warroad

(Enclosure)

CC: Col. Karl Jansen, IRRB Co-Chair, U.S. Section
Mike Renouf, IRRB Co-Chair, Canadian Section
Jim Ziegler Co-Chair, IRRB Water Quality Committee
Rebecca Seal-Soileau, U.S. Co-Secretary, IRRB
Girma Sahlu, Canadian Co-Secretary, IRRB
Chuck Lawson, U.S. Section, Secretary, IJC
Frank Bevacqua, U.S. Section, Public Information, IJC
Susan Daniel, U.S. Section, Legal Advisor, IJC
Camille Mageau, Canadian Section, Secretary, IJC
Christine Blanchet, Canadian Section, Legal Counsel, IJC