



August 30, 2004

The Rt. Hon. Herb Gray,
Chairman, Canadian Section
International Joint Commission
234 Laurier Avenue West, 22nd Floor
Ottawa, Ontario K1P 6K6

International Joint Commission

ACTION:

INFORMATION: LB, JC, FB, MC, CMRS, Clamen
FILE: 9-2-1:3

PRAIRIE PROVINCES WATER BOARD

300 - 2365 ALBERT STREET, REGINA, SASKATCHEWAN, CANADA S4P 4K3

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REGIE DES EAUX DES PROVINCES DES PRAIRIES

IJC / CMI OTTAWA

ACTION: McRiley

INFO: MV/NH/MC/Gough

Chair Gray/Bourget.

SEP 08 2004

Dennis L. Schornack
Chairman, United States Section
International Joint Commission
1250 - 23rd Street N.W., Suite 100
Washington, D.C. U.S.A. 20037 3-1-4-9(a)

Dear Sirs:

Re: Montana Request to Open the 1921 Order for the ST. Mary – Milk Rivers

On behalf of the Prairie Provinces Water Board, I would like to thank the International Joint Commission for the opportunity to provide comments regarding the request by the State of Montana to review the 1921 Order for the St. Mary and Milk Rivers. The PPWB would like to reiterate our concerns that were presented at your public meeting held in Eastend, Saskatchewan on July 28, 2004.

The Prairie Provinces Water Board (PPWB) is a federal-provincial board responsible for administering the Master Agreement on Apportionment, an agreement signed by the governments of Canada, Alberta, Saskatchewan and Manitoba in 1969. The Master Agreement consists of several sub-agreements including:

1. A general agreement (Master Agreement) between Canada and the three provinces;
2. An Apportionment Agreement between Alberta and Saskatchewan (Schedule A);
3. An Apportionment Agreement between Saskatchewan and Manitoba (Schedule B);

The Apportionment Agreements between the provinces (Schedules A and B) are based on the principle of equitable sharing of available water and set out in detail the apportionment formula for natural flow. In general, Alberta may consume up to 50% of the natural flow, with some specific exceptions, before it enters Saskatchewan; Saskatchewan may consume 50% of the remainder and 50% of the flow arising within its boundaries; and Manitoba receives the remainder of the flow.

Paragraph 6 of Schedule A addresses the three watercourses known collectively as the "Eastern Tributaries"; Battle Creek, Lodge Creek and Middle Creek. These tributaries rise in the Cypress Hills area of southeastern Alberta and enter Saskatchewan before crossing the US border. The Agreement, in recognition of Canada's obligations under the Boundary Waters Treaty, stipulates that Alberta permits a quantity of water equal to 75 percent of the natural flow to pass the interprovincial boundary from Alberta to Saskatchewan.

The apportionment agreements apply only to eastward flowing interprovincial streams. These streams are primarily in the southern prairie region, an area containing most of each provinces' population and where economic development is very dependent on water.

The prairie region is generally dry, with evaporation exceeding mean annual precipitation of between 11 and 19 inches (300 and 500mm). Drought and extended dry periods are common. These conditions together with the rolling terrain result in low local annual runoff. Most streams are small with intermittent flows and are therefore unreliable sources of water.

The major streams that originate on the eastern slopes of the Rocky Mountains and flow eastward provide the most reliable source of good, quality water. Approximately 80% of the flow in these streams originates in the mountainous upper 20% of the basin, including the water from the St. Mary River which contributes, on average, nearly 9% of the flow of the South Saskatchewan River at the Saskatchewan boundary. In dry years, such as 2001, the St. Mary River contributes nearly 13% of the South Saskatchewan River flow.

For over 100 years, a very large agricultural and industrial base has been established in southern Alberta and Saskatchewan, which depends on the waters of the eastern slopes of the Rockies. This development investment has been made based on the stability provided by two water apportionment arrangements – the Boundary Waters Treaty, using the apportionment methodology defined in the 1921 Order, and the Master Agreement on Apportionment.

A review of the 1921 Order would undoubtedly introduce uncertainties relating to entitlements and security of water supplies and may be counterproductive to the long-term planning and development necessary to beneficial users of the waters of these rivers. Changes to the Order could further affect the economies of the prairie provinces and create implications to the interprovincial arrangement under the Master Agreement.

The Prairie Provinces Water Board believes that Montana's concerns can be addressed by having Canada and the United States working cooperatively to improve apportionment calculations so as to improve each country's ability to utilize and put to beneficial use their respective entitlements, as defined by the 1921 Order, without a review of the Order. When confronted by apportionment concerns from one of the provinces, the PPWB follows a similar process of reviewing procedures for operations and management, and does not reopen the Master Agreement.

In conclusion, the Board believes that a review of the 1921 Order is not required to address Montana's concerns. The Board does not support the opening of the 1921 Order for review for the following reasons:

1. The Treaty and the Order have provided the stability required for long term planning and infrastructure development for both countries as well as for the Prairie Provinces. Opening the Order would create long-term uncertainty about the amount of water that would be available from the United States and undermine the integrity of the longstanding arrangement between the two countries.
2. The existing Order is flexible enough to allow for both countries to address any issues related to the apportionment, including Montana's current concerns.
3. All of Canada's entitlements to the waters of the St. Mary River, as defined by the 1921 Order, have been fully allocated within Alberta and no new licences have been issued for a number of years.
4. Canada and the Prairie Provinces have made significant investments in irrigation and improved water management based on entitlements defined by the 1921 Order.

For your information, I have enclosed a copy of the Master Agreement, a copy of our presentation made on July 28, and a brochure about the PPWB. Should you like further information or have questions please contact:

Richard Kellow,
Executive Director
Prairie Provinces Water Board
Room 300, 2365 Albert Street
Regina, Saskatchewan S4P 4K1

Phone 306-780-7004

Again, I wish to thank the International Joint Commission for providing us the opportunity to present our concerns.

Sincerely yours,



Jim Vollmershausen
Chair, Prairie Provinces Water Board
Enclosures

cc – PPWB Members:

S. Topping, Manitoba Water Stewardship
C. Neggers, PFRA, Agriculture and Agri-Food Canada
W. Dybvig, Saskatchewan Watershed Authority
R. Harrison, Alberta Environment
R. Kellow, PPWB



Prairie Provinces Water Board

RELATIONSHIP TO IJC'S 1921 ORDER

**Jim Rogers,
Secretary to the PPWB,
Regina, Saskatchewan**



MASTER AGREEMENT ON APPORTIONMENT

October 1969

AGREEMENT COMPONENTS

- A Master Agreement Amongst Canada, Alberta, Saskatchewan and Manitoba
- An Apportionment Agreement Between Alberta And Saskatchewan (Schedule A)
- An Apportionment Agreement Between Saskatchewan And Manitoba (Schedule B)
- A Prairie Provinces Water Board Agreement
- An Agreement on Water Quality (1992)

MASTER AGREEMENT

- No termination clause
 - Alteration/cancellation of Agreements in writing by all 4 parties
- Includes water quantity, quality & groundwater at boundaries
- Monitoring by federal government
- Proclaims principle of cooperation

Alberta – Saskatchewan

Apportionment Formula:

- Alberta to use up to $\frac{1}{2}$ natural flow of water arising in or flowing through Alberta
- subject to:
 - prior rights on South Saskatchewan River to 3,000,000 cubic decametres (2,100,000 ac-ft)
 - passing more than the lesser of $\frac{1}{2}$ the natural flow of the South Saskatchewan River or 42.5 cubic metres per second (1,500 cfs).
- provinces decide how to use their share of water

Battle-Lodge Creeks

- Are eastern tributaries of Milk River
- Apportioned between Canada & U.S.
- Canada's share (50%) further apportioned between Alberta and Saskatchewan through PPWB

Success

- Provincial governments have:
 - primary authority for regulation of water supplies,
 - complied with the Agreement and Board's recommendations.
- Compliance confirms the usefulness of the PPWB's policy of seeking consensus on all issues.

Boundary Waters Treaty and IJC 1921 Order Recognized:

- Equal & similar rights in the use of the waters
- Prior use by U.S. on Milk River
- Prior use by Canada on St. Mary River
- Irrigable lands “far exceed the capacity of the rivers”
- Share equally water in eastern tributaries
- Greatest beneficial use to the two countries

PPWB RECOMMENDS

- Agreements need to be respected
 - resolve concerns within agreements
 - Agreements have flexibility
- Long-term planning requires certainty
- Changes could cause ripple effect:
 - St. Mary's contributes to South Saskatchewan River, which is apportioned between 3 provinces;
 - Apportionment decisions on eastern tributaries for international & inter-provincial requirements.



Thank-you