



RECEIVED
BY [REDACTED]

ALBERTA ENVIRONMENT

AUG 26 2003

Office of the Minister

19 AUG 2003

AR 9450

Right Honourable Herb Gray
Chair, Canadian Section
Honourable Dennis L. Shormack
Chair, United States Section
International Joint Commission
234 Laurier Avenue West, 22 Floor
Ottawa, Ontario
K1P-6K6

IJC / CMI OTTAWA
ACTION: McAuley
INFO: Clamen/Blaney
Chair Gray /NH
AUG 26 2003

FILE / DOSSIER

3-1-5-3 [REDACTED]

Dear Messrs. Gray and Shormack:

As indicated by my colleague, the Honourable Halvar Jonson on July 24, 2003, Alberta fully supports the existing apportionment of the flows of the Milk and St. Mary Rivers. To assist you in gaining a better understanding of Alberta's concerns and the reasons why we oppose any re-opening of the 1921 Order, I have attached background information on our position, which I hope will be helpful to the International Joint Commission (IJC).

I would be pleased to provide any additional information that you may require to facilitate the IJC's deliberations.

Yours truly,

Lorne Taylor, Ph.D.
Minister of Environment

Enclosure

cc: Honourable Ralph Klein
Premier

Honourable Halvar Jonson
Minister International and Intergovernmental Relations

423 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 780/427-2391, Fax 780/422-6259

APPORTIONMENT OF THE MILK AND ST. MARY RIVER FLOWS UNDER THE BOUNDARY WATERS TREATY: BACKGROUND INFORMATION ON ALBERTA'S POSITION

1. Historical Context

In 1899 the Government of Canada granted a licenced water allocation for nearly 225,000 acre-feet of the flow of the St. Mary River to proposed irrigation initiatives in what is now Southern Alberta. Between 1899 and the signing of the Boundary Waters Treaty in 1909, Canadians made significant economic investments in land improvements and in the development of an irrigation infrastructure in the area. By 1911 these developments included a diversion canal having a capacity of 1200 cubic feet per second and a network of over 467 kilometres of canals and laterals to convey water from the St. Mary River to about 47,000 acres of improved irrigated lands, which were previously part of the dry short grass plains characteristic of this area.

2. The Boundary Waters Treaty

The first Paragraph of Article VI of the 1909 Boundary Waters Treaty, in its entirety, states;

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use by each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of the St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

Alberta's view is that this key paragraph must be read in its entirety to understand its intent and meaning. It is clear that Article VI of the Agreement recognized prior licenced allocations and utilization of water within each country as well as each country's economic investments, by granting a "prior appropriation" from the Milk River to the United States and a prior appropriation from the St. Mary River to Canada. When this paragraph is viewed in its entirety, it is also clear that the first sentence of Article VI applies solely to water outside the irrigation season and to water within the irrigation season that is in excess of the prior appropriation, as reflected in the 1921 Order of the IJC. In this context, it is clear that the "prior appropriation" entitlements during the irrigation season do not contradict the preamble of Article VI, but represent a seasonal exception that recognize historical use in the two basins.

3. Current Situation

Following the signing of the Boundary Waters Treaty in 1909 and the 1921 Order of the IJC, Albertans continued to make significant additional investments in terms of land improvements and infrastructure to better utilize Canada's share of the flow of these streams, as specified by the 1921 Order. These investments, which have run into the many billions of dollars and utilize nearly all of Canada's entitlements from the St. Mary River have resulted in a sophisticated network of diversion works, reservoirs, dams, and canals that support over 500,000 acres of improved irrigated land as well as municipal and industrial needs. More specifically, improvements to date include the following:

- The Waterton-St. Mary Headworks System, consisting of three major reservoirs and 93 kilometres of main canal, owned and operated by Alberta Environment, which captures water from three streams and conveys it for distribution to the Magrath Irrigation District (18,300 acres), the Raymond Irrigation District (46,300 acres), the St. Mary Irrigation District (371,320 acres), the Taber Irrigation District (82,280 acres) and the Blood Indian Reserve (25,000 acres).
- A distribution system within the irrigation districts of over 1,600 kilometres of canals, having a capacity as high as 3,200 cubic feet per second, and an additional 18 storage reservoirs.
- A water distribution system within the districts to deliver potable water to numerous towns, villages and rural residences as well as industrial water supplies for commercial operations located in the districts.
- Four hydroelectric plants that utilize the natural gradient within the irrigation distribution system to provide southern Alberta with "Green Power".

As the current level of development, with the exception of a few very wet years, fully utilizes Alberta's entitlements of the flow of the St. Mary River, as defined by the 1921 Order of the IJC, significant investments have also been made in various water conservation measures. These include the following:

- The automation of controls on all reservoirs and main canal structures so that they may be accessed remotely thereby allowing for more effective monitoring and control of water levels and more efficient distribution of limited supplies.
- The implementation of seepage controls such as tile drainage, plastic lining of canals and plastic cut-off curtains to prevent seepage losses.

In 2002, Alberta closed the St. Mary River to new applications for water licences. All new uses must meet their water requirements using water saved from the introduction of conservation measures or from the transfer of existing licenced allocations. This action was taken in response to the drought conditions experienced in 2001 in which St. Mary River water users received only 60 per cent of water requirements. As noted above, in all but a few very wet years, all of Alberta's entitlement of the St. Mary River is in use.

Irrigation and the security of water supplies achieved through Alberta investment in water storage and distribution infrastructure have had a profound effect on southern Alberta and the entire province. Currently irrigation developments supported by Canada's entitlement of the flow of the St. Mary River occupy 4 per cent of the cultivated land in the province and contribute nearly \$927 million or about 16.5 per cent to the agri-food domestic product for Alberta.

4. Summary

It is Alberta's position that the Boundary Water Treaty recognized allocations and investment made by Canada and the United States prior to the signing of the Treaty by granting a prior appropriation and that, as reflected in the 1921 Order of the IJC, the equal sharing of water applies solely to flows of the Milk River and the St. Mary River which are above and beyond what was granted through prior appropriation. It is also Alberta's position that over the past 80 years the people of Alberta have made significant infrastructure investments towards securing reliable water supplies for southern Alberta based on Canada's water entitlements defined by the 1909 Boundary Waters Treaty and the 1921 Order of the IJC. A review of the Order now is not justified and would introduce significant uncertainties and related negative impacts. Any reduction of Canada's entitlement would amount to an expropriation of extensive investment made in good faith over a number of years based on the 1921 Order.