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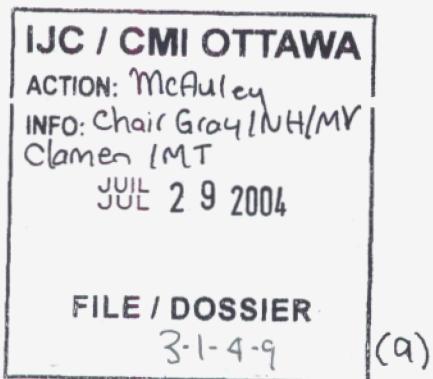
William D. Peterson, Q.C. \*  
Thomas B. Little •  
Patricia A. McMillan \*  
K. Gregory Senda \* +

537 - 7<sup>th</sup> Street South, T1J 2G8  
P.O. Box 1165, T1J 4A4  
Lethbridge, Alberta, Canada  
Telephone (403)328-9666 Fax (403)320-1393  
e-mail address: [p-plaw@telusplanet.net](mailto:p-plaw@telusplanet.net)  
web site address: [petersonpurvislaw.ca](http://petersonpurvislaw.ca)

Timothy N. Jorgensen  
Kevin D. Ronan  
Michael W. Jones  
(Student-at-law)

July 28, 2004

Secretary, Canadian Section  
International Joint Commission  
234 Laurier Avenue West, 22nd Floor  
Ottawa, Ontario  
K1P 6K6



Via fax no. (613) 993-5583

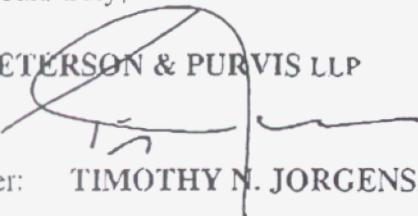
Dear Sir/Madam:

**Re: International Joint Commission Consultation on Apportionment of the Milk and St. Mary Rivers**

Please find attached our submissions to the International Joint Commission Consultation on Apportionment of the Milk and St. Mary Rivers.

Myself and my associate, Michael Jones, will be attending the session held in Lethbridge on the 29<sup>th</sup> of July and we look forward to seeing you there.

Yours truly,

  
PETERSON & PURVIS LLP  
Per: TIMOTHY N. JORGENSEN

TNJ/avn  
Enclosure

1400 33rd Street S.E. #1000  
# 17 3

SUBMISSION BY PETERSON AND PURVIS LLP TO  
INTERNATIONAL JOINT COMMISSION PUBLIC HEARING ON APPORTIONMENT  
OF WATER OF THE ST. MARY RIVER AND MILK RIVER HELD AT  
LETHBRIDGE ALBERTA CANADA ON 29 JULY 2004

If the 1921 agreement between Canada and the United States (hereinafter the "U.S.") apportioning the water of the St. Mary River and Milk River is reopened and a reapportionment occurs whereby Canada receives less water than it does presently there is a very real possibility that such a reapportioning would have a dramatic impact on agriculturalists in Southern Alberta. The St. Mary River is the primary source of the water used in the St. Mary River Irrigation District. This irrigation district provides 10 southern Alberta communities with drinking water. It also provides irrigation water to approximately 470,400 acres of land making it Canada's largest irrigation district. There are approximately 1,800 water users within the irrigation district including agricultural, municipal and industrial users. In considering the fact that the Montana government and other U.S. interests are requesting that the water in the St. Mary River be reapportioned giving a greater share of its annual flow to the U. S. it is important to keep in mind that any reduction in Canadian water rights will have severe negative effects for southern Alberta agricultural, municipal and industrial water users.

The most important negative affect for irrigation districts is that a reapportionment with less water for Canada will put pressure on other water users in the system. In Alberta we currently have a first in time first in right system. This essentially means that the first person to receive a license to the water can take the full amount of water apportioned under his license before the next person who received a license is entitled to any water at all. In most years this is not an issue as most of the senior licensees who are usually irrigation districts do not take their full allotment of water so that there is sufficient water left in the system to allow users with later licensing rights to take the water that they need. The problem arises when the flow of the river becomes so low that the water takers with the first priority, even though they continue to take the same volume of water as in previous years, take a greater overall percentage of the water from the watershed than they normally do so that there is insufficient water left for the later users. If this shortage is an isolated occurrence it is possible for all of the water users to band together and share water rights regardless of priority and in fact this is what occurred during the drought of 2001. However if the water shortage becomes chronic these temporary water sharing agreements will not be an acceptable long term solution.

There are two possible scenarios that will create friction in the St. Mary River Basin if the federal government allows the water to be reapportioned in favor of the U.S.. In the first scenario those with higher priorities will simply choose not to enter into water sharing agreements, preferring to decide on a case by case basis when to share water. This will cause difficulty for water users with a lower priority as they will receive a reduced amount of water, or no water at all, depending on the amount of water available. In the second scenario those with lower priorities will balk at a system that does not allow them to plan further than one year when it comes to their future needs for water. Certainly for any business or municipality that depends on water in its planning process, not having a stable or predictable water supply hinders their ability to make long range plans or investments. If either of these two scenario's becomes a reality it is probable that lower

priority users will begin to evaluate the legal position of the higher priority users in an attempt to call in to question the validity and the priority of the old licenses held by the irrigation districts. In order that their own position may be improved.

Many senior water rights holders are not overly concerned with this prospect as it is their belief that their licenses are secure and unassailable. However, we have looked at the situation and it is our belief that if junior water rights holders choose to challenge the licenses of the more senior water rights holders there are good legal arguments that could be made to support such a claim and in a situation where junior water rights holders do not have a reliable supply of water increased litigation in Canada over this issue is inevitable. Even if the junior water rights holders are not ultimately successful the cost and uncertainty of litigation is certainly undesirable.

Taking these factors in to consideration we believe that it is vital that the Canadian government make its best efforts to avoid redrawing the 1921 apportionment agreement. If the apportionment agreement is reopened and more water is given to the U.S. under a new apportionment agreement it can only lead to an increase in the tension between our water users which will inevitably lead to an increase in the amount of unease and litigation in Canada surrounding water rights.

Litigation over water rights would almost inevitably lead to instability in the southern Alberta economy and its communities. A great deal of time, effort and capital has been expended in southern Alberta in connection with irrigation infrastructure, all of it predicated on maintaining the status quo in regards to water rights.

If there is to be any renegotiation of the 1921 apportionment agreement such a renegotiation must be done with the involvement of all stakeholders who must in turn be fully aware of their rights and the ramifications of any decision in that regard.

Yours Truly,

Peterson and Purvis LLP  
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Per:

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