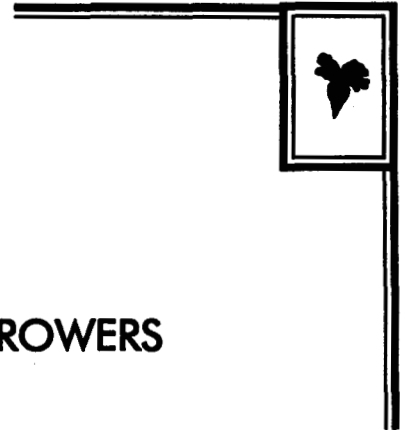
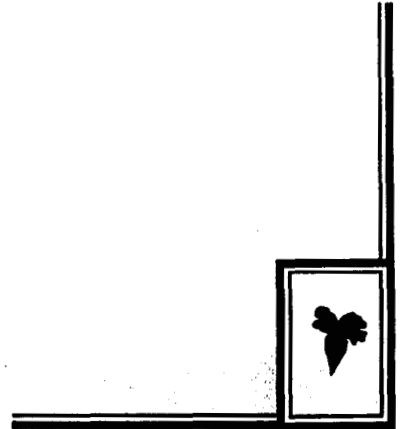
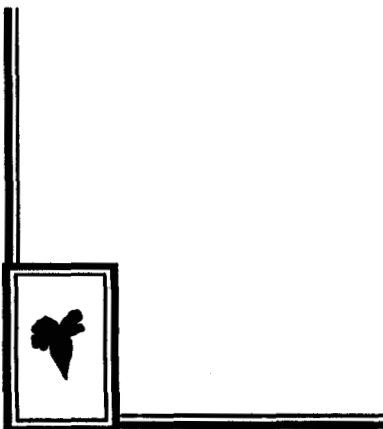


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**COMMENTS BY ALBERTA SUGAR BEET GROWERS  
ON THE 1921 ORDER  
TO  
THE INTERNATIONAL JOINT COMMISSION**

**Lethbridge, Lodge  
Lethbridge, Alberta, Canada  
Thursday, July 29, 2004**



The Alberta Sugar Beet Growers organization appreciates this opportunity of presenting the position of our farmers respecting the task before the International Joint Commission tonight of gathering "information on issues related to the apportionment of water between the United States and Canada from the St. Mary and Milk Rivers."<sup>1</sup>

Cultivation and processing of sugar beet has been and will continue to depend on the availability of irrigation water in southern Alberta. The re-interpretation of the 1921 Order put forward by the State of Montana causes us great concern. We support the position of the Province of Alberta in this matter.

Agricultural and industrial users of water in a fully allocated irrigation project cannot simply scale back if a significant portion of their water is diverted. The uncertainty this would cause in investment on the farm and in the municipalities affected will be devastating to those of us dependent on the existing Canadian allocation from the St. Mary and Milk Rivers.

In the sugar beet industry the impact will also affect farmers who irrigate from watersheds to the north. If the source of water for the Taber sugar beet factory in the St. Mary system is imperiled to an unknown degree, then farmers producing beet in the South Saskatchewan River basin will also find the value of their investment endangered.

#### History and Investment by Sugar Beet Farmers

On the basis of the water licence granted by the Government of Canada for water out of the St. Mary River in 1898, investment by farmers for sugar beet began early in the twentieth century. Likewise all of the sugar beet factories ever built in Alberta relied on irrigation water to operate. The factory in Taber today, processing all sugar beet production in the province, draws its water supply from the St. Mary's River Irrigation Projects.

The viability of sugar beet production and refining in Alberta would be threatened by the re-apportionment of water flows suggested by the State of Montana. Sugar refining is a high fixed cost, lower variable cost business; highly dependent on volume of throughput for economic operation.

Sugar beets are over 70% water. The cost of transporting water any distance is high. If water supply to the factory is cut back and sugar beet cultivation nearby to the factory in the St. Mary's River projects is reduced because there is less water to irrigate crops, then the economics of the industry would suffer. Beets produced in the more distant South Saskatchewan River irrigation projects could not carry the industry alone.

In 2003 there were 14,468 acres of beets grown in the St. Mary's River irrigation projects. Out of the South Saskatchewan River basin projects some 14,339 acres of beet were contracted. This year beet acreage expanded to 35,348 acres contracted versus the 2003 total of 28,807 acres.

The Alberta Agriculture, Food and Rural Development cost of production study for sugar beet shows each farmer has a significant investment. The 2002 study is the most recent one available. The study

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<sup>1</sup> IJC, Media Release, June 23, 2004.

sample of 29 enterprises reveals that the average investment in land and buildings dedicated to sugar beet is Canadian \$1,551.70 per acre or for 35,348 acres a total of Canadian \$54,849,491.60. The matching statistics for investment in specialized sugar beet equipment is \$1,022.74 per acre for a total of \$36,188,632.16. Most of the equipment cannot be used to farm any other crop and nearly all of it is valueless except to grow row crops under irrigation.

Additionally starting in 1998 the sugar beet processor, Rogers Sugar, invested over \$50 million in expanding and upgrading the Taber factory, including sophisticated water recycling and purification systems that have substantially reduced consumption of water in total and per unit of production.

The investment by Rogers Sugar is not a one time action. Users of irrigation water on the farm and in the factory in southern Alberta have invested substantially for a more efficient means of using this precious resource since the Government of Canada issued the first licence on the St. Mary in 1898.

Varying the 1921 Order would reduce the market value of our investments. The magnitude is unknown because a variance has not been authorized and we sincerely hope there is not one.

### State of Montana Legal Issues

None of our growers are lawyers and this submission was not reviewed by one. We have read the legal issue submissions on the International Joint Commission website from Montana and Alberta. The arguments put forward by Alberta are supported by us. The document we endorse is attached so that Commission members are clear about what it is that we support.

As non-lawyers we think the issues raised by Montana need clarification, historical research, and rebuttal from the Government of Canada. The conclusions advanced by the State of Montana should not go forward uncontested.

For a high enough fee, one could probably find lawyers who could defeat both the U.S. Constitution and our Constitution Act.

At least two fonds may contain information of use to Canadians in rebutting Montana arguments.

The extensive papers of General the Honourable A.G.L. McNaughton could reveal many supportive notes and memoranda. The General was, of course, Chair of the Canadian Section of the International Joint Commission from 1950 to 1962 and was intimately involved in bilateral water issues as well during the period 1922 to 1935. His biographer wrote that the 1909 Treaty satisfactorily settled<sup>2</sup> all the issues pertaining to sharing of water on the St. Mary and Milk Rivers and for power generation on the Niagra.

Where there are conclusions about McNaughton's work and opinions, one can usually find original memoranda to back it up. Canada should do research into this, particularly the 1931 reference to re-open the Order; with which the General was no doubt directly involved.

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<sup>2</sup> J. Swettenham, McNaughton, Vol. 1 (Ryerson Press: 1968), p.203.

The massive public record and involvement of a prominent Alberta politician should also be combed for original memoranda about the evolution of Canadian use of the St. Mary and Milk Rivers. Here we are referencing the decades long involvement in provincial and international water issues of the Right Honourable Richard Bedford Bennett, Viscount of Mickleham.

Viscount Bennett had a career long interest in the natural resources of southern Alberta and their development.

Starting with his election as a Member of the North-West Territories Assembly in 1898, Canada may be able to put together a commentary and understanding from the Alberta perspective about the initial federal licence on the St. Mary.

By 1921, the time of the original Order, Bennett was the federal Minister of Justice and Attorney General for Canada and senior political representative from Alberta in Cabinet. It should not be surprising to find his comments somewhere on the nature and conclusions of this document so closely impacting the welfare of many Albertans.

When the US asked for a review of the Order in 1931, Bennett was the Prime Minister of Canada. General McNaughton was his closest adviser then and the two must have reviewed the US request together; again the General's biographer wrote that during "the Bennett years no man had been closer than he to the seat of power"<sup>3</sup> than his subject.

The Montana historical research and conclusions are appreciated. They provide useful context to these proceedings. However, as Canadians we can supply our own research too. On such an important measure no fact or assertion should go unquestioned from the other side.

The Government of Canada has an obligation to throw light on this proceeding from a national perspective.

### The Politics of Water Sharing

Sharing international water resources is not just about engineering, legalities, and history. It is about politics also.

We believe the political reality of U.S.-Canada water sharing agreements was well stated many years ago.

On June 8, 1966, in Sherbrooke, Quebec, Senator Frank Moss of Utah and General McNaughton squared off before The Royal Society of Canada on the topic of continental water supplies.

Senator Moss made it quite plain to the audience that Canadian water, after being dedicated to a diversion project, is dedicated for all time and eternity. He stated in a not so conciliatory tone, "I want it understood and I'd like to underline this-I don't think Canada could manage this on a turn-

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<sup>3</sup> Swettenham, McNaughton, Vol. 1, p. 304.

on, turn-off basis, to say this year we are going to give you...water and that year we turn it off, because it just won't work that way....because, depending on water, cities grow and people move in and industries establish, and they just can't shut down and move away for a year. We are talking about a long range and continuous thing."<sup>4</sup>

The Senator was absolutely correct. What is true of the American goose is good for the Canadian gander. A flow of water once committed and the deal abided by for generations should not be reversed by the International Joint Commission. If the 1921 Order is subject to revision, then on short notice we can probably come up with a long list of water projects in western North America that have not benefitted Canada as well as was advertised at treaty signing, commencing with the Libby Dam. Glaciers melt in Canada too.<sup>5</sup>

Nor is the sharing of water from the St. Mary and Milk Rivers the only factor in play here. Management of the resource since 1921 is also an issue. The place where the facts point to for a Canadian irrigation farmer is what the United States Water Resources Branch admitted long ago and was read into the record of the Canadian House of Commons in 1966. "We in the United States are not running out of water but we are running out of ways to avoid paying the bill for adequate water works and rational management."<sup>6</sup>

Alberta sugar beet farmers do not have to catalogue this statement. Attached to our presentation is an article by Paul Azevedo of the State of Montana, Department of Natural Resources and Conservation. This article serves as a good primer about the current condition of irrigation works on the U.S side of the St. Mary and Milk River system and why they are in that condition.

### Conclusion

The opportunity to address the International Joint Commission is greatly appreciated. It is probably because of the 1921 Order that I am here. If the Order is re-interpreted, I am not sure where I will be or of the value of my investment in irrigation agriculture. This goes for all sugar beet farmers, not just the ones who pull water out of the St. Mary's River Irrigation Projects. The losses will not be small if they occur.

A typical southern Alberta irrigation farmer in the absence of this application by the State of Montana would not be operating on the assumption that the 1921 Order was only a quick and temporary fix. The Government of Canada should put to work the resources required to supply a Canadian vision and version of the important facts and issues in dispute.

At face value, given the personalities we know were involved on the Canadian side and the conclusions they reached about the satisfaction level of the Treaty and Order, our government really

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<sup>4</sup> Swettenham, McNaughton, Vol. 3, p.347.

<sup>5</sup> Unforecast melt rate of glaciers is cited as a need for re-opening the 1921 Order at Milk River Watershed News, Vol. 6, No. 4, p.5.

<sup>6</sup> Cited in Swettenham, McNaughton, Vol. 3, p.350.

owes the process an accounting of the facts which will help Montanans understand our perspective on events.

It has also been evident for decades that agreements respecting water sharing cannot be short term things. Arrangements agreed generations ago and signed off for decades should not be lightly revisited. For the side which could lose, the result as stated by the Government of Alberta "would amount to an expropriation of extensive investment made in good faith over a number of years based on the 1921 Order."<sup>7</sup>

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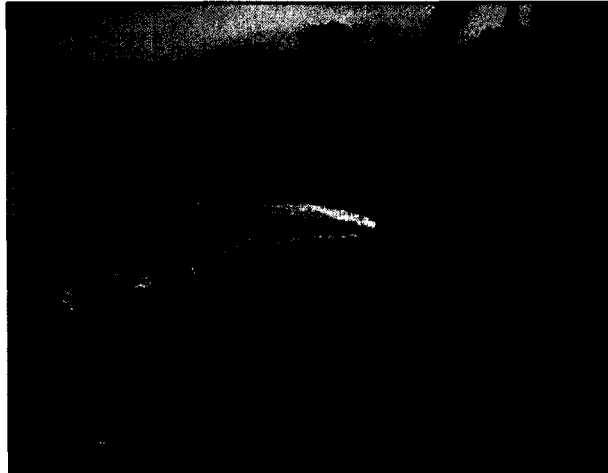
<sup>7</sup>Alberta Environment, Memorandum "Apportionment of the Milk and St. Mary River Flows Under the Boundary Waters treaty: Background Information on Alberta's Position, August 14, 2003, p.3.

# The Need to Rehabilitate the St. Mary Facilities

Paul Azevedo, Department of Natural Resources and Conservation

## The Issue

The U.S. Bureau of Reclamation's (USBR) St. Mary Facilities of the Milk River Project are in urgent need of rehabilitation. The St. Mary Facilities, located on the Blackfeet Reservation in Glacier County, consists of a storage dam (Sherburne Dam), diversion dam, head gate, 29 miles of canal, two sets of steel siphons, and 5 concrete drop structures. This system, which brings water from the St. Mary River Basin to the Milk River Basin, has been in operation for over 85 years with only minor repairs and improvements since its



2003 leak in St. Mary Siphon as it crosses the St. Mary River

original construction. Most of the structures have exceeded their design life and are in need of major repairs or replacement. The capacity of the system has dropped from a design capacity of 850 cubic feet per second (cfs) to approximately 670 cfs. The steel siphons are plagued with slope stability problems and leaks, and the concrete in the drop structures is severely deteriorating. Landslides along the canal and condition of the structures make the canal unreliable as a water source. Failure of one of the drop structures in 2002 resulted in the canal being turned off for approximately 2 months during the irrigation season. The economy of the Hi-Line region has been built around the stable water supply provided by the St. Mary Facilities. Without the needed rehabilitation the aging system may soon suffer catastrophic failure. Loss of the St. Mary Facilities will have a disastrous economic impact on the Milk River Basin and the state of Montana in general.

## Background and History

The first residents of the Milk River Watershed were Indian tribes. The Blackfeet (comprised of three bands - the Blood, Piegan and Blackfeet), the Gros Ventre, Assiniboine, Chippewa, and Cree were among the Tribes occupying different areas of the watershed. The vagaries of carving out a successful existence in the Milk River valley deterred permanent white settlement on the American side of the border until James J. Hill brought the Great Northern Railroad through the Hi-Line region in 1887.

In addition to the settlement momentum created by the coming of the railroad, the federal government encouraged agricultural settlement in the West

through the Homestead Act (1862) and Desert Land Act (1877). The Homestead Act gave the farmer 160 acres 'free', except for a small filing fee. After a five-year period of working the land, the homesteader got full title to it upon payment of a nominal fee per acre. The Desert Land Act allowed the homesteader to obtain a full section of land (640 acres) for only \$1.25 per acre, if the land was worked and irrigated within three years. At first, the Desert Land Act did not provide much benefit to Montana farmers because few of them could meet the expensive challenge of bringing water to lands far from a water source. During the 1880s, settlers in the Milk River Basin built small individual irrigation systems and, in 1890, constructed a community diversion dam in the vicinity of the present Fort Belknap Diversion Dam. However, the election of Theodore Roosevelt in 1901, and passage of the Reclamation Act of 1902 changed the course of irrigated agriculture in the Milk River Watershed forever.

The Reclamation Act authorized construction and maintenance of irrigation works for the storage, diversion and development of waters for reclamation of specified lands. Secretary of the Interior Ethan Allen Hitchcock conditionally authorized the Milk River Project (Project) on March 4, 1903. The Project has the distinction of being one of the first irrigation projects initiated by the new Reclamation Service (now the Bureau of Reclamation) under the Reclamation Act of 1902. Some local historians credit the friendship between President Theodore Roosevelt and John Willis, a hunting guide and rancher who lived on Big Dry Creek southeast of Glasgow (now part of the Big Dry Arm under Fort Peck Reservoir), for quick authorization of the Project. The Project's objective was to provide a stable source of water for irrigation of the lower Milk River valley. Settlers moved to the valley on the promise of a stable supply of water for irrigation. Early settlers had learned that natural flows in the Milk River did not provide a reliable water source for irrigation in the downstream end of the watershed. Consequently, a plan to divert water from the St. Mary River to augment flows in the Milk River was a key component of the Milk River Project.

### **The St. Mary Facilities**

Starting on the east side of the Rocky Mountains in what is now Glacier National Park, the St. Mary River flows north into Canada. In 1891, the U.S. Department of Agriculture began an investigation aimed at securing a viable water supply to augment low summer flows in the Milk River. The study determined that the most feasible alternative was a trans-basin diversion of water from the St. Mary River into the North Fork of the Milk River. Since the St. Mary River is located within the Hudson Bay Drainage Basin, any diversion of water would have to cross the drainage divide between the Hudson Bay and Gulf of Mexico drainage basins.

In 1901, Cyrus Babb conducted surveys to find the most feasible route of bringing water from the St. Mary River to the Milk River. As reported in their 1903-1904 Annual Report, the Reclamation Service had narrowed it down to three proposals regarding possible use of the St. Mary River:



1. Divert water to the North Fork of the Milk River through Canada to the lower Milk River Valley
2. Use water from the St. Mary River on the east side of the Blackfeet Reservation.
3. Divert St. Mary water across the North and South Forks of the Milk River to Cutbank Creek, down the creek and into the Marias River for 100 miles, into Big Sandy Creek.

Although the first option was considered the most viable, the third option was also considered because the U.S. was concerned Canadians would take water from the Milk River as it flowed through Alberta.

On March 25, 1905, Secretary of the Interior Hitchcock authorized construction of the St. Mary Diversion Dam and Canal, and \$1 million was set aside to begin construction. In 1906, bids were requested for excavation of the first 15 miles of the St. Mary Canal, as well as for concrete lining of 14,000 feet of canal. The canal was to have an 850 cfs capacity. Construction began on July 27, 1906.

In 1912, the Reclamation Service recommended construction of a storage dam on Lake McDermott (now Lake Sherburne). The earth embankment dam would store water from Swiftcurrent Creek, a tributary of the St. Mary River. Construction of Sherburne Dam was initiated in 1914 and completed in 1919. Water from Lake Sherburne is released to Swiftcurrent Creek and diverted to Lower St. Mary Lake via the Swiftcurrent Dike.

The St. Mary Diversion Dam is located 0.75 miles downstream from Lower St. Mary Lake. The St. Mary Canal begins at the St. Mary Diversion Dam on the west side of the St. Mary River and crosses the river 9.5 miles below the diversion through two 90-inch, riveted steel-plate siphons 3,600 feet in length. Eight miles

### **The Spite Ditch**

At the same time the U.S. was developing plans to divert water from the St. Mary River, Canadian interests were planning for large-scale irrigation development in southern Alberta. In 1902, Canada asked the U.S. not to proceed with plans to develop an American St. Mary Canal because it would be "injurious to Canadian interests". Canada, concerned over the potential loss of St. Mary River water to Montana, began searching for a feasible way to divert Milk River water, or re-divert St. Mary water, for irrigation use between Raymond and Lethbridge, Alberta. In 1903, the Canadian North West Irrigation Company began building a Canadian Milk River Canal.

Construction of the Canadian canal, commonly know as the "Spite Ditch", alarmed Montana irrigators and the Reclamation Service who prompted the U.S. Government to protest. President Roosevelt and Congress responded by refusing to recognize Canada's right to the water she was proposing to use.

American and Canadian actions and reactions finally brought the U.S. and Canada together to negotiate. The Boundary Water Treaty of 1909 was the result. Article VI of the treaty expressly provides for apportionment of the St. Mary and Milk Rivers. The treaty established the measurement and diversion of water between Alberta and Montana; apportionment was to be administered by the International Joint Commission (IJC). The actual apportionment methodology and division of waters was hotly debated for a number of years before being settled on October 4, 1921.

below the St. Mary crossing a second set of riveted steel-plate siphons, 78 inches in diameter and 1,405 feet long, conveys the water across Hall's Coulee. A series of five concrete drops at the lower end of the 29-mile canal provide a total fall of 214 feet to the point where the water is discharged into the North Fork of the Milk River. On average, 150,000 acre-feet of water per year are transferred over the Hudson Bay/Gulf of Mexico divide to



Building the St. Mary Siphon

the North Fork of the Milk River. The water then flows for 216 miles through Alberta, Canada, before returning to Montana where it is stored in Fresno Reservoir 14 miles east of Havre. Releases from Fresno Reservoir provide irrigation and municipal water along the Milk River to its mouth near Nashua, 200 miles to the east.

**Importance of St. Mary River Basin Waters to the Milk River Basin**

The St. Mary Facilities are the keystone to large-scale irrigated agriculture in the Milk River Basin. The system provides water to irrigate over 110,000 acres on approximately 660 farms within the Bureau of Reclamation's Milk River Project. Together, these farms produce approximately 8.3% of all cattle/calves produced in the State and approximately 7.8% of all irrigated hay and 8.2% of all irrigated alfalfa produced in Montana (Table 1).

**Table 1: Agricultural Statistics for a Portion of the Milk River Basin**

County	All Cattle / Calves	All Irrigated Hay (tons)	Alfalfa Irrigated (tons)
Blaine	72,500	94,270	78,140
Phillips	78,100	67,140	48,640
Valley	63,800	81,920	71,080
<b>Total</b>	<b>214,400</b>	<b>243,330</b>	<b>197,860</b>
<b>Montana</b>	<b>2,595,000</b>	<b>3,118,400</b>	<b>2,419,900</b>
<b>% of State Total</b>	<b>8.26%</b>	<b>7.80%</b>	<b>8.18%</b>

Source: National Agricultural Statistics Service.  
Data are 10 yr average from 1993 - 2002

Although the St. Mary Facilities were originally built to provide irrigation water, the beneficiaries extend far beyond irrigated agriculture. The Milk River

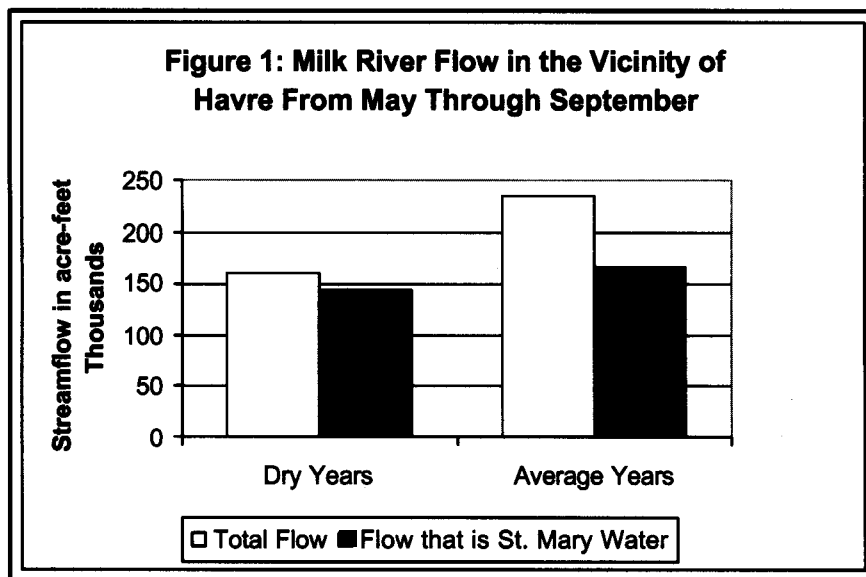
provides municipal water to approximately 14,000 people in the communities of Havre, Chinook, and Harlem (Table 2). In addition, two rural water systems are supplied from Fresno Reservoir. Beneficiaries also include fisheries, recreation, tourism, water quality, and wildlife.

**Table 2: Municipal Water Use From the Milk River**

Community	10 Year Average		US Bureau of Reclamation Contract Amount	
	Havre	1,800 ac-ft/yr	1.6 mgd	2,800 ac-ft/yr
Chinook	400 ac-ft/yr	0.36 mgd	700 ac-ft/yr	0.62 mgd
Harlem	180 ac-ft/yr	0.16 mgd	500 ac-ft/yr	0.45 mgd

ac-ft/yr = acre-feet per year                      mgd = million gallons per day  
 Source: U.S. Bureau of Reclamation

In a normal irrigation season (May through September), approximately 70 percent of Milk River flow near Havre originates from the St. Mary River Basin (Figure 1). In dry years the imported water may make up to 90 percent of the Milk River flows past Havre. During the drought of 2001, 95 percent of available water in the Milk River originated in the St. Mary River Basin!



Source: U.S. Bureau of Reclamation

Failure of the St. Mary Facilities would be catastrophic to the Hi-Line economy of north central Montana. The stable supply of irrigation water provided by the system secures the “backbone” of the region’s agricultural economy. Without imported water from the St. Mary River Basin, irrigated agriculture, as we know it in the Milk River Basin, and the influx of local dollars generated by it, will cease to exist. Failure of the canal, siphons, or drop structures may also result in environmental damage on the Blackfeet Reservation and in southern Alberta.

## Existing Status of the St. Mary Facilities

The St. Mary Facilities are approaching 100 years old and are still dependent on the same basic infrastructure built by the Reclamation Service in the early 1900's. As authorized in 1903, the Milk River Project is a single-use irrigation project. At the time, irrigated agriculture was seen as the primary beneficiary of Project construction. As a result, over the last 85 years, 100% of the cost to operate and maintain Project infrastructure, including the St. Mary Facilities, has been borne by irrigators within the Project through an annual assessment on



Buckled piece of pipe replaced in 2001

their irrigated lands. However, according to the USBR, ongoing costs of maintaining the aging system, including the St. Mary Facilities exceeds the irrigator's operation and maintenance payments. As a result, the St. Mary Facilities have deteriorated to the point that replacement and major rehabilitation is necessary. Since 1999, the State of Montana has awarded over \$400,000 in grants, and the eight irrigation districts within the Milk River Project have contributed \$200,000 for crucial repairs merely to keep system operating in some capacity.

The *Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999* (Public Law No. 106-103) directed USBR to conduct a regional feasibility study of north central Montana. The purpose of the study was to identify present and potential water supplies, water uses and management, major water-related issues, and opportunities to resolve these issues.

In March 2003, USBR released the first of two reports related to the feasibility study process. The objectives of the *North Central Montana Alternatives Scoping Document* are to identify major water-related issues and opportunities, as stated in the 1999 legislation, and to develop alternative plans to address them. Based on an appraisal level study within this draft report, the USBR estimates construction cost for rehabilitating the St. Mary Facilities are between \$75 million and \$125 million depending on canal capacity (500 cfs to 1,000 cfs). Rehabilitating the system to its original design capacity of 850 cfs is estimated to cost approximately \$90 million.

In the spring of 2003, USBR completed the regional feasibility study, and a report was submitted to USBR Commissioner John Keys in June 2003. Commissioner Keys has forwarded the draft report to the Office of Management and Budget for

review. However, the report is not a typical USBR feasibility study. The report does not include a preferred alternative, National Environmental Policy Act (NEPA) evaluation, economic evaluation, or a cultural resources survey. As such, USBR has not produced a report with a recommended plan sufficient to present to Congress for authorization and funding.

In addition to the huge monetary cost, rehabilitating the St. Mary Facilities will involve complex political and legal considerations. USBR studies indicate that the St. Mary diversion facilities are having a negative impact on the bull trout (*Salvelinus confluentus*), which is listed as a threatened species. Rehabilitation of the system will involve two Federal Indian Reserved Water Right Compacts. The Fort Belknap Water Rights Compact is predicated on the continued viability of the St. Mary Facilities to deliver water to the Milk River Basin. The Compact is a delicate negotiated balance of water rights, including the Gros Ventre and Assiniboine Tribes' right to essentially all of the natural flow of the Milk River, subject to the claims of the Blackfeet Nation. The St. Mary Facilities are located on the Blackfeet Indian Reservation. The State and the Blackfeet Tribe are in negotiations for a water rights compact that will include claims for water from the St. Mary and Milk rivers. The Blackfeet Tribe must be consulted on any rehabilitation of the St. Mary Facilities. Canadian and U.S. differences over interpretation of the 1921 International Joint



Commission Order on apportioning flows of the St. Mary and Milk Rivers must also be worked out.

### **What Does the Future Hold?**

Although originally built to supply irrigation water to the lower Milk River Basin, the importance of the St. Mary Facilities reaches far beyond irrigated agriculture. However, operation and maintenance costs are still borne primarily by irrigators on approximately 660 farms within the USBR's Milk River Project.

Milk River Project Irrigators pose with legislators from the Long-Range Planning Committee and the Natural Resource Committee in front of a section of the St. Mary Siphon on the back lawn of the Capitol in Helena in January 2003. From left to right are: Bim Strausser, Randy Reed, Max Maddox, Rep. Christine Kaufmann, Rep. John Musgrove, Rep. Jeff Pattison, Rep. Dave Kasten, Kay Blatter, Melvin Novak, Sen. Joe Tropila, Sen. Linda Nelson, Jack Gist, Rep. John Witt, Rep. Rick Riplev. John Lacey. and Sen. Bill Tash

The cost of rehabilitating and replacing the structures of the St. Mary Facilities will be substantial. It will take a cooperative partnership of all water users in the basin - municipal, tribal, recreational, and irrigated agriculture - to raise the capital necessary to rehabilitate the aging structures that deliver water to the Milk River Basin. The partnership must also include state and federal governments. Without significant federal and state funding assistance local governments and water users will never be able to afford the repairs.

The economy of the Hi-Line region has been built around the stable water supply provided by the St. Mary Facilities. It will take a well-coordinated and cooperative basin-wide effort to secure rehabilitation of the St. Mary Facilities, and ensure the economic viability of the Milk River Basin for present and future generations.

### **Sources of Information**

Information for this document was compiled from a number of sources. While every attempt has been made to ensure accuracy, some errors will undoubtedly exist. For this the writer apologizes.

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*DRAFT North Central Montana Alternatives Scoping Document.* U.S. Bureau of Reclamation, Montana Area Office, Billings, Montana, 2003.

*St. Mary Canal Milk River Project Engineering Appendix.* Department of the Interior, Bureau of Reclamation, Great Plains Region. April 11, 2003

Additional Historical Research provided by Joan Specking, Historian, Montana Reserved Water Rights Compact Commission.

U.S. Bureau of Reclamation web site:  
[http://www.usbr.gov/dataweb/html/milk\\_river.html](http://www.usbr.gov/dataweb/html/milk_river.html)

## **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 1<sup>st</sup> of April and 31<sup>st</sup> 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.

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### **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.

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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.

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