

## INTERNATIONAL JOINT COMMISSION

### Directive to the International St Mary – Milk Rivers Study Board November 10, 2021

#### Preamble

Article VI of the Boundary Waters Treaty establishes that water measurement and apportionment are conducted by the Accredited Officers (AOs) of the St. Mary and Milk Rivers as appointees of the Governments of Canada and the United States and at the direction of the International Joint Commission.

In order to give effect to Article VI of the Treaty, the Commission issued a 1921 Order which states that the AOs shall, until the 1921 Order is varied, modified, or withdrawn by the Commission, make jointly the measurement and apportionment of the waters of the St Mary and Milk Rivers to be used by the United States and Canada according to the rules defined by the Order. Some specific duties for the AOs are outlined in Paragraph VIII of the 1921 Order including reporting to the Commission on the measurements made; and "...to take such further and other steps as may be necessary or advisable in order to ensure the apportionment of the said waters....".

In 2007, the AOs developed through a consultative process a responsive apportionment procedure for the exchange of international waters in the Eastern Tributaries of the Milk River to increase flexibility in apportionment and to ensure that the spirit of equal sharing as stipulated in IJC 1921 Order could be best achieved. In 2019 the AOs prepared a Plan of Study entitled "*The St. Mary and Milk River Apportionment Procedures Review – Project Considerations*", recommending further study of non-structural options (i.e., administrative procedural changes) and structural options (i.e., new or improved water retention or conveyance infrastructure) that could potentially improve access to apportioned waters for each country. They also recommended further study of combinations of these options, as some combinations may hold the most promise to bring mutual benefit to both countries.

One non-structural option recommended by AOs considers exploring the performance of the 1921 Order in view of changing climate. They recommended a study exploring possible modifications to the 1921 Order including changing prior appropriation amounts, shares of water at different flows, and the definition of 'irrigation season' in the context of a changing climate.

The AOs delivered the Plan of Study to the Commission on November 22, 2019, requesting the Commission assist the AOs to find the resources to conduct the study. The AOs' recommendations underlined the fact that the climate has changed since the 1921 Order was issued and continues to do so. Given the complexities and interdependence of the options considered, coupled with vulnerabilities induced by climate change and the desire to achieve long-term resilience in these shared waters, the AOs noted in their report to the Commission that further detailed investigations were necessary to identify and implement the best option and/or combination of options. The AOs considered a variety of potential options to improve

each country's receipt of their entitlement.

On December 20, 2019, the Commission endorsed the AOs' Plan of Study and delivered it to governments recommending the governments fund the study. On June 28, 2021, the governments sent a letter of support to the Commission to conduct the Plan of Study.

The June 28, 2021, letter from governments supports the Commission's plans to "*undertake a study of administrative procedural changes and structural options that could improve both countries' access to apportioned waters.*" The letter of support also states, "*Conducting the study could help enable an analysis, including lessons learned from the past 100 years. For example, Article VI of the Boundary Waters Treaty of 1909 defines the irrigation season by reference to specific dates, yet the Parties are currently experiencing earlier spring melt and employing different agricultural practices than when the Treaty was signed. Support for the exploration of approaches to irrigation season is important to this work. The Commission should consider indicating this concern to the binational, unbiased study board, once formed.*" Further, it suggests, "*the focus of the IJC's studies and recommendations adhere to the elements identified in the AOs' Options and Recommendations paper, as well as the Supplementary document entitled The St. Mary and Milk River Apportionment Procedures Review- Project Considerations, in which the AOs provide a recommended detailed scope of the study.*" These documents dated June 18, 2019, and November 22, 2019, respectively, comprise the 2019 Plan of Study.

The governments' letter also included that "*the Commission should initiate the preparatory work for the proposed study by planning a process for stakeholder and Indigenous engagement. The governments expect that this work would be incorporated into the work plans of the study board, once formed.*"

#### Establishment of Study Board

Accordingly, the Commission hereby establishes the International St Mary – Milk Rivers Study Board (ISMMSB, Study Board) to assist the Commission in conducting the 2019 Plan of Study to further study and make recommendations to the Commission regarding structural and non-structural options and combinations thereof to improve each country's receipt of their water entitlement and provides the following instructions in order to guide and direct its activities. Furthermore, the ISMMSB's mandate is also informed by the letter of support from governments dated June 28, 2021.

The Commission has appointed a six-person board with an equal number of members from Canada and the United States. The Commission has named a member from Canada and a member from the United States to be the Co-Chairs of the Study Board. The Commission may appoint an alternate member to act in the place of the Co-chairs whenever that Co-Chair, for any reason, is not available to act as a member of the Study Board. The Alternate Co-Chairs may only participate in consensus decisions when respective co-chairs are not present (i.e., they do not act as additional Board members).

#### Duties and functions

The Commission will:

1. *In consultation with the Study Board, establish a working group known as the Government Forum* that will include representatives from federal, state, provincial and Indigenous governments having responsibilities for apportioning or permitting the use of water within their jurisdictions, and/or owning, operating, or accommodating infrastructure directly related to the conveyance or storage of St. Mary or Milk River water. Members of the Government Forum will be appointed by the Commission. The Commission may seek nominations from each of the relevant jurisdictions for consideration for membership. The Forum provides a venue for governments to:
  - receive and disseminate study-related information in a timely manner;
  - share information, ideas, and concerns;
  - discuss and explore options; and
  - provide feedback and advice to the Study Board on an active and ongoing basis, particularly during the formation of recommendations.
2. *In consultation with the Study Board, establish an Independent Review Group (IRG)* to ensure independent technical review is being conducted and documented on appropriate study components and documents during the entire study process. The IRG will manage and conduct this independent review and will engage the appropriate expertise as necessary. The IRG will endeavor to invite and include Indigenous traditional knowledge in its technical review.
3. *Administer and/or coordinate resource contributions from the two Governments to support the activities of the Study Board.* Members of the Study Board, its advisory and technical groups, and the Study Manager attending events (e.g., meetings, workshops) will be responsible for their own expenses unless otherwise arranged with the Commission.

The ISMMSB shall:

1. *Provide options and recommendations for the Commission's consideration.* In carrying out this mandate, the Study Board is encouraged to integrate as many relevant considerations and perspectives into its work as possible, including not only those previously suggested by the AOs/FRs in their Plan of Study, but also those that have not been incorporated to date, to assure that all significant issues are adequately addressed. Conducting the study is to enable an analysis of lessons learned from the past 100 years since the 1921 Order was implemented, including exploration of different approaches to water apportionment before, during, and after the irrigation season. IJC guidance on the formulation of recommendations is provided.
2. *Work towards solutions that are mutually beneficial to both countries.* Individual members of the Study Board shall serve the Commission in their personal and professional capacities, and not as representatives of their countries, communities, agencies, organizations, or other affiliations. Study Board members will focus collectively and impartially on benefits, improvements or impacts relative to the entire St Mary – Milk

Rivers basin in which the AOs conduct their work.

3. *Conduct its work by consensus as per the Commission's Guidance on Board Consensus Document dated March 20, 2020.* The Co-Chairs shall promptly notify the Commission of any irreconcilable differences within the Study Board and shall refer promptly to the Commission any lack of clarity or precision in instructions or directives received from the Commission.
4. *Provide a workplan for conducting the study to the Commission* within three months of the date of this directive including a detailed schedule and budget for the studies and tasks to be undertaken. The Study board will demonstrate in their workplan how Indigenous traditional knowledge will considered throughout the study.
5. *Appoint two Study Managers, one from each country, to assist the Study Board in delivering on its mandate.* The Study Managers shall work under the joint direction of the Co-Chairs of the Study Board. While they are not members of the Study Board, the Study Managers will participate in every Study Board meeting and remain fully aware of its work. The Study Managers will be responsible for the effective management of the Study Board's workplan, as overseen by the Study Board, and for general administrative and financial/contractual tasks including briefing the Study Board on these aspects of the study as requested by the Co-Chairs. Along with providing standard secretarial services, the Study Managers will maintain financial, travel and other records as may be necessary to document the contributions of each country to the study effort. Working with those responsible for information management, the Study Managers will also collect and maintain all reports, models and datasets developed as part of the study effort and ensure that the Commission receives copies of all such materials.
6. *Keep the Commission informed of its progress and direction and maintain awareness of basin-wide activities and conditions.* The Co-Chairs of the Study Board shall convene and preside at all meetings of the Study Board and shall jointly take a leadership role in planning and implementing the Study Board's mandate. The Co-Chairs shall keep the Commission informed of the Study Board's plans and progress and of any developments or impediments, actual or anticipated, which are likely to impede, delay, or otherwise affect the carrying out of the Study Board's responsibilities. The Study Board shall inform the Commission of any such activities or conditions that might affect its work through regular contact with liaisons designated by the Commission, and by appearing before the Commission at semi-annual meetings, or upon request. At least one week in advance of such meetings, the Study Board shall produce slide decks summarizing study progress and raising any issues to the Commission for discussion.
7. *Establish study teams, committees, work groups and other advisory bodies* needed to carry out its work under this directive. The Study Board will work with Commission staff to determine the composition and function of advisory bodies and acquire the appropriate supports. The Study Board will implement the necessary mechanisms to ensure regular and effective communications between all groups, to ensure their respective recommendations and advice are informed by each other's expertise.

8. *Involve the public in its work to the fullest extent possible.* The Study Board will establish a binational Public Advisory Group (PAG) within three months of the date of this directive. Members of the PAG, including its Co-Chairs will be appointed by the Commission's U.S. and Canadian Secretaries in consultation with Commission staff and the Study Board. The PAG will consist of an equal number of members from each country representing key interests. The Study Board shall engage with the PAG in the development of its Public Outreach Plan, which shall be provided to the Commission within five months of the date of this directive.
9. *Involve Indigenous people in its work to the fullest extent possible.* The Study Board will establish a binational Indigenous Advisory Group (IAG) within three months of the date of this directive. Members of the IAG, including its CoChairs will be appointed by the Commission's US and Canadian Secretaries in consultation with Commission staff and the Study Board, and will include Tribal, First Nation, and Métis Nation citizens from within the basin. The IAG will consist of an equal number of members residing within each country. The Study Board shall engage with the IAG in the development of its Indigenous Outreach Plan, which shall be provided to the Commission within five months of the date of this directive.
10. *Demonstrate to the Commission how the perspectives of its advisory bodies are considered throughout the duration of the study.* The Study Board is expected to meaningfully engage its advisory bodies in its work, and to take their perspectives into consideration in conducting its work. At a minimum, the Study Board shall meet with its advisory bodies prior to each semi-annual meeting of the Commission to inform them of study progress and listen to their perspectives. At each meeting with the Commission, and in Study Board reports, the Study Board shall outline how it has engaged with its advisory bodies and how they have contributed to its work.
11. *Carry out its outreach activities in accordance with the Commission's policies and guidance documents on the matter.* The Commission shall provide all Study Board members with these documents when appointed. In particular:
  - a. The Study Board shall provide the text of media releases to the Commission prior to their release. The Study Board shall inform Commission staff in advance of plans for any meetings, or other means of involving the public in Study Board outreach, and report to the Commission, in a timely manner, on these and any other presentations or representations made to the Study Board. Commissioners and relevant Commission staff are invited to any meetings of the Study Board and any committees the Study Board may establish.
  - b. To facilitate public outreach and consultation, the Study Board working with those responsible for communications shall make information related to the study as widely available as practicable, including white papers, maps, data, reports of the Study Board or any of its advisory bodies and other materials as appropriate.
  - c. Those responsible for communications shall develop and maintain a website content presence on the Commission website. The Study Board will use the website to encourage public discussion of such information. To the extent

practicable, those responsible for communications shall make available on the Commission website all documents that are available for public information under the Commission's Rules of Procedure, including public comment and other information made available by decision pursuant to the Rules of Procedure.

12. *Provide minutes of its meetings to the Commission* within 45 days of the close of the meeting in keeping with the Commission's April 2002 Policy Concerning Public Access to Minutes of Meetings. The minutes will subsequently be put on the Commission's website by the Study co-manager in coordination with Commission staff.
13. *Segregate Commission records from personal and business records.* Study Board members agree to maintain all paper and electronic records related to the Study separate from personal or business records. All Commission records which the Commission has not decided to make available to the public are privileged and immune from seizure as per the IJC's *Immunity Guidelines for IJC Board, Council, and Task Force Members*.
14. *Produce update reports in a format suitable for public release* (ideally via the Study Board's page on the Commission website, as well as via printed copy) and make annual reports available to the public upon request, normally one week after formal receipt by the Commission at its Spring semi-annual meeting unless directed otherwise by the Commission. The Study Board may submit additional reports to the Commission as necessary.
15. *Provide the Commission with its final report* by or before June 13, 2025, which shall contain the Study Board's findings, conclusions, and recommendations.

Signed by IJC Secretaries on the 10th day of November, 2021 – following Commission approval.