INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE MEASUREMENT AND APPORTIONMENT OF THE WATERS OF THE ST. MARY AND MILK RIVERS AND THEIR TRIBUTARIES IN THE UNITED STATES AND CANADA

UNDER ARTICLE VI OF THE TREATY OF JANUARY 11, 1909
BETWEEN THE UNITED STATES AND
GREAT BRITAIN

ORDER
OTTAWA, OCTOBER 4, 1921

RECOMMENDATIONS
OTTAWA, OCTOBER 6, 1921

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INTERNATIONAL JOINT COMMISSION.

CANADA.

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Secretary.

UNITED STATES.

OBADIAH GARDNER, *Chairman*
CLARENCE D. CLARK.
MARCUS A. SMITH.
WILLIAM H. SMITH,
Secretary.

INTERNATIONAL JOINT COMMISSION.

ORDER.

IN THE MATTER OF THE MEASUREMENT AND APPORTIONMENT OF THE WATERS OF THE ST. MARY AND MILK RIVERS AND THEIR TRIBUTARIES IN THE STATE OF MONTANA AND THE PROVINCES OF ALBERTA AND SASKATCHEWAN.

Whereas by Article VI of the Treaty entered into between the United States of America and His Majesty, the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, signed at Washington on the 11th of January, 1909, it is provided as follows:

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 to 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 St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

And whereas the said Reclamation and Irrigation Officers have been unable to agree as to the manner in which the waters mentioned in the said Article VI should be measured and apportioned;

And whereas, before giving directions as to the measurement and apportionment of the said waters, the International Joint Commission deemed it proper to hear such representations and suggestions thereon as the Governments of the United States and Canada, the Provinces of Alberta and Saskatchewan, and the State of Montana, and as corporations and persons interested might see fit to

make, and for such purposes sittings of the Commission were held at the following times and places: At the city of St. Paul, in the State of Minnesota, on the 24th, 25th, 26th, 27th, and 28th days of May, 1915; at the city of Detroit, in the State of Michigan, on the 15th, 16th, and 17th days of May, 1917; at the city of Ottawa, in the Province of Ontario, on the 3d, 4th, and 5th days of May, 1920; at the village of Chinook, in the State of Montana, on the 15th day of September, 1921; and at the city of Lethbridge, in the Province of Alberta, on the 17th day of September, 1921, when counsel and representatives of the said Governments, corporations, and persons appeared and presented their views;

And whereas, pending final decision as to the proper method of measuring and apportioning said waters, interim orders with reference thereto have been made by the International Joint Commission from time to time, the last of such orders bearing the date of 6th day of April, 1921;

And whereas the members of the International Joint Commission have unanimously determined that the said Reclamation and Irrigation Officers should be guided in the measurement and apportionment of said waters by the directions and instructions hereinafter set forth:

IT IS THEREFORE ORDERED AND DIRECTED by the Commission in pursuance of the powers conferred by the said Article VI of the said Treaty that the Reclamation and Irrigation Officers of the United States and Canada shall, until this order is varied, modified, or withdrawn by the Commission, make jointly the measurement and apportionment of the water to be used by the United States and Canada in accordance with the following rules:

St. Mary River.

I. (*a*) During the irrigation season when the natural flow of the St. Mary River at the point where it crosses the international boundary is six hundred and sixty-six (666) cubic feet per second or less Canada shall be entitled to three-fourths and the United States to one-fourth of such flow.

(*b*) During the irrigation season when the natural flow of the St. Mary River at the point where it crosses the international boundary is more than six hundred and sixty-six (666) cubic feet per second Canada shall be entitled to a prior appropriation of five hundred (500) cubic feet per second, and the excess over six hundred and sixty-six (666) cubic feet per second shall be divided equally between the two countries.

(*c*) During the nonirrigation season the natural flow of the St. Mary River at the point where it crosses the international boundary shall be divided equally between the two countries.

Milk River.

II. (*a*) During the irrigation season when the natural flow of the Milk River at the point where it crosses the international boundary for the last time (commonly and hereafter called the Eastern Crossing) is six hundred and sixty-six (666) cubic feet per second or less, the United States shall be entitled to three-fourths and Canada to one-fourth of such natural flow.

(*b*) During the irrigation season when the natural flow of the Milk River at the Eastern Crossing is more than six hundred and sixty-six (666) cubic feet per second the United States shall be entitled to a prior appropriation of five hundred (500) cubic feet per second and the excess over six hundred and sixty-six (666) cubic feet per second shall be divided equally between the two countries.

(*c*) During the nonirrigation season the natural flow of the Milk River at the Eastern Crossing shall be divided equally between the two countries.

Eastern Tributaries of Milk River.

III. The natural flow of the eastern (otherwise known as the Saskatchewan or northern) tributaries of the Milk River at the points where they cross the international boundary shall be divided equally between the two countries.

Waters not naturally crossing the boundary.

IV. Each country shall be apportioned such waters of the said rivers and of any tributaries thereof as rise in that country but do not naturally flow across the international boundary.

V. For the purpose of carrying out the apportionment directed in Paragraphs I, II, and III hereof the said Reclamation and Irrigation Officers shall jointly take steps—

(*a*) To ascertain and keep a daily record of the natural flow of the St. Mary River at the international boundary, of the Milk River at the Eastern Crossing, and of the eastern tributaries of the Milk River at the international boundary by measurement in each case:

(1) At the gauging station at the international boundary;

(2) At all places where any of the waters which would naturally flow across the international boundary at that particular point are diverted in either country prior to such crossing;

(3) At all places where any of the waters which would naturally flow across the international boundary at that particular point are stored, or the natural flow thereof increased or decreased prior to such crossing;

(*b*) To fix the amount of water to which each country is entitled in each case by applying the directions contained in paragraphs 1, 2, and 3 hereof to the total amount of the natural flow so ascertained in each case.

(*c*) To communicate the amount so fixed to all parties interested, so that the apportionment of the said waters may be fully carried out by both countries in accordance with the said directions.

VI. Each country may receive its share of the said waters as so fixed at such point or points as it may desire. A gauging station shall be established and maintained by the Reclamation or Irrigation Officers of the country in which any diversion, storage, increase, or decrease of the natural flow shall be made at every point where such diversion, storage, increase, or decrease takes place.

VII. International gauging stations shall be maintained at the following points:

St. Mary River near international boundary; the north branch of Milk River near international boundary; the south branch of Milk River near international boundary; Milk River at Eastern Crossing; Lodge Creek, Battle Creek, and Frenchman River, near international boundary; and gauging stations shall be established and maintained at such other points as the Commission may from time to time approve.

VIII. The said Reclamation and Irrigation Officers are hereby further authorized and directed:

(*a*) To make such additional measurements and to take such further and other steps as may be necessary or advisable in order to insure the apportionment of the said waters in accordance with the directions herein set forth.

(*b*) To operate the irrigation works of either country in such a manner as to facilitate the use by the other country of its share of the said waters and subject hereto to secure to the two countries the greatest beneficial use thereof.

(*c*) To report to the Commission the measurements made at all international and other gauging stations established pursuant to this order.

IX. In the event of any disagreement in respect to any matter or thing to be done under this order the said Reclamation and Irrigation Officers shall report to the Commission, setting forth fully the points of difference and the facts relating thereto.

X. The said order of the Commission, dated the 6th day of April 1921, is hereby withdrawn, except with respect to the report to be furnished to the Commission thereunder.

Dated at Ottawa, Canada, this 4th day of October, 1921.

O. Gardner,
C. A. Magrath,
C. D. Clark,
Henry A. Powell,
W. H. Hearst,
Mark A. Smith.

INTERNATIONAL JOINT COMMISSION.

RECOMMENDATIONS.

IN THE MATTER OF THE MEASUREMENT AND APPORTIONMENT OF THE WATERS OF THE ST. MARY AND MILK RIVERS AND THEIR TRIBUTARIES IN THE STATE OF MONTANA AND THE PROVINCES OF ALBERTA AND SASKATCHEWAN, UNDER THE TERMS OF ARTICLE VI OF THE TREATY OF JANUARY 11, 1909.

The Commission finds, as the result of a very thorough investigation of the possibilities of irrigation development in those portions of the State of Montana and the Provinces of Alberta and Saskatchewan capable of irrigation by the waters of the St. Mary and Milk Rivers and their tributaries, that the quantities of land in this international region susceptible of development far exceed the capacity of the rivers in question even under the most exhaustive system of conservation. It is therefore of the utmost importance, not only because of the practical benefits to accrue to the people of this western country, but still more because the St. Mary and Milk Rivers problem is one that might easily become a source of serious irritation and misunderstanding to the people of the two countries, that every effort should be made to obtain the maximum efficiency in irrigation from these waters.

In the first Annual Report of the United States Reclamation Service, 1902, a project was outlined for the storage of 250,000 acre-feet of water by means of a dam across the outlet of the St. Mary Lakes.

And, further, the United States Reclamation Service has already constructed a reservoir at Sherbourne Lake, and the Commission is informed that said Service has in contemplation the construction of what is known as the Chain-of-Lakes Reservoir in the valley of the Milk River after that stream leaves Canada; and that the Reclamation Service of Canada has in contemplation the construction of what is called the Verdigris Coulee Reservoir on the northern side of the Milk River.

The Commission is strongly of the opinion that the construction of said St. Mary Lakes, Chain-of-Lakes, and Verdigris Coulee reservoirs, and the operation of all reservoirs under its direction will make it possible to conserve practically the entire winter flow and flood waters of the two streams and insure the greatest beneficial use of the same to both countries. Because of the international

interests involved and as a means of furthering those relations of neighborliness and good fellowship which it is convinced the people of both countries have earnestly at heart, the Commission believes that the cost of construction of the works at the outlet of St. Mary Lakes should not be charged against any particular project, but should be borne jointly by the Governments of the United States and Canada, the legal title of said reservoir to be vested in the United States.

It is therefore ordered that the following recommendations be respectfully submitted to the Governments of the United States and Canada:

That the Governments of the United States and Canada enter into an agreement for the construction of a reservoir at St. Mary Lakes in Montana.

That the Reclamation Service of the United States proceed with the construction of the proposed Chain-of-Lakes Reservoir in Montana, and the Canadian Reclamation Service with the proposed Verdigris Coulee Reservoir in Alberta.

That all reservoirs herein mentioned be constructed, controlled, and operated in the manner, for the purpose, and subject to the conditions above set forth.

Dated at Ottawa, Canada, this 6th day of October, 1921.

O. GARDNER,
C. A. MAGRATH,
C. D. CLARK,
HENRY A. POWELL,
W. H. HEARST,
MARK A. SMITH.