

3-1-4-9 (9)

July 29, 2004

TO THE MEMBERS OF THE JOINT INTERNATIONAL COMMISSION:

I appreciate this opportunity to make a few comments at this hearing.

I attended the hearing at Havre, Montana and listened with interest as the speakers pleaded for fairness and equity in the allocation of water in the St. Mary and Milk Rivers.

I believe the present formula represents fairness and equity in the allocation of water and suggest that there is no need to open it up for review. Let me explain why.

Both Montana and Alberta use and honor the principle of "First in Time, First in Right" in establishing the priority in the use of water. The United States established that principle several hundred years ago and Canada and Alberta adopted that same principle from them and it is entrenched in Alberta's Water Laws.

I believe the International Joint Commission of 1921 applied the time honored principle of "First in Time, First in Right" in establishing the division of water from these two rivers.

The Province of Alberta issued water licenses for the diversion of water from the St. Mary River with a priority date of 1899 to the Magrath Irrigation District, the Raymond Irrigation District, the Taber Irrigation District and the St. Mary River Irrigation District. The total volume of these licenses for these four districts is 223,595 ac. ft. per year:

**9,180 ac. ft. for the Magrath Irrigation District
12,240 ac. ft. for the Raymond Irrigation District
34,000 ac. ft. for the Taber Irrigation District
168,175 ac. ft. for the St. Mary River Irrigation District**

A canal built in the 1890's began diverting water out of the St. Mary River near Kimball, Alberta to these districts in July 1900. The United States at this time was not diverting water out of the St. Mary River. This established a prior appropriation for Canada under the "First in Time, First in Right" principle, thus setting that water aside for Alberta. Then the balance in the river was to be shared equally between United States and Canada thus giving Canada 59% of the water and United States 41% of the water in the St. Mary River.

On the Milk River, United States began using water out of it earlier than Canada thus establishing their "prior appropriation" under the "First in Time, First in Right" principle; and giving them 66.4% of the water and Canada 33.6%.

Since the principle of "First in Time, First in Right" is established in law in both Montana and Alberta, it should be honored, thus making it unnecessary to open up the 1921 Order.

(over)

Canada established a “prior appropriation” of water from the St. Mary River and United States established a “prior appropriation” from the Milk River and these are appropriately reflected in the 1921 Order of the I.J.C. allocating fairly the waters of these two rivers to the two countries.

Respectfully submitted,

A handwritten signature in cursive script that reads "Keith Francis".

Keith Francis

**Chairman of the Board of the
Taber Irrigation District**